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SPACE SETTLEMENT GOVERNANCE: DEVELOPING A LEGAL FRAMEWORK

Abstract

From ESA's Moon Village to Elon Musk's Martian cities, there is increasing talk of establishing permanent human settlements or outposts in outer space. November 2018 will mark 18 years of continuous human presence in space via the International Space Station (ISS). However, these new proposals are different for several reasons. They are intended to have a permanence never envisioned for the ISS, they are intended to be 'home' to more than professional astronauts and fewer than a handful of space tourists, and they will be located on the Moon and other celestial bodies. The ISS is treated by the existing space law regime as a space object, or an assembly of separate space objects, regarded as functionally no different from any other space object. However, whether this approach could be taken for facilities on the Moon and other celestial bodies is the proposed focus of this paper. None of the space law treaties provide a precise definition of the term 'space object', however the generally accepted understanding is that "space objects may be defined as artificial man made objects that are brought into space and are designed for use in outer space." (Hobe, Cologne Commentaries) That is not to lament the lack of a specific definition, as it would most likely be disadvantageous to have been lumbered with the 1967 conception of 'space object'. The non-specificity of the treaties allow scope for development and adaptation to deal with the uses now proposed. Article VIII of the Outer Space Treaty potentially provides aid in this quest as it indicates that 'objects constructed on a celestial body' fall within the scope of 'space object'. Therefore, it is most likely possible to construct a regime providing a legal basis for governance of space settlements and outposts utilizing the existing 'space object' concept. However, there will still be potential issue around the non-appropriation principle codified in Article II of the Outer Space Treaty. Which this paper will also explore. This is a topic which is vital for the maintenance of the existing space law regime and is of growing relevance as more proposals for permanent human presence are made.