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IISL Young Scholars session and Dr. Jasentuliyana Keynote lecture by a leading space law expert (1)

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INTERNATIONAL SPACE CRIMES – SOLVING THE JURISDICTION VACUUM

Abstract

In August 2019, astronaut Anne McClain was accused of accessing her spouse's bank account while on a mission aboard the International Space Station. Though McClain was subsequently cleared of any wrongdoing, the incident highlights the vacuum in the legal regime concerning jurisdiction over crimes committed in space. With the commercialisation of space activities coupled with its ongoing militarisation, the commission of international crimes is not simply in the realm of imagination and related jurisdictional issues must be addressed.

Currently, only the inter-governmental agreement on the International Space Station makes an express provision for the exercise of criminal jurisdiction in accordance with the nationality principle (Article 22). Tangentially, Article VIII of the Outer Space Treaty also provides for a State being able to retain jurisdiction over "any personnel" aboard a space object. However, these provisions still leave unanswered the question of exercising jurisdiction in relation to space flights not on board the International Space Station or the exercise of jurisdiction over space tourists.

Therefore, a coherent theory of exercising criminal jurisdiction in space must include universal jurisdiction. The foundation such an extension is based on the nature of space. Since the advent of space law, outer space has been considered *res communis omnium* or a thing of the entire community. Thus, Article I of the Outer Space Treaty establishes that the exploration and use of outer space as a whole, "shall be the province of all mankind". Article II supplements this by unequivocally affirming that space is "not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means (emphasis supplied). Therefore, international space law establishes space as an extra-jurisdictional territory. Accordingly, the exercise of criminal jurisdiction is intrinsically linked to the exercise of sovereign power by States and would fall foul of the principles of space law if applied generally.

An accurate comparator for the exercise of criminal jurisdiction in space is elucidated by reference to another zone *res communis* – the high seas. The hybrid approach of prosecution of crimes on the high seas provides an ideal reconciliation of space law. As such, with respect to crimes committed aboard space objects, the State of registration would be able to retain jurisdiction but with respect to international crimes, every State should be able to exercise universal jurisdiction. This structure would reinforce the idea of space as the common heritage of mankind.