

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
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MISSION IMPOSSIBLE? WILL AN INTERNATIONALLY BINDING LEGAL REGIME TO GOVERN  
THE COMMERCIAL EXPLOITATION OF SPACE RESOURCES EVER BE ATTAINABLE?

**Abstract**

The heady tandem of ever-increasing accessibility to space and the constant and rapid evolution of technology means that it is only a matter of time before activities such as space mining become commercially viable and in-situ resource utilisation (ISRU) becomes standard and regular practice by parties from all nations. These feats are to be celebrated. Yet in order to execute such missions, spacefarers will need clear proprietary rights, and the ability to enforce them on the international plane. Here, a problem arises: neither regulations nor a regulator currently exist.

The Outer Space Treaty (OST) does not grant ownership rights over any land, resources or other materials that may be procured in extra-terrestrial realms. On the contrary, Article II of the OST confirms that nothing in space may be subject to 'national appropriation'. Unsurprisingly, motivated by wide-ranging political and commercial agendas, different players – and different States – have interpreted this provision in very diverse ways. This is certainly as grey as an area can be. No matter what is ultimately decided to constitute the correct interpretation, it is clear that, currently, the situation is dangerously uncertain, and there is a general acceptance among COPOUS members of the need to further develop the international legal framework in order to facilitate the commercial exploitation of space resources.

It seems odd, when considering the colossal scientific challenges that have been overcome to enable us to even ask these questions, that a legal conundrum presents what seems to be the biggest hurdle of all. Despite valiant efforts at the international level to address and clarify extra-terrestrial property rights, the negligible ratification of the Moon Agreement and the lack of implementation of the building blocks, proposed by in 2019 by the Hague International Space Resources Governance Working Group, both signify that this issue is unlikely to be resolved soon. Moreover, as States begin to take matters into their own hands, passing unilateral domestic legislation to 'clarify' the situation and provide comfort to space-faring investors, the chance of reaching global consensus on the matter diminishes, while the global fragmentation of space law becomes an ever more real prospect.

This paper considers the issue of extra-terrestrial proprietary rights, in the context of the existing international legal framework and customary international law, from the perspective of the new space age. It then contemplates whether a solution may ever be achieved or whether this is, truly, mission impossible.