

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
International cooperation on the way to the Moon and Mars (2)

Author: Mr. Dennis O'Brien
Space Treaty Project, United States, dennisobrien@spacetreaty.org

EXCLUSION OR SHARING? AN ARTICLE 11 RESOURCE AGREEMENT FOR THE MOON
TREATY

Abstract

The topic of international cooperation in outer space is more important now than even a year ago. Since then, the U.S. administration issued an executive order that renounced the Moon Treaty and asserted that any private entity could use the Moon however they wanted, without any cost or regulation. The subsequent Artemis Accords repeated this assertion, regulating only those activities that would be done under contract for NASA and/or partner space agencies. A Space Force was created to protect such economic interests. Many are now beating the drums of war, predicting and even inviting an international conflict over space resources.

There is currently no internationally recognized mechanism for granting property/priority rights for use of any location 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. Recent scholarship suggests that excluding other countries from an area of activity is an act of appropriation. Conversely, sharing access to scarce resources would allow "free use" without appropriation.

The Space Treaty Institute has proposed a ten-paragraph Implementation Agreement for the Moon Treaty 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/priority 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. It provides priority rights for use of a location if the country authorizing activity there has adopted the five U.N.-sponsored space treaties; access to scarce resources must be shared.

Space law itself needs capacity building. The Moon Treaty (which also applies to Mars) provides the international authority to grant property/priority rights. Article 11 does not prohibit them; it just prohibits any one country from granting them. The Model Agreement provides the minimum framework of international law that is necessary to support public/private activity on the Moon and beyond.

The mission of space law must be nothing less than to restore hope, to inspire humanity by giving people a future they can believe in; to counter the despair of war and violence and neglect. There will be only one time when we leave our home world, only one chance to create a new pattern that will lead humanity to its best destiny. That time is now.