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US legal developments in outer space mining

Zmiany prawne w USA w górnictwie kosmicznym

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Abstract

In December 2020 NASA (National Aeronautics and Space Administration) announced a contract with a private company to deliver Moon material to Earth, the first and only contract of this type to be concluded to date. The sum that will be paid for the services of Lunar Outpost company was set at 1 US dollar. Although the arrangement may seem like a publicity stunt to catch international media attention, it spurs a legal discussion on the actual degree of freedom to utilized outer space. This article is focused on describing the USA's policy and legislation concerning the utilization of natural resources of outer space, and comparing it to the international legal framework of outer space activities.

Keywords: space mining, outer space treaty, space industry, appropriation

Streszczenie

W grudniu 2020 roku NASA (Narodowa Agencja Aeronautyki i Przestrzeni Kosmicznej) ogłosiła umowę z prywatną firmą na dostawę materiału księżycowego na Ziemię, pierwszą i jak dotąd jedyną tego typu umowę. Kwota, jaka zostanie zapłacona za usługi firmy Lunar Outpost, została ustalona na 1 dolara. Chociaż układ ten może wydawać się chwytem reklamowym, mającym na celu przyciągnięcie uwagi międzynarodowych mediów, skłania on do dyskusji prawnej na temat faktycznego stopnia swobody użytkowania przestrzeni kosmicznej. Niniejszy artykuł koncentruje się na opisie polityki i ustawodawstwa USA w zakresie wykorzystania zasobów naturalnych przestrzeni kosmicznej oraz na porównaniu jej z międzynarodowymi ramami prawnymi działań w przestrzeni kosmicznej.

Słowa kluczowe: górnictwo kosmiczne, traktat o przestrzeni kosmicznej, przemysł kosmiczny, zawłaszczenie

“New Space”

In 2015 the U.S. Commercial Space Launch Competitiveness Act¹ (hereinafter CSLCA) was passed, initiating the “new space”² agenda. This act was aimed *inter alia* at providing a clear, albeit simplistic, framework for mining activities in outer space. This was achieved by including a new chapter in title 51 of CSCLA. However, it does appear that its primary goal is not the introduction of a working legal solution to the issue of space mining, but rather to check the response to such a notion at the international level. The act in question does little in terms of setting up a viable system of provision that would enable the effective conduct of space mining activities. What it does, however, is outline a definition of space resources, asteroid resources and what rights can be attributed to each of those.

Definitions

Section 51301 – introduced by CSLCA – provides definitions of asteroid resource and space resource respectively. It has to be noted that while the act itself does utilize the term of “US citizen” it does not define it by itself. Rather it refers to a definition present in section 50902 which defines a US citizen as:

- A. an individual who is a citizen of the United States;
- B. an entity organized or existing under the laws of the United States or a State; or
- C. an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary of Transportation) is held by an individual or entity described in subclause (A) or (B) of this clause³.

The act grants “US citizens” – as defined above – that are “engaged in commercial recovery of an asteroid resource or a space resource” an entitlement to “possess, own, transport, use, and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States”⁴.

The definitions of the resources in question can be best described as rudimentary. It appears that “space resource” is the broader and overarching term, as it includes any “abiotic resource in situ in outer space”⁵, including water and minerals⁶. An “asteroid

¹ 51 U.S. Code Title 51 – NATIONAL AND COMMERCIAL SPACE PROGRAMS, available at: <https://www.congress.gov/bill/114th-congress/house-bill/2262/text> (access: 10.10.2021).

² New Space or Space 2.0 is a loose term used to cover each and every “non-standard” outer space activity such as asteroid mining, space tourism, mega-constellation telecommunication.

³ 51 U.S. Code, Title 51, § 50902.

⁴ 51 U.S. Code, Title 51, § 51303.

⁵ 51 U.S. Code, Title 51, § 51301(2)(a).

⁶ *Ibidem*, (2)(b).

resource” is simply defined as a “space resource” that can be found either on or within a single asteroid⁷.

