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THE WORLD HERITAGE CONVENTION AND OUTER SPACE: FROM TERRITORIAL TO
INTERNATIONAL TO SPACE HERITAGE

Abstract

Public international law has mostly been designed for terrestrial needs of states. This paper examines the possible role of one apparently very “earthly” instrument of public international law, the World Heritage Convention (WHC), in the space sector.

At first sight the WHC seems to be inapplicable to space activities. Its wording appears to limit the Convention to the protection of properties on Earth and, furthermore, within the territories of contracting states only: it speaks about heritage situated “on the territory” of States Parties. Nevertheless, I would argue that the Convention can in fact have relevance beyond state territories, in international areas - even in outer space.

The “World” in the name of the Convention should not be understood in the narrow sense of “Earth” only – in fact, the WHC expressly declares itself as an instrument for the protection of cultural and natural heritage of “outstanding *universal* value”. Outer space, if anything, is universal. Moreover, the WCH does not purport to create such heritage – it merely creates a system where properties of outstanding universal value can be identified and afforded special protection. This is confirmed by Article 12: “The fact that a property belonging to the cultural or natural heritage has not been included in [the World Heritage Lists - - -] shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists”.

The objective of the Convention is to protect all world heritage. States must respect the WHC obligations of a general character also with respect to sites of outstanding universal value *not* listed pursuant to the WCH system (which can only accommodate sites within the territories of contracting states). These obligations include at least the “duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage” (Art. 4) as well as the obligation “not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage” (Art. 6).

Nearly all states – including major space-faring nations – are parties to the WHC. Accordingly, I would argue that states are under the obligation to do their best to identify and protect also outer space heritage. This should have important implications vis-à-vis the conduct of space activities – ranging from space tourism to future mining of celestial minerals.