

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

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PROPERTY RIGHTS AND SOVEREIGNTY WITHIN THE FRAMEWORK OF THE COMMON
HERITAGE OF MANKIND PRINCIPLE

Abstract

The conception of space as the common heritage of mankind (the **CHM principle**) is a founding principle of space law, enshrined in the Outer Space Treaty (**OST**) to ensure peace in outer space. In the years since the OST was drafted, the CHM principle has retained its relevance over the years. However, as technology and ambition continue march relentlessly toward settlements on celestial bodies, one expression of the CHM principle stands in the way— the principle of non-appropriation, which prevents states from appropriating any celestial body in part or as a whole through claims of sovereignty, occupation or any other means. As settlements on celestial bodies move closer to reality, space law must find a place for these settlements or risk obsolescence in the new order of things. This paper argues for a rethinking of property rights, and eventually of sovereignty itself, in relation to the CHM principle. It explores the development of sovereignty and property rights in relation to each other, then juxtaposes them against the conception of space as the common heritage of mankind and the principle of non-appropriation. Long terms settlements on celestial bodies could take two forms: private property or sovereign territory. The paper will explore what shape, if any, private property could take in a system where states are prohibited from claiming territory. It recommends that there should be a rethinking of the term ‘celestial body’ to apply only to larger bodies like planets and moons, excluding smaller bodies like asteroids and comets. Settlements on the newly defined celestial bodies could be defined as space objects to allow the launching states to maintain control over them, but if these are permanent in nature, they would fall foul of the non-appropriation principle. One possible way is for no existing state to exercise jurisdiction over the settlements; rather, an international body could grant private rights over plots of celestial bodies stopping short of absolute ownership. In the present scenario this would seem sustainable, but a new approach would be needed when space travel and extra-terrestrial settlements become ubiquitous. The paper shows that in such a situation, the possibility of larger settlements declaring independence would have to be considered a legal possibility.