The definitions indicated above are accompanied by section 403 of CSLCA that contains only one provision that contains a “belief of the congress” that the legislation in question does not amount to nor does it intend to claim sovereignty over any part of outer space.

Freedom or premeditated non-compliance

This extremely short regulation does raises topics for very heated discussions within doctrine. However, let us focus on two most important aspects – that is what rules of an international character would be applicable to activity described above, and how does USA’s legislation safeguard fulfillment of its international obligations in this respect?

Curiously enough, an issue of alleged ownership of a celestial body has already brought before court. This took place in 2004 *Nemitz v USA* case, where Gregory William Nemitz, pursuant to its claim of ownership over asteroid Eros 433, sought a 20 USD per century parking fee, for a NASA’s probe that landed on this asteroid⁸. The case was ultimately dismissed, however the rationale for such an outcome relied heavily on Mr Nemitz not providing any proof that he indeed was the owner of the asteroid, more than on an analysis of applicable international law. This being said, the case at hand was not completely devoid of considerations of public international law. Firstly, DoS in its response to motion made by Mr Nemitz directly stated that “private ownership of an asteroid is precluded by Article II of [OST]”⁹. Secondly, as it was indicated by the court of first instance, the “failure to the United States to ratify the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, commonly referred to as the Moon Treaty, nor the United States’ ratification in 1967 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, commonly referred to as the Outer Space Treaty, created any right in Nemitz to appropriate private property rights on asteroids”¹⁰. It has to be noted that the entire *Nemitz* case took place 11 years prior to the passing of CSLCA and therefore its outcome cannot be treated as still valid, in light of the new legislation.

It appears that within doctrine, this discussion comes down to two major issues, and completely different understandings of the legal situation at hand. Both feature an interpretation of article II of OST, with one part of the doctrine believing that space mining is entirely outside of its scope, thus causing no issues from public international law perspective, and the other part believing that any space mining activity within current

⁷ *Ibidem*, (1).

⁸ It has to be noted that Mr. Nemitz regarded himself as a member of so-called “sovereign citizens” movement, thus expressing a rather exotic outlook on USA’s legal system, and most importantly, not viewing himself as a part or a member of it.

⁹ Available at: <http://www.erosproject.com/exhibit01.html> (access: 10.10.2021).

¹⁰ Available at: <http://www.erosproject.com/order03.html> (access: 12.10.2021).

international regime poses serious threats when it goes to fulfilling obligations contained in OST. Both of these concepts will be addressed in turn.

Firstly, it appears that the argument supporting the notion of “space mining” being allowed under the provisions of OST relies on two main lines of argumentation. Firstly, it advocates that article II concerns only appropriation of a national character, and space mining not only will most likely not be national in character, but moreover will not amount to an appropriation of any part of outer space or celestial bodies. Secondly, a reference is being made to other instruments of public international law that also concern the issue of utilization and exploitation of certain areas on earth that – while not possible to be subject to territorial or sovereignty claims – are still available for the international community to utilize and explore.

Firstly, an attempt to reconstruct the non-appropriation principle contained in article II of OST is in order. This includes – should the concrete meaning not be established well enough in this way – resorting to subsidiary means of interpretation as codified in the Vienna Convention on the Law of Treaties (VCLT). The article II of OST provides: “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”.

The concept of non-appropriation in itself was not new in the domain of international law concerning outer space even in the late 1960s, when OST did come into force. GA Resolution 1721 (1961) and 1962 (1963) already have touched upon this subject. Resolution 1721 in its part A, point 1B provided “Outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation”. Similarly, resolution 1962 featured what would later become – with very few changes – article II of OST itself by stating “Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”¹¹. Doctrine does point out that this concept does play a crucial role from the perspective of OST Article I, as the inability of any state to appropriate outer space reinforces the concepts of “common interest”, “freedom” and conducting of outer space activities “for the benefit and in interests of all countries [...] on the basis of equality and in accordance with international law”¹². This underlines the importance of reading and analyzing the treaty as a whole, without resorting to cherry-picking parts of the international instrument that may appear to support our initial concept.

