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IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Space Mining: National Authority? International Authority? Both? (5)

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SPACE MINING: ACCOUNTING FOR NATIONAL ACTIVITIES IN INTERNATIONAL REGULATION THROUGH THE DELINEATION BETWEEN NATIONAL AND INTERNATIONAL JURISDICTION

Abstract

The milestone provisions in the OST designate outer space and celestial bodies as areas beyond national jurisdiction and impose limitations on national jurisdiction which extends only to space objects and persons in outer space. In view of upcoming commercial space mining and recent national legal developments, it is of crucial importance to delineate the different levels of legal authority over space resource activities.

Whether or not and in how far the national appropriation of outer space and space resources is legally allowed must be analysed systematically. What is indisputable, in the first place, is that any national appropriation or occupation of areas on celestial bodies or in outer space is prohibited by Article II OST. However this provision refers to "use" as one possible means of appropriation. By systematically interpreting Article II, it becomes clear that only use which amounts to territorial appropriation is prohibited, while resource appropriation as such is not addressed . Hence, the OST contains no explicit prohibition on space mining.

More specific provisions are formulated in the Moon Agreement. Its Article 11 prohibits the appropriation of resources on celestial bodies and states that such activities — as soon as they become feasible — must be regulated by the international community. While this *moratorium* on resource exploitation is binding only for the 18 ratifying State parties, there is no doubt that the legal authority to regulate over outer space lies solely with the international community and not with single States.

Unilateral legislative acts must conform to existing international provisions as outer space is an area beyond national jurisdiction. Where such explicit provisions are lacking – as is the case with the appropriation of space resources – the lawful scope of national authority must be delineated through international regulation.

This paper will present arguments for the following conclusions:

• While national sovereignty extends to space objects and persons in outer space, outer space and celestial bodies, including resources thereof, are under the sole jurisdiction of the international community.

• The strict prohibition on the appropriation of territory (areas) on celestial bodies and outer space is not specific with regard to space resources.

• While space mining activities are not explicitly prohibited under international law, they are not yet regulated.

• Existing *lacunae* in international regulation cannot be overcome through national laws as States lack the national prescriptive authority to regulate over outer space and celestial bodies.