

Legal Issues Related to Space Exploration (13)

Present and future regulation of space exploration and exploitation: general issues (1)

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THE MOON TREATY: A CHANCE FOR THE UNITED STATES TO SHINE

Abstract

The United Nations Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space has been grappling with the task of revisiting the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the Moon Agreement). The daunting task of establishing an international body for the purpose of defining and administrating the terms of the Moon Agreement has lacked the drive and direction of a key actor. This article proposes that it is within the interests of the United States to play a key role in the establishment of an international regime. It could be similar to a nonprofit, public benefit corporation.

Doing so would provide US delegates with the opportunity to frame the international governing body that will be responsible for defining the terms and scope of applicability of the Common Heritage of Mankind clause contained in the agreement.

The Common Heritage of Mankind is perhaps the most progressive expression of international democracy in development today. It posits that the collective interests of resources demand the prohibition of exclusive possession of such resources. This principle is expressed basically in the UN Law of the Seas (UNCLOS), which has experienced considerable US support for the freedoms explicitly provided and interests thereby secured. The US also holds a position of considerable influence in the International Seabed Authority, which issues licensure for mining and conducts research and development initiatives on behalf of the international community. The UNLOS has fumbled on provisions too narrowly defined for adaptability, but provides a useful draft of operable governance.

Until the international community provides the parameters of space industrial activity through legislation, the interests and investments encouraged by the NASA Authorization Act will continue to stall. The establishment of security for these interests and investments must precede the market, and by leading this development, the US will catalyze the industry while securing its own interests in the field.