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THE EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS IN OUTER SPACE

Abstract

Advancing democratization and colonisation across the final frontier requires a reconceptualization of the foundational principles and values offered by international human rights law (IHRL) to the specific technical, physiological, and legal challenges of outer space. The notion of human rights seeks to establish and safeguard the dignity and value of every human being – it is inherent, broad, and aims to promote tolerance, equality and respect in reducing conflict across diverse and isolated human communities.

While discussions examining the relationship between human rights and space law have predominantly concerned the influence of outer space activities upon the human rights of individuals on earth, there has been scant consideration upon the influence of outer space activities on the human rights of individuals residing in space or on a celestial body.

Technological advancements have given rise to novel and unanticipated human rights concerns in an era where the development of the law lags behind technology. The instruments comprising the seven-core IHRL treaties are lacking in any reference to the domain of space. Similarly, the five-foundational space law instruments are deficient in their reference to IHRL values and principles.

Accordingly, human rights offer a multitude of benefits conducive to the advancement of prolonged human habitation and activities in outer space. This includes supporting the lasting transference of universal values and ethical practices, maintaining the rule of law, upholding basic human rights and human dignity, and promoting environmentally sustainable practices.

The adaptation of IHRL into the context of outer space and its nascent legal regime discernible under established international instruments and case law. Under Article 1(5) of the Vienna Declaration, human rights are specified as “universal” in nature, hence implied as applicable beyond terrestrial settings and distinct from its contained reference to “global”. Further, the ICJ Namibia Advisory Opinion establishes that the title of a state over a territory is not a prerequisite to the extra-territorial application of IHRL, but that the state’s physical control over the territory is sufficient.

Determining what novel fundamental human rights are required in the context of space requires and understanding premised upon human dignity, respect, and fairness – as underpinned by their relation to human health and well-being. Accordingly, it is determined that the advancement and protection of human activities across the expanse demands consideration in enshrining a Right to Water, Right to a Breathable Atmosphere, and Right to a Habitable Environment in the context of outer space.