

**International Institute of Space Law (IISL)
European Centre of Space Law (ECSL)**

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Developing Countries and the Exploitation of Space Resources



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"Ideas matter only to the extent that power and interest do not matter."

Alexander Wendt, *Social Theory of International Politics*, 1999.



Hello, United Nations, we have a problem:

**How to regulate the exploitation
of natural space resources?**

Who can own these space resources?

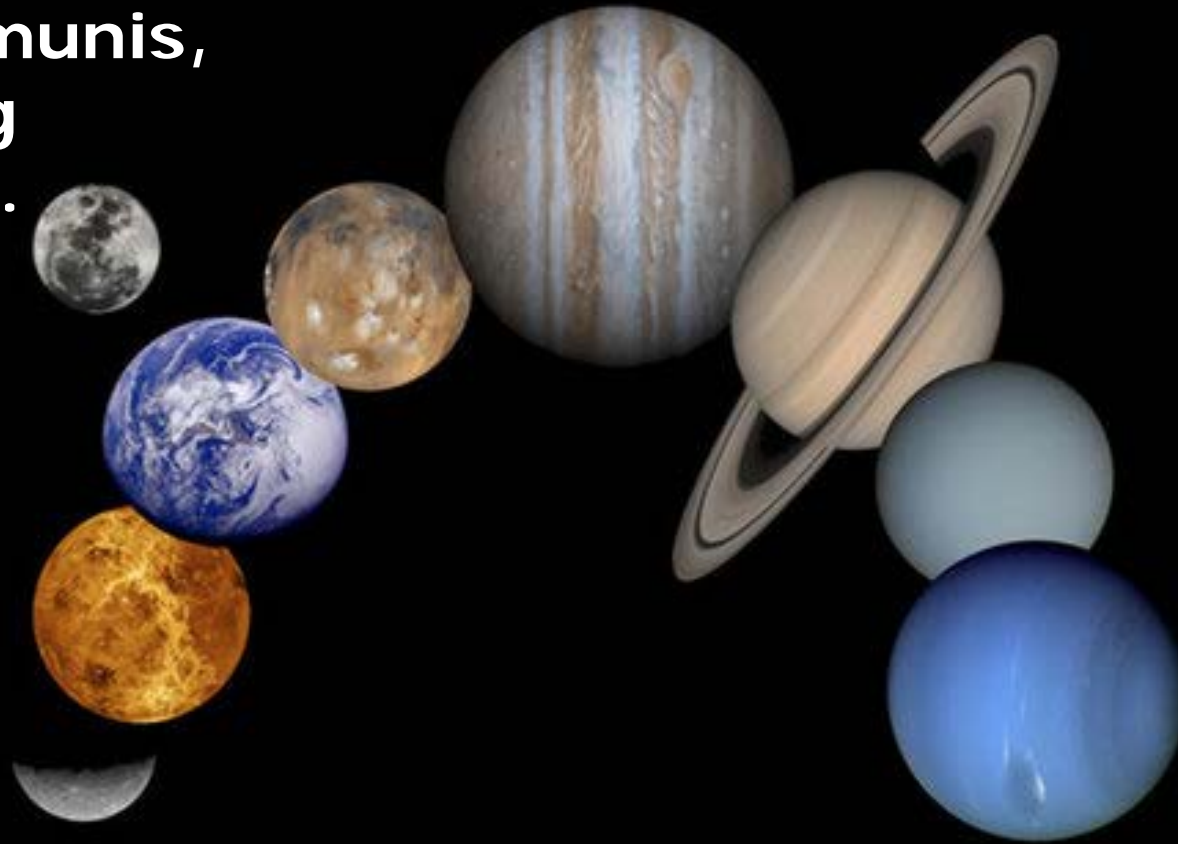
Is it a national or an international issue?

**Outer space and its natural resources
cannot be appropriated in any way.**

Article II of the Outer Space Treaty has no gaps:

**"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."**

**Res communis,
excepting
the Earth.**



The province of all mankind.

The National law can be applied only within the territorial jurisdiction of the respective State.

The USA Commercial Space Launch Competitiveness Act, whose Title IV refers to the exploitation of natural space resources, is a national law.

So, it cannot be applied to outer space and celestial bodies, which are a *res communis* and do not belong to the USA's jurisdiction.

The exploitation of natural space resources is – above all – an international, global issue.

It is of fundamental interest for all countries, all mankind.

Its legal basis is the famous “Clause of Common Benefit.”

