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Moon and Mars Settlement: Open Legal Issues (2)

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‘FOR ALL MOONKIND’ - LEGAL ISSUES OF HUMAN SETTLEMENTS ON THE MOON:
JURISDICTION, FREEDOM AND INCLUSIVENESS

Abstract

After a long period of subdued interests in the Earth’s single celestial companion, plans to send humankind back to the Moon are hatched in abundance again, and one major difference is that this time many of those plans focus on remaining there, ultimately to build semi-permanent or even permanent habitats. This obviously raises a number of issues that the short visits to the Moon by humankind so far, manned as well as unmanned, did not raise. Most fundamentally, the absence of exercise of jurisdiction on a territorial basis (as per Article II of the Outer Space Treaty) may no longer be sufficient to guarantee the baseline freedom of exploration and use (as per Article I of the Outer Space Treaty). Questions now arise as to how far the quasi- territorial jurisdiction over registered space objects (as per Article VIII of the Outer Space Treaty) can continue to exclude access to such space objects once transformed to or included in permanent habitats on the Moon in spite of the requisite free access to all areas as well as all stations and installations there (as per Articles I and XII of the Outer Space Treaty) and the similarly foundational understanding that activities on the Moon should be for the benefit and in the interests of all countries (as per Article I of the Outer Space Treaty). At what point would (hu)mankind settling on the Moon effectively become ‘Moonkind’, and what changes would, or should, that give rise to? These are the overarching questions the present paper will tackle.