

Criminal Responsibility for Crimes Committed in Space: Contemporary Challenges and Looking to the Future

Larysa Soroka

Doctor of Law, Professor, Scientific Institute of Public Law (Kyiv, Ukraine)

E-mail: lsoroka_kw@ukr.net

<https://orcid.org/0000-0002-6979-6049>

Soroka, Larysa (2022) Criminal Responsibility for Crimes Committed in Space: Contemporary Challenges and Looking to the Future. *Advanced Space Law*, Volume 10, 73-75. <https://doi.org/10.29202/asl/10/8>

Received: 15 December 2022 / Accepted: 28 December 2022 / Published: 30 December 2022

Crime as a criminal phenomenon, social phenomenon and socially dangerous act has existed since ancient times. This is evidenced by both archaeological finds and Bible texts. Neither education nor technological advances in human nature have changed anything. And although the issues of criminal liability in the field of space activities may not be very relevant now, this situation can change at any time. After all, more than 50 countries of the world are actively exploring space.

That is why we should already be prepared for such events. Moreover, there is already a precedent. Thus, in 2019, it was reported that NASA was investigating a case that may be the first crime in space. Astronaut Ann McClain was accused of committing a crime using the Internet while on board the International Space Station. McClain's ex-wife, Summer Warden, accused the NASA astronaut of illegally accessing her bank accounts while being in orbit around the Earth.

This raises the question: What criminal law, if any, can be applied in the commission of a crime in outer space? How will jurisdiction issues be resolved?

All legal obligations related to space activities were created more than 60 years ago. The 1967 treaty on the principles of states' activities in the exploration and use of outer space, including the Moon and other celestial bodies, also called the space Constitution, established guidelines for peaceful space exploration. Article VIII states that "A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer

© Soroka, Larysa, 2022

space or on a celestial body.” However, it does not matter whether this object is publicly owned or privately owned.

Thus, this document regulates the issue of jurisdiction over registered and launched objects into space and its own personnel. However, as for criminal jurisdiction when committing a crime outside the territory of registered space objects, this document does not establish.

The first attempt to settle the issue of criminal jurisdiction was during the implementation of the ISS project, because the station is still the only long-term environment for people to stay outside the Earth. And it is clear that by sending their researchers there, countries needed to agree on how to resolve disputes in the event of their occurrence.

In 1998, the parties involved in the ISS signed the international treaty called the Intergovernmental Agreement (IGA) on Space Station Cooperation, which granted them criminal jurisdiction, but again, as in the above-mentioned space agreement, only over their own citizens during their stay on the station. Simply put: the ISS is subject to the national laws of each country, as well as if their citizens commit a criminal offense, but during their stay in a part or module belonging to this country.

And if we assume that the participants in the crime on the ISS were citizens of different countries and they committed the crime not on the territory of the module that belongs to their country. Then how to solve the issue?

In space law, there is the following procedure: if a dispute arises, then consultations are held between Partner States and parties to the conflict. However, these consultations can be held within 90 days. And for an objective investigation of a crime, timely investigative actions are of great importance. Thus, resolving disputes over criminal jurisdiction as a result of a crime committed in outer space through consultations between states is not an option.

Considering these vague provisions of Space Law, potential conflicts can be foreseen.

What happens, for example, when states do not agree on who will administer justice after a crime is committed? What if the state demands the extradition of the criminal, but this request is not fulfilled? Sources of space law do not answer these questions.

Space law sometimes uses by analogy the rules of the law of the sea, as well as the rules governing the jurisdiction of special territories – the Arctic and Antarctic. The starting point is that outer space, like the high seas, is considered either *res communis* or *res nullius* – it belongs to everyone and no one.

So, for example, the United States, when resolving issues of jurisdiction on a spacecraft, from the moment of launch to its landing, applies a provision known as the “Special Maritime and territorial jurisdiction of the United States.” Extraterritorial criminal jurisdiction is used to protect the national interests of the United States and applies only to federal crimes.

Therefore, we can assume that if a US astronaut was attacked and harmed during a spaceflight, or if a member of the staff of another country was distributing drugs while on a US spacecraft, then this special type of jurisdiction would work.

But suppose that a space hotel is built by a company in one country, operated by a company in another, launched in a third state – which of them will have jurisdiction over theft committed on the territory of such a hotel by representatives of different countries? Taking into account that various private space companies in 2021 alone, more than 20 individuals have already flown into space on four different spacecrafts.

As we noted above, governments are responsible for what their commercial companies and private organizations do in space. That is, we are talking about the responsibility of states and legal entities, but in criminal law it is possible to bring to justice only a specific individual whose actions contain elements of a crime, as well as proven his guilt.

If we turn to international law, it, as in criminal law, has the principle of personal criminal responsibility. The principle of personal criminal responsibility is enshrined in the Fourth Geneva Convention, as well as directly foreseen in several military statutes and guidelines. This is one of the basic norms of most, if not all, national legal systems. But again, as in the case of the “Special Maritime and territorial jurisdiction of the United States,” the application of this principle has limitations. It applies only if an individual commits a war crime, a crime against humanity or genocide, and the responsibility for these crimes is in the relevant national legislation.

But most tourists are unlikely to be terrorists or war criminals. It will be necessary to solve more banal and not serious crimes: petty theft, fraud, and economic crimes that will be committed by citizens of different countries.

And if we add to the certain problems the problems of legal regulation of the use and application of artificial intelligence in space activities, the issues of liability in general and criminal liability, in particular, are taking on a new meaning. After all, it is not clear if a program with artificial intelligence, created for protection, neutralizes a space object whose actions are accidentally mistaken for danger. In this case, will AI be the tool, means, or subject of a crime?

Institutional changes are needed to address the above issues. The UN and its structures are not keeping up with the changes that are taking place in the context of the rapid commercialization of space activities. The establishment of the space Court, the global space administrator (e.g., the International Space Union, similar to the International Telecommunication Union) and the Space Police will help to resolve the issue of criminal jurisdiction in the commission of crimes in space.

To do this, it is necessary to conclude a convention on criminal liability for space crimes or create a space criminal statute (code) and not follow the path of making changes to national legislation.

So, let's restore order on Earth and start building a new future for us in the Universe.