Therefore, before we set out to analyze whether space mining as such is legal, not legal or even covered by article II of OST, we must attempt to reconstruct the two most important terms that are being put to use – national and appropriation. Since none of them

¹¹ UNGA Resolution 1962 (XVIII), Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, point 3.

¹² Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (hereinafter: OST) article 1, S. Freeland, R. Jakhu, *Cologne Commentary on Space Law, Volume 1, Outer Space Treaty*, 2009, Wolters Kluwer Deutschland GmbH, Cologne, p. 48 (hereinafter CoCoSL OST).

is being provided with a specific definition within OST, they will be addressed in turn. The analysis will, as it has been pointed out, rely on rules codified in VCLT¹³.

Firstly, let us tackle the term “appropriation”. Having in mind provision of article 31.1 of VCLT, provisions contained in a treaty need to be “interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”¹⁴. There are 5 types of circumstances that can potentially lead to a state appropriating a given territory: conquest, occupation, prescription, cession and accretion¹⁵. It is fairly clear that not all of those can even be analyzed in the realm of outer space, as it would be impossible for any state to prescribe or conduct cessation of any part of outer space, as a state would actually have owned part of outer space prior to transfer of ownership, or at the very least claim that part of the outer space belongs to it. This leads to the conclusion that appropriation in the meaning of article II most likely refers to conquest of occupation. This appears to be confirmed by Herbert Reis, USA’s delegate for the UN COPUOS: “[t]he purpose of this provision was to prohibit a repetition of the race for the acquisition of national sovereignty over overseas territories that developed in the sixteenth, seventeenth, eighteenth and nineteenth centuries. The treaty makes clear that no user of space lay claim to, or seek to establish national sovereignty over outer space”¹⁶.

Secondly, let’s address the issue of the term “national”. Following VCLT article 31.1 and Merriam Webster dictionary of the English language the term national means either “of or relating to a nation” or “belonging to or maintained by the federal government”¹⁷. Such an understanding would result in only activities that were either governmental in nature or procured by the government to be covered by contents of article II. However, as it is being pointed out in doctrine, the OST provides only for diversification between national and international outer space activities¹⁸. This is due to the existence of article VI of OST and the necessity to read the treaty as a whole. Article VI clearly provides for every state’s international responsibility for national activities in outer space “whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty”¹⁹. This leaves little to no space for interpretation of the term “national” that would yield in the juxtaposition of “governmental” and “non-governmental” rather than national and international. In consequence, since both – private and public – outer space activities are being regarded as national for the purposes of article II, it appears to exclude the possibility of private ownership of any part of outer space or celestial body. Finally, the same issue was brought up by USA’s president, Lyndon B. Johnson in his

¹³ Arbitral Award of 31 July 1989, Guinea-Bissau v. Senegal, I.C.J. Reports, Hague, 1991, pp. 69–70.

¹⁴ Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol. 1155, article 31.1

¹⁵ M.N.Shaw, *International Law*, 6th edition, Cambridge University Press, Cambridge, pp. 495–507.

¹⁶ CoCoSL OST, p. 49.

¹⁷ Available at: <https://www.merriam-webster.com/dictionary/national#learn-more> (access: 12.10.2021).

¹⁸ CoCoSL OST, p. 50.

¹⁹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 610 U.N.T.S. 205, article VI (hereinafter: OST).

letter of Transmittal to US Senate where he did state: “We of the United States do not acknowledge that there are landlords of outer space who can presume to bargain with the nations of the Earth on the price of access to this domain”²⁰, which clearly indicated the USA’s position on the matter at the time of adopting the treaty. Consequently, this makes the activities of private actors attributable to the USA, in turn making USA responsible for ensuring compliance of such activities with public international law. As much as indeed it does not directly provide for rights and obligations of private parties under any jurisdiction, it is still a far cry from claiming that its provisions are ultimately irrelevant for private entrepreneurs.

