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GOLD RUSH ON THE FINAL FRONTIER: IS A NEW REGULATORY FRAMEWORK NECESSARY  
FOR THE COMMERCIAL EXPLOITATION OF NATURAL RESOURCES IN OUTER SPACE?**Abstract**

International space law has so far faced a variety of new economic, technological and political challenges. In many respects, the corpus juris spatialis generally has a good track record in predicting such challenges. Increasing commercialisation and privatisation of outer space activities are now the driving forces of these changes and it is questionable whether the legal regime, as it stands, is sufficiently equipped to address new demands. An area of particular interest is the extent to which the regime provides for and regulates resource exploitation of celestial bodies.

This paper begins first with a review of the Moon Treaty 1979, Article 11(5) of which provides for the eventual establishment of an “international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible”. It is argued that this provision does not adequately enable the development of a suitable regulatory framework, and an attempt to determine if there are alternative models of regulation available is therefore important.

This paper secondly assesses the ‘common heritage of mankind’ concept as it applies to Article 11(1) of the Moon Treaty 1979, and analyses comparatively its application in the space law regime with the concept in the context of the deep seabed regime under the United Nations Convention on the Law of the Sea 1982, a similar concept under the Antarctic Treaty System and the principle of ‘equitable sharing’ in the sphere of the Convention on Biological Diversity 1992. As of March 2012, the Moon Treaty 1979 has been ratified or signed by only 17 states most of whom are non space-faring states. This paper contends that in considering these comparable international regimes, there are certain lessons to be learned from the application of the ‘common heritage of mankind’ concept (or similar) which may address its problematic inclusion in the Moon Treaty 1979.

As the feasibility of commercial mining activities in space grows, the inadequacy of the law is becoming ever more apparent. It is the conclusion of this paper that a new, robust regulatory framework – in the form of a Protocol to the Moon Treaty 1979 based on the example of similar legal regimes – is necessary. Indeed, should private investment in this field continue as envisaged, such a framework will be imperative.