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FROM COMMONS TO CONQUEST: LEGAL FRAGILITY AND THE RISE OF TERRITORIAL SPACE POLITICS

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INTRODUCTION

For decades, outer Space has inspired awe and unity, remaining as the final frontier for science exploration, and progress. But today, this vision seems to falter as it battles against the force of human greed.

The world is witnessing an alarming trend of rapid commercialization, expansionist foreign policy, new Space powers, and the rise of private actors. As powerful States carve out zones of influence, revealing powerful ambiguities in established Space law, a new reality is emerging—one where the notion of outer Space as a *'shared heritage'* gives way to quiet conquest. What happens when rules established in a past era are faced with a new Space race, the race for extraterrestrial ownership?

This article seeks to explore the existing legal frameworks safeguarding the status of Space as Global Commons, and the risks of letting Earth-bound rivalries spill over into the cosmos.

I. Foundational Treaties and Their Limits

The established laws forbid countries from asserting Space-based territorial claims or limiting access to celestial bodies, justifying Space under the Roman legal concept of *res communis* or *Global Commons*.

A product of Cold War pragmatism and idealism stewarded by the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS)[1], the foremost framework governing Space is the 1967 Outer Space Treaty (OST)[2]. Its core commitments include:

- Article I, which proclaims outer Space as the "province of all mankind", guaranteeing its free exploration for scientific and cooperative purposes.

- Article II which prohibits national appropriation of the Moon and other celestial bodies "by claim of sovereignty, by means of use or occupation, or by any other means." in order to preserve its pristinity.[3]

Later instruments tried to extend this vision but failed to garner international support, such as the 1979 Moon Agreement[4].

Earthly Conflicts Spill Over

The discovery of rare minerals such as Helium-3[5] and water ice on the Moon's poles combined with cheaper launch costs; have caused Space to become central to the future of commerce, communication, and military operations[6]. The stakes—strategic, scientific, and commercial—are immense, stoking the idea that the old prohibition on sovereignty could be sidestepped by "first-to-exploit" resource policies.

1 G.A. Res. 1348 (XIII), Question of the Peaceful Use of Outer Space (Dec. 13, 1958); U.N. Office for Outer Space Affairs, *Committee on the Peaceful Uses of Outer Space (COPUOS)*, https://www.unoosa.org/oosa/en/ourwork/copuos/index.html

2 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty].

3 Ibid.

4 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies art. 11, Dec. 18, 1979, 1363 U.N.T.S. 3 [hereinafter Moon Agreement].

5 Leonard David, *The Moon's Helium-3: Resource for the Future*, Space.com (July 24, 2014), https://www.space.com/26776-moon-helium-3-fusion-fuel.html.

6 Michael J. Listner, *The (Not Quite) Definitive Guide to the Legal Construct of "Space Resources"*, The Space Review, Jan. 6, 2025, https://www.theSpacereview.com/article/4915/1.

A DOCTRINAL GAP EMERGES

While the OST prohibits national extraterrestrial ownership, it doesn't explicitly address private ownership of celestial property and/or resources mined from them, creating an exploitable loophole[7] (which I discuss more in my previous blog post).

This allows companies like SpaceX, Blue Origin, and ispace to not only advance Space technologies but actively shape the emerging Space governance landscape. SpaceX's Starlink constellation, for instance, has raised regulatory questions about orbital traffic, monopolization of Low Earth Orbit, and more. Meanwhile, ispace has already launched lunar missions with plans to mine resources, operating under Japan's permissive national law (discussed more in Table 1).

These private ventures push the boundaries of the OST[8], which never anticipated the scale or role of commercial actors in resource appropriation and planetary operations.

Global powers are also using this gap as an opportunity to solidify their intentions for Space-bound power, effectively saying: "You can't own the Moon, but if you dig up a rock, it's yours."

