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Outer Space, an Area Recognised as *Res Communis Omnium*: Limits of National Space Mining Law

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ABSTRACT

Against the background of rapid advances in space technology and better understanding of the composition of celestial bodies, the utilisation of space resources has become an increasingly important topic; however, the lack of a comprehensive legal framework and the consequent legal uncertainty surrounding legality and conditions under which space resources can be utilised represent a significant barrier for private investors. To be precise, outer space is not unregulated. There are norms of customary international law applicable to activities in outer space, and fundamental legal principles have been enshrined in the Outer Space Treaty. What is more, the Moon Agreement declared space resources the *common heritage of mankind* and envisages the establishment of an international legal regime; however, the Moon Agreement – the only international treaty explicitly addressing space mining – has been ratified/acceded to by only 18 states, and legal principles enshrined in the Outer Space Treaty are too vague to provide private investors with the regulatory certainty they need. As a result of the lack of progress on legally binding instruments within traditional fora, especially the UN COPUOS, several states decided to address legal certainty unilaterally – via national law. National legislators should take into consideration that national space mining laws are to be applied in an area that is open for access and use to all, an area recognised as *res communis omnium*. This article analyses regimes governing the utilisation of space resources and aims to identify practical implications for national legislators and diplomats.

1. Introduction

Utilisation of natural resources in outer space has the potential to significantly enhance our ability to explore and use outer space. In recent years, utilisation of space resources has moved to the forefront of the agenda of many space agencies [1–3]. Moreover, a growth of commercial opportunities in space related to the utilisation of space resources has driven growing private sector interest.[1] Against the background of rapid advances in space technology and better understanding of the composition of celestial bodies, the utilisation of space resources has become an increasingly important topic; however, the lack of a comprehensive legal framework and the consequent legal uncertainty surrounding legality and the conditions under which space resources can be utilised represent a significant barrier for private investors.

For decades, the utilisation of space resources was not considered feasible; *therefore,* the 1967 Outer Space Treaty, laying down principles of international space law, does not contain any specific reference to space resource activities. The benefits, which may be derived from the exploitation of the natural resources of the Moon and other celestial bodies, were acknowledged for the first time by the Moon Agreement, adopted in 1979, becoming the first and the only source of international space law explicitly addressing the utilisation of space resources. However, the Moon Agreement has been ratified/acceded to by only 18 states, and its widespread acceptance remains elusive [4]. Rejection of the Moon Agreement (no space-faring nation has ratified the Moon Agreement) has meant that the utilisation of space resources by the nationals of most of the states is governed only by ambiguous principles applicable to any space activities enshrined in the Outer Space Treaty and customary international law. As a result of the lack of progress on legally binding instruments within traditional fora, especially the UN COPUOS, several states decided to address legal certainty unilaterally – via national law. More specifically, the US adopted the Commercial Space Launch Competitiveness Act, including Title IV dedicated to space resource exploration and utilisation in 2015 [5]. Luxembourg passed the Law on Exploration

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[1] Commercial companies such as Lunar Outpost, Masten Space Systems or iSpace.

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