



# FRAMEWORKS FOR SPACE RESOURCE ACTIVITIES AND THE DUE REGARD PRINCIPLE

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# Overview

- Norms of Responsible Behavior in Space
  - Norms for space resource activities
- The Due Regard Principle in the OST: The Prime Directive?
- The Due Regard Principle in International Law
- Bringing in “due regard norms”
- The Artemis Accords
- The Hague Building Blocks
- Progressive development of international space resource utilization law



Why Norms?

# Responsible Behavior & Space Resources

- Safety zones
- Priority rights
- Celestial bodies: Does size matter?
- Extracting resources without appropriating celestial bodies

Balance needed:

promoting development, innovation, & free use of space without infringing the rights of others to develop, innovate, & use space

# OST Art IX

In the exploration and use of outer space, including the Moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space, including the Moon and other celestial bodies, **with due regard to the corresponding interests** of all other States Parties to the Treaty.

Also:

- Avoid contaminating celestial bodies
- Consult in cases of potentially harmful interference

# Due Regard in International Law

- Maritime law & environmental law: customary due regard principle; conduct activities with due diligence
  - UNCLOS codifies the customary due regard principle in maritime law
  - ...at least in a maritime context, two avenues for application of the due regard principle
- Space law:
  - Codified in OST
  - Developed in space as a customary principle pre-dating the OST or parallel to the OST?
  - Existing in general international law beyond just the bounds of maritime and environmental law (and therefore applicable to space)?

# Chagos Marine Protected Area Arbitration

“...the ordinary meaning of ‘due regard’ calls for the [State party] to have such regard for the rights of [another State party] as is called for by the circumstances and by the nature of those rights. The Tribunal declines to find in this formulation any universal rule of conduct.”

# Using “norms” to interpret due regard

Vienna Convention on the Law of Treaties, Art 31

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.



# Artemis Accords: Normalizing Due Regard

- The Signatories acknowledge and reaffirm their commitment to the Outer Space Treaty, including those provisions relating to due regard and harmful interference.
- Consistent with Article IX of the Outer Space Treaty, a Signatory authorizing an activity under these Accords commits to respect the principle of due regard.
- The Signatories commit to seek to refrain from any intentional actions that may create harmful interference with each other's use of outer space in their activities under these Accords.

(Section 11)



# Artemis Accords: Normalizing Space Resource Activities

- The Signatories emphasize that the extraction and utilization of space resources...should be executed in a manner that complies with the Outer Space Treaty and in support of safe and sustainable space activities.
- The Signatories intend to use their **experience** under the Accords to contribute to multilateral efforts to further **develop international practices and rules** applicable to the extraction and utilization of space resources, including through ongoing efforts at the COPUOS.

(Section 10)



# Artemis Accords: Normalizing Safety Zones

- The Signatories intend to use their experience under the Accords to contribute to multilateral efforts to further develop international practices, criteria, and rules applicable to the definition and determination of safety zones and harmful interference.
- The area wherein this notification and coordination will be implemented to avoid harmful interference is referred to as a 'safety zone'. A safety zone should be the area in which nominal operations of a relevant activity or an anomalous event could reasonably cause harmful interference.
- Provides principles related to safety zones (Section 11)



# Hague International Space Resources Governance Working Group: Building Blocks

- reaffirm relevant provisions of the Outer Space Treaty, including the due regard principle, and further provide key elements for a framework, including:
  - priority rights,
  - resource rights, &
  - safety zones.
- Significant attention is given to avoiding, mitigating, monitoring, and redressing any harmful impacts that may be caused by space resource activities.

# The Due Regard Principle as the “Prime Directive”

## **Recommendations:**

- Any efforts to articulate a framework for space resource activities should expressly state that they are framing standards and expectations in line with the due regard principle.
- Note that any guidelines are implemented “to fulfill the obligation to act with due regard” to create a clear nexus with Article IX of the Outer Space Treaty.
- Call out conduct that does not conform to expectations of “due regard”



Questions?