



UN/Turkey/APSCO Conference on Space Law and Policy

LEGAL RESOURCES OF JURISDICTION OVER SPACE OBJECT

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A hypothetical case

- A space object is launched from State A, produced by State B, owned by State C, persons on board/in space have the nationality of State D, in orbit transferred or rent to State E, tracked and controlled by State F and lands within the territory of State G.
- Q:
 - **1. Which State has jurisdiction over the space object and persons thereof when it's registered or not registered?**
 - **2. Whether the registry State is the only one who owns jurisdiction over the registered space object?**
 - **3. Whether the jurisdiction could be shared as a whole and whether the elements of the jurisdiction could be allocated to different States?**
 - **4. Assuming there are concurrent jurisdictions, which one overrides?**
 - **5. Whether there is a hierarchical order among them?**



Outline

- I. Ambiguities, Inconsistencies, Pitfalls
- II. Re-think ‘nationality for space object’
- III. Reconsider ‘sovereignty in space’
- IV. Conclusions and Recommendations





I. Ambiguities, Inconsistencies, Pitfalls





I. Ambiguities, Inconsistencies, Pitfalls

- i. Ambiguities in Art. VIII, OST *per se*
- ii. Inconsistency in LC and RA
- iii. Further inconsistency in MA
- iv. Separation of jurisdiction from registration in RC



I. Ambiguities, Inconsistencies, Pitfalls

● i. Ambiguities in Art. VIII, OST *per se*

*‘A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over **any personnel thereof**, while in outer space or on a celestial body.’ –Art. VIII*

➤ The scope of ‘jurisdiction’ is not clear.

✓ Whether ‘personnel’ is the one in RA? Does it include all persons?

✓ Whether ‘personnel thereof’ is identical to ‘personnel on board’?

➤ Whether registration is mandatory and the consequences of non-registration is not specified.



I. Ambiguities, Inconsistencies, Pitfalls

● ii. Inconsistency in LC and RA

- Whether ‘launching State’ and ‘launching authority’ could be severed as legal basis of jurisdiction in the absence of registration?
- Whether the above terms indicate part of the legal connotations of jurisdiction even if registration existing under a different State?
- What is the hierarchical order among launching State, launching authority, registration State and if applicable, to be considered with owner State, user State, TT&C State? (*de facto jurisdiction*)



I. Ambiguities, Inconsistencies, Pitfalls

● iii. Further inconsistency in MA

*'States Parties shall retain jurisdiction and control over **their** personnel, vehicles, equipment, facilities, stations and installations on the moon. ' -Art.12*

- The jurisdictional links based on ownership, operational control, or even employment instead of registration.





I. Ambiguities, Inconsistencies, Pitfalls

● iv. Separation of jurisdiction from registration in RC

*'Where there are two or more launching States .., they shall jointly determine which one of them shall register the object .., and **without prejudice to** appropriate agreements concluded or to be concluded among the launching States on **jurisdiction and control** over the space object and over any personnel thereof. '-Art. II (2)*

- Changes may be made at will by agreement between the parties concerned without the consent of the other contracting parties or their knowledge
- A risk to open the door of “convenient flag” in space.



I. Ambiguities, Inconsistencies, Pitfalls

● iv. Separation of jurisdiction from registration in RC

➤ The practice in IGA aggravates the fragmentation of jurisdiction.

'[P]ursuant to Article VIII of the Outer Space Treaty and Article II of the Registration Convention, each Partner shall retain jurisdiction and control over the elements it registers in accordance with paragraph I above and over personnel in or on the Space Station who are its nationals . . . '-Art. 5(2), IGA

✓ which jurisdiction shall apply:

- a. Chinese person on board of American element of ISS
- b. Japanese personnel of American element
- c. Russian tourists in ESA's element





I. Ambiguities, Inconsistencies, Pitfalls

*“what is clear...in particular the provisions of the various United Nations treaties on outer space in the way they have dealt with the relationship between subjects of international law and space objects, while studiously avoiding **the concept of nationality**, is the tangled mess of inconsistencies, ambiguities, and pitfalls in which they have landed themselves.”*

--Prof. Bin Cheng





II. Re-think ‘Nationality for space object’



II. Rethink ‘Nationality for space object ’

● i. nationality and jurisdiction in IL

- Nationality has been granted to individuals, bodies corporate, ships, and aircraft, but without mentioning space object.
- Territorial jurisdiction overrides both quasi-territorial and personal jurisdictions, whilst quasi-territorial jurisdiction overrides personal jurisdiction.
- Jurisdiction over ships, and aircraft with nationality of a State is deemed as an excise of quasi-territorial jurisdiction of the State and it is wider than personal jurisdiction.



II. Rethink ‘Nationality for space object ’

● ii. legal function of ‘nationality for space object’

- The national State enjoys quasi-territorial jurisdiction, which would override all concurrent personal jurisdictions of the national States of any foreigners who may be on board, but would give way to the territorial jurisdiction of any State in which the space object may land intentionally or by accident.
- Assisting in resolving problems in the interpretation of Article VI of the Space treaty on international responsibility for 'national activities' in outer space.



II. Rethink ‘Nationality for space object’

- **iii. approach to establish ‘nationality for space object’**
 - modification of space treaties
 - *de facto* amendments through subsequent practice with the requisite *opinio generlis juris generlis*.
 - Registration of nationality together with registration of general information of a space object and leave it open regarding the hierarchy of the possible concurrent jurisdiction.
 - ✓ add “nationality” as a new item in the recommend registration form provide by OOSA.



III. Reconsider ‘sovereignty in space’



III. Reconsider 'sovereignty in space'

- 'Sovereignty in space' is not 'Sovereignty over space' .
- Sovereignty in space gives expressions to the jurisdiction over person, object, behaviour and data information in outer space.
- Sovereignty in space should be recognized by genuine link in connections with the legal term as owner State, user State, TT&C State, launching State and launching authority or even nationality State.



IV. Conclusions and Recommendations





IV. Conclusions and Recommendations

- The legal resources of jurisdiction over space object in existing space legal system is insufficient to promote responsible, peaceful and safe use of space, considering the rapid development of international cooperation and commercialization in space.
- Nationality for space objects and sovereignty in space might be effective steps to sweep away much of the confusion which now prevails regarding jurisdiction over space objects, confusion inherent in the various treaties on outer space.





IV. Conclusions and Recommendations

- Academia is encouraged to recognize sovereignty in space and establish specific theories for the recognition of sovereignty in space on base of practices or hypothetical scenarios.
- States are encouraged to formulate the concept of the registration of nationality for a space object through new legislation or practice.
- International platform is encouraged to discuss the legal resources of jurisdiction, including the hierarchy of possible jurisdictions generating from existing legal framework and the necessity, feasibility of establishment nationality for space object or any other means in the sense of *lex ferenda*.



thank you!

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