

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

Author: Prof. Irmgard Marboe
University of Vienna, Austria

REVIEWING THE MOON AGREEMENT OR AMENDING THE OUTER SPACE TREATY – VIEWS
OF UNCOPUOS MEMBER STATES

Abstract

The 1979 Moon Agreement has left it for the future to determine the international rules governing the exploitation of space resources, including appropriate procedures, so as to clarify what it means that the Moon and its natural resources are the “common heritage of mankind”. In accordance with Article 18, one third of the States parties, with the concurrence of the majority of the States parties, could request the UN Secretary-General to convene a conference of the States parties to review the Agreement. It might be tempting for the State parties to the Moon Agreement to take advantage of the small number of them and to initiate the process for a review conference. As of 2018 there were 18 State parties, so that only 6 of them would be required to put the request forward to the UN Secretary-General, and 3 more to approve such an initiative. On the other hand, the Outer Space Treaty with its larger number of State parties, as of 2018 they were 107, could also be amended. In accordance with Article XV any State party may propose amendments which shall enter into force when a majority of the States parties has accepted them. In addition, the uncertainty about property rights on space resources which stems primarily from the unclear relationship between paragraphs 1 and 2 of Article I, Article II, and Article IX of the Outer Space Treaty could be clarified by subsequent agreements or subsequent practice according to Article 31 paragraph 3 of the Vienna Convention on the Law of Treaties. First exchanges of views between the State parties to the Moon Agreement and those of the Outer Space Treaty took place in the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) under the agenda item “General exchange of views on potential legal methods for activities in exploration and utilization of space resources” in 2017 and 2018. The present paper will analyse the different statements by governments made in this forum and try to analyse any common ideas and principles which could become the substance of a review, amendment or agreement on interpretation of the Moon Agreement or the Outer Space Treaty.