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Author: Mr. Chinmoy Roy
Antrix Corporation Limited, India, chinmoy@antrix.co.in

LEGALITY OF MINING IN OUTER SPACE: A CRITICAL ANALYSIS

Abstract

The next leap of mankind may come in the form of space mining as is evident from the private players along with space faring nations seeking to actively venture in the outer space for natural resources. Surprisingly, the idea of mining space resources is even a precursor of space exploration and is largely believed to originate in The Exploration of Cosmic Space by Means of Reaction Devices authored by Konstantin Tsiolkovsky in 1903. Space mining gained its initial traction in recent times with the announcement of plans to mine asteroids by commercial entities. With the advancement of technology, States have shown great interest in utilizing natural resources available on celestial bodies including moon. This approach has reinforced the idea of mining in Outer Space. Mining in Outer Space poses two fundamental questions.

Firstly, in the *res communis* regime, are the States allowed to procure natural resources for their idle benefit? A careful perusal of the international agreements on outer space will show us how the resource procurement is permissible. However, the procurement of natural resources should be based on the principle of benefiting the whole of mankind through a benefit sharing mechanism. Furthermore, the procurement of natural resources in outer space should also be judged on the touchstone of the principle laid down under the Outer Space Treaty i.e. the principle of non-appropriation. Additionally, the principle of '*non-appropriation*' under the Outer Space Treaty has received varied interpretations. Therefore, these inconsistencies must be discarded to ensure a uniform and sustainable state practice. The author endeavours to provide a functional solution to this problem after a careful perusal of principles under International Law and Domestic Law.

Secondly, What is the ambit of the term '*use*' under Article I of the Outer Space Treaty? The term has not been defined under the Outer Space Treaty; neither a uniform definition has been adopted by the States through International bodies. The ever-expanding horizons of space exploration and technological advancements makes it imperative for the treaty to be interpreted in an evaluative manner to maintain its relevance in the contemporary sphere. This paper examines a possible solution to '*non-appropriation*' and '*use*' conundrum under the Outer Space Treaty.