ARTICLES

JURISDICTION IN OUTER SPACE: CHALLENGES OF PRIVATE INDIVIDUALS IN SPACE

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"One of the great things about working in this field is the realization that the future – the future that imagination has taken us to so often before – is closer now in a real way than it has ever been. Private citizens will fly in space on private vehicles."
-Patricia Smith
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"Law must precede man into space."
-Andrew G. Haley[2]

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[1] *How Safe Is the Race To Send Tourists into Space?*, THE WALL STREET JOURNAL ONLINE, Apr. 19, 2007, http://online.wsj.com/article/SB117683067961072819.html. Smith is the Associate Administrator for Commercial Space Transportation with the Federal Aviation Commission.

[2] ANDREW G. HALEY, *Space Age Presents Immediate Legal Problems*, 1 PROC. COLLOQ. L. OUTER SPACE 5 (Andrew G. Haley & Welf Heinrich eds., Wein, Springer, Verlag 1959).

I. INTRODUCTION

A. The problem of Judicial Jurisdiction in Space

In the midst of the space race that began in the 1950s, jurists began defining what legal rules would apply in outer space. The United Nations formed the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) which drafted the so called Outer Space Treaty (OST).[3] This treaty (and the four other general treaties on space that followed) set out rules that governed the interactions between States in outer space. These treaties as a whole, though, tend to ignore the gamut of possible interactions between individuals in space. Because there are "no detailed rules . . . in the treaty on Outer Space governing the exercise of State Jurisdiction in outer space,"[4] there are nebulous jurisdictional areas in space. The state parties did agree that space would be the "province of all mankind,"[5] creating an extra-jurisdictional international territory. At the time this did not present a real problem because "[t]he great cost of space exploration mean[t] that it [was] a matter for government appropriations."[6]

In recent decades the climate of space exploration has changed dramatically. The private sector has become more instrumental in the exploration and exploitation of space. This means that there will soon be new types of relationships occurring between individuals in space who are not necessarily representatives of a state entity and that the treaty regimes have not anticipated. As one jurist stated: "Human Nature being what it is . . . what criminal law will guide and judge the behav-

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[3] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.T.S. 205 [hereinafter OST].

[4] IMRE ANTHONY CSABAFI, THE CONCEPT OF STATE JURISDICTION IN INTERNATIONAL SPACE LAW 3 (Nijhoff 1971). It should be noted that Csabafi's book was written before the ratification of the Registration Treaty.

[5] OST, *supra* note 3, at art. 1.

[6] EILENE GALLOWAY, *The Community of Law and Science*, 1 PROC. COLL. L. OUTER SPACE 62 (Andrew G. Haley & Welf Heinrich eds., Wein, Springer, Verlag 1959).

ior of mankind in space?"[7] This question should rightly be expanded to include civil law issues as well. As the law stands there are jurisdictional lacunae in which man may soon find himself. At the First Colloquium on the Law of Outer Space, Andrew G. Haley stated that "law must precede man into space."[8] The laws of the early days of space exploration were sufficient to precede states into space, but now new laws must be developed in order to precede the growing private sector into space. This will be a daunting task since there has not been a new space treaty since the Moon Agreement[9] which entered into force in 1984 and has not been widely ratified.[10]

Since the "notion of jurisdiction finds its origins in the concept of territory, the principle of sovereign equality, and non-interference with the domestic affairs of states," nations will have to use new and innovative legal regimes in order to exert legal controls over people in space.[11] This paper will survey the current national and international jurisdictional regimes that are present in the context of outer space. First, it will address both international customary law and treaty law contexts for jurisdiction in outer space. It will then identify the lacunae which are left open by the international regimes. Following this analysis, it will look at ways in which states have used national laws to fill these gaps in jurisdiction. In so doing, the paper will illustrate that states have only created a jurisdictional patchwork that will be ineffective in the coming space boom. Finally, this paper will propose the concept of a space visa which will serve as a way to create an internationally uniform jurisdictional regime. The space visa will seek to treat spaceports as border regions, much as airports are treated today. Through

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[7] Hans Sinha, *Criminal Jurisdiction on the International Space Station*, 30 J. SPACE L. 85, 86 (2004).

[8] HALEY, *supra* note 2.

[9] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, Dec. 18, 1979, 1363 U.N.T.S. 3 [hereinafter Moon Agreement].

[10] United Nations Treaties and Principles on Outer Space, Addendum, STATUS OF INTERNATIONAL AGREEMENTS RELATING TO ACTIVITIES IN OUTER SPACE AS AT 1 JANUARY 2005 at 8-15, ST/SPACE/11/Add. 1/Rev. 2, U.N. Sales No. E.02.I.20 (2005), *available at* http://www.unoosa.org/pdf/publications/ST_SPACE_11_Add1_Rev2E.pdf [hereinafter STATUS].

[11] CSABAFI , *supra* note 4, at 49.

the auspices of the space visa, a state will grant permission to leave the territory and enter space. In exchange for the permission, the space traveler will subjugate himself to the personal jurisdiction and laws of that state. The result will be a regime in which every individual in space will be subject to at least one state's jurisdiction at all times, and that states will be better equipped to fulfill their duty to supervise non-governmental entities in space.

B. Why it's important - New ways for humans to interact in space

1. Space Tourism

One of the newest developments in relation to outer space is the idea of space tourism. On April 30, 2001 Dennis Tito became the first space tourist when he visited the International Space Station (ISS) as a guest of the Russian Government.[12] While Tito's trip was groundbreaking, it is most likely not the model for future space tourism. Tito was the guest of a government entity and therefore under a significant amount of government control.[13] Space tourism of the future will most likely be more closely modeled on the terrestrial tourist industry in which private companies provide the service of facilitating space travel. This model is exhibited in ventures such as Virgin Galactic, which is scheduled for its first flight into space with space tourists on board in 2008.[14] With at least 100 people signed up for the initial flight at $200,000 a ticket, there might be enough interest to make this business venture profitable at some point.[15] According to Steve Attenborough, Virgin's head of astronaut relations, if Virgin can prove that space tourism is "commercially viable," then "potentially there is a wall of

[12] R. Thomas Rankin, *Space Tourism: Fanny Packs, Ugly T-Shirts, and the Law in Outer Space*, 36 SUFFOLK U.L. REV. 695 (2003).

[13] Trips like this are brokered through a private entity, Space Adventures, Ltd. As of April 2007, 5 civilians have made such a flight. *See* WALL STREET JOURNAL ONLINE, *supra* note 1.

[14] Simon Hattenstone, *Joy Ride*, THE GUARDIAN WEEKEND, Nov. 11, 2006, at 20 (on file with author).

[15] *Id*.

money, of private sector money, that will come into the industry and then you could see things develop very quickly."[16] Virgin Galactic is not the only player in the game either. A quick look at the Personal Spaceflight Federation's web page shows at least 15 businesses that are all working towards the goal of commercial personal space flight, and this list can hardly be seen as exhaustive.[17]

If Attenborough's prediction is correct and Virgin can create a working business model, then it is possible that space tourism could be the biggest boost the space industry has received since the Cold War infused the space race of the 1960's with public support. It could also serve to create the biggest challenges for the legal regime in space since the initial rush of treaties that followed the moon landing. Those treaties, which created a legal regime amongst state actors in space, could prove vastly insufficient when addressing the new ways in which private citizens could be interacting with each other in frontiers of space. Tourists could be an especially volatile development, since they are not military-esque state actors that have generally been sent to space as the "envoys of mankind,"[18] nor would they even feel constrained by the rules and regulations of a private company with operations in space as an employee of that company might. Their interactions would most closely resemble interactions of the average citizen on earth where crime and other conflicts regularly occur.

2. Renewed interest in Moon exploration

The renewed interest in exploration and possible commercial exploitation of the moon and its resources is another development that enhances the need for clarification of jurisdictional rules. The United States, Great Britain,[19] China,[20] and Japan[21]

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[16] *Id.* at 22.

[17] Personal Space Flight Member Organizations, http://www.personalspaceflight.org/members.htm (last visited June 15, 2007).

[18] OST, *supra* note 3, at art 5.

[19] *See Joint Statement of Intent for Cooperation in the Field of Space Exploration by the United States National Aeronautics and Space Administration and the United Kingdom British National Space Centre*, U.S.- U.K., Apr. 4, 2007, http://www.nasa.gov/pdf/

have all expressed renewed interest in lunar exploration. Exploration of the moon as an economic resource could be big business for those involved. These nations' interest is rooted in "industrial competitiveness that could lead to securing rights to acquire resources in outer space in the future."[22] For example, China's space policy is based around its desire to "develop its economy and continuously push forward its modernization drive."[23] Attenborough's principle on space tourism can be applied to the interest in exploiting the resources on the moon: if it is commercially feasible, the private sector will get involved. This investment could lead to large numbers of private individuals interacting on the moon. These private individuals are cause for concern. The companies they will work for are currently well regulated under national laws, however the discrete individual is left to guess at what law applies and where.

II. THE LAW APPLICABLE IN OUTER SPACE

While space law itself is not a "coherent or self-contained body of law," its main source is international law.[24] Article 3 of the OST states that state parties will act "in accordance with international law, including the Charter of the United Nations."[25] Outside the five space treaties, general international

174684main_Signed_Joint_Statement.pdf (specifically addressing future moon exploration by the two countries).