At the same time, article II does not specify per se any particular manner in which national appropriation should be conducted. Instead we are presented with a non-exhaustive list, that explicitly provides for the lack of ability to appropriate outer space or any part of the celestial body by means of sovereignty claims, use, occupation “or any other means”²¹. This was further elaborated by doctrine as “prohibition on sovereign appropriation that historically resulted from such use and occupation”.

It has to be noted that up to this point, the issue was regarded solely within the territorial framework. Proponents of space mining are keen to point out that while such activity is indeed aimed at economical gain, as the ownership of a given resource is the ultimate goal, it is not explicitly banned by the treaty²². This is due to mining activities, as it concerns usage of outer space and ownership of resources rather than appropriation of outer space or any celestial body per se. As much as linguistically it is possible to agree with such interpretation, it may prove to be potentially problematic in practice. Firstly, one cannot disregard the fact that international treaties need to be interpreted in their entirety, taking into account internal and international context, object and purpose. In case of OST, it does impose a plethora of obligations on states in their execution of their national activities, including but not limited to, ensuring that those are “guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty”²³, performed “in the interest of maintaining international peace and security and promoting international co-operation and understanding”²⁴ and “carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind”²⁵.

Moreover, should anyone apply the contents of article 32 of VCLT to article II of OST, the results would be exactly the same. According to article 32 of VCLT, preamble and

²⁰ Treaty on Outer Space: hearings before the Committee on Foreign Relations, United States Senate, Ninetieth Congress, first session, on Executive D, 90th Congress, First Session, March 7, 13, and April 12, 1967, p.105.

²¹ OST, article II.

²² P.J. Blount, *One Small Step: the Impact of the U.S. Commercial Space Launch Competitiveness Act of 2015 on the Exploration of Resources in Outer Space*, 18 North Carolina Journal of Law & Technology & Tech, Chapel Hill, 2016, p. 169.

²³ OST, article IX.

²⁴ OST, article III.

²⁵ OST, article I.

preparatory works can be utilized in order to establish the contents of given rule of public international law. In the case at hand, the preamble of OST does refer to UNGA resolution 1962 (adopted in 1963). This resolution, often times referred to as a prototype of OST, does include the same provision in its article II as does the final treaty. Additionally, the resolution calls upon states to conduct their “exploration and use of outer space” for “the benefit of all peoples irrespective of the degree of their economic or scientific development” – not limiting it to activities of purely governmental nature²⁶. The same concept has been voiced by the doctrine²⁷.

The points referenced above seem to indicate that the issue at hand – contrary to what might be the initial assumption for parts of the doctrine – is not a question of legality of space mining as a category of outer space activities, but rather the technical way and means by which it should be executed in order to safeguard the compliance with public international law, and especially article II of OST. This, in turn, makes the issue at hand resemble quite closely that of the famous *Lotus Case*, where the court found that the emphasis should be put on the scope of the obligations that were agreed upon by the states in question, rather than pursuing the search of what types of activities were not banned²⁸.

Having that in mind, each outer space endeavour that still makes extensive use of surface and natural resources of celestial bodies, at the same time remaining compliant with the provisions of articles I, III and IX of OST, as well the entirety of public international law, would undoubtedly be legal.

The question therefore that remains is, how such mining activities – given the contemporary state of public international law – can be in full alignment with requirements mentioned above? While on linguistic level, one can argue that simply extracting resources from outer space does not lead to appropriation of any part of the area in question, it also maintains that while states are unable to extend its jurisdiction and property rights over any part of outer space, they are somehow able to effectively grant and protect the property rights of private individuals extracted from the same area. At the same time we have to face the reality of mining operations as such. Unlike – e.g. fishing on high seas – mining activities tend to be greatly dependent to a fixed location for extended periods of time. This raises concerns whether such fixed-area activity, lasting for years on the Moon or other celestial body, would not qualify as appropriation “by any other means” – i.e. extensive use and guarantees or at least protection of economic and political character. After all, the states in question would have to safeguard the exclusivity of the right to utilize this particular part of the celestial body in order to ensure its profitability. It is extremely difficult to come up with a means of conducting mining operations be it in private or public-private form, that would simultaneously ensure unrestricted and profitable access to the resources to one state, and maintain the possibility for every other state party to OST the possibility to conduct its own mining operations in the same spot. The issue at hand is not whether any sort of safeguard of outer space operations are equal to appropriation, but whether

²⁶ OST, preamble.

