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Author: Mr. Scott Scoular  
University of Oxford, United Kingdom

THE RISK OF REPLACING THE CONSENSUS PRINCIPLE IN SPACE WITH ALTERNATIVE RULE  
SETTING: A COMPARISON OF SPACE MINING WITH DEEP SEA MINING

**Abstract**

The modern space industry is markedly different from what it was approximately 50 years ago when the UN space treaties came into force. Initially characterised by state-led launches, primarily from the USA and USSR in a competitive race to the Moon, the landscape today features substantial private investment. This investment has led to the establishment of extensive Low Earth Orbit (LEO) constellations, private launches supporting state-backed missions and, most notably for the purposes of this paper, the beginnings of feasible outer space mining. This paper will show that these technological advancements, propelled by the industry's shift to New Space, have not been accompanied by new binding legal norms that work off the consensus principle, thus leaving open questions concerning the legality of outer space mining, especially in the context of non-State entities.

This paper will outline the various alternative space rules currently adopted which govern outer space mining, namely the Artemis Accords and the Building Blocks from the Hague Conference. From there, a factual comparison between the status of deep sea mining and outer space mining will be made, highlighting one key legal similarity between the two - the fact that both are global commons, meaning they are shared resources owned by all of humanity. The high seas derives this status from the UN Convention on the Law of the Sea Article 136 ("common heritage of mankind") whilst celestial bodies and outer space gets this from Article 1 of the Outer Space Treaty ("common province of all mankind").

This paper will then compare similarities between the consensus-based rules governing outer space mining (from the Outer Space Treaty, and the Moon Agreement) and deep sea mining (from UNCLOS). It will then use the current issues and concerns facing deep sea mining as a springboard to highlight the dangers of accepting different regional rules through alternative rules setting in place of consensus-based norms in the context of outer space mining. Specifically, concerns regarding the long-term sustainability of national-minded approaches to an internationally owned area will be addressed. With these concerns set out, the paper will ultimately advocate for a renewed effort to develop rules under the consensus principle which directly address public and private space mining, rather than relying on separate alternative rules based systems.