[20] Marc Kaufman, *NASA Chief Says China May Make It to the Moon*, THE WASHINGTON POST, March 16, 2007, at A06.

[21] Japan Aerospace Exploration Agency, *JAXA Vision - JAXA 2025,* at ii-iii, *available at* http://www.jaxa.jp/about/2025/index_e.html (last visited June 15, 2007). Japan seeks specifically is seeking to create a lunar base as it considers exploration of the moon the "as the first step in efforts to broaden the horizon of human activities" in space. *Id.* at 31.

[22] *Id.* at 32.

[23] Yin Wenjuan, *Presentation made by Ms. Yin Wenjuan At the UN/Republic of Korea workshop on Space Law*, *in United Nations treaties on outer space: actions at the national level*, PROCEEDINGS OF THE UNITED NATIONS/REPUBLIC OF KOREA WORKSHOP ON SPACE LAW, U.N. Office of Outer Space Affairs, ST/SPACE/22, at 31 (Daejeon, Republic of Korea, Nov. 3-6, 2003) *available at* http://www.unoosa.org/pdf/publications/st_space_22E.pdf.

[24] PHILLIP DANN, *The Future Role of Municipal Law in Regulating Space-related Activities*, *in* SPACE LAW: VIEWS OF THE FUTURE 125 (Tanja L. Zwaan eds., Kluwer 1988).

[25] OST, *supra* note 3, at art. 3.

law is the governing law in space. The sources of international law are stated in the Statute of the International Court of Justice, which is "widely recognised as the most authoritative statement as to the sources of international law."[26] The Statute states that the court in deciding disputes shall apply:

> (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
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> (b) international custom, as evidence of a general practice accepted as law;
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> (c) the general principles of law recognized by civilised nations;
>
> (d) subject to the provisions of article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidary means for the determination of the rules of law.[27]

Of the four sources recognized by the Statute only three are binding on the court, and these are the ones that can be seen as substantive international law. The other items, judicial decisions and the teachings of scholars, are only persuasive. This paper will deal primarily with law made through international conventions and international custom.

The general principles of law as a source of international law have a "fairly limited scope" in determining actual principles of international law.[28] These principles usually represent very broad and indefinite determination; this is especially true when it comes to things such as jurisdiction and criminal acts. For example it can be assumed that murder is illegal in all legal systems, but the constituent elements of murder may differ dramatically from one system to the next, leaving no concrete international definition for the term. Procedure is one of the

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[26] MALCOLM N. SHAW, INTERNATIONAL LAW 55 (Cambridge University Press 4th ed. 1997).

[27] Statute of the International Court of Justice art. 38(1), June 26, 1945, T.S. 993. *available at* http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER 11.

[28] SHAW, *supra* note 26, at 78.

"most fertile fields" for development of international principles from general principles of law.[29] This would include jurisdictional determinations, but these also vary drastically across practice of the states. Therefore, jurisdictional bases must be examined from perspective of those customarily accepted within the international framework.

It should also be noted, that municipal law from the individual states is an active legal force in the arena of outer space and "its relative importance is likely to increase."[30] Most importantly, while jurisdictional bases are accepted through custom and state practice, for a court to exercise that jurisdiction domestically it must be a valid basis in the domestic law of the particular state. Municipal law, while exceedingly important to space law, can result in a patchwork of norms that are not uniform in outer space.

III. CRIMINAL JURISDICTION UNDER INTERNATIONAL LAW

A. Customary International Law

Criminal Jurisdiction can be a slippery thing: a crime can be blatantly committed, but if there is no entity with jurisdiction to prosecute the crime then it can go unpunished. Furthermore, due to the internationally accepted principle of *nullum crimen sine lege* and the invalidity of *ex post facto* proceedings, obvious bad acts can go unpunished due to there being no law proscribing that particular act.[31] Customary international law recognizes five bases for criminal jurisdiction: "territorial, nationality, protective, passive personality, and universal."[32] Additionally, for a state to prosecute, the basis of jurisdiction must be an accepted part of that state's domestic law.

Territorial jurisdiction is the first and most often invoked principle because "[o]ne of the main functions of a state is to

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[29] *Id.* at 79.

[30] DANN, *supra* note 24.

[31] ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 139-145 (Oxford University Press 2003).

[32] Sinha, *supra* note 7, at 93.

maintain order within its own territory."[33] This type of jurisdiction can apply when the criminal conduct occurred in part or in whole within the territory of a state. The key inquiry is whether a "constituent element of the offense occurred" in the state's territory.[34] It should be remembered that the *lex loci* is controlling, thus a person can be convicted of criminal conduct in a foreign state even if the same conduct is not criminalized in that person's home state.[35] Many states, though, have extended this principle to include "offences committed abroad which merely produce effects on [or in] their territory."[36] This innovation has allowed states to extend their jurisdiction over criminals outside their territory. A classic example would be a defamatory statement made and communicated to another in state X. If the person defamed suffers damage in state Y, then state Y could claim jurisdiction over the offender. This approach has been criticized as leading to a "slippery slope which leads away from the territorial principle towards universal jurisdiction."[37] It is essentially a problem of line drawing in which Michael Akehurst (in his seminal article on jurisdiction under international law) argues that only the country where the "primary effect is felt" can claim jurisdiction.[38] A primary effect rule would limit jurisdiction, but Akehurst gives no test for determining what the primary effect constitutes. Arguments could be made both for a temporal test or a gravity of harm test and conflicting claims to jurisdiction could easily result. This doctrine has "provoked considerable controversy" and is now generally limited to cases where asserting jurisdiction is considered "reasonable" in light of a balancing test.[39] The principle could be important if a crime were committed in space and had effects within the terrestrial borders of a state.

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[33] Michael Akehurst, *Jurisdiction in International Law*, 46 BRIT. Y.B. INT'L L. 145, 152 (1972-73). Akehurst notes that while civil law countries rely much more heavily on the nationality principle than do common law countries, the territorial principle remains the most heavily relied on basis in civil as well as common law countries. *Id.*

[34] *Id*.

[35] *Id.* at 154.

[36] *Id.* at 153. These effects need not be a constituent element of the crime. *Id.*

[37] *Id.* at 154.

[38] *Id.*

[39] SHAW, *supra* note 26, at 484-85.

The second basis for criminal jurisdiction under international law is that of nationality. Nationality allows a state to exercise jurisdiction over crimes of its nationals committed abroad. Different states exercise different limitations to this type of jurisdiction; for example some states "require proof that the act is also criminal under the *lex loci*, or restrict jurisdiction to serious crimes or cases where the injured party or his government request prosecution."[40] This of type jurisdiction only applies to the accused national and does not extend jurisdiction over his alien accomplices.[41]

Thirdly, states may turn to the protective principle in order to assert jurisdiction. This covers acts "committed by aliens abroad which threat[en] the state."[42] The doctrine, though, must be limited in such a way that it prevents a state from imposing its ideology on "aliens living in foreign countries."[43] Akehurst again argues for a "primary effect" test by which it must be shown that the "*primary* effect of the accused's action was to threaten that state."[44] This test looks to the intent of the accused, and is particularly relevant to the current problem of global terrorism in which states are attempting to extend jurisdiction over terrorist cells that function outside the borders of the state.

Next, there is the universality approach, which originates in the "centuries" old rule that any state may try pirates.[45] Universal Jurisdiction is asserted "solely on the nature of the crime."[46] Piracy was the first crime to have this sort of jurisdiction applied to it. Since it "originates from nonsovereign territory (i.e. the sea), it is a threat that cannot be countered by the

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[40] Akehurst, *supra* note 33, at 158. It should be noted that such limitations are not required under international law: "a state has an unlimited right to base jurisdiction on the nationality of the accused." *Id.*

[41] *Id.*

[42] *Id.* at 157-58.

[43] *Id.* at 159.

[44] *Id.*

[45] *Id.* at 160.

[46] PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION, at princ. 1(1) (Stephen Macedo ed., Princeton 2001).

practice of sovereign protection of domestic territory."[47] Universality was applied to piracy because states felt a need to "fight jointly" against it due to piracy's adverse effects on all states.[48] It was later used in the 1949 Geneva Conventions in relation to war crimes and also in the 1984 Convention Against Torture on the grounds that states should "protect *universal* values."[49] This new rationale reflected the view that there were some crimes of such "gravity and magnitude" that the whole of society should work to prevent them.[50] It is, however, a controversial form of jurisdiction due to the uncertainty as to exactly which crimes fall under it. While it is affirmatively codified in some treaties, it is also generally extended to *jus cogens* criminal offenses.[51] It is problematic "that every individual is or may be subject to the laws of every State at all times and in all places,"[52] but this is only so if "the laws vary from place to place, if they are the same in all countries the individual suffers little hardship."[53] *Jus cogens* offences are the only offences that can be said to universally fit this paradigm, as they are prohibited in all jurisdictions as violations of international law. While there is not an exhaustive list of these offenses, some accepted ones could be committed in space (e.g. piracy or torture). Furthermore, it could be argued that the ideals set out in the OST that outer space should only be used for "peaceful purposes" has entered into customary international law,[54] and that a violation of this principle could constitute a *jus cogens* offense.

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[47] MARK B. SALTER, RIGHTS OF PASSAGE: THE PASSPORT IN INTERNATIONAL RELATIONS 17 (Lynne Riemer Publishers 2003).

[48] CASSESE, *supra* note 31, at 284.

[49] *Id.* at 284-5.

