

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Recent Developments in Space Law with Particular Focus on Space Debris Remediation (7)

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THE 2023 DRAFT AGREEMENT ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE
BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION AND ITS
IMPLICATIONS, IF ANY, REGARDING THE EXTRACTION OF SPACE RESOURCES

Abstract

Resource extraction in outer space is currently an emerging reality. The space resource extraction movement is progressing in derogation to Moon Treaty, which is viewed as irrelevant by a majority of States. Moon Treaty Article 11 provides that “[t]he Moon and its natural resources are the common heritage of mankind, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article.” Moon Treaty Article 18 then proceeds to set forth an international regime and procedures to regulate the extraction of lunar natural resources. Moreover, pursuant to Moon Treaty Article 1, all provisions of the treaty apply to other celestial bodies in the solar system other than Earth. Article 11’s “common heritage of mankind” language and principles in conjunction with Article 18 is what is said to relegate the Moon Treaty as an outcast among the space law treaties.

In March 2023, the international community concluded successful negotiations of the Draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (“2023 Oceans Treaty”). A fundamental objective of the Treaty is to “ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term.” Most notable is that similar to the Moon Treaty, the 2023 Oceans Treaty provides that “the principle of the common heritage of humankind which is set out in the Convention” shall be a guiding principle for the Parties. This adoption of the “common heritage of mankind” principle within the context of an resource extraction regime raises the issue of a potential renaissance of the Moon Treaty.

While Moon Treaty Article 11 references natural resources, it does not differentiate between biological or abiotic resources. The 2023 Oceans Treaty, by contrast, is limited to a category of biological resources referred to as “marine genetic resources which is essentially a biological rather than an abiotic resource. Nevertheless, it is reasonable to conclude that the resources covered by the 2023 Oceans Treaty are a natural resource.

This paper will address the implications, if any, the 2023 Oceans Treaty may have in connection with the extraction and use of space resources and whether it creates a potential avenue for the Moon Treaty’s application to the extraction of natural space resources.