The “Clause of Common Benefit” is stated in Art. I, Paragraph 1, of the 1967 Outer Space Treaty, the major code of outer space:

“The exploration and use of outer space, including the moon and other celestial bodies, shall be 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.”

And according to the Article IX of the OST,

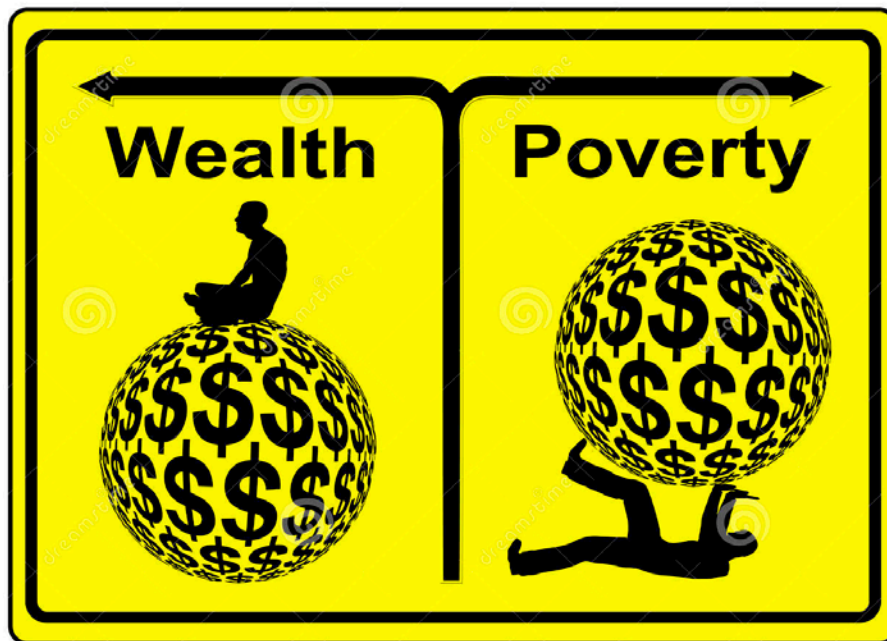


**all space activities must be carried out with
“due regard to the corresponding interests
of all other States.”**

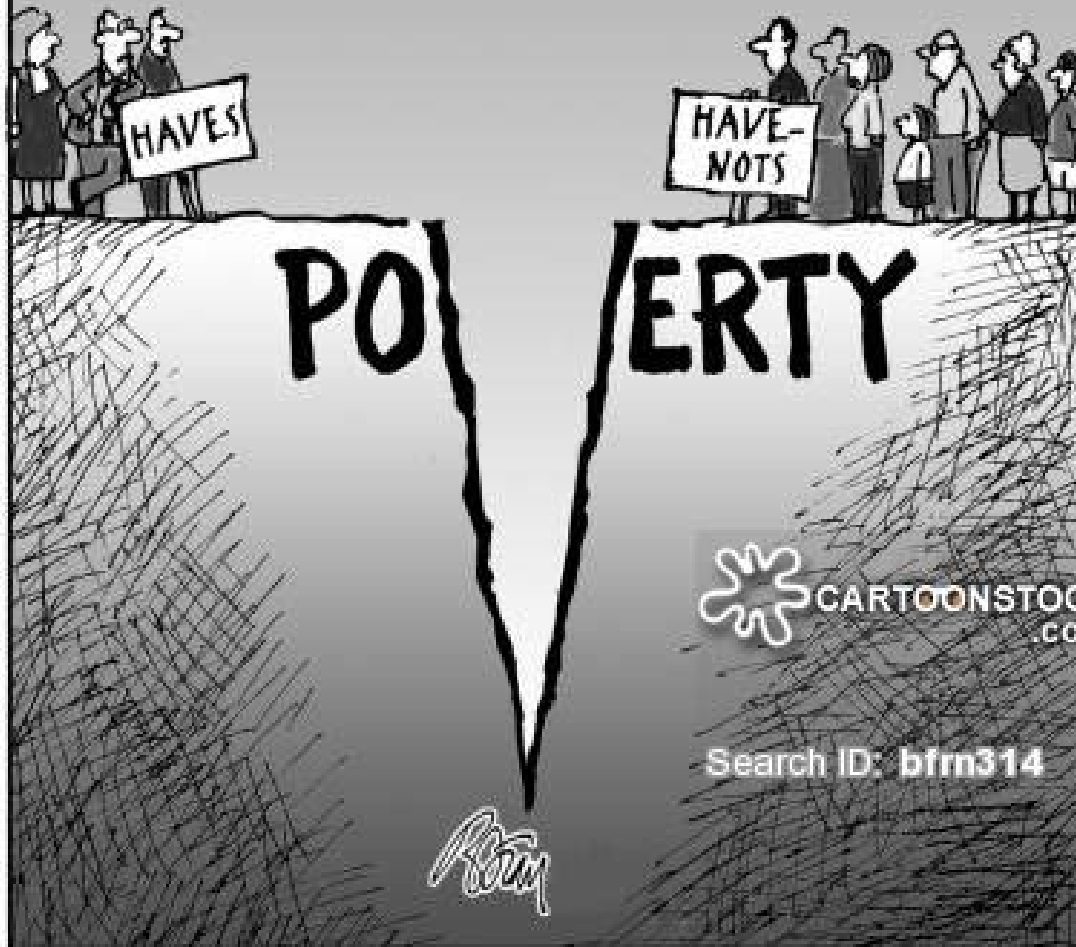
The exploitation of natural space resources only by private companies does not seem to meet these legal requirements.

