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The International Legal Regulation of Outer Space within the Scope of Public International Law (3)

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## REVISIT THE CONCEPT OF INTERNATIONAL CUSTOM IN INTERNATIONAL SPACE LAW

**Abstract**

International custom is one of the primary sources of international law. For long there has been little dispute that an international custom is composed of two elements: general practice and *opinio juris* of States. However, these traditional two elements seem to be challenged by the development of space law. While general state practice requires consistency, uniformity and generality, space activities have developed just from the second half of the 20th century, with a limited number of players. In the context of international space law, general practice, instead of being a constitutive and indispensable element, would merely be considered as evidence of the existence and contents of the underlying rule and of the requisite *opinio juris*. On the other hand, *opinio juris* is the essence-some would argue the only constitutive element-of international customary law. In international space law, before an international treaty is concluded, *opinio juris* may be reflected in, for example, the UN resolutions, bilateral or multilateral treaties, or national legislations. These sets of rules form “instant international customary law”, as proposed by a number of scholars. This paper will further look into some rules or principles (such as principles relating to the remote sensing, principles relating to the NPS, principles concerning the use of geostationary orbit and mitigation of space debris), as established in the UN resolutions, bilateral or multilateral treaties, national legislations, or instruments of other international organizations. With reference to the concerning rules and principles, this part will try to find out whether they already form instant customary law, their respective binding force in different cases and the requirement of establishing an instant custom in international space law.