

- CRIMINAL LAW IN SPACE

Any investigation into the application of criminal law to activities in space must address two interrelated questions: "What body of criminal law is to be applied?"; and "How are the relevant laws to be enforced?"

A. Jurisdiction and Control

The simple answer to the first question is: "Whatever nation has jurisdiction and control over the space object. " As discussed in detail above, questions of jurisdiction are not easily resolved without first knowing how the space station is to be owned and registered. If some type of shared jurisdiction and control scheme is used, and if more than one nationality is represented in the crew, it is possible that there would be more than one body of criminal law that could be applied. In that case, the nations involved might wish to agree in advance to adopt one nation's laws, a special criminal code composed of the laws of several nations, or a special set of "conflict of law" rules for applying different national laws in different situations.

It is also important to remember that jurisdiction can be based on more than ownership and registration. In principle, all a nation need do is establish a genuine link between itself and the persons, property, or events over which jurisdiction is claimed. As a result, should a French astronaut assault a German astronaut on a U.S. space station, both the French and German courts, relying on the nationality principle, and the U.S. courts, relying on the territorial principle, might claim that they had the right to exercise criminal jurisdiction over the French astronaut who committed the crime.

In light of these difficulties, it might be desirable to simply negotiate an agreement in advance of occupying the space station. Negotiated agreements have been used effectively to govern the activities of diplomats and soldiers stationed in foreign lands. Since article II of the Registration Convention allows nations to enter into separate agreements with respect to jurisdiction and control over space objects and personnel, this might be an effective way to manage criminal actions in space, at least with respect to the first space stations. In the past, three basic options have been used:

o Complete Immunity From Prosecution - Assuming that one nation's laws are chosen to govern the space station, other nations might wish to protect their space station astronauts with immunities similar to those enjoyed by diplomats. Under such a scenario, the individual governments would be responsible⁸² for the good conduct of their citizens but individual

citizens could not be charged for civil or criminal offenses committed while on the space station. Astronauts on board the spacecraft of another nation would, then, have the status of diplomats in a foreign land.

o Limited Immunity - If complete immunity were judged undesirable, nations might wish to negotiate more limited agreements. For example, individuals might be liable for actions not accomplished as part of their "official duty." Alternatively, individuals might be liable for civil wrongs but immune to criminal prosecution.

o Negotiated General Agreement - The nations of the North Atlantic Treaty Organization (NATO) have developed a complex set of agreements (Status of Forces Agreements) to govern questions of jurisdiction and control with respect to NATO troops stationed in the respective countries. These agreements grant the host countries exclusive jurisdiction over some offenses and grant concurrent jurisdiction over others. Where concurrent jurisdiction exists, one nation may be given primary jurisdiction which may be waived, at its discretion, in favor of some other nation. Such negotiated agreements would be useful whether jurisdiction and control of the space station were held by one nation, several nations, or whether nations retained control over individual modules.

B. Ability to Enforce Criminal Laws

It is important to remember that a state having the jurisdiction to prescribe a rule of law may not, in all cases, have jurisdiction to enforce that rule. In the Case of the S. S. *Lotus*,⁸³ a French merchant vessel struck a Turkish vessel on the high seas killing a number of Turkish nationals. When the French vessel landed in a Turkish port, a French officer was tried and convicted for manslaughter under a Turkish law attaching criminal penalties to collision on the high seas.⁸⁴ The Permanent Court of International Justice held that the Turkish vessel was like Turkish soil; therefore, Turkey had the jurisdiction to **prescribe** the criminal laws which had been applied to the French officer. Because the French officer later landed on Turkish soil, Turkey had the jurisdiction to **enforce** the laws in question. Had the French ship not landed in a Turkish port, this would not have affected the right of the Turkish Government to prescribe the rule in question but it would have

⁸² Such "responsibility" might or might not include financial "liability" for actions committed aboard a space station.

⁸³ P.C.I.J., ser. A, No. 10 (1927); [1927-1928] Ann. Dig. 153 (No. 98),

⁸⁴ While the offense of manslaughter occurred on the high seas, the Turkish law was much broader, encompassing any offense 'abroad' against Turkey or a Turkish national. The Turkish law reflected an acceptance of the passive personality principle (discussed above, note 38). This principle is not recognized by the United States except in extraordinary cases such as terrorism.

altered its ability to enforce that rule.

