

Legal Issues Related to Space Exploration (13)

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

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EMERGING ISSUES, EXISTING SPACE LAW, AND PRAGMATIC SOLUTIONS

Abstract

The Outer Space Treaty of 1967 is widely ratified by major space powers and emerging space faring nations, and has overseen fifty years of the peaceful use and exploration of outer space. Fundamental portions of it have passed into the realm of customary international law, and it has largely hindered the militarization of outer space. This foundational treaty has also been supplemented by additional treaties on the rescue of astronauts, on international liability, and on the registration of space objects. The UN committee where the treaty originated has also promulgated various principles and declarations which further refine the legal framework for the use of space.

However, aspects of the major space treaties may prove ill-suited for the next, more globalized and cooperative age of global space exploration. Vagaries over the extent and nature of the prohibition on appropriation and the treatment of celestial resources have engendered debate and confusion. While the sparsely ratified Moon Treaty of 1979 does not strictly prohibit resource utilization, resistance to it warrants against seeking its further ratification.

While it is perhaps fruitless to attempt to precisely define the limits of the prohibitions on the use of resources on celestial bodies, this emerging issue must be faced by states seeking to abide by their international treaty obligations. How can states (either acting alone or cooperatively) seeking to use celestial resources proceed and not fall foul of the prohibitions in the body of international space law? What role can private industry play?

The long time frame of space projects and the allocation of vast amounts of capital for procurement and project management require that sufficient legal certainty exists beforehand. Besides adopting additional space treaties, a prospect seen as politically impracticable, what pragmatic solutions exist for settling this and other emerging legal issues in the next age of space exploration?