

Property Rights on Celestial Bodies

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ABSTRACT: *The progression of space technology has opened new visions of promises with which the humanity shall be benefitted if the technology is regulated in a proper manner. And this technology has indeed been very beneficial. Fore.g., remote Earth sensing, direct TV transmission, connectivity, travel, weather and atmosphere, etc. As outer space is however identified as the "common patrimony of the human race," the advantages for all countries must be possibly clear. In addition, the use of external space opened new frontiers of discrepancies on jurisdictions and sovereignty as well as on other associated topics such as delimiting outer space, space emissions, etc., in addition to its potential or technological growth and its economic promises. In this paper titled "Property Rights on Celestial Bodies" the author will discuss the rights and legality of the rights to own a property on celestial bodies.*

KEYWORDS: *Celestial Bodies, Law, Property, Rights, Space, Guidelines.*

INTRODUCTION

A modern perspective of the cosmos is provided through space travel. It is related to new ideals that also need to be accurately evaluated in terms of culture. Furthermore, spatial breakthrough is a significant industrial revolution. In the sense of this exploration, we deal with the scope and scale of the work, like the moon and other celestial bodies, and we carry out legal regulation. Legal regulation here requires no federal structure, but rather the method of establishing and constructing an outer space system of law and order accomplished between the 1957 and the ratification of the Space Treaties.

The present work usually includes a legal review of this Treaty and other related treaties, as well as of the ordinary events leading to such treaties. It's not hypocritical. It just tries to determine the legal status of the de legelata. Any work in the formational process on space law is bound to be both detailed and intensive, including citizenship, authority, jurisdiction, and nationality, relations between states or other foreign bodies, private integration and various conflicts of law problems. At this point, a stable legal system is required to promote responsible study and possible use of resources by these celestial bodies.¹

The marketing of commodities of celestial species has a great opportunity. However the countries and private businesses do not wish to gamble it and participate in such ventures because of the lack of a stable structure or legislation.

Space contains precious commodities. These offer developers, investors and policymakers a good incentive to try and resolve space exploration. Asteroids, most of which are uncommon on the Planet, are considered to be abundant in precious elements such as scandium, Yttrium, Iridium, platinum and palladium. Since these minerals influence high prices, extracting them from space can warrant expeditions to even very expensive mining.²

Naveen Jain, a billionaire from Microsoft, has created MOON EXPRESS to use robots to start mining the Moon – it says early next year. Meanwhile, The Shackleton Energy Corporation, Texas, is preparing to use Shackleton Crater ice in the lunar southern pole to promote planetary activities. Despite the technical

¹PrakharMaheshwari, Property Rights in Outer Space, West Bengal National University of Judicial Sciences (Visited on 22ndJan 2021 at 11:00 pm).

²United Nations Office for Outer Space Affairs.

innovation and the use of valuable tools, the absence of a well-established legal system to recognize property rights in the spatial international law has hindered the settlement of space. There is a marginally technically agreed precedent for the preservation of property in space mining resources as lunar samples were traded for other tokens of worth on both US and Soviet missions.

In fact, it is more troublesome, as in a conventional mining argument, to own the part of the celestial body from which minerals are obtained. It is difficult, if not impossible, to raise funds to build land or exploit the wealth it retains without lawfully recognized rights to purchase, possess and sell titled lands. Owing to the contingencies in the history of international law in the earlier era of land, property rights have long been considered a cornerstone of stability in the developed world and their loss of space.³

INTERNATIONAL SPACE LAW

In the space race the international law started to take shape as outer space was not seen as a possible border for creation and settlement by private players, but rather as a competitive battlefield between the two Cold War superpowers, and as a new area of technological exploration led by governmental space agencies.

They both attempted, or at least pretended to have, a shared basis of discovering spaces for the advancement of science, to curb the other's political and military use of space.

The Antarctic Treaty of 1959, which was intended to stop the militarizing of the Antarctic and to ensure that peaceful operations, especially science, could continue in the Antarctic, was a significant precedent for the establishment of international Space Law.

This were only the sorts of priorities that world leaders at the time were dealing about by an international space deal and president Eisenhower recommended on 22 September 1960 the Antarctic Treaty concepts⁴ using as a basis for an international space deal. However, it is clear that the Antarctic Treaty has prohibited all nations from building up their jurisdiction, and does not have clauses on the waiver of land rights or on controlling economic activity.

In comparison to the growing resource boom, there are much clearer land rights under the control of the Arctic nations in the similarly inhospitable areas of the Arctic.

1. *Outer Space Treaty:*

Negotiation between the United States and the Soviet Union on spatial operations in the late 50's and early 1960s resulted in the signing in 1967 of an international agreement, best known as the Outer Space Convention, on the Concepts of State Activities for Discovering and Using Outer Space, including the Moon and Other Celestial Bodies (OST).