²⁷ CoCoSL OST, p. 46.

²⁸ *The Case of the S.S. “Lotus” (France v. Turkey)*, Judgment of 7 September 1927, P.C.I.J. Series A, No. 10.

the extent of this safeguards that can be observed on Earth in connection with mining operations would not yield a violations of article II.

***Res communis omnium* approach**

One possible way to extract the scope of rules regarding exploitation of outer space resources, is to turn to examining the practice of states in relation to so-called “Res communis omnium”.

One of the examples of such a regime is the 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS). It establishes a regime designed to facilitate exploitation of deposits of natural resources from deep seabed (hereinafter the Area). It has been defined as “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”²⁹. Furthermore, UNCLOS provides for the Area constituting a “common heritage of mankind”³⁰, that should not be subject to any claim of jurisdiction³¹, and rights to natural resources contained therein are “vested in mankind as a whole”³². It is also indicated that the only legal mean by which the resources in question can be extracted is a subsequent agreement, made on the basis of UNCLOS³³.

Similarly to OST, activities of states conducted within the Area shall be “carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations”³⁴.

The actual distribution of the benefits should be subject of the Authority’s prerogatives³⁵. In turn, the Authority (the international organization dealing with deep seabed exploration) – established in article 156 – is the singular that governs and oversees tapping into those resources. The extraction process itself can be conducted only after application made by the state willing to begin its activity is accepted by the Authority. Moreover, exploitation of each part of the Area must be accompanied by reserving parts of the Area for future use, in order to guarantee effectiveness of the “global benefit” clause³⁶, including but not limited to fostering exploration of the deep seabed³⁷, ensuring profit participation by the Authority³⁸ and subject to periodical review³⁹.

²⁹ UN General Assembly, Convention on the Law of the Sea, 10 December 1982, available at: <https://www.refworld.org/docid/3dd8fd1b4.html> accessed 28 November 2021], article 1 (hereinafter: UNCLOS).

³⁰ UNCLOS, article 136.

³¹ UNCLOS, article 137.1.

³² Ibidem, 137.2.

³³ UNCLOS, article 137.3 & 138.

³⁴ UNCLOS, article 140.

³⁵ UNCLOS, article 140.2.

³⁶ E. Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, Springer Science & Business Media, Berlin, 2011, p. 17.

³⁷ UNCLOS art 150.

³⁸ UNCLOS art 151.

³⁹ UNCLOS art 154 & 155.

Similar issue was proposed in relation to resource extraction from Antarctica. Even though – currently – any activity that would constitute natural resource exploitation in Antarctica is banned by virtue of Protocol on Environmental Protection to the Antarctic Treaty (hereinafter Madrid protocol)⁴⁰, an attempt was made to create a more permissive international regime. This was done by proposing the adoption of Convention on the Regulation of Antarctic Mineral Resource Activities (hereinafter: CRAMRA) in order to establish “international property regime in Antarctica”⁴¹.

It distinguished three separate types of utilization of natural resources of the Antarctic – exploration, development and prospecting. Only the last one – prospecting – did provide for retaining the ownership of extracted resources. The Madrid protocol also allowed for the investigation into possible sites of future extraction of natural resources, however this in itself could not affect the rights and claims of any party to the protocol⁴². Any of the listed activities would have to become subject to authorization and permit issued by the Regulatory Committee established by CRAMRA. In the end however, the Madrid protocol did not come into force.

Both of the aforementioned instruments of public international law can be – according to parts of the doctrine⁴³ – understood as being indicative of international community at least evaluating the possibility of different understanding of the rules contained in OST. Regardless of the merits of an attempt to analyze provisions of one treaty in light of rules derived from another – albeit similar – instrument, this does not yield the required result in light of Title IV of CSLCA.

