

26th SYMPOSIUM ON SPACE POLICY, REGULATIONS AND ECONOMICS (E3)
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United StatesSPACE CRIME: THE NEED FOR POLICE POWER OVER THE SPACE CONDUCT OF ALL
NON-STATE ACTORS**Abstract**

Customary international law primarily concerns itself with state practices and rarely imposes legal restraints on non-state actors. A non-state actor is subject to international law when rights and duties are attributed directly to the non-state actor and not through the medium of states. Accordingly, criminal activity of non-state actors is rarely considered a violation of customary international law because non-state conduct hardly ever constitutes a matter of mutual legal concern among states. This principle holds true for the outer space legal regime which thereby shifts the focus to the availability of municipal law to regulate the space activities of non-state actors.

The Outer Space Treaty {"OST"} and its progenies focus on regulating the behavior of states. With the exception of Moon Treaty Article 11{3}, they do not directly regulate the space activities of non-state actors. While OST Article VI obligates a state to police the space conduct of its nationals, the space treaty regime generally does not vest state parties with jurisdiction over non-nationals. The only deviation is OST Article VIII which grants a registry state jurisdiction over all personnel onboard its registered space object. OST Articles VI and VIII appear to create a gap in regulating non-state conduct in space which is complicated by the unsettled scope of OST Article II which prohibits national appropriation in space "by claim of sovereignty, by means of use or occupation, or by any other means." This circumstance suggests that extraterrestrial conduct of certain non-state actors may be beyond the reach of liability under any municipal law so long as the persons are not onboard a space object registered to a state which honors its international obligations. Such non-state actors may consist of stateless persons, nationals of failed states, nationals of a state not a party to a space treaty, and nationals from states unable or unwilling to enforce compliance with a space treaty.

My paper will focus on non-state actors engaging in space activities such as "hacking," "hijacking," or otherwise interfering with a satellite or other space object through the use of technology. The paper will examine the potential basis for a foreign state exercising jurisdiction over non-state actors engaging in such conduct. It will further discuss the need for the space law regime to address the inevitability of "space crime" in order to secure a safe environment for commercial space activities.