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SPACE-FARING STATES' OBLIGATIONS TOWARD THE INTERNATIONAL COMMUNITY AS
GUARDIAN OF "MANKIND" IN TERMS OF THE COMMON HERITAGE OF MANKIND
PRINCIPLE

Abstract

Any state, or private entity over which the state has jurisdiction and exercises control, that procures or launches or whose territory is used for a launch of an object into outer space is a "space-faring state" and includes entities that play a significant role in international affairs insofar as they have attained legal standing in the international sphere. Mankind has been made a beneficiary under space law but has limited personality in law, i.e. it may be the bearer of rights, but without the capacity to exercise it directly. Mankind consists of individual human beings and the future generation. The international community, which is inter alia made up of individual states, is the "guardian" of the rights of mankind under the common heritage of mankind concept ("the concept"). Therefore through the nationality of individuals the particular state is enjoined to protect the interest of those individuals under its jurisdiction.

The concept is made up of a non-appropriation element, an economic element, an environmental element and a peaceful use element. The Outer Space Treaty ("the OST") incorporates most of the elements of the concept. As the OST has been ratified by most space-faring states and the concept is more than a mere moral obligation by space-faring states.

The main features of the concept have obtained customary law status, even if the whole concept has not in detail been worked out. It is only the manner in which it has to be implemented that needs to be worked out and in this regard it is suggested that this process could greatly be assisted by the use of the concept in respect of the seabed, the principles of good faith and equity.

Under the era omnes principle courts were only willing to protect "basic human rights" the concept definitely passes the important right test. However the concept has the making for such status.