

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Moon and Mars Settlement: Open Legal Issues (2)

Author: Prof. Fumiko Masuda
Okayama University, Japan, fumiko.masuda@okayama-u.ac.jp

‘JURISDICTION AND CONTROL’ OVER SPACE PRODUCTS IN THE AGE OF MOON AND MARS
SETTLEMENT: AN ANALYSIS FROM A PRIVATE LAW PERSPECTIVE**Abstract**

Settlement to the Moon and the Mars would entail prevalence of transactions among settlers and/or service providers based on the Earth or other celestial bodies. While business transactions on the Earth hinge on proprietary rights over assets, effects of which usually depend on *lex rei sitae*, in the current international space law, the unique legal principles apply not only to the appropriation of celestial bodies (Article II of the Outer Space Treaty (OST)) but also to the ownerships of objects launched into outer space (Article VIII of the OST). This paper aims to examine how the idea that responsible States should have ‘jurisdiction and control’ over human-made products in space would affect future possible transactions in the course of settlement from a private law perspective. Particular attention will be paid to Article 6 of the Building Blocks for the Development of an International Framework on Space Resources Activities adopted by the Hague International Space Resources Governance Working Group on 12 November 2019 since the Building Blocks are the only and most recent instrument addressing *in situ* activities in outer space.

Firstly, it is discussed how the rationale for the *lex rei sitae* principle established in private international law can be reconstructed in the context of outer space, considering the uniqueness of outer space itself and the law of outer space. Then, the reconstructed model will be examined, applied to the process of settlement divided into three stages: (i) preparation for the settlement mainly on or near the Earth, (ii) building a colony on the Moon or the Mars, and (iii) settling down. The analysis will show whether and to what extent the idea of attributing ‘jurisdiction and control’ over products in space to responsible States would facilitate or, conversely, hinder transactions in the course of such settlement, revealing tension with the non-appropriation principle. The result of analysis will differ depending on whether such settlement would be led by States on the basis of international collaborative agreements, or private firms would take initiative. This paper ultimately seeks to suggest possible different approaches to the issues of (quasi-) proprietary rights in outer space, in the light of lessons from the attempts to enhance predictability and certainty of international business transactions through private international law and uniform law instruments.