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GOING ROGUE OR TAKING THE LEAD: THE BIGELOW LETTER AND ITS IMPLICATIONS ON
U.S. SPACE POLICY AND INTERNATIONAL LAW

Abstract

In a letter written to Bigelow Aerospace, an American company constructing space habitats for commercial use, the United States' Federal Aviation Administration (FAA) stated that it "recognize(s) the private sector's need to protect its assets and personnel on the Moon or on other celestial bodies" and will "leverage the FAA's existing launch licensing authority to encourage private sector investments in space systems by ensuring that commercial activities can be conducted on a non-interference basis." This announcement involved input and coordination from various other U.S. agencies and therefore reflects the stance of the U.S. government. While the ASTEROIDS Act still remains dormant in the U.S. Congress, the FAA's letter is indicative of a notable shift in American space policy. The United States under the Obama Administration has been gradually shifting towards a greater focus on supporting commercial space industry, however, this is the first policy initiative that has international implications, especially considering the country's commitment to the Outer Space Treaty (OST) of 1967. This paper will analyze the legal framework proposed by the FAA's letter and whether it has in fact violated any of the provisions of the OST. It will then outline how this shift in policy might manifest and evolve in the future and whether this development will further complicate the parameters of the treaty and the international space community or in fact serve to elucidate and/or mature the global legal framework for space. This analysis will also involve an examination of the developmental process that formed the international legal framework for the sea, and a juxtaposition of this with the FAA's letter to Bigelow Aerospace. Ultimately, I conclude that the U.S. Government's shift in policy is in fact an attempt to lead the way towards a more progressive international framework for space rather than an attempt to go rogue and depart from the OST entirely.