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HOW SIMPLE TERMS MISLEAD US: THE PITFALLS OF THINKING ABOUT OUTER SPACE AS A
COMMONS

Abstract

The space treaties include several different phrases defining the exploration and use of outer space. These include: "...for the benefit of all peoples (countries), and "...shall be the "province of all mankind." The Moon Agreement extends these ideas in the phrase, "the Moon and its resources are the common heritage of all mankind." Various legal and economic terms are now used as parallels in outer space to these phrases (but do not appear in the treaties themselves). They include: "space is a global commons," "common pool resources," "anti-commons," "res nullius" and "res communis." In reality, none of these terms clearly fits the legal or economic conditions of outer space and none of them provides any useful guide for future handling of space resources, space exploration, or even for resolving the unavoidable future issues when there will be competing interests or major accidents occurring in outer space. This paper will review the definitions often misused for space activities and suggest more pragmatic and accurate ways of insuring that the outer space environment will be effectively managed to avoid misuse, overuse, or abuse. These methods include recognition of limited property rights and developing binding dispute resolution techniques based on analogies now employed in many terrestrial activities.