



A Stellar Personality: Legal personality as a means for sustainable governance of outer space

Stephen Jannink

Abstract: My essay on sustainable governance of celestial bodies draws upon New Zealand's usage of legal personality as a way to govern culturally significant natural landmarks. The Te Urewera Act 2014 and Te Awa Tupua Act 2017 enable legal personality of natural landmarks and create common law corporations with the ability to sue. This model incorporated both western and indigenous Māori perspectives on resource management. New perspectives on multilateral governance are needed in space as nation states push a way from multilateralism in favour of domestic legislation. The analysis will investigate the approaches effectiveness and potential implementation toward celestial bodies.

Introduction

History was made in 2014 when New Zealand granted Te Urewera rainforest legal person status. Today both the Te Urewera Act 2014 and Te Awa Tupua Act 2017 grant legal personality to culturally significant natural landmarks (Te Awa Tupua (Whanganui River Claims Settlement) Act (TATA) 2017; Te Urewera Act 2017). These landmarks can now sue, contract, possess rights and owe duties. The 2017 Act gives practical effect to this legal person by establishing three governance entities: a board (Te Pou Tupua), a strategy group (Te Kōpuka nā Te Awa Tupa) and an advisory group (Te Karewao) to collectively represent the Whanganui river and allocates them a fund of \$30 million (NZD) (TATA 2017; New Zealand Government 2017).

This essay advocates for applying New Zealand's approach towards legal personality of resources to space governance, specifically to govern the Moon and asteroids. Existing treaties are becoming out of touch with today's level of technological and commercial development, pushing states to create differing domestic legislation (Space Resource Exploration and Utilization Act 2015). Domestic legislation risks a regulatory race to the bottom and prioritizes business interests whereas legal personality aligns with well-established institutional design principles for fostering cooperation (Eytan and Whitehead 2018). Legal personality of space resources can help create a non-political rotational board, reducing state power imbalances, and more effectively respond to technological developments and future generations' needs through legal action.

Proposed Framework

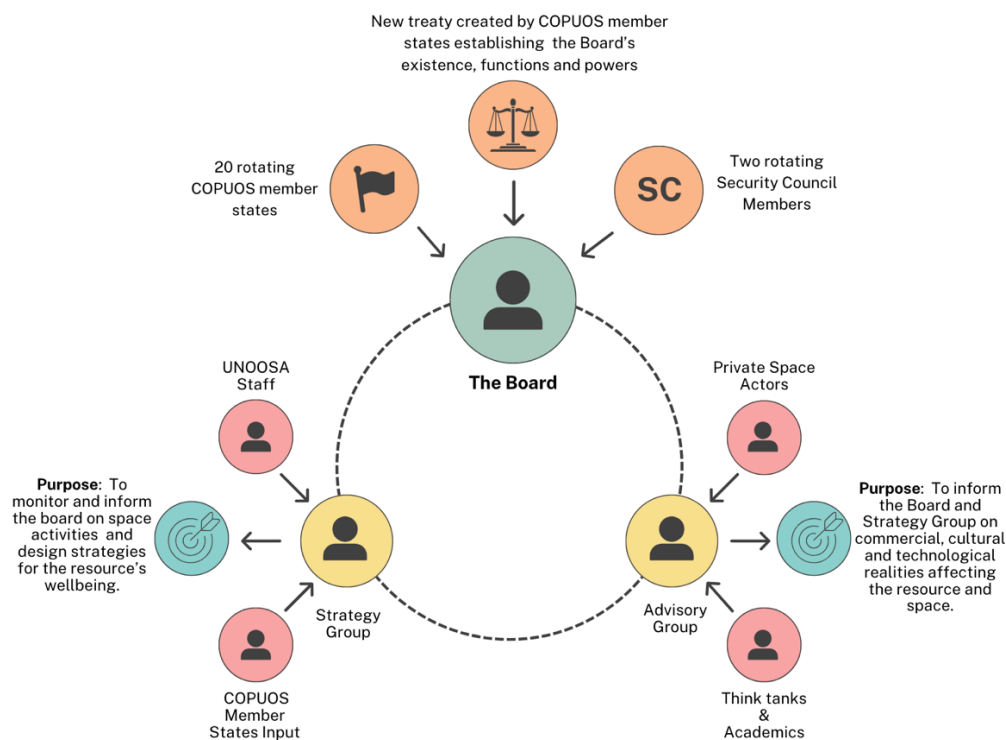


Figure 1. Proposed Framework



Framework Justifications

Somewhat mirroring the New Zealand structure, the proposed framework involves creating separate boards for the respective natural resources of the Moon and asteroids, each consisting of 20 rotating COPUOS members, including two Security Council members, with half from spacefaring nations and half from aspiring spacefaring nations. The Strategy Group is responsible for representing legal claims, signing contracts, and suggesting duties that actors must abide by with board approval. The Advisory Group is made up of private companies, think tanks, and academics that inform the Strategy Group on technical and commercial realities.

This structure promotes success in three ways. Firstly, it allows for the political reality that states need to retain enough power under the new treaty to be willing to consent to it, but also limits the power of any individual state. COPUOS members provide input on what is politically feasible in the Strategy Group, while UNOOSA staff provide legal and policy advice and vote on what actions to take to the Board. Only a subset of states on the Board make final joint decisions to increase decision-making efficiency and market certainty (a 51% majority will be required for all decisions on both the Board and Strategy Group). Providing roles for both spacefaring and non-spacefaring nations ensures the system works for all states' future generations. UNOOSA also contributes as an existing and trusted organisation within the international community which would be more efficient and less controversial than making a new international governmental organisation. Further, having two Security Council members allows for the escalation of warfare-related policies to the Security Council to enact into international law by gaining their insights at the design stage before they take it to a general assembly.