II. GEOPOLITICAL RIVALRIES IGNITE THE SHIFT

The end of the Cold War era heralded a major geopolitical shift, manifesting the transformation from a bipolar to a multipolar world order. This has led to the formation of major alliances or Space blocs, capable of revolutionizing international Space law further, such as:

- The US-led *Artemis Accords,* which are a set of non-binding soft-law agreements. With 54 signatories so far, it promotes peaceful use and forbids national appropriation, while authorizing resource mining[9].
- The Sino-Russian axis, now formalized via the International Lunar Research Station (ILRS)[10], aims to build a permanent lunar base by 2050. A deliberate

7 Ibid.
8 Supra note 2
9 NASA, *Artemis Accords*, NASA (visited July 19, 2025), https://www.nasa.gov/artemis-accords/.
10 Ben Turner, *China Signs Deal with Russia to Build a Power Plant on the Moon—Potentially Leaving the US in the Dust*, Live Science (May 13, 2025), https://www.livescience.com/space/the-moon/china-signs-deal-with-russia-to-build-a-power-plant-on-the-moon-potentially-leaving-the-us-in-the-dust.

move made to rival U.S. based lunar activities; the ILRS will anchor Chinese and Russian technological and diplomatic leadership in lunar activities, drawing in partners from the Global South.

- Emerging powers like India seek to balance their roles between diplomatic inclusivity and strategic advancement, opting to align themselves with both 'Space blocs'[11] to secure their interests, while also encouraging private sector involvement. This highlights a wider trend, with nations wishing to profit from the coming Space economy without abandoning the global commons vision in rhetoric.

A recent 2020 U.S. Executive Order[12] even explicitly rejected the idea of outer Space as a "Global Commons," framing it instead as a domain for commercial opportunity. Additionally, Anti-satellite missile tests display countries' determination to re-classify the heavens as a nouveau battlefield, vulnerable and no longer immune to Earth-centered disputes[13].

While such blocs claim to uphold international principles, the legal trajectory is stark: laws governing Space no longer align wholly with the interests of the entire international community. These developments seem to turn outer Space governance into a fragmented legal mosaic, with the potential to greatly imperil human security if failed to be appropriately regulated and adjusted to.

III. DOMESTIC LEGISLATION AND THE FRAGMENTATION OF CONSENSUS

Notably, The U.S pre-emptively took the first step in passing the Commercial Space Launch Competitiveness Act (CSLCA) of 2015, granting Americans ownership rights over extracted celestial resources. Moving in a similar vein— Luxembourg, the UAE, Japan, and most recently, India— have followed suit[14].

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11 Svetla Ben-Itzhak, *Space Blocs: The Future of International Cooperation in Space Is Splitting Along Lines of Power on Earth*, The Conversation (May 27, 2022), https://theconversation.com/space-blocs-the-future-of-international-cooperation-in-space-is-splitting-along-lines-of-power-on-earth-180221

12 Exec. Order No. 13,914, 85 Fed. Reg. 20,381 (Apr. 6, 2020).

13 Anelle Ferreira-Snyman, *Selected Legal Challenges Relating to the Military Use of Outer Space, with Specific Reference to Article IV of the Outer Space Treaty*, Potchefstroom Electronic L. J. 18, no. 3 (2015), https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812015000300003.

14 Ridima Sur, *Space Resource Regulation: From National Approaches to the Need for a General Framework*, SpaceGeneration (on behalf of SLP's Space Resources Team) (visited July 19, 2025),

Table.1 offers a helpful visual representation of various nations and their laws progressing towards a privately owned Space and cosmos.

Country	Law/Accord	Year	Key Provision
US	CSLCA, Artemis Acc.	2015/2020 +	Extraction and ownership of resources allowed
Luxembourg	Space Resources Act	2017	Legalizes private property rights in Space mining
UAE	National Law	2019	Recognizes ownership over Space-extracted resources
Japan	Space Resources Act	2021	Permits commercial Space mining and ownership
India	National Space Policy	2023	Authorizes private sector in resource ownership

While these laws and agreements do not yet claim sovereignty over heavenly bodies, they seem to be speeding towards such a conclusion—effectively sidestepping the spirit, if not the letter, of the OST's non-appropriation principle.

https://spacegeneration.org/space-resource-regulation-from-national-approaches-to-the-need-for-a-general-framework.

