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The ISS IGA: Lessons learned and looking to the future (3)

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CRIMINAL JURISDICTION IN INTERNATIONAL SPACE LAW: FUTURE CHALLENGES IN VIEW
OF THE ISS IGA

Abstract

Traditional international space law attributes the right to exercise jurisdiction over the space object to the State of registry, according to Art. VIII of the Outer Space Treaty. This enables the application of the so-called “quasi-territorial” jurisdiction. However, for the first truly multinational space project so far undertaken, the International Space Station (ISS), a different rule was chosen: the active nationality principle, whereby jurisdiction over crimes committed aboard the ISS is conferred to the national State of the alleged offender (Article 22 (1) of the Intergovernmental Agreement, IGA). In addition, Art. 22 (2) IGA lays down, under certain restrictions, the passive nationality principle, i.e. jurisdiction according to the nationality of the victim. The ISS IGA was thus the first international instrument to establish concrete rules on international criminal jurisdiction. Coupled with criminal jurisdiction are two additional issues that have also been addressed by the IGA, i.e. extradition and the commander’s disciplinary authority on board. In the future, legal challenges arise from mainly two kinds of international space missions: private orbital stations and interplanetary missions. The present paper explores whether the IGA rules on jurisdiction, extradition and disciplinary authority should apply to each one of these missions. It is submitted that private space endeavours should be subject to the criminal jurisdiction of the State of registry, which would also be competent to establish the disciplinary authority on board. However, since multinational interplanetary missions will be conducted mainly by States, rules more similar to the IGA could apply. If the exploration spacecraft does not consist of different modules, which is most likely, then the most appropriate solution would be the active nationality principle combined with rules on extradition. The commander’s disciplinary authority could be established through a special agreement of the Partner States.