[50] *Id.* at 285.

[51] The content of *jus cogens* is under debate due to the stringent nature of their development. SHAW, *supra* note 26, at 97-98. The Princeton Principles list piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, and torture as crimes covered, but this list is not treated as exhaustive and allows for other unspecified crimes. PRINCETON PRINCIPLES, *supra* note 46, at princ. 2.

[52] Akehurst, *supra* note 33, at 165 (citing J.L. Brierly, *'Lotus' Case*, 44 L.Q.R.154,161 (1928)).

[53] *Id.*

[54] BIN CHENG, STUDIES IN INTERNATIONAL SPACE LAW 125-149 (Clarendon Press 1997).

Finally, the most controversial innovation of the jurisdictional regimes in international law is that of passive personality. Passive personality allows a state to extend jurisdiction over "any act committed outside its territory by a foreigner which substantially affects the person or property of a citizen."[55] The difference between the passive personality principle of jurisdiction and the protective principle is that the protective principle allows a state jurisdiction when the state itself is threatened, whereas passive personality allows a state to extend jurisdiction over "crimes committed abroad against [its] own nationals."[56] The principle reflects the states interest in "the need to protect nationals living or residing abroad" and "a substantial mistrust in the exercise of jurisdiction by the foreign territorial state."[57] Generally, this principle is limited by states in that it requires "double criminality," i.e. the act is a crime in both the state in which it was committed and in the state which is exercising jurisdiction.[58] This is also a requirement of extradition, and it works as an effective limitation when the accused is still abroad.[59] This type of jurisdiction, however, is seen by many as "dubious ground" for jurisdiction and has been opposed by the United States and the United Kingdom.[60] However, it has recently been more widely accepted for certain crimes, especially those dealing with terrorism.[61]

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[55] GLENN REYNOLDS & ROBERT MERGES, OUTER SPACE: PROBLEMS OF LAW AND POLICY 277 (Westview Press, 2nd ed. 1997).

[56] CASSESE, *supra* note 31, at 282.

[57] *Id.* (emphasis removed).

[58] *Id.*

[59] *Id.* at 282-3.

[60] SHAW, *supra* note 26, at 467. There are a few federal laws in the US that allow for such jurisdiction such as 18 U.S.C. 7(7) (2006), which grants jurisdiction in "any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States."

[61] SHAW, *supra* note 26, at 468. *See also* United States v. Yunis, 924 F. 2d 1086, 1091 (C.A.D.C. 1991) (holding that both universality and passive personality to be proper in grants of jurisdiction over plane hijackers whose only connection to the US were the presence of US citizens on the plane).

B. Treaty Law

States may also use treaties to allocate criminal jurisdiction. For the purposes of space law there are four treaties particular to space that are pertinent. They are the OST; the Registration Convention;[62] the Moon Agreement; and the ISS Agreement[63]. Also pertinent is the Rome Statute[64] establishing the International Criminal Court and the impact that it could have on criminal jurisdiction in space.

The OST was the initial treaty that was passed by the United Nations at the dawn of Space Exploration. One of its most important functions is to distinguish space as the "province of all mankind."[65] Further, it declares that space shall not be "subject to national appropriation by claim of sovereignty, by means of use or occupation."[66] It, in essence, sets space aside as an extra-jurisdictional territory. This does not preclude states exercising "jurisdiction and control over people, institutions, and objects in outer space."[67] The only jurisdiction that the OST affirmatively recognizes is that of a state over an "object launched into outer space . . . and over any personnel thereof, while in outer space or on a celestial body."[68] Thus, the OST does not comment on jurisdiction outside space objects or personnel, except to "designate international law as applicable to space activities."[69] In reading articles 6 and 8 together it is implicit that

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[62] Convention on Registration of Objects Launched into Outer Space, Jan. 14, 1975, 1023 U.N.T.S. 15 [hereinafter Registration Convention].

[63] Agreement Among the Government of Canada, the Governments of the Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation and the Government of the United States of America Concerning Cooperation on the Civil International Space Station, State Dept. No. 01-52, Jan. 9, 1998, *available at* 2001 WL 679938 [hereinafter ISS Agreement].

[64] Rome Statute of the International Criminal Court, June 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

[65] OST, *supra* note 3, at art. 1.

[66] *Id.* at art.2.

[67] STEPHEN GOROVE, *Legal Problems of Manned Space Flight*, *in* THE USE OF AIRSPACE AND OUTER SPACE FOR ALL MANKIND IN THE 21ST CENTURY 246 (C.J. Cheng ed., Kluwer 1995).

[68] OST, *supra* note 3, at art. 8.

[69] Mary McCord, *Responding to the Space Station Agreement: The Extension of U.S. Law into Space*, 77 GEO. L. J. 1933, 1936 (June 1989). McCord also notes that the treaty is silent as to the extent that domestic law applies in space. *Id.*

states have the authority to exert jurisdiction over individuals in space, but as argued below, this is not generally done in an effective manner. Furthermore, the extent to which states must supervise these non-governmental entities is uncertain as "the minimum degree of control of a nation-state over its private 'national' space object remains . . . barely touched by the 1967 Treaty" and subsequent ones.[70] The OST was followed by the Registration Agreement, which requires states to register "space objects" that they launch into outer space "in an appropriate registry."[71] It is the state of registry that exercises jurisdiction over any given space object.[72] This only adds to the OST by acknowledging that, when there are multiple launching states, states may allocate jurisdiction over the space object through agreements concluded between the launching states.[73]

The last of the five general space treaties passed by UNCOPUOS is the Moon Agreement. It adds very little to the jurisdictional regime in space established by the other treaties. This is especially so in light of its low number of state parties.[74] It, like the OST, establishes that the moon and other celestial bodies are to be used only for "peaceful purposes."[75] In light of this, it prohibits states from establishing military bases on the moon, which could have ramifications in the area of law enforcement.[76] Additionally, the Moon Treaty prevents the Moon from becoming the private property of "any state, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person" even by the placement of structures on the moon.[77]

The ISS Agreement should be mentioned as it is the only positive source of criminal law that currently exists in outer

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[70] SIEGFRIED WIESSNER, *Human Activities in Outer Space: A Framework for Decision-Making*, *in* SPACE LAW: VIEWS OF THE FUTURE 14 (Tanja L. Zwaan ed., Kluwer 1988).

[71] Registration Agreement, *supra* note 62, at art. 2.

[72] GOROVE, *supra* note 67.

[73] Registration Agreement, *supra* note 62, at art. 2.

[74] As of Jan. 1, 2006 only 12 states have ratified the treaty. *See* Moon Agreement, *supra* note 9. All of the major space powers are conspicuously missing.

[75] Moon Agreement, *supra* note 9, at art. 3(1).

[76] *Id.* at art. 3(4).

[77] *Id.* at art. 11(3).

space.[78] It is not a general treaty; instead it represents the type of agreement envisioned under the Registration Agreement in which parties have allocated jurisdiction amongst themselves. The agreement, which governs the international space station developed by Canada, the European Space Agency, Japan, the Russian Federation and the United States, adopts a nationality approach to criminal jurisdiction on board. It grants each state jurisdiction "over personnel in or on any flight element who are their respective nationals."[79] It also includes elements of passive personality jurisdiction. If a crime "affects the life or safety of a national of another party" or "occurs in or on or causes damage" to another party's flight element (the station is made up of elements that are registered to the party that launched it), then injured states or the state of the injured party can request consultations.[80] If the state of the accused party refuses to either concur in granting jurisdiction to the aggrieved state or refuses to assert jurisdiction itself, then the aggrieved state may assert jurisdiction.[81] Of course, this criminal regime is only applicable on board the ISS and only to "personnel" on board. Unfortunately, the drafters of the agreement failed to define personnel, so the true extent of the jurisdiction is somewhat open ended, but the agreement does represent a significant step for dealing with these types of issues. This is especially so in that the first space tourists have been visiting the ISS.

Finally, a cursory look must be given to the Rome Statute of the International Criminal Court. Under this treaty some crimes can have jurisdiction taken up by a supra-jurisdictional International Criminal Court (ICC). However, due to the nature of these crimes they are unlikely to be committed in space. The court has jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression.[82] Both genocide and crimes against humanity have scale requirements that are

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[78] For an in depth look at criminal jurisdiction on the ISS *see* Sinha, *supra* note 7.
[79] ISS Agreement, *supra* note 63, at art. 22(1).
[80] *Id.* at art. 22(2).
[81] *Id.* at art 22(2).
[82] Rome Statute, *supra* note 64, at art. 5.

unlikely to be met in outer space anytime in the near future.[83] For war crimes and crimes of aggression to occur in space one would have to presuppose a collapse of space law as now extant, since the OST states that space will only be used for "peaceful purposes."[84] Furthermore, for the ICC to gain jurisdiction over the accused the actions of the accused must occur within the territory of a state party or be a national of a state party.[85] If these sorts of crimes were to occur in space a referral to the ICC might be likely due to the nature of the investigation which many states would find too costly. While the Rome Statute is a pertinent piece of international criminal law its application to space seems remote, but could eventually have some impact.

C. Other Considerations

1. Enforcement

While somewhat outside the scope of this paper, a related issue to jurisdiction is the actual enforcement of the rule of law in space. While in the future there may be ample opportunity for a plethora of peoples to be able to gain access to outer space, it will most likely remain that only a very few governments will have extensive space programs in the initial years of the new space boom, creating two significant implications. First, the burden of enforcement of rules of law will fall upon the governments that have the resources to enforce them. Secondly, and following from the first, this could mean that there is a selective enforcement of laws in space, which will be biased in favor of the enforcing government.