Such activities are not a simple private business.

**The wealth concentration/accumulation
in some companies and States
causes increasing inequality and poverty
– already extremely large –
among peoples and nations all over the world.**




THE WIDENING GAP...



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**Poverty is
a weapon of
mass destruction**

**"Global capital has no social conscience;
it goes where the returns are,"**

**as said by Kevin W. Sharer, professor of
Corporate Strategy at Harvard Business
School and board member of companies
such as 3M, Northrop Grumman and
Chevron.**

**More than ever our planet needs
a true international cooperation.**



The OST has social conscience.

It affirms that all space activities shall be carried out "for the benefit and in the interests of all countries",

and with "due regard to the corresponding interests of all other States."



**Developing countries need
to participate in and benefit from the
exploitation of space resources,**

**in order to achieve economic, social
and cultural development**

**and to face the growth of global
inequality – already so large –
among nations.**

Developing countries made a relevant contribution to the “Clause of Common Benefit” – in the Art. 4, paragraph 1 of the Moon Agreement:

“Due regards shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.”

This requires the broadest international cooperation, taking into account the contribution and the experience of the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS).



**It is timely to recall
the 1996 “Declaration on International
Cooperation in the Exploration and
Use of Outer Space for the Benefit
and in the Interest of All States,
taking into Particular Account the
Needs of Developing Countries.”**

The Declaration reiterates the “Clause of Common Benefits”, and makes an important addition:

“Particular account should be taken of the needs of developing countries.”

A global call for sharing

The principle of sharing benefits proposed by the Moon Agreement for the exploitation of space resources is a cooperative idea.

It stated in Art. 11, paragraph 7, letter d, of the Moon Agreement, and is defined as follow:

“An equitable sharing by all States Parties in the benefits derived from those [lunar] 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.”



**A very important distinction:
“Equitable” does not mean “equal”.**

**The idea is creating a balance between
investing and non-investing States.**

**So, the legitimate interests
of developing countries can be taken
into due consideration.**

**And the needed negotiations
can be stimulated.**

The OST does not refer explicitly to space resources, nor to mining activities in celestial bodies, nor to industrial, commercial and economic activities in outer space, including celestial bodies.

Hence, such activities should be duly regulated as a global question of great interest for all States.

We need to amend the OST, updating this fundamental Treaty.

An updated Treaty could also, for instance, define the term “exploration and use” of outer space and celestial bodies, and fill other gaps of the OST.

**The attempts to interpret the OST
in view to create a legal basis
for unilateral private mining on celestial
bodies tend to be seen as one-sided,
arbitrary and legally unfounded.**

