



CRIMES IN AND FROM OUTER SPACE: SOME JURISDICTIONAL ISSUES

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Media has recently reported a case of crime committed by an astronaut (Anne McClain) in and from outer space. This is the first of its kind and a relatively simple case. In the future, however, far more serious and complicated crime scenarios may occur in space which would pose a lot of imponderables and uncertainties that may need to be handled and adjudicated with solemn objectivity and high legal acumen. This raises many issues for discussion, including those related to legal jurisdiction for such a crime.

The reported case (TOI, August 24, 2019) relates to a NASA astronaut posted at ISS and working in American quarters there. The astronaut had been fighting a separation and parenting dispute in the US prior to flight to the ISS. In order to obtain more details about the finances of the estranged spouse, (Summer Worden) without permission, the astronaut accessed the bank account with the intention to gain benefit in legal settlement. Thus, the

astronaut made an unauthorised use of NASA computers to gain illegal access to the bank's computer system solely for personal benefit. The astronaut is now back on Earth. The spouse has alleged an identity theft and improper access to private financial records.

In order to analyse and determine jurisdiction, the wrongdoing must first be tested on the dichotomy of international Law and domestic laws. 'Internationally wrongful acts' are those that violate a substantive provision of an international treaty or Convention and may thus be try-able under International Courts like the International Court of Justice, the International Criminal Court or an International Tribunal. This situation does not seem applicable in this case as no such violation of international law has taken place.

Further, Outer Space Treaty (1967), (hereafter referred to as OST), as per its Article VIII permits national "jurisdiction and control over personnel" whether "in space or on a

celestial body or by their return to the Earth.” It thus permits that an astronaut is governed by the nationality criterion, as also the principle of permanent national jurisdiction over objects and personnel launched into outer space. Another international instrument, namely, Agreement on the Rescue and Return of Astronauts also adduces support to the nationality principle and, in such cases, leads to the offender being subject to the jurisdiction of domestic courts.

Hence, in the case under consideration, no infringement of any international instrument seems to have occurred; and the provision of permanent jurisdiction under the OST also supports the stated position. Therefore, international trial is not mandated. Accordingly, the trial venue rightfully shifts to domestic jurisdiction of the US Courts under the principles of nationality of the US astronaut; the principle of territoriality due to the US quarters of ISS being deemed US territory; and the relevance of subject matter requiring intervention by the US courts. Ergo, the domestic jurisdiction of the appropriate US courts under the germane law becomes applicable and legitimate.

The alleged act of misfeasance reveals *mens-rea*, it was a voluntarily done and was intended to benefit the wrongdoer which establishes *prima facie* culpability. Thus the apparent criminality may be held try-able through due process of law. This actual case of crime is simple and relates to only one state on all salient parameters. But the situation may not

always be so simplistic in nationality or territoriality or the subject matter of offence. Future crimes in space may be far varied and more complex and national courts may find it difficult to seize jurisdiction of the cases so easily.

Many more complications are imaginable on the international and domestic scenes. Looking ahead, moot courts have evolved narratives with scenarios much more complex and intertwined with international implications and national compulsions. Permutations and combination can be imagined. For example, one can visualise a scenario of human rights violations in space and on celestial bodies where in case of an accident or an emergency or in distress, space powers stationed nearby or on the same celestial body, refuse to provide shelter or emergency aid or evacuation facilities as mandated under the OST and R&RA. Such incidents of denial or discrimination would tantamount to torture of the affected under the Geneva Convention and its protocols and hence punishable under International Humanitarian Law in International Courts. Indeed, the issue of crime in and from space is going to exercise the human mind more and more as human presence in outer space increases in the coming years.

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