Another, problem that might arise is that the government that is functioning as the enforcer in space could feasibly attempt to assert jurisdiction over crimes based on the fact that it

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[83] *Id.* at arts. 6 & 7. To be a crime that occurred only in the confines of space would require large groups of individuals to be in space. While one can come up with hypotheticals to meet the elements of these crimes in space, the application of the treaty would be quite remote.

[84] OST, *supra* note 3, at art. 4.

[85] Rome Statute, *supra* note 64, at art. 12. In addition to this, the Security Council can refer a case to the ICC, which would grant jurisdiction over a person or event. *Id.* at art. 13(b).

enforced the law i.e. that the only link between the state and the alleged criminal act is that the state enforced. Under the current jurisdictional regimes in customary international law (as discussed above) there must be "some genuine link between the state and the persons, property, or events over which jurisdiction is claimed."[86] The problems with this would be twofold. If claimed as a new form of jurisdiction it creates an atmosphere of "might makes right" in that only the powerful can claim criminal jurisdiction in space. On the flip side, if the state does not claim a new form of jurisdiction but instead tries to fit it into one of the already accepted regimes it could look as though that state were actually asserting a territorial claim on outer space. For instance, if a citizen of state X assaults a citizen of state Y and state Z enforces, then State Z would most likely apply its domestic law. The result is that even if it attempts to use the universality basis for jurisdiction it has actually created the precedent that its domestic assault law is applicable to all persons in the territory of space, effectively extending its control and jurisdiction in violation of the OST.

It is beyond the scope of this paper to discuss in depth the pros and cons of an international enforcement body for outer space, so suffice it to say that any such body is decades if not longer in the future. While such a body might be able to clear up difficulties in the enforcement area, its remoteness does not help to address the current needs of space exploration in which there is the probability of a wrongful act in space but not the necessity for a full time enforcement body.

2. Legislative Jurisdiction

While this paper is intended to primarily discuss the exercise of judicial jurisdiction, another related problem is that of legislative jurisdiction. States may not, due to the constraints of the OST, extend their jurisdiction over outer space. This includes legislative jurisdiction, which "refers to the supremacy of the constitutionally recognized organs of the state to make bind-

[86] REYNOLDS & MERGES, *supra* note 55, at 276.

ing laws within its territory."[87] This does not inhibit states from extending legislative jurisdiction over its nationals abroad. For instance, a state could make it illegal to for its citizens to chew gum in space. The state cannot, however, abuse the right to legislate, especially in such a way that would "infringe the sovereignty and independence" of another state.[88]

Complications arise when a state attempts to extend legislation over foreigners. It is not entirely clear whether a state, using passive personality, has violated the OST if it passes a law that makes it a crime for anyone to assault one of its citizens in space. Crimes are usually legislated on a territorial basis, thus a law such as this could be seen as an extension of a states jurisdiction into space. This legislative problem obviously creates a loop hole in which some acts could be crimes on Earth, and not in space (if a state has not properly extended its criminal statutes).[89] This creates a good argument for an international space code; but, like an international enforcement body, will be long in the making and is unlikely in the near future.[90]

D. Specific Problems

1. Mugging on the Moon

The most controversial of all the space treaties is the Moon Agreement. While the agreement has entered into force, it lacks the ratification of many major space powers, making it effectively powerless as a control on moon activities.[91] However, for the purposes of jurisdiction, the Moon Agreement added little to

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[87] SHAW, *supra* note 26, at 456.

[88] *Id.*

[89] *See* United States v. Cordova, 89 F. Supp. 298 (E.D.N.Y 1950) (holding that congress had not extended its Special Maritime Jurisdiction over airplanes, thus it could not exercise jurisdiction over an assault occurring in a plane over the high seas).

[90] *But see* George S. Robinson, *Astronauts and a Unique Jurisprudence: A Treaty for Spacekind,* 7 HASTINGS INT'L & COMP. L. REV. 483 (1983-84).

[91] Leslie Tennen, *Commentary on Emerging System of Property Rights in Outer Space in United Nations treaties on outer space: actions at the national level*, PROCEEDINGS OF THE UNITED NATIONS/REPUBLIC OF KOREA WORKSHOP ON SPACE LAW, U.N. Office of Outer Space Affairs, ST/SPACE/22, at 343 (Daejeon, Republic of Korea, Nov. 3-6, 2003) *available at* http://www.unoosa.org/pdf/publications/st_space_22E.pdf.

the regimes already put in place by the OST.[92] Stephen Gorove, in an early article, identified four areas in space where a crime can occur: "in outer space itself, that is in the void, or on board a spacecraft, space laboratory or another space object in outer space, or on such craft or on a celestial body or on a celestial body but not aboard such craft either within a particular facility or without it."[93] As seen in the discussion of the treaty law above, a space object with a registered launching state will be under the jurisdiction of at least one state, thus the concern here are crimes that could occur in the void of space or on a celestial body. Specifically, the Moon will be addressed as it is the most likely place where two humans might meet each other (though the problem could be similarly formulated if the crime were on another celestial body or in the void of space).

If a person from state X were to mug a person from state Y on the moon, it is feasible that no state could assert jurisdiction. The crime certainly occurs outside the territory of any state (and it would be absurd to claim that it affected the territory of either state) so the territoriality principle could not be asserted. The nationality principle might be used by state X in order to punish a national, but only barring any limitations that State X might have on the principle. For example, if state X will only use the nationality principle for serious offenses, then mugging may not rise to the level of seriousness required. Or, if state X limits itself to crimes that are also illegal in the *lex loci*, then it can not be said with certainty that mugging is illegal in the frontiers of space, as there is no *lex loci* in outer space as of yet. Indeed, a mugging in space might not even be illegal under state X's criminal code if the definition of the crime uses a territorial action as an element.[94] It should be noted that a state

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[92] The OST had already set the moon aside as an extra-jurisdictional zone. OST, *supra* note 3, at art. 2.

[93] Stephen Gorove, *Criminal Jurisdiction in Outer Space*, 6 INT'L L. 313 (1972).

[94] In order for a state to assert any basis for jurisdiction it must have properly legislated it into domestic law. For example, the criminal code of Western Australia holds that an offense is only committed under the code when "at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia." Criminal Code of Western Australia, pt. I div. III §12 (1)(b) (2004). Part (c) of this legislation does allow for the extraterritorial application of some laws, however it is highly unlikely that this jurisdiction has been extended by statute to a

could argue that theft by force is illegal in all legal systems and thus a violation of a general principle of municipal law, meaning that it could reasonably assert that there is double criminality. State Y will not be able to use the protective principle as a mugging will not significantly threaten the state (unless, for example, the mugged is carrying secret state documents). The crime is certainly not a *jus cogens* violation, so universality would not apply. Finally, passive personality might be asserted by state Y if it accepts such grounds for jurisdiction. However, many states would not assert this sort of jurisdiction for such a small violation of the criminal code. In addition, double criminality is often used as a limitation on passive personality. Even if state Y extended its criminal code to include a mugging in space, it could only properly do so over its nationals and its space objects; otherwise, it would be in violation of the OST by extending its jurisdiction into space in a territorial manner. The result is that state Y would lack sufficient grounds for asserting jurisdiction under passive personality.

If jurisdiction under the customary international law rules cannot be asserted a state could turn to the space treaties. These, could very well leave jurisdiction lacking also. Under the space treaties the only reasonable argument would be that the launching state or state of registry would have jurisdiction to prosecute, but under the language of the treaties that state only has jurisdiction over its space object and its personnel.[95] It could be argued that asserting jurisdiction over the mugger by state A would be acceptable as a proper supervision of a non-state entity, but this could be seen as lacking since this supervision applies to "national activities."[96] The exact meaning of national activities is unclear, but a stroll on the surface of the moon might be below the bar and be considered a private or non-national activity. It is unclear what "national activities" means and one commentator suggests that the term would not include

crime such as mugging. If State A were to have a criminal code of this sort it would be impossible for it to correctly assert jurisdiction.

[95] OST, *supra* note 3, at art. 8.

[96] *Id.* at art. 6. Furthermore, the definition of space activities is left largely undefined. *Id.*

activities "conducted by the nationals of a State when they are not within either its territorial or quasi-territorial jurisdiction."[97] Furthermore, the treaties mention nothing about what criminal code applies, thus the mugger is in danger of multiple and unexpected criminal codes being applied to him and the mugged is in danger of no code at all being applied.

2. The Launching Stateless Space Object

Similar problems could occur in the case of a space object that lacks a launching state. As stated by the Liability Convention, a launching state is the state that launches a space object, the state that procures the launching of a space object, or the state from whose territory or facility an object is launched.[98] It is possible for a space object to lack a launching state if it is launched by a private entity, from a private facility located in international waters or on Antarctica. Furthermore, there might not be a violation of international law if the entity is from a country that has not acceded to the OST or a country that has not implemented any domestic legislation to restrict its citizens from taking part in such an exercise.

The jurisdiction on this object would suffer from all the problems outlined in the problem of the mugging on the moon scenario, but additionally, there would be no launching or registering state that could even attempt to extend jurisdiction over the criminal.

