

Law Issues and Public Awareness Related to Space Exploration (11)  
Law Issues and Public Awareness Related to Space Exploration (2)

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## JURISDICTION REGIME FOR SPACE EXPLORATION: A DOCTRINAL LABYRINTH

### Abstract

Space exploration is a trailblazing project endowed with multiple uses by multiple users. Before stepping one foot out of Earth's door, the industry still has no way of knowing whose governance they might be swept off to. Investors' passion might be hindered by fear. More and more complicated lunar exploration will command more detailed rules and analysis. This is the *raison d'être* of this paper.

First, this study considers prescriptive jurisdiction. Following *ratione personae*, several international instruments have stated that the State of registry shall retain jurisdiction and control over personnel and object (*e.g.* Outer Space Treaty Art. VIII). In a collaborative undertaking such as governmental and commercial cooperation on the moon, in case that more than one State try to regulate activities therein, we will have to consider be how to discern the applicable law, handle the conflict of laws, and *non-liquet* etc.

Second, I will elaborate on adjudicative jurisdiction. Imagine in manned lunar mission, an individual suffers loss or harm due to another's tortious act; it may not be possible yet for them to seek a court on the Moon. So what is the threshold for an earthly tribunal to assert jurisdiction? Under customary international law, there has been a long lineage of regulations and precedents on extraterritorial jurisdiction. Notably, the 'foreseeability' test (*Akpan v Shell Nigeria, Ltd* 2013) and 'touch and concern' test (*Kiobel et al v Royal Dutch Shell Petroleum Co. et al.*, 2013) have drawn much attention. This study will compare different approaches for the purpose of discerning a viable formula for adjudicative jurisdiction applicable to the Moon.

Last but perhaps the most important is the enforcement aspect. In this regard, international law has been going through a winding path, oscillating between *ratione personae* and *ratione loci*. Much debate is on whether 'effective control' or 'at least decisive influence' is enough to establish jurisdiction; which one matters more - effective control of the 'espace' or over 'individuals'? Further, the aforementioned individuals refer to offenders or victims? My study will clean up the mess for the purpose of beating out a trail on the Moon.

In a nutshell, the three sides of the jurisdiction prism are complementary and mutually reinforcing. I will address them in a holistic fashion from a legal perspective. The presentation will offer thoughts for turning this prism to make promising rainbows for international cooperation.