IV. THE RISKS

This raises serious and manifold questions in a myriad of aspects. A few are explored below:

1. Equity and Accessibility

- There is growing trepidation that the more developed nations will exploit Space resources, whilst depriving developing nations. This idea is reminiscent of colonial-era inequality, mirroring the global "gold-rush" of the time. Without updated mandates, the majority of nations will turn into powerless bystanders in humanity's shared cosmic future.
- Due to the lack of an international authority to manage Space mining or the allocation of resources, forums like COPUOS will struggle to maintain consensus. As alliances coalesce around rival programs, the risk of blocs hampering cooperation by vetoing each other's proposals also increases.18199.

2. Sustainability

- Resource excavation and the development of celestial bodies carries with it the risks of environmental degradation. Humankind has already caused massive planetary destruction, including but not limited to extinction, pollution and permafrost melting—-what's stopping us from being similarly destructive towards the heavens?
- Space mining, satellite launches, and anti-satellite weapons testing have even now been found to create debris and risk contaminating the orbital environment, with the impacts potentially lasting centuries. For example, in 2007, China conducted an anti-satellite (ASAT) missile test that destroyed one of its own weather satellites, generating over 3,000 pieces of orbital debris and drawing widespread international condemnation[15]The OST falls short when confronted with such novel problems, lacking necessary guidelines to avoid recklessness in Space exploration.
- Treating celestial bodies as extractive frontiers also favors immediate profit over necessary sustainability. Rash procedures may take from not just humanity's future

15 Ferreira-Snyman MP "The Environmental Responsibility of States for Space Debris and the Implications for Developing States in Africa" 2013 *CILSA* 19-51 [Links]

generations' rights to the enjoyment of Space and its bounty, but also of our (possible) cosmic neighbors. Who decides whether Space belongs only to humanity, and is not just as much for the enjoyment of any extraterrestrial life forms?

3. Security and Militarization

- Expansionist policies such as the Russia-Ukraine war have spurred the thought of spatial militarization, causing countries to take steps like how the USA has announced the creation of a "Space Force", a Space-based military unit.
- Though Article IV of the OST[16] bars the placement of nuclear weapons or other WMDs in Space, it proves outdated in regards to emerging technologies such as anti-satellite weapons, cyber warfare, and other "dual-use" platforms, blurring the distinction between peaceful and non-peaceful use of Space[17].
- India's 2019 "Mission Shakti,"[18] —a military exercise with Anti Satellite Missiles which targeted a low-orbit satellite— further exemplifies how Earthly rivalries are spilling into Space, raising consternation about the ineffectiveness of current arms control norms under international legal frameworks[19].

4. Loss of Scientific and Humanitarian Values

- By prioritizing mining and territorial interest over pure scientific exploration, some feel that the deeper purpose of human curiosity is being undermined. Redefining the Moon or Mars as piecemeal property assumes humanity's destiny is to colonize and exploit, potentially losing sight of our greater collective achievements.

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16 Supra note 2

17 Bourbonnière M and Lee RJ "Legality of the Deployment of Conventional Weapons in Earth Orbit: Balancing Space Law and the Law of Armed Conflict" 2007 *EJIL* 873-901

18 **Debris From Anti-Satellite Test to Disintegrate in 45 Days: Official**, *The Hindu* (May 7, 2019), https://www.thehindu.com/news/national/debris-from-anti-satellite-test-to-disintegrate-in-45-days-official/article26680591.ece.