IV. CIVIL LAW

A. Customary International Law

Civil law jurisdiction, as regulated under customary international law, is less controversial when exerted by domestic courts. This is because "the rules governing the Jurisdiction in

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[97] CHENG, *supra* note 54, at 238-39. According to Cheng, a person not on board a craft and not part of the personnel of that craft would be outside the quasi-territorial jurisdiction of the state. *Id.* at 232.

[98] Convention on International Liability for Damage Caused by Space Objects, art. 1(c), Mar. 29 1972, 961 U.N.T.S. 187 [hereinafter Liability Convention].

civil and criminal cases are founded in many respects on radically different principles."[99] As a result the same reasoning that gives a state jurisdiction in a criminal case will not necessarily give a state jurisdiction in a civil case.[100] In fact it has been argued that "the only limitation on jurisdiction in civil trials [is] contained in the principle of effectiveness."[101] In support of this argument Akehurst asserts that "states claim jurisdiction over all sorts of cases and parties having no real connection with them and that this practice has seldom if ever given rise to diplomatic protests,"[102] which is "partly due to the fact that public opinion is far more easily roused where a person is tried abroad for criminal offenses."[103] As a result "international law has tended to focus on penal rather than civil jurisdiction."[104]

Courts have used "far wider grounds than has been the case in criminal jurisdictional matters" to assert civil jurisdiction.[105] In common law states, the most prevalent basis for jurisdiction is service upon the defendant while within the borders of the state. This presence can be temporary, but it is based on a common law principle and may be seen as suspect in non-common law States.[106] Under common law, service of process on a defendant while that defendant is within territory of the jurisdiction of the court gives the court jurisdiction over that defendant. There is no set length of time for this presence, and "in theory a visit lasting a few seconds would be sufficient."[107] US courts have even held that the rule applies when the party is within the state "transiently," with one court even upholding

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[99] Akehurst, *supra* note 33, at 170 (internal cites omitted John Basset Moore).

[100] *Id.*

[101] *Id.*.

[102] *Id.*

[103] SHAW, *supra* note 26, at 457.

[104] Christopher L. Blakesley, *Criminal Law: The United States Jurisdiction Over Extraterritorial Crime*, 73 J. CRIM. L. & CRIMINOLOGY 1109 (1982).

[105] SHAW, *supra* note 26, at 457.

[106] Akehurst, *supra* note 33, at 171. Akehurst notes that civil law jurisdictions require service of process as a form of notice, but that the service does not create jurisdiction: "Jurisdiction must exist before a writ can be served." A judgment based on this type of jurisdiction "would almost certainly be refused recognition outside the common law world," but that there has been no protest that this jurisdiction is contrary to international law. *Id.*

[107] *Id.* at 170-71.

service on a defendant who was served while onboard an airplane over the state.[108] Obviously this basis of jurisdiction would have limited application in space. While onboard a government owned space vessel service may be seen as being made within the territory of the state.[109] It is not clear though whether a space vehicle owned by a private actor would become the *de jure* territory of its registry state or its launching state without domestic legislation declaring it as such.

In civil law countries the traditional basis of civil jurisdiction is often founded on habitual residence of the defendant within the state.[110] To some extent this basis has been undermined by courts that will assert jurisdiction based on a connection to the matter at hand (e.g., the tort occurred within the state); however, while there are good policy reasons for such assertions, it can hardly be accepted as the rule.[111] The idea, though, has gained in popularity and even common law states now use an array of tools in order to extend their jurisdiction. The leading example can be found in the United States Supreme Court case of *International Shoe v. Washington*[112] in which the court held that the "amenability of a party to a suit is based on the party's connection with the forum state."[113] However, the test is not a steep one and only requires "minimum contacts," but it does seek to determine the nature of the forum state's connection to the suit and the forum state's interest in the subject matter.[114]

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[108] Grace v. Macarthur, 170 F. Supp. 442 (E.D. Ark. 1959). These cases are usually dismissed due to *forum non conveniens.* Akehurst, *supra* note 33, at 71. *See also* Amusement Equip. Inc. v. Mordelt, 779 F. 2d 264, 265 (5th Cir. 1985) (noting that "the rule of transient jurisdiction has suffered a fate akin to that of the once proud but now extinct dinosaurs").

[109] *But see* Lauritzen v. Larsen, 345 U.S. 571, 583 (1952) ("the test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the variety of legal authority over waters she may navigate").

[110] SHAW, *supra* note 26, at 458.

[111] Akehurst, *supra* note 33, at 175.

[112] Int'l Shoe v. Washington, 326 U.S. 310 (1945).

[113] Karen Robbins, *The Extension of United States Criminal Jurisdiction to Outer Space*, 23 SANTA CLARA L. REV. 627, 654 (1983).

[114] *Id.* at 652. An international formulation of this test can be found in the Nottebohm Case (second phase) (Liechtenstein v. Guatemala), 1955 I.C.J. 4; *See* Robbins, *supra* note 113, at 656.

A final basis of jurisdiction is that of *forum patrimonii,* which allows a state to exercise jurisdiction in cases where the defendant has assets within the country. While some states limit the jurisdiction of the court to those assets alone, others can take jurisdiction over ancillary matters that are unrelated to the assets.[115] The result of course can seem unjust as in the example of when "a tourist who left his slippers behind in a hotel bedroom" could find himself subject to unrelated suits within that jurisdiction.[116] Regardless of the strange outcome no state has made a protest against this sort of jurisdiction.[117]

If diplomatic protests are indeed the "acid test of the limits of jurisdiction in international law,"[118] it seems, though, that the only truly accepted limit to civil jurisdiction under international law is that of effectiveness. This is illustrated by the routine extension of jurisdiction of US Anti-Trust Laws. These laws have been held to have a significant extraterritorial effect, and while they have been met with some diplomatic protest they are still routinely applied. In fact many states have found the best way of dealing with these sorts of laws is by enacting laws that counter the effects of the US legislation within their own borders.[119] Additionally, the minimum contacts test generally only serve to determine whether a state can exercise jurisdiction, and not whether another state has better claim to jurisdiction. In the international context, this creates a situation in which the enforcement of a judgment becomes the limiting factor as to the validity of the judgment, because a foreign court would retain the right to review the jurisdiction before enforcing a judgment.[120]

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[115] Akehurst, *supra* note 33, at 171-72.

[116] *Id.* at 172.

[117] *Id.*

[118] *Id.* at 176. Akehurst notes that the few on record are isolated and that the "law must be taken to follow the general practice rather than the isolated protest." *Id. But see* D.W. Bowett, *Jurisdiction: Changing Patterns of Authority Over Activities and Resources* 53 B.Y.B.I.L. 1, 3-4 (1982).

[119] SHAW, *supra* note 26, at 486.

[120] An example of this sort of limitation at work is the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Feb. 1, 1979, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=78. Instead of addressing domestic jurisdiction this treaty grants the right to deny a judgment for a set of particular reasons. *Id.*at arts. 4-5. In so doing it

B. Treaty Law

As already stated the OST defines space as "the province of all mankind," and little more needs to be said about the ramifications of this premise.[121] The treaty does go farther in setting up civil liability rules than it does in stating any sort of criminal ones. In addition to the jurisdictional clause in Article 7, the OST also states that a state will have "international responsibility for national activities in outer space" even if those activities are carried out by a non-governmental entity.[122] In addition, it requires the state to authorize and supervise activities of non-governmental entities.[123] While this clause is attempting to assign liability for damage done by space activities, it can certainly be argued that by virtue of the fact that a state authorization implicitly puts that entity within the jurisdiction of that state by giving it a minimum contact. On the other hand, one could argue that this clause would only give jurisdiction over civil causes occurring during a "national activity" that causes damage giving rise to international responsibility - excluding an interpersonal contract violation or personal tort.[124]

The Liability Convention adds another dimension to the dilemma of civil jurisdiction. It assigns liability based on the idea of the launching state. The launching state can be the state that launches the object, the state that procures the launch of the object, the state from whose territory the object is launched, or the state that owns the facility from which the object is launched.[125] It is, theoretically, possible that there can be up to four launching states. It could be argued that any launching state is connected enough to the object that it could assert civil jurisdictions for acts thereon. But the jurisdiction clause in the OST grants jurisdiction to the state that registers the object which would then be controlled by the Registration Conven-

limits the jurisdiction of the contracting parties through effectiveness as opposed to an affirmative statement of jurisdiction.

[121] OST, *supra* note 3, at art 1.

[122] *Id.* at art 6.

[123] *Id.*

[124] *Id.*

[125] Liability Convention, *supra* note 98.

tion.[126] Thus, a distinction is necessary between the registering state, which has jurisdiction, and the launching state which (unless granted in an agreement between parties) lacks jurisdiction, but is still liable for damage. It should be noted that the Liability Convention only covers damage caused by space objects and not by individuals, thus its usefulness in extending jurisdiction further than the bounds of the space object are limited.

C. Other Considerations

An ancillary problem is that of choice of law. Virtually all judicial systems have a system of inquiry in place to help and determine which law to apply in its courts when there are multiple jurisdictions involved. This would change little in the space law context. The only significant change would be that there could be no line of questioning as to territory; however, the balancing tests that many jurisdictions use would simply take into account other features of the litigation in order to make their determination.

Choice of law could come into play if another court has to examine the enforceability of a judgment (enforcement being the only real limitation on civil law jurisdiction). This could lead to precedent being adopted in which certain contacts to a given jurisdiction are treated differently in the space law context.