Just like the Antarctic Treaty intended to maintain the Antarctic as a location for international scientific co-operation, space law historian Vladimir Kopal writes that consensus on the OST was governed by 'the unrestricted discovery of outer and celestial bodies.

This Treaty section allowed the development of commercial telecommunications, remote sensing and spacecraft industries, which were then in its early infancy and now prosper, in order to encourage non-government intervention in the region, albeit under governmental oversight.⁵

Nevertheless, as Kopal states, "the treaty does not have principles governing the business of the outer space and the moon and other celestial bodies to explore and exploit natural resources."

³KapilRana, The Law of Outer Space, D.E.S Law College, Pune, Legalservicesindia (visited on 22th Jan 2021, 12:00 pm).

⁴*Supra* 1.

⁵United Nations Treaties and Principles, On Outer Space, unoosa.org/pdf/publications/ST_SPACE_061Rev01E.pdf (visited on 22nd Jan 2021, 11:30 pm).

When the Treaty was signed, the economic issues at large remained distant and negotiators set aside them as possible hurdles to achieving a compromise on what they perceived to be more urgent issues.⁶

2. *Space Property Rights and International Law:*

It is necessary to differentiate from the various spurious arguments made on land tracks on the Moon and other celestial bodies, such as those made by the "Lunar Embassy" and other news lunar deed mills, the Space Settlement Prize Act, which attempts to secure and to encourage legal ownership rights in space.

The goal of the 2004 declaration by the Board of Directors of the International Institute of Space Law (IISL), an organization committed to researching space law, was the harsh argument, as well as the private company Orbital Development's attempt on asteroid Eros.⁷

The argument of the IISL board rightly states that the suppliers of alleged lunar conduct did not obtain the "legal title" to their statements and therefore "the acts they sell have no juridical value or importance and do not convey any recognized rights."

The argument, however, also provides a wider understanding than it should of the Outer Space Treaties. The OST, note, bans the "national seizure" of celestial and outside space. However, the resolution of the IISL Board claims that "Non-governmental organizations (private parties) operate in a national capacity" and therefore any demand on property in the room is tantamount to "national appropriation" and forbidden by the OST.

It is not entirely true for as we see, the supporters of the Space Settlement Prize Act claim that, without participating in a forbidden act of national appropriation, the government of one country will accept a property right on behalf of a private individual of another country.

Regardless of whether or not this reading of the OST includes water, as with American legislatures and courts the exact sense of the OST's limits is subject to law. In fact, the U.S. government attorneys did not even bother to invoke the OST as they countered Orbital Development's argument to Eros, or when the court decided.

As the 2004 article in the Journal of Space Law states, the District Tribunal has not had to contract OST nor address the issue whether or not the convention excluded privately held lunar or celestial resources. As there is a total inability to assert a property interest in Eros".⁸

Some opponents, including Dunstan, have protested that the law introduced goes beyond it and that a slower solution is being promoted that is less politically upsetting, such as the mechanism that has defined property rights to lunar and artificial satellites over decades.

CONCLUSION

In the coming years, there is significant risk of broad private operations with the recent rate of technical progress and advancement of space sciences. To guarantee our survival in space, such space explorations have to be financed and a legislative structure needs to be developed in order to encourage private involvement in them.

It might not be enough for fresh interpretations. If we not only wish to conserve land but also open it up for colonization as the great new frontier, maybe we will have to renegotiate and change the Treaty soon – or else totally scrap it off and start from scratch.

⁶Outer Space Treaty, 1967, IAS gateway (visited on 22nd Jan 2020, 3:47 pm).

⁷*Ibid.*

⁸Chaitya Hiremath, PROPERTY RIGHTS ON CELESTIAL BODIES: PRIVATIZATION OF THE MOON, ISSN: 2581-8503.

The need for morality in international law in space age is also generally accepted. The emphasis on moral law is not a response to positivism, but a counter stream. Space strategy is still underdeveloped and needs to concentrate on space protection and resilience.

This ensures that the amount of permits or licensing fees is not limited as an opportunity for extracting revenue. Control must ensure that national foreign agreements are complied with, protection must be ensured, risks protected and perhaps uniform.

Finally, while the OST is arguably incapable of prohibiting land disputes from being accepted per se, it could prove to be a barrier to some sort of large-scale spatial operation other than just arbitration.

This is the most disturbing term of the whole Treaty: NGOs' operations in outer space, including moon and other celestial bodies, must be approved and constantly supervised in the Treaty by the respective State Parties.

Remember, if taken literally, the consequences of the words "continuous supervision." It may be argued that satisfaction would enable someone working off the planet to have a minder with the government at all times. Prior permission, for example, a launching permit, may not be enough, as monitoring may require physical regulation, rather than only examination.

This Treaty language may mean that it is inadequate even to remotely control private activities at the premises, which itself would be a big impediment to space settlement.

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