

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

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COMPROMISE, COMMONHOLD AND THE COMMON HERITAGE OF MANKIND

Abstract

This paper addresses the limitations that conflicting approaches to celestial property rights place upon the development of settlements on the Moon and Mars. It does not seek to engage in the ongoing debate about the legitimacy of private property rights in outer space. Instead, the focus is on providing an alternative method of ownership that would enable the existence of private property, whilst protecting the right of all nations to be involved in the management of a territory seen by many as the “Common Heritage of Mankind”. It is argued this compromise would be best achieved through a modified version of Commonhold, a system of property ownership currently used within England and Wales. The premise of Commonhold being that although owners possess the freehold title to their property, there is a shared ownership of, and responsibility for, common areas. It is proposed that a comparable system could be constructed for use within this context, with representatives from each interested country able to discuss and vote upon a number of issues relating to the management of celestial territory. This model would also facilitate the inclusion of covenants, such as a stewardship covenant, ensuring owners used their land in a sustainable way. By guaranteeing that some areas remain commonly owned, it safeguards the right of all nations to use and benefit in some way from celestial territories. Further, the credibility of a model involving multinational cooperation and management will be demonstrated by a comparison between the management committee proposed here, and the European Council and Antarctic Treaty Consultative Meetings. Ultimately, it is concluded that Commonhold provides, if not a perfect solution, at least a base upon which to work.