D. Specific Problems

1. A Lack of Minimum Contacts

With the wide latitude of jurisdictional options for states in the civil matters the only real problem could be in a case that has a defendant without any minimum contacts. For instance, the case of a long term space resident that contracts to sell a piece of chattel property (that is in space) and then reneges, could create a fact pattern in which there are no minimum contacts which could allow a court to extend jurisdiction. The per-

[126] OST, *supra* note 3, at art. 7.

son lacks presence in a territory and could also feasibly lack domicile in any territory. The contract and breach were both completed in space and the property is also in space; therefore, there are no minimum contacts under which a state could extend jurisdiction. The only possibility would be if a state is able to extend jurisdiction over the person due to his citizenship or presence on a registered space craft.

2. Judgment Enforcement in Space

If the true limitation on jurisdiction is the ability to enforce the judgment then there is a distinct problem of the space resident. If a person has begun to permanently reside in space it might be impossible (short of the use of some sort of force) to enforce a judgment against that person. A person winning such a judgment would have no court to turn to in order to get the judgment enforced due to the lack of courts in space. The only option would be to search out any terrestrial assets that the space resident might still retain.

V. NATIONAL LAWS

Many nations have enacted national laws, under the OST duty to supervise, that extend a limited amount of jurisdiction into outer space. However, many nations with space programs are lacking these laws. For instance, India "has not put in place a law regulating space activities by Indian nationals and corporations within Indian Territory."[127] Most countries only have licensing schemes that help control the commercial aspects and questions of launching state status, but these generally do not make affirmative statements as to the extent of jurisdiction over the participants on these flights.[128] In fact, many of these stat-

[127] C. Jayaraj, *India's Space Policy and Institutions, in United Nations treaties on outer space: actions at the national level*, PROCEEDINGS OF THE UNITED NATIONS, REPUBLIC OF KOREA WORKSHOP ON SPACE LAW, U.N. Office of Outer Space Affairs, ST/SPACE/22, at 106 (Daejeon, Republic of Korea, Nov. 3-6, 2003) *available at* http://www.unoosa.org/pdf/publications/st_space_22E.pdf.

[128] Among these countries are Australia, Space Activities Act 1998, No. 123 (1998), *available at* http://www.unoosa.org/oosa/SpaceLaw/national/australia/space_activities_act_1998E.html; Brazil, Ministry of Science and Technology Brazilian Space Agency

utes only apply to an entity needing a license for launching space objects, reentry of space objects, and running facilities for launching or reentry of space objects. This section will address three national regimes that attempt to deal with the jurisdiction problem and the inadequacies of each.

A. United States

The current leader in space exploration is the United States,[129] and it follows that the US has a highly developed legal system for its outer space activities. In the realm of jurisdiction the US has extended some extraterritorial jurisdiction that reaches into space through its Special Maritime and Territorial Jurisdiction legislation. Under this law, jurisdiction extends to:

> Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take

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Administrative Edict N. 27, June 20, 2001, *unofficial translation available at* http://www.unoosa.org/oosa/SpaceLaw/national/brazil/administrative_edict_27_2001E.html; The Russian Federation, Law of the Russian Federation, *About Space Activity*, Decree No. 5663-1 of the Russian House of Soviets, *unofficial translation available at* http://www.unoosa.org/oosaddb/showDocument.do?documentUid=312 (the Russian code does affirmatively extend its laws on board its vessels); South Africa, Space Affairs Act 1993, *available at* http://www.unoosa.org/oosa/SpaceLaw/national/south_africa/space_affairs_act_1993E.html; United Kingdom, Outer Space Act chap. 38 (1998), *available at* http://www.unoosa.org/oosa/SpaceLaw/national/united_kingdom/ outer_space_act_1986E.html; and Ukraine, Ordinance of the Supreme Soviet of Ukraine, On Space Activity, Law of Ukraine, Nov. 15, 1996, *unofficial translation available at* http://www.unoosa.org/oosa/SpaceLaw/national/ukraine/ordinance_on_space_activity_1996E.html. For an overview of these types of laws *see* United Nations Committee on Peaceful Uses of Outer Space (UNCOPUOS), Legal Sub-Comm., *Review of existing national space legislation illustrating how states are implementing as appropriate, their responsibilities to authorize and provide continuing supervision of non-governmental entities in outer space*, UN A/AC.105/C. 2/L. 224 (Apr. 2001).

[129] Japan Aerospace Exploration Agency, *supra* note 21, at 32 (noting the United States "represents eighty percent of the total investment in space activities").

> over the responsibility for the vehicle and for persons and property aboard.[130]

The extension of jurisdiction by this law is in line with the Outer Space treaties, but it is not entirely clear as to how far it extends. Jurisdiction is most certainly accorded to the United States on a vehicle, but there is no comment as to the effects of the doors of the craft being opened in space. Furthermore, the initial clause functionally extends jurisdiction over "any vehicle used or designed for flight or navigation in space." The jurisdiction applies to the territory of the craft and not to the territory outside the craft, thus the result is that a person who leaves the craft also leaves the jurisdiction of the United States.[131] So, in the mugging scenario, if the mugger had been on a US space object he would have left the jurisdiction of the US. The US could still use its extraterritorial jurisdiction that applies to international spaces, but if the neither the mugger nor the victim were US citizens,[132] the mugger would be immune from prosecution, because US courts will refuse to enforce extraterritorial jurisdiction without evidence of specific Congressional intent.[133] Therefore, a crime committed by a space traveler who was not personnel or a US citizen but had left the confines of US space object would be outside US jurisdiction.

One must look further into the US legislation to find any other sort of jurisdictional connections extended to space travelers. The Commercial Space Launch Activities Act requires an entity (not necessarily an individual person) to get a license in order to launch or reenter a space vehicle or to operate a site in

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[130] 18 U.S.C. §7(6) (2006).

[131] This sort of jurisdiction has been held to extend to an Arctic iceberg in a manslaughter case. *See* United States v. Escamilla*,* 467 F. 2d 341 (4th Cir. 1972) (the en banc appeals court was equally divided on the issue of jurisdiction and therefore upheld the decision of the lower court to exercise jurisdiction.) *But see* Smith v. United States, 507 U.S. 197, 204 (1993) ("we assume that Congress legislates against the backdrop of the presumption against extraterritoriality.")

[132] 18 U.S.C. §7(7) (2006).

[133] *See* McCulloch v. Sociedad Nacional de Marineros, 372 U.S. 10, 20-21 (1963) (looking for and finding no "construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag, contrary to the recognition long afforded them not only by our State Department but also by the Congress.").

the business of doing so.[134] This license is needed both inside the territory of the US and also for a US citizen outside of the US. The obvious effect and purpose is to regulate which space objects the US will be classed as a launching state, but it leaves out any reference to jurisdiction over those that are aboard the vehicle. Interestingly, this particular code has been augmented by recent regulations passed by the Federal Aviation Administration (FAA), The Human Space Flight Requirements for Crew and Space Flight Participants (a regulation with a direct bearing on the space tourism industry), makes no mention of any jurisdictional issues.[135] In fact, these regulations are more inclined towards "protect[ing] the uninvolved public,"[136] than the participants who "travel at their own risk"[137] and are required only to waive any claims against the US.[138]

B. Sweden

Swedish law is representative of the most common type of legislation used to supervise nationals in outer space. The Swedish Act on Space Activities requires a license in order to take part in space activities in the territory of Sweden or by a "Swedish natural or juridical person" even if not in the territory of Sweden.[139] Significantly, there is a penal punishment if this act is violated.[140] Space Activities, according to the Decree on Space Activities, are to be controlled by the National Board of Space Activities.[141] This control is as close to a comment on jurisdiction that can be found in the Swedish laws. The act is un-

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[134] 429 U.S.C. §70104(a) (2006).

[135] Human Space Flight Requirements for Crew and Space Flight Participants, 71 Fed. Reg. 75616 (Dec. 15, 2006) (to be codified at 14 C.F.R. 401ff) [hereinafter Human Space Flight Requirements].

[136] WALL STREET JOURNAL ONLINE, *supra* note 1.

[137] *Id.*

[138] Human Space Flight Requirements, *supra* note 135.

[139] Act on Space Activities, § 2 (1982:963), *unofficial translation available at* http://www.unoosa.org/oosaddb/showDocument.do?documentUid=318&level2=none&node=SWE1970&level1=countries&cmd=add.

[140] *Id.* §5. Either a fine or imprisonment of up to a year. *Id.*

[141] Decree on Space Activities, § 2 (1982:1069), *unofficial translation available at* http://www.unoosa.org/oosaddb/showDocument.do?documentUid=319&level2=none&node=SWE1970&level1=countries&cmd=add.

clear as to whether each individual taking part must gain a license or if a license can be granted to a company. Presumably (by the use of the word "party" instead of person in §2) a company could gain a license which would then leave open questions of jurisdiction for individuals. This is of particular import because Virgin Galactic has built its first space port in Sweden.[142] Whether or not each individual space tourist will have to gain a space license is questionable, because the term "space activities" is not specifically defined, making it difficult to determine whether mere transit through space is a space activity or not. In the end the Swedish law is not definite enough to solve jurisdictional problems.

