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LEGAL AND POLITICAL EXAMINATION OF BENEFIT-SHARING: BETWEEN INTEREST OF
ALL COUNTRIES AND PROVINCE OF ALL MANKIND

Abstract

Despite rapid technological development, adequately large financial capacities of private investors and ambitious plans of national or international space agencies in space resources, legal unclarity and obstacles represent a significant barrier. Even though space mining is not prohibited per se, outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and the Outer Space Treaty (OST) declares that exploration and use of outer space shall be carried out for the benefit and in the interest of all countries and shall be the province of all mankind. The long-standing absence of consensus at the UN COPUOS and reluctance to adopt the Moon Agreement, eyeing an international regime, resulted in several national initiatives.

Much of the focus on the two pioneering national legislatures, the 2015 US Commercial Space Launch Competitiveness Act and the 2017 Luxemburg Law on exploration and use of space resources, has been given to the issue of appropriation, whether by U.S. citizens or any locally registered entities. Yet, the principle of non-appropriation is not the only requirement to be met. It is important to mention that national space legislation of the US and Luxembourg do not address the benefits and interests of all countries and do not reflect that the exploration and use of outer space shall be the province of all mankind. We consider this a critical point worthy an examination in order to respect the Outer Space Treaty dichotomy.

According to the authors, any conceptualization of benefit-sharing enshrined in the Outer Space Treaty ought to be firstly, consensual to prevent any potential conflict over such resources, secondly globally beneficial, to ensure benefits to all mankind, and thirdly, to offer a stable and predictable legal framework to attract investors and allow for the development of necessary technology and activities. Based on these assumptions the paper seeks to evaluate the OST dichotomy between “benefits and interests of all countries” and “the province of all mankind” from legal and political perspectives. The wealth of academic literature covering international consensus-building, international norm dynamics, global governance and legitimacy will offer a perspective for the political examination, while terrestrial mining experiences and adequate legal frameworks such as the United Nations Convention on the Law of the Sea (UNLOS) or Special License to Operate (SLO) will provide a base for the legal investigation.