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FREEDOM OF ACCESS TO ALL AREAS OF CELESTIAL BODIES VIS A VIS SPACE RESOURCE
ACTIVITIES: AN EXAMINATION OF POSSIBLE CONFLICTS IN INTERNATIONAL SPACE LAW

Abstract

The emerging reality of space resource activities creates a pressing discussion on the possibility of conflicts with the freedom of access to all areas of celestial bodies. On the surface level, this universal freedom does not seem compatible with activities whose practices can lead to de facto exclusive use of territory. This situation gives rise to two primary concerns: competing interests in the same location (creating the need of excludability) and the restriction of access to locations where resource activities take place.

New proposals concerning resource activities, such as the Hague Building Blocks and the Artemis Accords, include principles relating to safety zones, which in turn reflect these concerns. Yet, according to current international law, Art. I of the Outer Space Treaty states that outer space is free for exploration and use by all States, whilst granting them freedom of access to all areas of celestial bodies (with a similar provision also existing in the Moon Agreement).

As such, with the current focus on space resource activities and, in the absence of a proper legal framework, one needs to consider how possible requirements emerging from these activities will intersect with this freedom.

This paper addresses the potential conflicts between the freedom of access to all areas of celestial bodies and space resource activities, as well as their possible legal requirements. The first section discusses the concept of celestial bodies in order to understand the scope of application of this freedom. The second section addresses Article I of the Outer Space Treaty and the Moon Agreement, to understand how this freedom was enshrined in the existing body of international space law and its potential consequences for space resource activities. The third and final section analyses new proposals and approaches covering space resource activities, including the proposal for “safety zones” found in the Artemis Accords and in the Hague Building Blocks, to evaluate potential conflicts that might arise. We conclude with our insights and perspectives on these two seemingly divergent visions, and how to reconcile them.