Swedish law might soon be changing, though. Sweden has signed a deal with Virgin Galactic for Spaceport Sweden to be used for Virgin Galactic flights to observe the Aurora Borealis. Part of the agreement calls for the Swedish Government to enact a regulatory regime that is modeled on the United State's.[143] The goal of this probably has more to do with safety regulations than with jurisdictional issues.

C. Finland

Even though Finland can not be classed as a space power, the Finnish Penal Code is a fine example of a criminal code that has jurisdictionally been extended into outer space. Instead of including territorial requirements in the elements of the individual crime, the Finnish code makes a blanket jurisdictional statement at the beginning of the code effectively extending its entire criminal law. First, the Finnish code uses the passive personality principle to extend its jurisdiction over crimes committed against its citizens, but only if that crime is punishable by more than six months imprisonment.[144] Similarly, the nationality principle has been codified, but if the crime is committed outside the territory of any state the act again must be punish-

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[142] Peter de Selding, *Virgin Galactic Strikes Deal with Swedish Government*, SPACE.COM, Jan. 28, 2007, http://www.space.com/news/070128_sweden_virgin.html.

[143] *Id.*

[144] The Penal Code of Finland, at Chap. 1.§5 (2003), *unofficial translation available at* http://www.finlex.fi/pdf/saadkaan/E8890039.PDF.

able by more than 6 months imprisonment.[145] The Finnish code also extends over what it deems to be international offences:

> Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (*international offence*).[146]

Finland could use this provision to extend its law into outer space in order to supervise in accordance with the OST. This section of the code could only be used to apply the criminal code to space travelers that are either on board space objects for which Finland is a launching state or Finnish nationals, as it has no obligation to supervise others in space. There would still be limitations depending on how one defines "national activities" as used in the OST.

VI. PROPOSALS

A. Suggestions from other scholars

1. Astrolaw

George Robinson, in his article "Astronauts and a Unique Jurisprudence: A Treaty for Spacekind," calls for a specific treaty to address the legal problems that may occur between individuals in space.[147] He cites research that states that the space environment could cause different human reactions due to the biological effects of the space environment on the human body.[148] To deal with this particular problem he proposes a treaty that allows space inhabitants to create the law that is applicable to their unique situation.[149] In addition to dealing with the specific biological effects of space, he claims that his proposal will allow for a new type of law that will reflect the

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[145] *Id.* at Chap.1 §6(1).
[146] *Id*. at Chap. 1. §7(1).
[147] Robinson, *supra* note 90, at 494.
[148] *Id.* at 485.
[149] *Id.* at 494.

cultural differences of astronauts.[150] His proposed treaty allows for an expert academy, as part of the UN, to create law (including jurisdiction for Spacekind, as opposed to Earthkind).[151]

Robinson's assertion that "Earth-indigenous laws, as cultural institutions, have evolved hand in glove with human biological evolution" is a useful reminder for future space legislation, but his proposed treaty fails to cope with the current problems of space travel.[152] Actual space societies are far in the future, thus making the potential for any sort of treaty specifically regulating those societies irrelevant as present. Man's emergence into space will be slow and methodical due to the risk involved and the most acceptable rules in the initial stages of space exploration will be the extension of terrestrial rules into space. Robinson's proposal is not without value, and in time could be particularly useful when dealing with the problems of long term or even permanent space residents; however, it does not cure regulatory problems for Earth residents entering outer space.

2. Minimum Contacts as a Basis for Criminal Jurisdiction

Reacting to the Special Maritime Jurisdiction Act of the United States, Karen Robbins suggests the adoption of a minimum contacts approach for criminal cases in space (such an approach would already be used in US for civil cases).[153] Her argument is that the extraterritorial jurisdiction legislation that the US has passed is inadequate and confusing. She suggests that due to the "unusually complex set of possibilities" in outer space a minimum contacts test in which a court determines, for the purposes of jurisdiction, "the nature and degree of the accused's connection with a nation and the interest the nation in the subject matter."[154] She claims that by basing jurisdiction on a multiplicity of factors, the best jurisdictional results are reached.

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[150] *Id.* at 493.
[151] *Id.* at 499.
[152] *Id.* at 484.
[153] Robbins, *supra* note 113.
[154] *Id.* at 652.

There are shortcomings to the test, however. Its traditional role has been in the civil law jurisdiction and its application to criminal law in this case would be unique.[155] The major shortcoming to this test is that it could result in the application of criminal laws to parties that would not expect those laws to be applied to them. If a state were to determine that it had jurisdiction to try a crime that occurred between two non-citizens then that state's law could suddenly be imposed on a party that was unaware it applied. Furthermore, if a state decided it had "minimum contacts" it could assert jurisdiction over a state that might have more contacts leading to potential friction between the two states. Minimum contacts is effective in the realm of civil law due to the sparse diplomatic objections to its exercise. Since the test seeks to determine whether a state has jurisdiction at all and not whether it is the best court to be asserting jurisdiction, in the criminal law arena it would lead to uncertain results causing numerous diplomatic problems.

3. Space Crimes as Piracy

One final proposal was made by C. Wilfred Jenks in his book, *Space Law*. He argues that violent acts in space should be considered as acts of piracy and thus subject to universal jurisdiction. He argues that though piracy was originally a maritime offence, it is not necessarily an exclusively maritime offense.[156] He cites authority that endorses the extension of piracy to the realm of air and other extraterritorial areas to support his thesis.[157]

Piracy might, in the future, be a crime that could occur in the realm of outer space and at that point the extension of universal jurisdiction to such acts would be proper. The extension of universal jurisdiction to "violent acts" in space is a bit far reaching and ill defined. It is the indefiniteness as to what would then constitute a violent act that would constitute piracy

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[155] *Id.* at 654. *See also* McCord, *supra* note 69, who endorses the test for use on the ISS.

[156] C. WILFRED JENKS, SPACE LAW 292 (Stevens & Sons 1965).

[157] *Id.* at 292-93.

that is problematic for Jenks' proposal. Definite laws are desirable and this proposal, while interesting, comes up short in addressing the complexities of criminal law and the competing interests that states retain in its application.

B. Proposed Space Visa

It is not argued that states are powerless to control people in the bounds of outer space, instead that the framework for this control is currently absent. At best there is a patchwork of jurisdiction with numerous holes. While a seamless jurisdictional regime is distant at best, a uniform international system for dealing with jurisdictional issues is not an impossibility.

As is often recognized, definite rules and regulations can help to encourage private sector investors. The nebulous nature of exactly what jurisdiction applies in space could be seen as a restraint of obstacle to private investors who would like to invest in space explorations. Also, knowing what law applies, to whom, and where would be highly beneficial for private citizens who enter space. While such determinations can be made quite easily within the confines of a registered space object, the jurisdictional lacunae will cause problems. This is particularly true when it comes to moon exploration where there will be a significantly higher likelihood of two people meeting in a non-space object context. Furthermore, the "function of State Jurisdiction in outer space, as elsewhere, is to maintain legal order and stability. The growing importance of rules governing the exercise of state jurisdiction over space activities parallels the development of the exploitation of outer space."[158] Currently, order is only present on board space objects, and while this has yet to actually create a problem, it would be advisable to be prepared for such a problem when it occurs rather than be caught unawares. The absence of jurisdictional rules compounded by emerging private interests in space creates a "great urgency for a national legal authority in space to be well-defined, comprehensive, and yet flexible enough to accommodate emerging patterns of extra-

[158] CSABAFI, *supra* note 4, at xvii.

terrestrial interaction between nations."[159] The proposed space visa fulfills the three requirements for criminal jurisdiction and it helps to supplement civil jurisdiction by creating at least one state with sufficient contacts to an individual in space.

The space visa is apt for a variety of reasons. While it could be titled a license or permit, the analogy of the visa is particularly appropriate due to the emerging focus on space tourism and the existing parallels between space tourism and terrestrial tourism. The visa is used to control the flow of peoples over international boundaries and airports often serve as the border area in which passports and visas are presented. A spaceport will serve the same functions as an airport and it, similarly, should also be treated as a boundary area for people passing into space, thus the space visa will fits neatly into an preexisting and internationally accepted regime. The space visa itself would function in the same way that a terrestrial visa functions. It would be granted by a state and affixed in a traveler's passport. It would then be stamped upon exit to and re-entry from space by a border control agent. Each state could implement its own visa system and accompanying set of conditions, and could extend the visa to any class of people that they deemed fit (including foreigners). The criminal and civil codes of a nation would be applicable to the visa holder at all times while in space. This creates a situation in which no one would be able to enter a jurisdictional lacunae, because there would constantly be a jurisdictional authority to which that person had subjugated himself.

State control over citizens is a desirable element of space exploration, but this control cannot be linked to the appropriation of any territory of outer space. Therefore, it is necessary to develop "special rules governing the exercise of jurisdiction in outer space."[160] It is proposed that a space visa should be developed, which a person must obtain before entering outer space. While numerous countries already employ licensing schemes, they are intended to deal more with commercial liability than

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[159] Robbins, *supra* note 113, at 653.

[160] CSABAFI, *supra* note 4, at 52.

with jurisdictional matters and often come at a high cost.[161] Visas, on the other hand, are "government-issued travel documents that grant foreigners the right to travel to and enter" another territory.[162] The space visa would allow an individual to submit to a particular domestic law regime. This would be the controlling law on the person throughout the outer space journey (except, of course, when on board a properly registered space object which would retain its jurisdiction as granted by the OST). Additionally, it would allow states to fulfill their duties to supervise non-governmental entities in space as required under the OST.[163] State responsibility promotes "responsible state regimes" that can be "expressed and manifested by domestic licensing or other authorization mechanisms."[164] A space visa, therefore, would be a valid use of state power to implement a responsible regime in order to supervise private actors in space.