**They do not match the importance
of exploiting space resources
in benefit for all nations.**

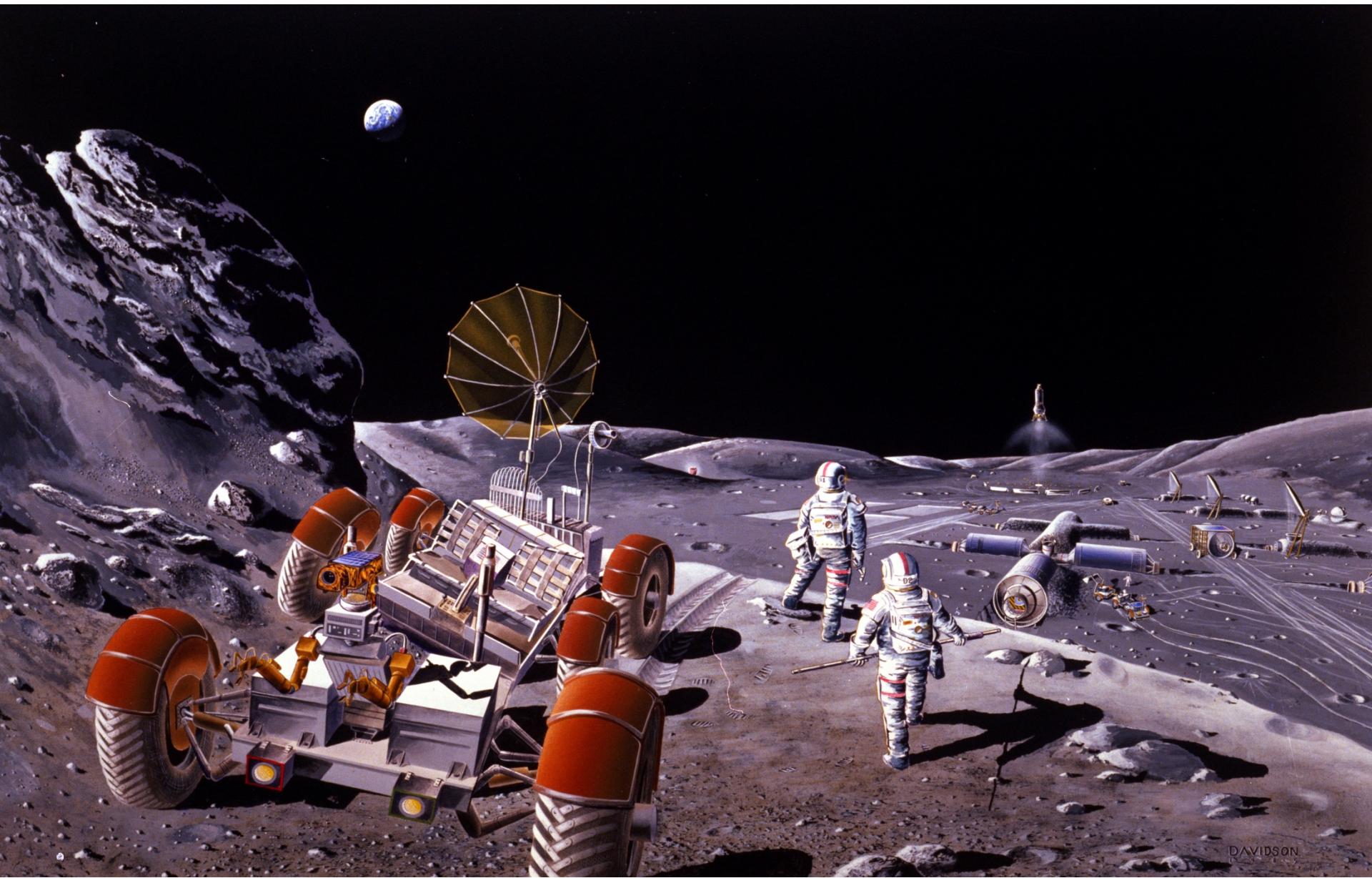
So far, the strongest attempt to interpret the OST seems to be the USA Commercial Space Launch Competitiveness Act, signed into law by the then President Barack Obama on 25 November, 2015.

Its Title IV regulates the exploitation of natural space resources.

According to this USA Act, there is no intention of asserting sovereignty or sovereign or exclusive rights or jurisdiction over, or ownership of, any celestial body.

American private companies plan to own only space resources mined by them.

Is this possible?



DAVIDSON
ARTS

It is hardly possible mining a celestial body without asserting exclusive rights over it.

To install an industrial mining on a celestial body one need to assure exclusive rights over part of it – at least temporarily.

The mining work does not permit “free access to all areas of celestial bodies”, as the OST requires in the Art. I , paragraph 2.

Under the non-appropriation principle (Art. II of the OST) there is not an approved legal regime to support any private claim to ownership of a part of outer space,

as States have the obligation to assure that national activities, which includes activities of private entities, “are carried out in conformity with the provisions of the Outer Space Treaty.”

Thus, there is no legal basis for States and private companies to freely explore natural space resources for industrial and commercial ends.

We need a special regulation for these activities to ensure that outer space remains the province of all mankind.



Thanks for your kind attention.