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RECENT DEVELOPMENTS IN OUTER SPACE AND THE MOON AGREEMENT: PROMOTING A
SAFER ENVIRONMENT FOR BOTH PRIVATE AND PUBLIC EXPLOITATION OF NATURAL
OUTER SPACE RESOURCES

Abstract

Recent events demonstrate that commercial exploitation of outer space natural resources is close to becoming a reality. The successful landing of a European spacecraft on a comet, a proposed American bill to regulate property rights on asteroids, and the positive review by the FAA of a proposed lunar habitat demonstrate that international regulation of space resources cannot be further delayed. The only existing international treaty addressing such regulation, however, is the Moon Agreement (MA), ratified by only a few Member States, none of which are space-faring nations. The MA has generated considerable controversy, particularly regarding the Common Heritage of Mankind (CHM) principle, which is considered the primary reason for the limited number of ratifications. Although the concept of CHM is well known in international law, it should be defined in accordance with the Agreement itself, particularly given the international legal regime to be created by the Treaty's parties when space exploitation becomes feasible. It is, therefore, a misstatement to argue that CHM is contrary to commercial exploitation of space resources. Additionally, there are other reasons justifying ratification of the MA. For example, Article 3 goes further than the Outer Space Treaty (OST) concerning the use of the Moon for exclusively peaceful purposes, as it prohibits state parties from employing fractional orbital bombardment systems (FOBS). This provision is important, because space is a vital military asset that could easily be misused for non-peaceful purposes, especially if there is competition over natural resources. Indeed, increased international concern regarding war potentially occurring in space resulted in a draft treaty proposed at the Conference on Disarmament regarding the prevention of the placement of weapons in space and the threat or use of force against space objects. The international regime should impose barriers precluding a "Moon Race", providing rules for space exploitation, and avoiding possible conflicts caused by legal uncertainty amongst nation states. This paper proposes a concept of the CHM that balances the interests of space powers, developing countries, and private companies with space law paramount principles such as non-appropriation, the protection of the interests of all countries, and the peaceful uses of outer space. The paper also shows how Article 3 could further contribute to avoiding the use of outer space for non-peaceful purposes, and concludes that ratification of the MA by many more countries would help promote a safer environment for both private and public exploitation of natural outer space resources.