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THE PARADOX OF UNITED STATES' POSITION ON THE REGULATION OF SPACE RESOURCE
EXTRACTION

Abstract

Title IV of the United States Commercial Space Launch Competitiveness Act ("Space Resource Exploration and Extraction", hereinafter the Act) signed into law on November 25, 2015 is only the beginning of emerging national legislation to authorize and supervise commercial activities of companies like Deep Space Industries, Planetary Resources and Shackleton Energy Company, among others, who seek to extract resources from near-Earth asteroids and the Moon. Sponsors of the Act, which is comprised of a mere three provisions followed by a disclaimer of any intent to assert sovereignty over celestial bodies, publicly acknowledge this is a work in progress, especially as it concerns mission authorization. The Act pointedly requires a report on recommendations for the allocation of responsibilities among Federal agencies for commercial exploration and recovery of space resources, recognizing the ongoing concern of identifying the correct governmental agency or division ultimately responsible to supervise these activities. Notwithstanding the ambiguity, it is clear the United States will not be held back from forging its way through virgin territory to regulate off-world resources.

The official position of sponsors of the Act is that it does not support the creation of an international body to establish rules and regulation over space resource mining because to do so would be counterproductive, undermining U.S. national interests and dis-incentivizing private sector investments. The sole ostensible purpose to allow state domestic law and customary practice to develop without proscribing international rules begs the question of what import (if any) is to be given to the Moon Agreement provisions which were aggressively negotiated by the US and the USSR for nearly an entire decade. Whether the current congressional sponsors wish to acknowledge it or not, their government has already played a significant role in voicing the international community's opinion juris on how a framework regulating that activity should evolve. This paper will discuss the paradoxical position of the US and what rational avenues exist to reconcile current international law on regulation of space mining ventures.