

29 March 2018

English only

---

**Committee on the Peaceful  
Uses of Outer Space**  
**Legal Subcommittee**  
**Fifty-seventh session**  
Vienna, 9–20 April 2018  
Item 15 of the provisional agenda\*  
**General exchange of views on potential legal  
models for activities in exploration,  
exploitation and utilization of space  
resources**

## **Questions and observations by Belgium on the establishment of national legal frameworks for the exploitation of space resources**

### **Working paper prepared by Belgium**

Following the statements and observations made by Belgium during the 56th session of the Legal Subcommittee, and the extension for one year of the item of the agenda dedicated to space resources, Belgium would like to propose the following observations.

### **Introduction**

1. Until now, the discussion on a possible legal framework for the exploitation of space resources has mainly focused on the national legislative initiatives taken by a small number of States. The driving force behind the handling of the regulation of space resources, both at the national and at the international level, seems to be the private sector. Likewise, most observations by Member States on the topic relate to the opportunity and the legal feasibility of national legislation allowing exploitation of space resources, interpreted as mineral deposits. Few contributions have been made on the need to establish an international regime for that purpose. Initial informal consultations to this effect among States, notably those parties to the 1979 United Nations Moon Agreement, have not been pursued. The discussion on space resource exploitation at the international level has so far reduced key issues concerning the legality and finality of this activity to mere matters of interpretation of a small number of international legal provisions. This focus on interpretation apparently aims to have the legal implications of one of the most dramatic evolutions in modern spacefaring be determined by the subsequent practice of only a handful of States. It consciously excludes any possibility for a truly international discussion of the most basic questions of the actual goals of a future regime of space resource exploitation.

---

\* [A/AC.105/C.2/L.303](#).



2. While Belgium recognizes the merits of the work performed so far through certain initiatives involving experts from different countries and different backgrounds, and which aim at providing substantial ideas on what a future international regime for the exploitation of space resources could be, it is clear that such initiatives can only, at best, be compared to academic contributions submitted through Member States to UNCOPUOS. In the absence of any actual mandate received from States and of a formal mechanism ensuring their representation, Belgium does not acknowledge such initiatives as providing a “*forum for negotiations on an international framework*”.<sup>1</sup> We regret that the work of some experts, though potentially valuable, has been undertaken in a manner that, eventually, creates confusion and generates interference with the work of UNCOPUOS.

3. Considering the above, the Belgian delegation therefore proposes, for the review of the current agenda item on space resource exploitation, to proceed on the basis of several fundamental enquiries, which we believe States could address in order to achieve a truly multilateral exchange of views. For the purpose of these queries, the term “Exploitation Activities” is defined as any activity in outer space, including on celestial bodies, meaning asteroids or on any other natural body present in outer space, with the purpose of extracting mineral resources from those bodies in order to transfer them, before or after transformation, to Earth, with the intent to use them for governmental or commercial business. This includes prospection activities.

#### **Basic question**

**QUESTION #1:** Do Exploitation Activities require an international legal framework?

Rationale: Article II of the 1967 United Nations Outer Space Treaty prohibits national appropriation by referring to “*claims of sovereignty*”, “*means of use*” or “*occupation*”. From the combination of Art. I and Art. II of the Treaty, it results that no State sovereignty applies *to*<sup>2</sup> outer space, including the Moon and other celestial bodies. This implies that any regime concerning the exploitation of natural resources, to the extent that it has not been covered by the existing treaties, should be international in nature, which has been indeed confirmed by the United Nations General Assembly in the 1979 Moon Agreement. The question remains, however, whether, considering the poor participation in that Agreement, States not party to the Moon Agreement still consider an international regime as useful, relevant and/or appropriate.

**QUESTION #2:** Do Exploitation Activities qualify as “exploration” or “use” of outer space in the meaning of Article I of the Outer Space Treaty?

Rationale: The United Nations treaties on outer space essentially refer to the *exploration and use* of outer space in defining their respective scopes. It is therefore important to understand whether the Exploitation Activities envisaged by some States fall under those terms, or if those activities would consist in a different kind of human intervention in outer space.

