

Law Issues and Public Awareness Related to Space Exploration (11)

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Author: Ms. Maria Manoli

Institute of Air and Space Law, McGill University, Canada

RETHINKING THE DEFINITION OF “STATE” THROUGH THE LENS OF EXTRATERRITORIAL SETTLEMENTS: A STARTING POINT TO AN INTRA-PLANETARY LEGAL REGIME?

Abstract

The purpose of this paper is to study the impact of permanent establishment of human populations over extraterrestrial areas on the legal definition of “State” as the latter currently stands in the realm of international law. Although space activities are mainly covered by the specific regime of the five UN space treaties, provisions of general international law equally apply to them whenever the *lex spetialis* is silent. One of the aims of modern space activities is to achieve the permanent extraterritorial establishment of human beings (extraterritorial settlement) for various scientific and non-scientific purposes. Such an achievement would inevitably lead to the creation of extraterritorial States. However, space law does not contain relevant provisions as to the legal nature of an extraterritorial State. It is thus general international law that provides a customary definition of State contractually accepted solely in the Montevideo Convention. Indeed, international law (both ICJ jurisprudence but also conventional law) recognizes States as entities composed of a territory, a population, a government, and the ability to enter into international relations, *i.e.*, signing treaties.

Nonetheless, such definition has been formed through State practice to fulfill terrestrial needs and could not effectively characterize an extraterrestrial State. Given that the creation of the latter is only a matter of time and given also the fact that the formation of States mainly constitutes a *de facto* rather than legal reality, questions arise as to whether an extraterrestrial State would *ab initio* be illegally formed and whether the manner in which international law views the notion of “State” should be rethought. Finally, it raises the question whether a new form of *common sharing of a certain extraterritorial space by a group of humans with a common government and the ability to enter into international relations* would need to be recognized not within the limits of traditional international law, but rather as the starting point of a new legal regime, that of inter-planetary law. It is in this last context that this paper attempts to frame the definition of extraterritorial “State” as the starting point of a new, futuristic legal reality.