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AUSTRALIA'S POSITION IN RESPECT OF REGULATION OF SPACE MINING

Abstract

As one of the 18 States party the Moon Agreement it is often suggested that Australia is at a commercial disadvantage in seeking to provide a suitable legal and regulatory environment for its commercial enterprises to participate in space mining. In fact, it is sometimes suggested that Australia should withdraw from the Moon Agreement. However, Australia's ratification of the Moon Agreement, together with many other factors, can be leveraged to not only put Australia on a firm commercial footing in competing in a prospective space mining industry, but can also be leveraged to iteratively work towards institution(s) and a regulatory framework that works for all enterprises in the space mining industry, regardless of their origin. Unilateral regulatory regimes are a legislative knee-jerk reaction that, even from a commercial perspective, fail to adequately address all the issues that are likely to arise, and which fail to provide commercial entities with the stable normative platform they need to succeed. Apart from the context of the international legal obligations by which it is bound, Australia is a country with a wealth of experience in mining and operation in remote and relatively inhospitable environments. Australia continues to be a major participant in the Antarctic Treaty Consultative Mechanism which has sought to respect and protect the environmental value of Antarctica. Yet Australia was also instrumental in the 1994 UNCLOS Implementation Agreement, a pragmatic initiative balancing commercial, environmental, national security and other interests and which managed to bring the vast majority of industrialised States onto UNCLOS as State Parties. Australia is also a significant and well-respected participant in the International Civil Aviation Organisation in which commercial and other interests are balanced in yet another global commons. It is suggested that it would be inappropriate and premature at this stage to seek to develop a comprehensive international legal and regulatory framework, but Australia could take a leading role in establishing an institution that would work, with industry, iteratively to develop a framework that provides space industry participants with the stable, global platform that they need to succeed.