Mine, Mine, Mine!
ON THE NEW US SPACE RESOURCE POLICY AND ATTITUDE TOWARDS OUTER SPACE

In an impressive display of questionable timing and priorities, the US President may just have rung in the first round of a new space age. While “non-viral” news currently fly under the radar, the legal and policy implications of the newest “Executive Order on Encouraging International Support for the Recovery and Use of Space Resources”, quite literally, go above and beyond. This BOFAXE sheds light on the newest developments in international outer space law and highlights their potential for international progress, but also their risks of inequality and conflict.

Before discussing the US executive order, a brief overview of the international legal regime on space resource recovery is due. When it comes to resource extraction and utilization in outer space, two treaties must be considered: the Outer Space Treaty (OST) of 1967 and the Moon Agreement (MA) of 1979. The MA is a relatively peculiar treaty. While it uses much more specific and restrictive language than the OST with regards to property acquisition in outer space, it has only 18 States parties, none of whom are major spacefaring nations (yet). It is thus relatively irrelevant – perhaps not only to our purposes. The OST, in contrast, is broader in scope and has 109 States parties. While Article I of the OST only declares outer space to be “free for exploration and use by all States without discrimination of any kind” and its exploration and use “the province of all mankind”, Article II prohibits national appropriation of outer space “by claim of sovereignty, by means of national exploitation, or by any other means.” From the outset, the OST attaches paramount legal significance to the non-appropriation clause on the one hand and the overall inclusive and cooperative nature of the OST as a whole, on the other hand. Article XV OST does allow for amendments and, more generally, states are free to subsequently agree on the interpretation of a treaty or the application of its provisions. Whether such agreements which would undermine the conciliatory purpose of the OST at the expense of the rest of humanity can be made in good faith is highly doubtful, to say the least. Especially, if one agrees that the concept of “global commons” does not necessarily prohibit the extraction and subsequent appropriation and utilization of its resources per se.

In conclusion, attempts to reduce legal uncertainty are generally laudable. The overall direction of the current US approach is, however, worrying. As space resource extraction is about to become feasible, it is important that states while regulating the extraction from a global commons do not do away with the global commons status itself. At the same time, given that the current legal uncertainty does in fact slow down humanity’s progress on and through the final frontier, one must hope that the US attempt – as egocentric as it may be – will at least instigate a long overdue discussion, so that resource conflicts in space do not one day turn into military ones.

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