PRIVATE COMMERCIAL ENTERPRISES EXTRACTING RESOURCES FROM OUTER SPACE? IS IT LEGAL?

Rudolph V. Pino, Jr.
Outer Space Treaty of 1967 (OST)

The Treaty on Principals Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies

- Exploration carried out for the benefit of all countries
- Outer space free for exploration
- Free access to all areas of celestial bodies
Outer Space Treaty does not give an absolute right to governments or commercial entities to extract space resources.

Outer Space Treaty Art. VI provides that commercial entities activities must be carried out in conformity with the Treaty provided the entity is continuously supervised by their State and duly licensed.

Some have argued that this Treaty provides for the extraction of resources only for the benefit of all countries which precludes the sale of extracted resources for profit.

At the time of enactment only the US and Russia were involved in space activities.

It is likely that the drafters and signatories intended to deal with and regulate known space operations.

“Explanation” and “Use” are not defined in the Treaty making it difficult to argue that the Treaty specifically limits exploration and use.

It is clear from the Treaty however, that a commercial entity seeking use of explore space must do so pursuant to the regulations and supervision of their State.

It is also clear that no State can appropriate bodies in outer space – such as moon and asteroids.

Tanja Masson-Zwaan agrees that existing treaties do not seem to prohibit ownership of extracted resources but adds that exploitation of space resources must comply with general space law principles.
1979 Moon Agreement

AGREEMENT GOVERNING THE ACTIVITIES OF THE STATES ON THE MOON AND OTHER CELESTIAL BODIES

• Moon and Celestial bodies should be used for peaceful purposes
• Recognizes that natural resources of the moon and other celestial bodies could be exploited
• Reiterates the principle that engaging in space activities such as the removal of resources does not create any ownership rights over the celestial body. Article 11
• Parties to the Agreement agree to develop laws to regulate and control the “exploitation” of resources
• The Agreement provides that natural resources in space are the common heritage of mankind and the extraction of resources can only be done through international agreement
• US, Russia and China are not signatories
• Common Heritage provision could mean that technology would have to be shared and a portion of the extracted resources or profits derived from them would be subject to distribution
Asteroids Act Of 2014

THE AMERICAN SPACE TECHNOLOGY FOR EXPLORING RESOURCE OPPORTUNITIES IN DEEP SPACE

“Any resources obtained in outer space from an asteroid are the property of the entity that obtained such resources, which shall be entitled to all property rights thereto, consistent with applicable provisions of Federal Law”

• This bill recognized that US private commercial enterprises have property rights on extracted space resources
• Asteroids Act never became law but its provision were incorporated in the Space Resource Exploration and Utilization Act of 2015
Space Resource Exploration And Utilization Act Of 2015

“To facilitate a pro-growth environment for the developing of commercial space industry by encouraging private sector investment and creating more stable and predictable regulatory conditions, and for other purposes”

• Commitment to meet international obligations and allocate responsibility for compliance among federal agencies
• Recognizes an American citizen’s property rights to space resources recovered
• Sec. 403 disclaims any assertion of sovereignty or exclusive rights to any celestial body
Critics Of The Act Of 2015

- Breach of Article II of Outer Space Treaty since States have no property rights a State cannot recognize private property rights
- The law only takes into account US interests and not possible conflicting claims
- The law illegally modifies the Outer Space Treaty by permitting (the private exploitation of space resources) through national legislation

See: Private property rights on asteroid resources: Assessing the legality of the Asteroids Act
http://dx.doi.org/10.1016/j.spacepol.2014.07.005

The Space Resource Exploration and Utilization Act: A Move Forward Or A Step Back, Fabio Tronchetti
http://dx.doi.org/10.1016/j.spacepol.2015.08.001
Conclusion

While there is no consensus it does not appear that any treaty or international space law bars private companies from extracting and owning space resources

Provided:

• Regulated (licensed) by the State
• No ownership of the celestial body
IS IT LEGAL FOR PRIVATE COMMERCIAL ENTERPRISES TO EXTRACT RESOURCES FROM OUTER SPACE?

Yes

1. No appropriation
2. Private commercial enterprises are authorized by their respective states and in compliance with international obligations
Thank you.

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