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TRYING TO FIT A SQUARE PEG INTO A ROUND HOLE? APPLYING AIR LAW TO MANNED
COMMERCIAL SPACEFLIGHT – THE CASE STUDY OF CURAÇAO

Abstract

In the discussions on the best way to regulate incumbent manned commercial spaceflight it has been proposed often and in various manners that applying air law to these flights would be the best approach, or at least offer the most advantageous starting point. The vehicles so far being developed for sub-orbital spaceflight generally would, could or at least should qualify as aircraft, their flight profile takes them ‘above’ air space for only a brief part of their trip without much of a relation to ‘classical’ space activities, and aviation has a longstanding tradition of regulating private commercial flights. In all those cases, however, little if any detailed attention had been paid to investigating in detail what it would actually mean, to (try to) apply existing air law and ensuing regulations to this new endeavour. The present paper represents a first effort to fill that gap, using Curaçao – an outlying part of the Netherlands and so far still the focus of one of the leading efforts to establish manned commercial spaceflight operations on a regular basis, by the locally-incorporated Space Expedition Curaçao (SXC) intending to use wet-leased Lynx vehicles from US-developer and -manufacturer XCOR – as a case study. Thus, the paper will first summarise the current stage of developing manned commercial spaceflight as well as the relevant debate so far, by way of general and broad introduction into the topic. Secondly, it will outline the relevant elements of safety regulation of aviation as per the international regime developed on the basis of the Chicago Convention, its Annexes and the ensuing competences of the International Civil Aviation Organisation (ICAO). Thirdly, then, it will assess the manner in which in Curaçao the resulting international obligations of the Netherlands have been implemented by way of ‘regional’ aviation regulations, in order to finally discuss its potential application, or applicability, to manned commercial spaceflight.