

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
Legal Issues Relating to Emerging Space Activities on Celestial Bodies (3)

Author: Prof. Frans G. Von der Dunk  
University of Nebraska, College of Law, The Netherlands, fvonderdunk2@unl.edu

STATES IN SPACE? EXTRATERRESTRIAL EXERCISE OF JURISDICTION AND ITS FUTURE  
SCENARIOS

**Abstract**

International space law, as part of the larger body of public international law, has always hinged upon the legal concept of the ‘State’ as the main relevant actor and carrier of direct rights and obligations. That concept, going back ultimately to the Peace of Westphalia in 1648, has always been understood and defined with reference to States on Earth, and they have been habitually defined in turn with reference to the sovereign control over territory on Earth as the most fundamental element of Statehood. That, at the same time, a foundational and generally accepted legal concept of space law ruled out the application of territorial sovereignty to outer space, including any of the celestial bodies, did not give rise to major problems concerning the exercise of State power for the sake of maintaining and reinforcing the international legal order for outer space for almost half a century. More recently, however, this fundamentally changed – with first a few major projects bent on exploitation of celestial bodies’ natural resources, and then various burgeoning plans to establish more broadly long-term human habitats on the Moon (and later on perhaps also Mars). In such a context, the age-old definition of a ‘State’ and ‘Statehood’ as the primary category of movers and shakers in the realm of space law suddenly comes under pressure. While undeniably non-State players – notably some huge space corporations – are increasingly taking the lead in terms of some of the major projects concerned, the question arises whether there really is an alternative to (terrestrial) States exercising their jurisdiction in a manner not only extraterritorial but actually extraterrestrial – or whether the concept of States should be revisited and adapted to a future reality of human habitation of non-terrestrial areas.