19 Supra note 13

V. HISTORIC LEGAL DISPUTES AND POSTCOLONIAL FRACTURES

In the absence of a binding, multilateral regime, the specter of "first come, first served" looms large. Recent attempts at creating new treaties or amending the OST have so far foundered on geopolitical and economic divides. For example, In the 1970s, a group of equatorial nations (including Brazil, Colombia, and Kenya) signed the *Bogota Declaration*[20], asserting vertical sovereignty over geostationary orbits passing above their territories, arguing that these orbits are a *"scarce national resource"* rather than part of the global commons. This move was a direct challenge to the *"res communis"* ideal, revealing how States marginalized under post-colonial politics constructed alternative international legal claims.

At the time, the leading Space powers rejected these claims, arguing that terrestrial sovereignty should not project *ad infinitum* into Space. This dispute highlights the strategic advantage wielded by technologically advanced States in setting the cosmopolitan legal agenda, contrasting the glaring structural disadvantage faced by the less fortunate.

However, the international community—especially major Spacefaring nations—rejected this claim, citing the OST's Article II[21] and maintaining that sovereignty cannot extend vertically into Space. Consequently, the Bogota Declaration had no binding legal effect and remains largely symbolic, illustrating early postcolonial attempts to challenge the legal dominance of powerful Space nations.

VI. FUTURE GOVERNANCE: CHALLENGES AND REFORMATIONS

There is a growing consensus among legal scholars that current frameworks are inadequate for managing the next phase of the Space Race, argue for the urgent creation of a new treaty or an international resource authority—something to provide clear, equitable rules before celestial

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20 Haris A. Durrani, The Bogotá Declaration: A Global Uprising? Uprising 13/13, Columbia Ctr. for Contemporary Critical Thought (Jan. 21, 2018), https://blogs.law.columbia.edu/uprising1313/haris-a-durrani-the-bogota-declaration-a-global-uprising/.

21 Supra note 2

bodies become battlegrounds or business parks. Others suggest more achievable goals: updating the OST, clarifying norms within multilateral forums like the UNCOPUOS[22].

But time may be running out. Investments are accelerating, companies are announcing lunar mining missions, and politicians are increasingly framing Space as critical to national defense and prosperity. Once boots, bots, or drills hit the Moon en masse, it'll be hard to renegotiate law after the fact.

Potential Solutions

- Amending the OST via a multilateral conference (difficult, given divergent national interests).
- A new treaty or perhaps a "Code of Conduct" for Space resource management and arms control.
- Enhanced COPUOS working groups to draft and promote consensus-based norms.
- *Greater focus* on international cooperative ventures (e.g., International Space Station, SSA agreements).

CONCLUSION: WILL WE RECREATE EARTH'S MISTAKES IN SPACE?

As the *"province of all mankind"* paradigm frays, humanity faces a fateful choice: cooperative stewardship, or a drift into celestial conquest. The practical realities of geopolitical rivalry, commercial ambition, and technological acceleration are overtaking treaty ideals crafted for a bygone era.

Universal principles—from the OST to Bogota Declaration—still hold moral and legal weight, but are now challenged by a dual trend: national laws asserting resource rights and powerful blocs shaping governance outside UN consensus. The next decade will prove decisive: a return

22 Supra note 1

to multilateral dialogue, a refreshed legal treaty, or invention of clearer laws as possible paths. To persevere humanity must write rules that are fair, inclusive, and sustainable.

What is certain is that outer Space, once the symbol of human collective imagination, is becoming the next frontier for contest—not just among states, but between competing visions of law, equity, and the future. Every human has a stake. The challenge for lawyers and policymakers—perhaps the greatest since the Space age began—is ensuring no nation or corporation can monopolize it to its detriment.

What began as a shared dream of humanity may end in a divisive conquest, carved up by those who can afford to arrive first.

Still, there's time to act. Space law needs a reckoning—an honest assessment of what kind of future we want. The next chapter will not be written in Washington, Moscow, or Beijing alone. It must be written together—or not at all.

This article draws on international legal instruments, recent national laws, and emerging doctrine to chart the transformation of outer Space from a global commons to an arena of selective conquest and regulation.

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