Although the decision in the *Lotus* case is no longer a valid precedent in maritime law,⁸⁵ it does serve to highlight several important space station issues. For example, suppose the United States and Great Britain jointly own a space station but maintain jurisdiction and control over their separate space modules. Now, further suppose that a British astronaut assaults a U.S. astronaut while the U.S. astronaut is in the British module. There is no doubt that the United States would have the jurisdiction to pass laws prohibiting such conduct; whether the United States would have the jurisdiction to enforce such rules would depend on whether it had some prior agreement with the British Government. Lacking an agreement with the British Government, the United States would not have jurisdiction to enforce these laws in the parts of the space station under British jurisdiction and control.

C. U.S. Criminal Law in Space

Initially, NASA regulations were the primary means by which U.S. law was extended into space. The authority to develop these regulations was granted to the Administrator in the 1958 NAS Act. As currently written, these regulations grant the shuttle commander broad authority over U.S. and foreign crew members to enforce order and discipline during space shuttle flights.⁸⁷ In 1976, NASA's administrative regulations were strengthened by

85 Article XI of the "Convention on the High Seas," Apr. 29, 1958 (13 U.S.T. 2312; T.I.A.S. 5200) states:

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag state or of the state of which such person is a national.

See also: 1982 United Nations Convention on the Law of the Sea, article 97.

86 Section 203 (c) states: "... the Administrator is authorized. . .to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of [NASA'S] operations and the exercise of the powers vested in it by law"; (42 U.S.C. 2473).

87 14 C.F.R. 1214 702 (1972) states:

2. (a) During all phases of an STS flight, the STS commander shall have the absolute authority to take whatever action is in his/her discretion necessary to (1) enforce order and discipline, (2) provide for the safety and well being of all personnel on board, and (3) provide for the protection of the STS elements and. . .payload. . .The commander shall have authority throughout the flight to use any reasonable and necessary means including the use of physical force, to achieve this end.

(b) The authority of the commander extends to any and all personnel on board the Orbiter including Federal officers and employees and all

the introduction of criminal sanctions, which stated:

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the [NASA] Administrator. . . shall be fined not more than \$5,000, or imprisoned not more than one year, or both.⁸⁸

NASA regulations and their related criminal sanctions were sufficient to maintain order when the only people in space were highly trained and disciplined NASA astronauts carrying out closely supervised tasks. Congress, looking forward to a time when large numbers of men and women would work in space for long periods of time in a relatively unstructured environment, amended the United States code in 1981 to include U.S. space vehicles within the "special maritime and territorial jurisdiction"⁸⁹ of the United States. The inclusion of U.S. space vehicles within this special jurisdiction meant that, in addition to NASA regulations, a range of more common criminal offenses would be applicable to people living and working in space.^{90 91}

other persons whether or not they are U.S. nationals.

For another look at the role of the space station commander, see: Scott F. March, "Authority of the Space Station Commander: The Need for Delegation, " *Glendale Law Review*, vol. 6, No. 1, 1984.

88 18 U.S.C. 799.

89 The "special maritime and territorial jurisdiction" is discussed above, p. 27.

90 U.S. military personnel will also be subject to the jurisdiction of the Uniform Code of Military Justice (10 U.S.C. 805 (1976)) which applies "in all places."

91 As a result of the 1981 amendment, the following activities, if conducted in space, would be regarded as Federal crimes: arson (18 U.S.C. 81), assault (18 U.S.C. 113), maiming (18 U.S.C. 114), embezzlement and theft (18 U.S.C. 661), receiving stolen property (18 U.S.C. 662), false pretenses (18 U.S.C. 1025), murder (18 U.S.C. 1111), manslaughter (18 U.S.C. 1112), attempted murder or manslaughter (18 U.S.C. 1113), malicious mischief (18 U.S.C. 1363), rape (18 U.S.C. 2031), and robbery (18 U.S.C. 2111).