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UTILIZATION OF NATURAL RESOURCES IN OUTER SPACE: COMPLIANCE OF A NATIONAL
LAW ON EXPLORATION AND USE OF SPACE RESOURCES WITH THE PRINCIPLES OF
INTERNATIONAL SPACE LAW

Abstract

Fundamental legal principles applicable to activities in outer space are enshrined in the 1967 Outer Space Treaty (“OST”). However, the treaty does not contain any specific reference to the space resource activities. Bearing in mind the benefits which may be derived from the exploitation of the natural resources of the moon and other celestial bodies, the Moon Agreement (“MA”) declared the moon and its natural resources the common heritage of mankind. In addition, parties to the MA undertook to establish an international regime to govern the exploitation of natural resources “as such exploitation is about to become feasible”. Extraterrestrial mining is now within the realms of the probable, however, no international regime has been established yet and the sole instrument of international space law addressing the utilization of space resources – the Moon Agreement - has been ratified by only 18 states. Its widespread acceptance remains elusive. The lack of necessary legal framework on space resource utilization and the consequent legal uncertainty represent a significant barrier for private investments. As a response to the legal uncertainty surrounding legality and conditions under which space resources can be utilized Luxembourg and the U.S. enacted national space laws declaring that space resources are capable of being appropriated. More specifically, Luxembourg’s law stipulates that legal persons having their registered office in Luxembourg may apply for an authorization for a mission of exploration and use of resources for commercial purposes and acknowledges that space resources are capable of being appropriate. Both of the above-mentioned national laws require compliance of the authorized space resource activities with international obligations of Luxembourg/the U.S., however, neither Luxembourg’s nor the U.S. national law address the uncertainty associated with the interpretation of the common benefits clause stipulating that space resources are to be carried out for the benefit and in the interest of all states, and that the exploration and use of outer space is the province of all mankind. The paper explores how the above-mentioned national laws should be amended or complemented to be considered compatible with the international law principles. In particular, the author aims to analyse whether a national law on exploration and use of space resources can provide legal certainty and a stable socio-political environment to attract large financial resources needed for the development of the first space mining operations.