

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
International cooperation on the way to the Moon and Mars (2)

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IS THE US UNILATERALISM SETTING A DANGEROUS TREND IN THE LEGAL REGULATION
OF SPACE ACTIVITIES?

Abstract

The United States has been aggressively pursuing its space activities since its entry into the field of outer space activities. The private space sector has developed tremendously due to the liberal licensing policy adopted by the United States. While the launch, operation and other related services have been extensively commercialized, the recent trends in the United States reflect the focus on the space resource exploitation. The United States Commercial Space Launch Competitiveness Act 2015 has not only allowed the commercial exploitation of asteroid and space resources but it also goes on to recognize the private property rights over those resources. In 2020, the United States has officially rejected the applicability of the Moon Agreement 1979, and has proposed Artemis Accords for going back to the moon with an intention to explore and exploit the moon resources. Though the United States is seeking cooperation from other countries to implement Artemis Accords, the terms of the programme seems to be a dictate from the United States. Hence, several States have expressed their reservations and unwillingness to be part of the Artemis programme. The United States' developments are also a marked departure from the twentieth century developments of space law, which have been based on the solid foundations of multilateralism rather than unilateralism. The concept of common heritage of mankind, as enshrined under Article 11 of the Moon Agreement, is one of the best known examples of such spirit of multilateralism. Even Article 11(5) of the Moon Agreement advocates for a regulatory regime based on the multilateral negotiation for the governance of celestial resources. It is also important to note here that the Hague International Space Resources Governance Working Group has already come up with the Building Blocks for the Development of an International Framework on Space Resource Activities in 2019. The Building Blocks are based on the fundamental principles of the UN space treaties, including the requirement of benefit sharing. Hence, the US unilateralism poses a serious question on the future of legal regulation of space activities. The Artemis Accords carries the risk of unilateralism (or at best the plurilateralism) overtaking the spirit of multilateralism, which is already being evidenced in the current crisis of the WTO.