Secondly, the framework balances state and private actor concerns. The NZ 2017 Act similarly involves non-state actors in governing rivers (TATA 2017). However, given the international strategic environment and the high value of the Moon and asteroids the idea of states agreeing to companies being in the strategy stage seems unlikely. Therefore I have based the role of companies on APEC's model of its advisory business council which helps guide decision makers on new commercial realities without having direct decision-making power (APEC 2023).

Thirdly, this model learns from why New Zealand's legal personality model was successful while India's was not. The New Zealand's model's decision-making power was balanced by multiple parties rather than one which was vulnerable to political incentives. Additionally, India's experience highlights the importance of needing funding to support legal action (O'Donnell and Talbot-Jones 2018).



Dispute Resolution

The NZ Act requires the Strategy Group to create a strategy to support the resource's wellbeing which is enforceable (TATA 2017). An international governance framework would need to be enforceable globally against state and non-state actors. There are three major components that would need to be included as articles in the new treaty to achieve this:

1. Principles governing the resources welfare and sustainability
2. Funding requirements
3. Choice of Law

Principles on welfare and sustainability can be inspired by the NZ Act and how they are implemented through both Māori and western individuals, but will here be agreed upon by strategy group members from UNOOSA and COPUOS with Advisory Group input. The principles should also reference future generations. Building on the Indian experience, the funding clause would require COPUOS members pay a certain amount annually in order for the Strategy Group to execute its functions.

The choice of law article ensures disputes go to a trusted and independent body by incorporating the Permanent Court of Arbitration's optional rules on outer space (Permanent Court of Arbitration 2011). This clause would allow the board to bring claims against both states and private actors if the treaty is incorporated into states' domestic legislation, unlike the Liability Convention which binds only states (Convention on International Liability for Damage Caused by Space Objects 1971). This creates a minimum threshold of sustainability as states and private entities will need to bring their practices in line or face legal claims. Since the Board brings any legal claims, states no longer risks causing diplomatic upsets as compared to one country punishing another country's private space industry. Requiring a 51% vote also means that even if one state does not want to pursue its own companies in one particular instance the majority can overrule it.

Conclusion

Regulators understandably want to allow their industry to grow domestically by limiting their interference, but this approach is unsustainable. Without consistent global reform an unregulated and anarchic space industry which prioritises short-term, individual state interests will come to haunt future generations.



Bibliography

Act on the Promotion of Business Activities for the Exploration and Development of Space Resources, 2021 (Japan). <https://www.japaneselawtranslation.go.jp/en/laws/view/4332/en>.

APEC, n.d. “APEC Business Advisory Council.” Other-Groups. Last modified May, 2023. <https://www.apec.org/groups/other-groups/apec-business-advisory-council>

Hollingsworth, Julia. 2020. “This river in New Zealand is legally a person. Here’s how it happened.” CNN. Last updated 11 December, 2020.

<https://edition.cnn.com/2020/12/11/asia/whanganui-river-new-zealand-intl-hnk-dst/index.html>.

Law of 15 December 2020 on Space Activities, 2020 (Luxembourg).

<https://legilux.public.lu/eli/etat/leg/loi/2020/12/15/a1086/jo>.

Law of 20 July 2017 on the exploration and use of space resources, 2017 (Luxembourg).

<https://legilux.public.lu/eli/etat/leg/loi/2017/07/20/a674/jo>.

New Zealand Government. 2017. “First Te Pou Tupua appointed.” Published 4 September, 2017. <https://www.beehive.govt.nz/release/first-te-pou-tupua-appointed>.


Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 (New Zealand).

<https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

Te Urewera Act, 2017 (New Zealand).

<https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

Ngā Tāngata Tiaki o Whanganui. n.d. “Te Pou Tupua: The face and voice of Te Awa Tupua.” Accessed 15 March, 2024. <https://www.ngatangatatiaki.co.nz/our-story/ruruku-whakatupua/te-pou-tupua/>.



O'Donnell, Erin L. and Julia Talbot-Jones. 2018. "Creating legal rights for rivers: lessons from Australia, New Zealand, and India." *Ecology and Society* 23, No. 1 (March): 7. <https://doi.org/10.5751/ES-09854-230107>.

Permanent Court of Arbitration, *Optional Rules for Arbitration of Disputes Relating to Outer Space Activities*, 6 December 2011. <https://docs.pca-cpa.org/2016/01/Permanent-Court-of-Arbitration-Optional-Rules-for-Arbitration-of-Disputes-Relating-to-Outer-Space-Activities.pdf>.

Space Resource Exploration and Utilization Act, 2015 (United States of America). <https://www.congress.gov/bill/114th-congress/house-bill/1508#:~:text=promote%20the%20right%20of%20U.S.,transfer%20or%20sell%20such%20resources>.

Tepper, Eytan and Christopher Whitehead. 2018. "Moon, Inc.: The New Zealand Model of Granting Legal Personality to Natural Resources Applied to Space." *New Space* 6, No. 4: 288-298. <https://doi.org/10.1089/space.2018.0025>.

United Nations General Assembly, *Convention on International Liability for Damage Caused by Space Objects*, agreed 29 November 1971. https://www.unoosa.org/pdf/gares/ARES_26_2777E.pdf.

United Nations General Assembly, *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, opened for signature 27 January 1967. <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html>.

Vincenzo, Cecilia. 2023. "Resolving disputes in outer space: the role of international arbitration." Accessed 15 March, 2024. <https://www.dlapiper.com/en/insights/publications/2023/04/resolving-disputes-in-outer-space-the-role-of-international-arbitration>.