

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Moon and Mars Settlement: Open Legal Issues (2)

Author: Mr. Dennis O'Brien
Space Treaty Project, United States

LEGAL SUPPORT FOR THE PRIVATE SECTOR: AN IMPLEMENTATION AGREEMENT FOR THE
MOON TREATY

Abstract

The United Nations' Committee on the Peaceful Uses of Outer Space has accomplished much over the decades, most notably helping to produce the five space treaties, international agreements that provide the legal foundation for human activity in outer space. But it has been unable to produce the international framework of laws that the Moon Treaty calls for to facilitate humanity's departure from the home planet, leaving a gap in space law that has discouraged private activity. The Moon Treaty, with the proper implementation agreement, now offers the best hope for closing that gap. Although some argue that the Moon Treaty would hinder private space activities, with the proper IA it would in fact support them.

The Space Treaty Project has proposed a ten-paragraph Implementation Agreement that is based on four organizational principles:

1) The Agreement must be comprehensive and support all private activity; 2) The Grand Bargain: Trade private property rights for public policy obligations; 3) Defer issues currently at impasse (e.g., monetary sharing of benefits) by creating a governance process for making future decisions; 4) Build upon and integrate current institutions and processes.

Why is this proposal necessary? In the year 2020, there is no internationally recognized mechanism for granting property rights to anyone for any location or natural object in outer space. The current controlling international law is the Outer Space Treaty of 1967, which prohibits any one country from appropriating anything in outer space:

"Article II: Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."

The Moon Treaty provides the international authority to grant property rights. Article 11 does not prohibit ownership; it just prohibits any one country from granting it on its own authority. Article 11 also clarifies that the "common heritage of mankind" is defined by the Moon Treaty and its implementation agreement. The CHM has no legal meaning or force of law beyond the framework that the States Parties adopt.

The proposed Implementation Agreement provides the minimum framework of international law necessary at this time. In addition to property rights, the Agreement addresses the authorization/supervision of private space activities, the protection of intellectual property, the sharing of technology, the protection of the environment, legal jurisdiction and dispute resolution, and the protection of human rights, thus helping to avoid the collision of national legislation.