If Exploitation Activities have to be considered as a third type of activities not addressed by the United Nations outer space treaties, the following subquestion could apply:

**QUESTION #2a:** What is the international legal basis for such type of activities? How would such activities comply with the United Nations outer space treaties?

If Exploitation Activities are considered as a form of exploration and use of outer space addressed by the United Nations outer space treaties, the following subquestion could apply:

---

<sup>1</sup> <http://law.leiden.edu/organisation/publiclaw/iiasl/working-group/the-hague-space-resources-governance-working-group.html>.

<sup>2</sup> While State sovereignty may — and has to — apply *in* outer space through the registration of space objects or the settlement of stations. This national jurisdiction in outer space is a condition for the implementation of the treaties.

**QUESTION #2b:** How could such activities justify any appropriation under national law with respect to Art. II of the 1967 United Nations Outer Space Treaty (which explicitly prohibits national appropriation by means of use)?<sup>3</sup>

**Rationale:** Art. I United Nations Outer Space Treaty, which forms the basis for the freedom to explore and use, including (under this interpretation) exploit, outer space, has the same scope of application as Art. II, namely “outer space, including the Moon and other celestial bodies”. How would States justify natural resources to be included in the scope of Art. I yet excluded from the scope of Art. II?

**QUESTION #3:** Would Exploitation Activities require the recognition of exclusive rights on, authority, control over, and/or access to certain areas of celestial bodies, asteroids or other natural bodies in outer space?

**Rationale:** Investments in Exploitation Activities are supposed to be very substantial, in terms of financial means and technological means. Natural resources such as minerals may be limited not only in quantity, but also in accessibility and in affordability. Therefore, those resources are likely to be considered as scarce resources, implying economic rivalry for their exploitation. As a result, legal and physical protection of the resources *in situ* should be permitted and enforced.

If the answer to question 3 is affirmative, the following subquestion applies:

**QUESTION #3a:** How would Exploitation Activities in that case be carried out under national jurisdiction in compliance with Article I (2nd para.) of the 1967 United Nations Outer Space Treaty, namely the two following principles?

(a) *Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law[.]*

(b) *[T]here shall be free access to all areas of celestial bodies.*

**QUESTION #4:** In the case of infrastructure erected and/or equipment placed on celestial bodies, by governmental or non-governmental entities, for the purpose of Exploitation Activities, will they be subject to Art. XII of the 1967 United Nations Outer Space Treaty, which requires that they be “open to representatives of other States Parties to the Treaty on a basis of reciprocity”?

**Rationale:** To this day, no national provisions explicitly foresee the obligation for non-governmental entities to comply with Art. XII of the Treaty.

**QUESTION #5:** Is there a legal basis or practice in your State to submit space infrastructure (e.g. stations) and equipment to national jurisdiction, for instance by assimilating them to space objects to be registered?

**Rationale:** National jurisdiction over ground stations on celestial bodies is only addressed under the provisions of the 1979 United Nations Moon Agreement. Considering they are assembled once in outer space, they may not necessarily qualify as “space objects”. Art. 12.1 of the Moon Agreement does not mention any registration for stations or installations on celestial bodies, but rather refers to a form of jurisdiction through ownership. The legal basis for jurisdiction over stations or installations should be clarified with regard to non-governmental properties.

---

<sup>3</sup> It can be noted that § 51303 of the United States of America Code as amended on 25 November 2015 is only applicable to “US citizen(s) who (are) engaged in the commercial recovery of (space resources)”. If the recovery is a form of use, it is remarkable that this provision implicitly excludes non-commercial use of space resources (see the paper presented at IAC 2017 by George Anthony LONG (IAC-17.E7.2.14)). Another question raised by the formulation of that provision is its limitation to United States citizens. This excludes non-United States citizens from the benefit of the provision, leaving open the question of the recognition, by the United States, of individual rights acquired by foreign citizens under their own law. Does such a recognition require a (bilateral) treaty?