

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Alternative Space Rules Setting (5)

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CRIMES IN SPACE: CAN PRIVATE INTERNATIONAL LAW OFFER THE ANSWERS?

Abstract

Although the history of space tourism is relatively short, the possibility of outer space becoming a new vacation spot in the decades ahead, along with the determined plans of some space faring nations to establish human settlements on celestial bodies such as Mars, has awakened interest in the application of criminal law to life in outer space, including issues about which State would have criminal jurisdiction and what the applicable law would be.

Various viewpoints exist as to how to apply national and international principles of criminal law to the unique environment of space. Thus far, no space crime has ever been committed – beyond certain false allegations against American Astronaut Anne McClain. Fortunately, we need not start off with a clean slate. Criminal jurisdiction is not a new challenge devoid of all precedent. In effect, the 1967 Outer Space Treaty already includes general provisions on jurisdiction over ‘personnel’ and, in addition, the ISS Intergovernmental Agreement provides for criminal jurisdiction rules for ‘personnel’ aboard the ISS. However, given the complexities associated with joint space missions now and into the future, on the issue of criminal jurisdiction we may face issues of private international law or conflict of laws.

This paper will argue that it is not, however, necessary to create an international criminal space law body – which represents more the solution that the international community would adopt for grave international crimes. Instead, we contend that Article III of the Outer Space Treaty incorporates into space law *stricto sensu* the wider universe of international law, including private international law rules.

Under this premise, we explain the two necessary steps to address the future of criminal jurisdiction in outer space: one at the national level and the other at the international level. In the former case, domestic legislation of interested States should be amended to effectively include crimes committed in outer space, which would imply adding an express extraterritorial criterion of applicability of the relevant domestic criminal law. At the international level, we argue that a treaty dealing with conflicts of law in circumstances involving space crimes will fill the gap of current space law in the broadest sense.