Secure World Foundation

Agenda Item 14 - General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources

Madam Chair, the Secure World Foundation welcomes a discussion within this subcommittee on Agenda Item 14 - *general exchange of views on potential legal models for activities in exploration, exploitation, and utilization of space resources*. To be realistic, the regular occurrence of these activities - the interaction with and productive use of celestial resources - is still a number of years into the future. However, these anticipated uses of celestial resources carries with them ample subject matter for differing views between actors in the space domain.

Madam Chair, distinguished delegates, a noted scholar in international law has written "in any legal system there are silences, things the system does not seem to regulate, matters as to which it seems not to speak. This is also, perhaps particularly, true of the international legal system", and in activities and domains with rapid technological change.[1] The decades of debate within academia and COPUOS on the regulations applicable to the use of celestial resources clearly reinforce the idea that there is a lack of legal clarity in the law surrounding these topics.

In international law, silence and the lack of legal clarity occur often. There are two types of silence in international law. Gaps, or lacunae, may be unintentional or intentional, but exist where there is an absence of applicable law. Alternatively, the term *non-liquet* describes instances where some law generally exists, but its specific application, or the limits of the rights and obligations it creates, is unclear or uncertain. The treatment and regulation of the use of

[1] Helen Quane, *Silence in International Law*, 84 (1) British Yearbook of International Law 240-270, https://doi.org/10.1093/bybil/bru021.

celestial resources under space law may be helpfully understood as being one of these gaps or lacunae - or, as an unclear or uncertain *non-liquet* situation.

Keeping in mind that the Outer Space Treaty is a treaty on principles, and remembering that Article II, creating the prohibition on national appropriation of celestial bodies, is a brief 17 words long, the modest conclusion is that international space law is essentially silent on many proposed activities of the access and exclusive use of space resources. The activities currently envisioned might include the extraction and use of volatiles (including water) and mineral resources for the production of oxygen, fuel, and raw material for use in production or manufacturing. The applicable existing international space law simply does not directly address these proposed activities, neither plainly making them permissible, nor explicitly prohibiting them. Again, the decades of debate, and the divergent views on this topic strongly show one thing - that the law itself, on these proposed activities, is unclear.

In a closed legal system, practitioners and jurists merely identify the applicable law, then interpret it, and then apply it. When gaps are found, they are filled with pre-existing other sources of law, such as general principles. However, as with other systems where technological progress and change is continual, international space law is an open legal system. The subsequent elaboration and refinement of rules is a method incorporated into the system of space law itself. We know that space law is an open legal system, as articles V, VI, VII, and VIII of the Outer Space Treaty were refined and expanded into the Astronaut Rescue and Return Agreement, the Liability Convention, and the Registration Convention. Additionally, the subsequent soft law creation within COPUOS, and the elaboration and refinement of international rights and obligations with national space legislation, all further an understanding

that international space law is an open legal system. That the topic of resource use is now an agenda item here in the Legal Subcommittee, and under also discussion in the Hague Space Resources Governance Working Group of which the Secure World Foundation has been an active member, further show that existing laws require clarification. It also shows that space law is understood and accepted as an open system subject to refinement, expansion, and clarification.

There are also gaps in the international community's understanding of the technical means by which space resources will be explored, accessed, and utilized. As the space resources industry is just beginning, today's knowledge and plans are subject to technology development and validation. Any legal instruments - whether national or international in character - pertaining to space resources should be developed in balance with the current scientific and technical understanding of approaches to space resource development, and should further be adaptive to changes in technical maturity and understanding.

There are many avenues to address gaps and silence in international space law, including both national and multilateral approaches. We applaud the willingness of this subcommittee to devote serious attention to the legal complexities surrounding access to space mineral resources and the circumstances of their use. Secure World Foundation will continue to provide as much as assistance as it can in the clarification of these complexities especially in this forum as States members pursue consensus. Madam Chair, distinguished delegates, I thank you for your time and attention.

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