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THE END OF THE CONCEPT OF “COMMON HERITAGE OF MANKIND”? – THE VIEWS OF
STATE PARTIES TO THE MOON AGREEMENT

Abstract

The U.S. Commercial Space Launch Competitiveness Act of November 2015, in particular its Title IV on “Space Resource Exploration and Utilization”, raises an important question to the State parties of the Moon Agreement: How should they react? Do they still maintain that the Moon and its natural resources “are the common heritage of mankind” and that neither the surface nor the subsurface of the Moon, “nor any part thereof or natural resources in place shall become the property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person” (Article 11 of the Moon Agreement, paragraph 1 and 3)? Or do they see value in commercial activities of non-governmental entities to explore and exploit resources on the Moon, asteroids, or other celestial bodies which need to be facilitated by granting property rights? In the past years, the State parties to the Moon Agreement have launched several initiatives to raise awareness of the potential of this international treaty, which will be presented and analysed in the present paper. The importance of the reaction of the State parties to national initiatives is rooted in the functioning of public international law as a dynamic field of law in which State practice and opinion *iuris* can bring about changes to the legal framework. Customary international law can lead to new norms and alter existing ones. In addition, for the interpretation of a treaty, the subsequent practice in its application by State parties is important, as is stated in Article 31 para 3 (b) of the Vienna Convention on the Law of Treaties. In the present paper, the relationship between the concept of “province of mankind” as enshrined in Article I on the Outer Space Treaty and the “common heritage of mankind” mentioned in Article 11 of the Moon Agreement will also be analysed more closely in view of Article 31 para 3 (c) of the Vienna Convention on the Law of Treaties. This shall contribute to a better understanding of whether the “freedom of use” of outer space can ultimately include the ownership and consumption of resources on celestial bodies.