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DECOLONISING THE SPACE: SHAPING A JUST AND INCLUSIVE FUTURE

INTRODUCTION

The vast expanse beyond our planet, commonly called 'space,' transcends its scientific definition, encompassing a tapestry of historical, political, and economic significance. The epochal moment of the Cold War, marked by the launch of the Soviet satellite 'Sputnik I,' not only heralded the dawn of space exploration but also unveiled a geopolitical battleground for establishing dominance. The ensuing response from the United States with the launch of 'Explorer I' underscored the fusion of space endeavours with political manoeuvring, shaping the trajectory of global space sciences. As time hurtles forward, the contemporary landscape sees space evolving into a new frontier – not just for scientific discovery, but as a burgeoning arena for economic pursuits. The space economy has emerged as a tangible force, adding a commercial dimension to the once-ethereal concept of space. In this nuanced interplay between history, politics, and commerce, the meaning of space continues to expand, reflecting the multifaceted pursuits of nations and the relentless march of human exploration beyond our terrestrial boundaries.

In 2021, 95% of the estimated \$469 billion in revenue earned in the space sector was from the space-for-earth economy: that is, goods or services produced in space for use on Earth, with a growth of 6.4% since 2020¹. Companies like Space X, Made in Space INC and Axiom Space have rapidly ascended to become prominent figures in the space industry, rewriting the narrative of cosmic exploration. Their pivotal collaboration with NASA signifies a paradigm shift, marking the advent of private enterprises as major stakeholders in shaping the future of space endeavours. This alliance extends beyond the mere development of space infrastructure;

¹ Space Foundation, GLOBAL SPACE ECONOMY (July 27, 2022), <https://www.spacefoundation.org/2022/07/27/the-space-report-2022-q2/>

it encapsulates a transformative era where private players actively engage with governmental space agencies. Together, they embark on ventures that push the boundaries of technological innovation and herald a new chapter in space tourism. As these influential entities forge ahead, their collaborative efforts underscore a departure from traditional models, ushering in an era where public and private sectors intertwine to propel humanity's journey into the cosmos.

PIONEERING SPACE LEGAL FRAMEWORKS

At present, a select quartet of nations stands at the forefront of legislating the burgeoning realm of space commerce. Among these trailblazers are the United States, Luxembourg, the United Arab Emirates, and Japan². These countries have individually crafted comprehensive legal frameworks to govern the intricacies of activities in outer space, signifying a proactive stance in addressing the challenges and opportunities inherent in the evolving landscape of space-based enterprises.

In heralding its ambitious quest to retrace human footsteps on the lunar surface, NASA is embarking on a pivotal mission that not only signifies a crucial return to the Moon but also serves as a foundational step towards the ultimate goal of sending humans to Mars. Central to this initiative is the Artemis Accords, strategically designed to catalyze international collaboration and lay the groundwork for a systematic and cooperative approach to activities in space. As the text of the accord suggests this treaty is more of a political commitment than a legally binding instrument. A similar attempt was made by the 'Moon Agreement' in 1979 to regulate the activities of states on celestial bodies. There are only 18 parties that have rectified it till now and does not hold good in international customary law.³

ADDRESSING ARTEMIS ACCORDS' OUTER SPACE TREATY CHALLENGES

The Artemis Accords play a seminal role in rallying global support to develop a comprehensive legal framework for the ever-expanding domain of space-related endeavours. It aims to gather international cooperation in governing the space regime. Australia, Canada, Italy, Japan, Luxembourg, the United Arab Emirates, the United Kingdom and the United States of America

² Id.

³ The Moon Agreement, 1979-Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, December 5, 1979, 1363 U.N.T.S. 3

are the founding members of the Artemis accord.⁴ This document outlines that the principles it adopts align with the Outer Space Treaty (hereinafter OST). Upon closer examination, discrepancies between the two will become more apparent.

Section 10 of the Artemis accord says “*The Signatories emphasize that the extraction and utilization of space resources, including any recovery from the surface or subsurface of the Moon, Mars, comets, or asteroids, should be executed in a manner that complies with the Outer Space Treaty and in support of safe and sustainable space activities. The Signatories affirm that the extraction of space resources does not inherently constitute national appropriation under Article II of the Outer Space Treaty and that contracts and other legal instruments relating to space resources should be consistent with that Treaty*”⁵

Reading the above-stated section 10 with Article II of the Outer Space Treaty which says-

“*Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, using use or occupation, or by any other means*”

“Utilization of space resources”, as specified in section 10, raises the question of whether space resources will be included under the ambit of article II of the Outer Space Treaty is still answered.

Another important question that needs clarification is whether non-state actors like private enterprises will be prohibited too under Article II of the said treaty.

Further looking at article I of the OST, which says “*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*”. The term “use” here may refer to the exploitation of outer space. During the treaty's formulation, deliberations unfolded around the multifaceted implications of the word "use." The French delegate thought that the term “use” meant exploitation⁶.

Again, a perusal of section 10 and article I together, give rise to the question of whether ‘exploitation’ or ‘use’ and ‘exploration’ of outer space would include extraction and utilization

⁴ Id.

⁵ The Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes

⁶ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, opened for signature Jan. 27, 1967, 610 U.N.T.S. 205 (entered into force Oct. 10, 1967), T.I.A.S. No. 6347, U.S. Department of State.

(as mentioned in section 10), and to what extent can it be stretched is still a question that needs clarity.

CONCLUSION

The absence of a regulatory framework to ascertain resource rights implies that political agreements like the Artemis Accords endorse a 'first come, first serve' model which will ultimately favour economically and technologically advanced nations, contradicting the foundational principle on which the Outer Space Treaty was built. Thus, this conundrum underscores the need for an internationally recognised treaty to put all the states on an equal footing, irrespective of any economic or technological factor, giving equal access to all interested parties.