Moon Agreement

The reality of how the international community deals with new types of activities appears to be somewhat different from the proposition characterized above. This is because whenever a new realm of possible human activity – and especially exploitation of natural resources – is identified, the international community tends to create and adopt tailor-made solutions, rather than reinterpreting already existing treaties. The very existence of a separate set of rules concerning the Area, as well as an attempt at drafting CRAMRA serves as perfect proof of such an approach. Such was the case with outer space. One of the reasons behind the adoption and ultimate entry into force of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (hereinafter Moon Agreement) was to provide for – at the very least – a mutual starting point for future agreements governing the utilization of outer space resources. This still remains the case, even though the doc-

⁴⁰ Protocol on Environmental Protection to the Antarctic Treaty, UNTC Volume 2941, A-5778, New York, 2013, article 7.

⁴¹ J.G. Wrench, *Non-Appropriation, No Problem: The Outer Space Treaty Is Ready for Asteroid Mining*, 51 Case Western University Reserve, “Journal of International Law”, Vol. 437, Cleveland, 2007, p. 453.

⁴² *Ibidem*, p. 454; Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 1988, preamble.

⁴³ J.G. Wrench, *op. cit.*, p. 439.

trine seems to vastly support the view of the Moon Treaty being a “failed” agreement, as neither Russia nor USA acceded to it.

The notion of utilizing the Moon Agreement as a guide on how the rules of public international law should be interpreted seems all the more viable, once the circumstances of its conclusion are taken into account. As such, the draft of the Moon Agreement has been accepted by each and every member-state of UN Committee on Peaceful Uses of Outer Space, as well as by UN General Assembly. Moreover, it was the USA who appeared to be the strongest of the advocates for inclusion of the Common Heritage of Mankind Concept into the draft, and later on into the treaty itself.

The Moon Agreement tackled the issue of the exploitation of outer space resources in a twofold manner. Firstly, article 11 of the Moon Agreement introduces what can be called a temporary ban on exploitation of outer space resources, and maintains the non-appropriation principle included in article II of OST⁴⁴. At the same time, the Moon Agreement provides the possibility for the state parties to “undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible”⁴⁵. Pursuant to article 11.7 such instrument is required to contain:

1. The orderly and safe development of the natural resources of the moon;
2. The rational management of those resources;
3. The expansion of opportunities in the use of those resources;
4. An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration.

The Agreement in question would also have to contain provisions concerning the Common Heritage of Mankind concept, however, only within the scope of the Moon Agreement⁴⁶. However the most important part of the Moon Agreement’s article 11 is the fact that it offers – in light of currently existing technical limitations – a path forward for states, once the limitations in question are overcome⁴⁷. This leads to a conclusion, that despite what may be argued in some parts of the doctrine, there already exists a somewhat suitable solution for states interested in further exploiting outer space resources.

Concluding remarks

The practice of the international community in terms of regulating new frontiers of natural resource exploitation appears to follow the line of establishing new legal regimes, tai-

⁴⁴ Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, UNTS 1363, New York, 1992, article 11.3.

⁴⁵ *Ibidem*, 11.5.

⁴⁶ S. Freeland, R. Jakhu, S. Hobe, F. Tronchetti, *Cologne Commentary on Space Law, Volume 2*, 2009, Wolters Kluwer Deutschland GmbH, Cologne, p. 394 (hereinafter CoCoSL OST).

⁴⁷ *Ibidem*, p. 397.

lor-made for the type of activities in question. It does not – however – support the notion of re-interpretation of already existing rules derived from materially different treaties and factual circumstances, that verges on brink of being not in compliance with VCLT. Additionally, such an approach would most likely not remain within the confines of OST’s drafting parties intent. However, this bears little to no effect on the status of the American legislation in question. As it has been pointed out, attempts proving its compliance with *corpus iuris spatialis* concern the legality of the issue of outer space natural resources exploitation, without concerning whether the means to achieve this goal would be equally legal. In this respect the legality of CSLCA is entirely beside the point, with the main concern being – how to make practical application of its rules legal. This remains to be answered by to-be developed practice.

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