

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

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JURISDICTION IN INTERNATIONAL SPACE LAW: SOME GROUND-CLEARING AT THE DAWN
OF A NEW ERA

Abstract

Increasing complex space activities will raise increasingly complex jurisdictional questions. To understand and resolve these issues, international space law scholarship has often relied on Bin Cheng's tripartite categorization of jurisdiction as either territorial, quasi-territorial, or personal. However, general international law scholarship has tended to favour a different direction. Taking as its touchpoint Cedric Ryngaert's work on jurisdiction in international law, much of this literature bifurcates jurisdiction into territorial and extraterritorial jurisdiction (and then subdivides the latter into various principles, such as the passive personality principle).

The fundamental nature of jurisdiction - and the fact that international space law is a branch of public international law - suggests that a more uniform approach would be doctrinally preferable. However, the doctrinal tension between Cheng and Ryngaert has not been addressed in the literature. While incompatibility between the two approaches cannot be assumed, the issue has not been comprehensively discussed. Further, the particular provisions of the Outer Space Treaty relating to jurisdiction may have the effect of displacing or modifying general international law. Notably, Article VIII links jurisdiction to control and provides that it extends not just to spacecraft, but also to the "personnel thereof". Further, Article VI mandates that States exercise "continuing supervision" over their national space activities - potentially suggesting yet a further basis for jurisdiction.

As such, this paper explores how these different approaches to jurisdiction may provide different answers to near- and medium-term issues on the Moon, such as jurisdiction over safety zones, declared heritage areas, and even inter-base visiting crew members. This paper then comments on how jurisdiction, when fully assessed, may help to avoid conflict by laying down the ground-rules for future exploration of outer space, the Moon and other celestial bodies and bring clarity to the issue of jurisdiction. Finally, this paper provides insights and comments on the nature of international space law as a branch of general international law, and the circumstances in which the unique legal and physical environment of space may justify the former's differences from the latter and why Cheng's tripartite categorization of jurisdiction would provide a viable solution to face the legal issues head on.