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Author: Mr. Andrew Simon-Butler
University of British Columbia, Canada

A LEGAL VISION FOR THE FUTURE: PEACEABLE SETTLEMENT OF SPACE DISPUTES
UNDER HUMANKIND'S COMPULSORY JURISDICTION

Abstract

Article I of the Outer Space Treaty (OST) declares that “the exploration and use of outer space ... shall be the province of all mankind.” The future potential accordingly exists to recognize the emerging international legal personality of “[hu]mankind”, endowing this provision with the pivotal role of investing residual sovereignty and ultimate title in humankind over those areas of space used and explored by humanity. This is based on the primary meaning of the word “province” and also the longstanding connection under customary international law of the activities of “exploration” and “use” with the acquisition of territory. Furthermore, humankind stands alone as the sole international legal entity immune from Article II’s prohibition against “national appropriation” and the attendant national attribution that Article VI of the OST imposes upon all other subjects of international law. It is therefore uniquely able to both appropriate those areas of outer space explored and utilized and exert territorial legal jurisdiction over said areas. Recognition of such residual territorial sovereignty would enable humankind to insist that all international legal disputes between other subjects of international law that arise in outer space fall under the purview of its compulsory legal jurisdiction. Additionally, given the current absence of any binding dispute settlement procedure in space, it should be for humankind to determine the manner in which such disputes between other subjects of international law be lawfully heard, adjudicated and resolved within its province. This potentially represents the single most important action humanity can undertake to ensure a peaceful future in space, safeguarding the guarantee that the Moon and other celestial bodies shall be used “exclusively for peaceful purposes.”

The development of an authoritative international dispute settlement mechanism will help ensure that the international disputes inevitably arising alongside the future utilization and commercialization of outer space, including resource extraction, tourism, mega-constellations and human settlement will not be resolved by force of arms, but instead under the rule of law. For while compulsory jurisdiction and peaceable adjudication by institutions such as the International Court of Justice enjoy far from universal coverage over international disputes here on Earth, space presents a domain where humankind’s compulsory territorial jurisdiction over all international disputes can be imposed. The possible institutional expressions and models that could be developed for exercising this compulsory jurisdiction of humankind over international dispute settlement in outer space will also be analyzed.