

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Young Scholars Session with Keynote Lecture (1)

Author: Ms. Iva Ramuš Cvetkovič
University of Ljubljana, Slovenia

LEGAL ANALYSIS OF THE NATIONAL SPACE MINING LAWS IN LIGHT OF ENVIRONMENTAL
PROTECTION AND SUSTAINABILITY**Abstract**

The issue of legality of space mining has been debated for a long time. The fact that Article II does not explicitly address space resources, enabled the development of two interpretations about its meaning, namely, the one that allows for the appropriation of space resources and the one does not. The two interpretations differ in understanding whether the appropriation of space resources means the prohibited national appropriation of outer space, including Moon and other celestial bodies. Despite the lack of consensus over the question which one of those two views is a correct one, a few states took advantage of that legal uncertainty and adopted national space mining laws - namely, USA, Luxembourg, Japan and United Arab Emirates. As it has been noted by several experts (see, for example, de Zwart), space mining carries a risk of causing harmful environmental effects. Despite such warnings, there have been claims that these space mining laws represent a developing state practice, that will, together with the growing number of signatories to Artemis Accords, create a rule of customary international law. This means that a customary rule could emerge outside of traditional multilateral lawmaking process at UNCOPUOS, without necessary precautions and safeguards that are needed for achieving international consensus. In light of the growing concern that this is the new way of bypassing international lawmaking forums in order to promote a favourable interpretation of international treaty, the space mining laws as potential examples of emerging state practice need to be examined and evaluated from the perspective of environmental protection and sustainability. Otherwise, the lack of such evaluation of these laws could open the door for a mass exploitation of space resources without proper environmental and sustainability measures in place. This could further result in the situation where such practice could become incompatible with principles of the Outer Space Treaty (OST), especially the principles enshrined in Articles I (freedom of exploration and use of outer space for all states) and IX (due regard to the interest of other states and avoidance of harmful contamination of outer space). In my presentation, I am to provide the much-needed environmental and sustainability evaluation of these laws, as well as address the dangers of the current trend of using the state practice for bypassing the multilateral lawmaking processes.