

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Safety Zones on Celestial Bodies and in Outer Space (5)

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SOCIAL LICENCE TO OPERATE: A TOOL TO ENSURE LEGALITY AND LEGITIMACY OF
SAFETY ZONES

Abstract

Safety zones are mentioned by both the Building Blocks for the Development of an International Framework for the Governance of Space Resources Activities and Artemis Accords. They appear to be a fundamental measure to assure safety of space activities associated with the utilisation of space resources and avoid any harmful interference.

However, the outer space is an area recognised as *res communis omnium* and is not subject to an appropriation. States are precluded from exercising territorial jurisdiction over the outer space. In other words, the principle of non-appropriation appears to be inherently incompatible with the establishment of safety zones. How should a safety zone be declared without impeding the free access to all areas of celestial bodies stipulated by the Outer Space Treaty?

Protection of investments is primarily guaranteed by the legal system or direct commitments made by the state on which territory the investment was made. At the first glance, there is no such a guarantor of protection in the outer space. The author believes that the concept called Social License to Operate may play an important role in this regard. It has been adopted by the extractive industry to fix regulatory and legitimacy gaps in situations when the guarantees provided by the host state were not viewed as sufficient. Hence, the author believes that SLO can play a critical role in getting legitimacy, credibility and then protection.

It may be useful to learn a lesson from the historical experience of non-governmental entities seeking to commence mining operations in the areas beyond national jurisdiction in 1970s. A slow pace of the international deliberations did not result in the establishment of an international legal framework and led the mining industry to press for alternative means. Although it was possible to claim that natural resources in the deep seabed could be validly perceived as *res nullius*, Deepsea Ventures, Inc., a mining company, filed a notice of discovery and claim of exclusive mining rights in relation to a deposit of seabed manganese nodules in the specified area in the Pacific Ocean. It requested for diplomatic protection and protection of investment. The company requested states, persons and all other commercial entities to respect the exclusive rights asserted. Copies of the letter were filed with the embassies of 12 nations. No government recognized their claim, however, the request represents an inspiring attempt to gain both legality and legitimacy.