

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Moon and Mars Settlement: Open Legal Issues (2)

Author: Dr. Thomas Cheney
Open University, United Kingdom

SPACE SETTLEMENTS, SPACE OBJECTS AND THE CONCEPT OF TERRITORY IN OUTER
SPACE

Abstract

The non-appropriation principle enshrined in Article II of the Outer Space Treaty presents a legal challenge for space settlements. While there are disagreements over the full extent of the scope of application of the non-appropriation principle one thing is clear it prohibits the acquisition of territory in outer space. Territory is fundamental to any polity, at the most basic level you need somewhere to build your house, and security of tenure is vital to prosperity. Therefore, Article II OST could be seen (and indeed is by many) as an impediment to human settlement of outer space.

However, as this paper will explore, Article II OST is not necessarily the impediment it may seem at first. This paper will examine the concept of ‘space object’ which has a ‘quasi-territorial’ status and may therefore serve as an adequate transliteration of the concept of territory to outer space. It will also inquire as to the value of reviving the UN Trusteeship Council as a way of providing a legal basis for settlement without violating the spirit of Article II of the Outer Space Treaty. It will also look at the role that ‘self-determination’ may play, particularly looking to the further future and the potential desire to create ‘States’ in outer space. Finally, this paper will also explore the full meaning of Article II OST within the context of its ‘object and purpose.’ That Article II OST is intended to stop a colonial land race among Earth based States is fairly clear, however there would be a perverse irony if one of the strongest anti-colonial provisions of international law resulted in trapping those humans who move beyond the bounds of Earth in a quasi-colonial linkage to terrestrial states.

Human settlement of outer space has long been popular, but thanks to the likes of Elon Musk and Jeff Bezos it is being seen as increasingly possible. If the Outer Space Treaty is seen as an impediment to these developments, it will be discarded leading to anarchy in outer space. Therefore, it behoves space lawyers to devise ways to accommodate these novel developments within the existing framework. It should not prove too difficult, after all the Outer Space Treaty is ‘inspired by the great prospects opening up’ as a result of humanity’s movement in outer space.