

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

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THE FORTHCOMING COLLISION OF INTERNATIONAL MIGRATION LAW AND
INTERNATIONAL SPACE LAW IN THE SETTLEMENT OF OUTER SPACE

Abstract

International migration law as the umbrella term for the complex web of legal relationships among persons, groups and States that together regulate the movements of individuals, like all general international law should apply in outer space by virtue of Article III of the Outer Space Treaty (OST). The three main pillars of this particular branch of international law involve the human rights and duties of persons undertaking migration, the elements of sovereignty that relate to human movement such as the entry and exit of non-citizens and finally the law's role in promoting cooperation among States to manage the international movement of people. However, when the eventual settlement of the Moon and Mars occurs, there exist two fundamental conflicts nascent in the future collision of international space law with international migration law.

The first relates to state sovereignty, which the OST seemingly rejects in relation to territory in outer space through its 'non-appropriation principle' at Article II. International migration law is, however, fundamentally premised upon state sovereignty and its connection to territory. For a core prerogative conferred upon all States is the sovereign discretion to admit and expel non-citizens, subject only to minimal limitations (such as those applying to the international movement of refugees). The second conflict also arises from this inherent State power to exclude, with this ostensibly irreconcilable with a guarantee contained in Article I of the OST. This declares that outer space "shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies."

It is therefore clear that the international migration law regime in effect on Earth today cannot simply be transplanted to regulate the future wave of frontier migration to the Moon, Mars and other settler destinations in space. This paper will accordingly examine the future intersections and collisions between these separate branches of international law which to date have largely escaped combined scholarly analysis. Possible solutions for reconciling these currently disparate legal branches, for example through the development of a freedom of movement in outer space as an individual human right, will also be explored.