

Australian Institute of International Affairs

JOIN

DONATE

Home > Australian Outlook >

To the Moon and Beyond: Australia's Space Activities and Obligations Under International Law

About

03 APR 2023

To the Moon and Beyond: Australia's Space Activities and Obligations Under International Law

By Dr Stacey Henderson

[ANALYSIS](#)



In recent years, there has been an increased recognition of the importance of space to Australia's economic, social, and national security interests. Australia may soon find itself torn between its obligations under international space law and its involvement in internationally collaborative space activities.

Space technologies impact the lives of Australians daily. Banking, satellite navigation, and communications all depend on space technologies. In recent years, there has been an increased recognition of the importance of space to Australia's economic, social, and national security interests. The Australian government is investing AUD [\\$2.4 billion](#) to triple the size of the Australian domestic space industry by 2030, and AUD [\\$7 billion](#) to provide the Australian Defence Force with assured access to space, enable situational awareness, and deliver real-time communications and positioning, navigation, and timing information.

On the global stage, Australia is a partner in NASA's [Artemis program](#), which includes returning humans to the surface of the Moon and the establishment of Gateway, space resource extraction and utilisation, and an increase in commercial space activities. Australia may soon find itself torn between its obligations under international space law and its involvement in internationally collaborative space activities, such as Artemis. But this may also offer great opportunities for Australia to lead the development of international norms for the responsible use of space and space resource utilisation.

Australia's Space Strategies

The narrative adopted in Australia's Civil and Military Space Strategies is consistent with Australia's portrayal of itself as a responsible space actor in military, civil, and commercial uses of space. The [Australian Civil Space Strategy 2019-2028](#) confirms Australia's commitment to promoting a space sector culture that is globally respected, ensures national safety and security under an appropriate regulatory framework, and meets international obligations and norms. Australia's Defence Command was established on 18 January 2022 and [Australia's Defence Space Strategy](#) seeks to develop sovereign capability and promote and protect Australia's interests. As a responsible space actor, and as a party to all five international space law treaties, Australia is obliged to ensure that all of its space activities are conducted in accordance with international law and its treaty obligations.

Australia's obligations under international space law

The foundation for Australia's international obligations in relation to space activities is the [Outer Space Treaty](#). Article I of the Outer Space Treaty states that space is free to be explored and used by all states in accordance with international law, which would seem to allow space mining activities. However, this must be reconciled with the principle of non-appropriation which provides that outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means (Article II). Additionally, under the Outer Space Treaty, Australia has an ongoing obligation to authorise and continuously supervise its space activities. Compliance with this obligation is provided for in the licencing regime established in the [Space \(Launches and Returns\) Act 2018](#). Building on this foundation, as a State Party to the Moon Agreement, Australia has additional international obligations, particularly in relation to space mining.

Moon Agreement

With Saudi Arabia having recently announced its [withdrawal](#) from the [Moon Agreement](#), Australia is one of the few states which are State Parties to the Moon Agreement as well as being a signatory to the Artemis Accords. It is generally understood that the Artemis Accords are at odds with the Moon Agreement in relation to commercial space mining. This places Australia in a complex position and may soon cause a clash between Australia's obligations under international law and its participation in space mining activities.

Articles 4 and 11 of the Moon Agreement may pose a challenge for Australia in the near future. Article 4(1) states that:

“The exploration and use of the Moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.”

Paragraphs 5 and 7 of Article 11 provide that: “5. States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible... 7. The main

purposes of the international regime to be established shall include”:

“(a) The orderly and safe development of the natural resources of the Moon;(b) The rational management of those resources;(c) The expansion of opportunities in the use of those resources;(d) An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the Moon, shall be given special consideration.”

These provisions appear at odds with commercial space mining for profit and stand in contrast to the position adopted in the Artemis Accords, which supports commercial space mining. Section 10(2) of the Artemis Accords states that:

“The Signatories emphasize that the extraction and utilization of space resources, including any recovery from the surface or subsurface of the Moon, Mars, comets, or asteroids, should be executed in a manner that complies with the Outer Space Treaty and in support of safe and sustainable space activities. The Signatories affirm that the extraction of space resources does not inherently constitute national appropriation under Article II of the Outer Space Treaty, and that contracts and other legal instruments relating to space resources should be consistent with that Treaty.”

While the Artemis Accords are a non-binding, multi-lateral agreement, rather than binding international law, and do not have broad international support and consensus, there are 24 signatories to the Accords at the time of writing. This is significantly more than the 18 States Parties (17 once Saudi Arabia's withdrawal takes effect) to the Moon Agreement. Russia and China notably object to the Artemis Accords as an attempt by the US [to create norms outside of established international regulatory frameworks](#). Despite this objection, there appears to be growing momentum towards commercial space mining, which may provide an opportunity for Australia to lead the development of international norms for the responsible use of space and commercial space resource

mining. This process is already underway with an Australian representative appointed as Vice-Chair to the United Nations Committee on the Peaceful Uses of Outer Space Legal Subcommittee's recently convened [Working Group on Legal Aspects of Space Resource Activities](#) .

Reconciling competing obligations

Australia may soon be forced to decide whether it is in the national interest to follow Saudi Arabia's lead and also withdraw from the Moon Agreement, or whether it can continue to balance its competing international obligations. Remaining a party to the Moon Agreement may offer Australia an opportunity to lead the development of an international agreement for responsible space mining and position itself as a leader in the responsible use of space.

[Dr Stacey Henderson](#) is an international law scholar whose research includes the protective capacity of law in the context of sustained human presence in space. She is Senior Lecturer of Law, College of Business, Government & Law, Flinders University. She is currently a Director of the Space Law Council of Australia and New Zealand, and Council Member and Secretary of the Australian and New Zealand Society of International Law.

This article is published under a Creative Commons Licence and may be republished with attribution.

