



The National Appropriation of Outer Space and its Resources

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I. Implications of Art. II OST for the
exploration, exploitation and utilization
of natural resources

Implications of Art. II OST for the exploration, exploitation and utilization of natural resources

Art. II OST:

Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or by any other means.

Comparative Legal Regimes

1. Art. 11 para. 4 Moon Agreement:

„States Parties have the right to exploration and use of the Moon without discrimination of any kind, on the basis of equality and in accordance with international law and the terms of this Agreement.“

2. Convention on the Regulation of Antarctic Mineral Resources (CRAMRA):

discussed possibilities of the exploitation of the Antarctic (not in force)

3. 1998 Protocol on Environmental Protection to the Antarctic Treaty prohibits the taking of territory through a 50-years moratorium

4. Part XI UNCLOS provides for an internationally regulated system to exploit the resources of the Area.

5. Art. 136 UNCLOS: „The Area and its resources are the common heritage of mankind.“

Comparative Legal Regimes

6. Art. 11 para. 5 Moon Agreement:

“States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible (...)”

7. The Space Benefits Declaration of 1996 (UNGA Resolution 51/122 of 13 December 1996) provides that so far Art. I para. 1 OST does not provide for an explicit rule for the distribution of the benefits derived from the exploitation of resources. It is therefore an open question to be answered by the international community in the future.

Preliminary results

1. The legal structure of outer space legislation on the one hand strictly prohibits the appropriation of territory on celestial bodies and in outer space.
2. Whether this strict prohibition extends to natural resources in space as well ultimately remains unclear due to the lack of specific provisions dealing with space resources in the OST.
3. The OST does set certain conditions for the exploitation of resources as one possible type of the 'use' of outer space. The question is basically left for the future when the international community must come up within an agreement on the conditions for such exploitation.

**II. Implications of Art. II OST for the
jurisdiction to regulate
space resource exploration,
exploitation and utilization**

Approaches to jurisdiction

1. Restrictive approach
2. Permissive approach

Restrictive: territorial jurisdiction

“ A state’s jurisdiction to prescribe law with respect to persons, property, and conduct within its territory” .

Power of States to exclusively determine the legality of all actions, including of other nationals, based on connection with territory

Article II OST: no territories in space > no exclusive territorial jurisdiction over outer space as such

Restrictive: personal jurisdiction

Article VIII OST: jurisdiction of registering State over space object and its personnel

“A state’s jurisdiction to prescribe law with respect to the conduct, interest, status, and relations of its nationals outside its territory”.

Power of States to exclusively determine the legality of actions by its nationals, and exclusion of power to determine legality of actions of others, outside its territory > no legislative power over outer space as such

Article VI OST: “States Parties to the Treaty shall bear international responsibility for national activities in outer space (...) and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty .”

Permissive approach?

Sufficient for State to raise interest in international situation to enact legislation

Different laws subject to different interpretations

Inconsistent with aims of OST and unworkable in practice

Preamble: “[d]esiring to contribute to broad international cooperation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes”, and “[b]elieving that such cooperation will contribute to the development of mutual understanding and to the strengthening of friendly relations between States and peoples”

Conflicts of laws: impossible to satisfy interest-balancing test due to Article I, para. 1 OST: “[t]he exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind”

Results

It is the basic decision of the Outer Space Treaty that:

1. Outer space and celestial bodies, including resources thereof, are global commons under the sole jurisdiction of the international community.

2. The Luxembourg and the US national laws lack any jurisdiction to unilaterally legislate over this common and enact such legislation as it appears to be impossible for single States to satisfy the interest-balancing required for the exploitation of global commons.