The space visa, which could be attached to a passport (much like any terrestrial visa), would have numerous advantages. One of the largest would be its relative ease of implementation. It is reasonable to assume that "control over space will not, in the foreseeable future, be relinquished by sovereign nations to an international authority."[165] Due to the lack of a central legislative body in the realm of international law, lawmaking can be a long process. An international code of conduct for outer space could be quite long in the making, because states' interests in such a code would be substantial. However, a visa scheme might be readily accepted by the states as it would allow them to extend their domestic laws over an easily identifiable class of persons in space. The protection of states' sovereign interests is paramount in setting up such a scheme. As seen with the Moon

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[161] *See* Swedish Act on Space Activities (SASA 1982:963). The Swedish code restricts Swedish Nationals from carrying on Space Activities from outside Sweden without a license, and the penalty is penal. The Swedish regime is closer to that suggested here than others, it however lacks any language extending its jurisdiction *en banc* over its licensees. *Id.*

[162] Bryan Paul Christian, *Visa Policy, Inspection, and Exit Controls: Transatlantic Perspectives on Migration Management,* 14 GEO. IMMIGR. L.J. 215 (1999-2000).

[163] OST, *supra* note 3, art. 6.

[164] Tennen, *supra* note 91, at 342-43.

[165] Robbins, *supra* note 113, at 653.

Treaty, states will shy away from treaties that they feel do not protect their interests.[166] The space visa would protect states' interests, because it would only be an addition to an already working and accepted international system. Because "each visa system must be viewed as a product of its distinct national configuration, and not as superior or inferior to another,"[167] states would each have the power to craft the space visa into the sort of document that it deems best protects it and those traveling under that regime.

The passport regime in the international arena helps to "facilitate people's movements."[168] It also does much more than this, though; it also "ensures that their bearers may avail themselves of the protections that state may provide."[169] The space visa would allow a traveler to avail himself to the protection of the issuing state. In exchange for this protection, the traveler submits to the "control function" of the modern passport.[170] The control element that states gain through the issuing of passports is exactly the element that preserves their sovereign interests in a space visa regime. Not only do they grant permission to enter the territory of space, but they are able to extend their control over individuals there. A state can, as with a terrestrial visa, choose whether it will grant it to a particular person or not. This determination is made under the domestic laws of that nation and is not a matter of international control. Persons have "increasingly come to be seen as lacking any *prima facia* claim to access to the territory of a state other than their own."[171] By the same reasoning it could be claimed that a person would lack any claim to accessing the territory of space. While it is considered the "province of all mankind,"[172] it is defined in such a manner by states in order to preserve state interests, and

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[166] STATUS, *supra* note 10.

[167] Christian, *supra* note 162, at 216.

[168] JOHN TORPEY, *The Great War and the Birth of the Modern Passport System*, *in* DOCUMENTING INDIVIDUAL IDENTITY: THE DEVELOPMENT OF STATE PRACTICES IN THE MODERN WORLD 257 (Princeton University Press 2001).

[169] *Id.*

[170] *Id.*

[171] *Id.* at 269.

[172] OST, *supra* note 3, at art. 1.

not to preserve individual citizen's specific claims to access.[173] It would seem counter productive for a state to massively restrict its citizens' access outer space, but many states do severely restrict the rights of their citizens to leave the states' territories, and "[p]assports are the primary document that states use to regulate the permeability of their borders."[174] Also, due to state responsibility for non-governmental actors imposed by the space treaties, states would have definite interests in restricting, for example, convicted felons from entry into outer space. Since "[m]ovement is strictly determined as legitimate or illegitimate at the will of the sovereign state," then it can only be concluded that this includes movement into international territories such as space.[175] "Subjects of a state cannot automatically assume that they have the right to travel abroad, a situation both manifested and exacerbated by the fact that most states now require passports for departure from their domains."[176] However, a passport is not the only requirement for some countries. Many nations "insist that the international voyager acquire an exit visa as evidence of the state's acquiescence in the traveler's . . . departure."[177] The space visa would also function as an exit visa in which the state would acquiesce to the traveler's departure in return for the traveler's acquiescence to the states jurisdiction over his or her acts while in the territory of space.

Passports serve to "connect the individual to the realm of the international."[178] It is this connection that makes the passport (and visa's placed therein) the natural vehicle for initial jurisdictional controls in outer space in lieu of territorial jurisdiction. A space visa would further the notion that the passport "connects the individual to international law through the sovereign state."[179] It has been argued that jurisdiction is the "distri-

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[173] *See id.* at art. 6.

[174] SALTER, *supra* note 47, at 2.

[175] *Id.* at 7.

[176] John Torpey, *Coming and Going: On the State Monopolization of the 'Legitimate Means of Movement*, SOC. THEORY, at 239, 251 (Nov. 1998).

[177] *Id.* It should be noted that Torpey sees this as a state monopolization over its citizens' movements, and he views it in less than favorable light. *Id.*

[178] SALTER, *supra* note 47, at 1.

[179] *Id.* at 4.

bution of *authority* (as distinguished from power) among different legal institutions and separate political entities."[180] If states were to use space visas authority to prosecute and oversee would be distributed amongst the states. This is particularly important in the arena of space where the spacial boundaries that usually demarcate these distributions are absent. Additionally, by making this distribution horizontally among the states it is likely that a "more rational delimitation of jurisdiction will result" than by attempting to "centralize authority."[181]

Also, this arrangement would allow passengers to enter outer space with a reasonable certainty of the law that could be exerted over them and actually allows that person to submit to that code. When a citizen enters the territory of a different state he or she must "relinquish the rights that her home country grants when she petitions" to enter the foreign state.[182] In essence this traveler has "subjugated those rights to the sovereign whose territory she is entering."[183] Space lacks territorial control except in the case of properly registered space objects. A space visa would allow the traveler to subjugate her rights to a sovereign on a personal jurisdiction level, because a visa can come with "attendant benefits" which could include the benefits of jurisdiction.[184] The result is that the state has extended its control over a person in outer space without violating the OST's ban on claims of jurisdiction over regions of space, and the individual involved has voluntarily submitted to the personal jurisdiction of the state granting the visa.

It should be noted that the space visa system would not eclipse customary international law rules or treaty rules, instead it allows a state to have primary jurisdiction. In the same way Article 8 of the OST does not create "exclusive" jurisdic-

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[180] RICHARD A. FALK, THE ROLE OF DOMESTIC COURTS IN THE INTERNATIONAL LEGAL ORDER 21 (Syracuse University Press 1964).

[181] *Id.* at 22. Horizontal order, according to Falk, is like that among the states and is non-hierarchical. Vertical order on the hand is like that between a federal government and the states below it, which is hierarchical. *Id*.

[182] SALTER, *supra* note 47, at 128.

[183] *Id.*

[184] Christian, *supra* note 162, at 215.

tion[185] over a space object, a space visa would not create exclusive jurisdiction in the issuer.[186] Other states with an interest could exert jurisdiction under customary or treaty law as they would be able to on earth.

Additionally, this system would allow for flexibility. As space law progresses this is a system that would allow for the easy implementation of an international space code of conduct that could then be applied uniformly to all bearers of space visas (and even include penalties for those who fail to obtain such a visa). Other systems might prematurely limit legal growth in outer space, which could be potentially bad due to the fact that the unknowns of outer space could make for situations that a rigid international treaty would be unable to adapt to due to the slow process of producing international law. This flexibility is desirable, because in the future it could be expected that there will be space colonies, at which point some new way of documentation and legislation will be needed. Instead of being bogged down by an international treaty, the international community will be able to react in an efficient way to ensure that the rule of law continues in space and that there is some sort of body that can exert jurisdiction over malefactors.

Ideally the implementation of such a regime would be a simple treaty, but it could be initiated through a Generally Assembly resolution with sufficient backing. A standard form could be adopted through the ICAO, as has been done with the Machine Readable Passport.[187] It would then be up to individual states to create the domestic legislation that best suits their own needs in the execution of its treaty obligations.

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[185] *See* Gorove, *supra* note 93, at 316-17 ("if the state of registry for some reason did not prosecute, this fact alone should not necessarily bar prosecution by another state on the basis of invoking some other recognized principle of criminal jurisdiction.").

[186] For example, Finland would still be able to assert its criminal code on its own nationals regardless of what country's visa the national were to hold.

[187] MRTD - Machine Readable Travel Documents, http://mrtd.icao.int (last viewed June 19, 2006). The ICAO currently adopts the specifications for the internationally interpretable passport.

VII. CONCLUSION

While a space visa might not solve every jurisdictional problem that could occur in outer space, it could certainly help clarify the subject. The realm of outer space is an uncertain area; however, exploration of it will be fostered by certainty of the law that applies. A space visa helps to cure this ill, by providing a primary body of law that the holder can depend on - not only to punish him, but also to protect him. Additionally, the space visa would lend more certainty to civil law jurisdiction by creating a situation where there is at least one definite forum with a connection to a space defendant. Finally, the space visa would create a uniform, yet flexible, state of law, able adapt itself to the ever changing situations in outer space that comes with mankind's increasing presence there. Law has preceded the nations into space. It is now time for it to (as Andrew Haley declared) precede man into space.