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THE APPRECIATION OF THE JURISDICTION OF CRIMES COMMITTED DURING COMMERCIAL SPACE FLIGHTS

The author examines the jurisdictional dilemma of determining the appropriate approach to be applied to a crime that could potentially be committed during a space flight with tourists on board by assessing the place of commission of the crime. In addition, the study is based on comparisons under such sources of international law as the Outer Space Treaty (OST) and the Antarctic Treaty (AT). Based on the analysis of certain articles of these documents, the authors propose to regulate commercial space flights by the example of distinguishing the “tourist element”. This approach is based on the fact that Article 8 of the Antarctic Treaty specifically refers to the tourist as a subject of liability and that a person with tourist purposes is protected by national law. Therefore, for the proper international regulation of space tourism and improvement of the Outer Space Treaty, it is recommended to legitimise tourist purposes and to distinguish the status of non-astronaut tourists in order to establish liability for certain criminal acts.

To support these initiatives, two cases are cited as examples: that of astronaut Ann McClain and Dr. Rodney David Marks. Thus, the first case emphasises the restricted applicability of criminal jurisdiction on the international space station, which is usually decided by the law of the country of a person’s nationality. The second case demonstrates that although the Antarctic Treaty can serve as an example for regulating space tourism, the jurisdictional battles between states on the territory of the site of an incident with a criminal element have undermined its effectiveness. Consequently, the authors conclude that it is necessary to introduce specific international rules to regulate commercial space flights, where the aspect of jurisdiction in the investigation of a crime committed by a non-astronaut tourist should be of paramount importance.

It is specified that each partner of a space flight, both the state (in the case of public interests) and/or certain flight authorities operating under the auspices of a particular country, and a space company and/or a provider of relevant services (in the case of private interests), must register a commercial space flight and its structural objects as flight elements.

In this case, each of these partners retains jurisdiction and control over the registered components.

Key words: *space tourism, non-astronaut tourist, outer space jurisdiction, astronaut Ann McClain, scientist Rodney David Marks, Outer Space Treaty, Antarctic Treaty.*

Original article

INTRODUCTION. The rapid development of interest and investment in space tourism in the last two decades has created its own trajectory that introduces a new dimension to conventional notions of sustainability and how this might be applied or interpreted to the space industry, space-related tourism, and tourism as a whole (Scott, 2022, p. 2243). Daria Bulgakova’s survey, the EARTH-SPACE-EARTH TRIP Questionnaire (ESE Q) (Bulgakova, 2020, p. 123), highlights the

awareness among the overall population and the urgent need for international rules to govern commercial space flights. The survey revealed that over half of the respondents across six geographical regions showed the demand for the phenomenon of space travel, as evidenced by their affirmative responses to ESE Q “Do you know that it’s possible to buy a “TRIP INTO SPACE”?” The highest rates were found in Europe, North America, South America, and Australia

while the lowest rates were recorded in Africa and Asia. Notably, South America respondents had a 100 percent positive response rate. Hence, the public value purchasing tickets for space travel, even despite the lack of astronautic experience, which further emphasizes the urgency of such regulation. Accordingly, the study underscores the need for the development of international legal norms to regulate space tourism, especially considering potential criminal scenarios involving space tourists, and calls for comprehensive legal guidelines for this purpose.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of the article is to resolve the next problem question: How the appreciation of the jurisdictional approach is addressed when a private individual (space tourist, non-astronaut) commits a criminal offense during a human-manned spaceflight (commercial space flight, space tourism)? Regardless, the research target is to explore the raised two approaches (for contrast) in relation to the determination of the jurisdiction based on the (1) scene (location) of the committed crime, and (2) the jurisdictional claim by the state. The research delves into distinct proposals to solve research matters regarding the jurisdiction of crimes committed in various locations such as the International Space Station (ISS), and spacecraft.

METHODOLOGY. The methodology used in writing this article is a literature review. This article depicts several literary works on the matter of state jurisdiction on a questionable territory that has been explored beforehand by scholars such as Mohd Hassan (2015), Gorove (1972), Hans P. Sinha (2004), researchers Ouyangai-hui (2012), Long Jie (2019), and others. It was helpful for the writing process since the review benefits to limit (i) the subject to be revisited, (ii) identify relevant contents and contra-argues, (iii) originate research discussion, (iiii) document the results, and finally (iiiii) distribute the authors' outcome for the publication.

The design of the main content of the article begins with a hypothesizing of the way to solve the issue of state jurisdiction over crimes committed in space and the challenges it poses by citing the results of various scholars who have explored this topic and submitted related arguments. The authors' discussion is based on the proposal of a space crime scheme with further analysis of the legal framework governing jurisdiction and present the results of how it would apply in a particular case. The article applies a comprehensive approach to international legal sources including the Outer Space Treaty (OST) and Antarctic Treaty (AT) system. Throughout the main body, the

authors cite the case of astronaut Ann McClain to support an opinion about the hypothetical analogical scenario of crime during commercial space flight and the limited appreciation of criminal jurisdiction at the ISS. Furthermore, the article refers to evidential material from the National Post of Toronto (Chapman, 2006) about the crime process dispute of the death of Dr. Rodney Marks at the South Pole that still remains without conclusion due to the trouble in an investigation under the uncertainties of states claims between the jurisdiction of the US and New Zealand.

RESULTS AND DISCUSSION. According to the study, there are gaps in the legislation when a crime is committed at a facility registered in several states. The principles governing jurisdiction in criminal cases, including territoriality, protective principle, the impact of territoriality principle, and universality, present controversial issues due to their differing applicability. Gorove's (1972) main argument to resolve jurisdictional appreciation is that criminal justice for offenses committed in outer space should be based on the general principles of criminal jurisdiction, including territoriality, protective or impact territoriality principles, and universality. However, there is a dilemma about the exclusive or competitive competence of countries, despite Article VIII of the Outer Space Treaty stating the applicability of legislation based on country registration. This subject is complicated further by international liability provisions in the Space Treaty since launched objects can be registered by two or more states. Depending on the complexity of the criminal offense, several principles of criminal jurisdiction may apply, leading to potential double liability which is prohibited. This poses a risk in a dual and contradictory approach of the jurisdiction, resulting in consequences of a violation of international human rights law by subjecting an individual to punishment for the same crime twice. Regardless of the minimization of risks and solving of the jurisdictional appreciation problem, the research proposes the solution results and the discussion respectively to the four approaches relevant to the commercial space flight applicability.

a. Approach No.1 Space crime scene in the International Space Station

The authors argue that specific regulations, such as the International Space Station Intergovernmental Agreement (IGA) must be at hand. Notably, IGA Article 5 para 1 stipulates that "[e]ach Partner shall register as space objects the flight element[s]", and as stated in para 2 "[e]ach Partner shall retain jurisdiction and control over the elements it registers in accordance with paragraph 1 above and over personnel in or on the

Space Station who are its national[s]”. Accordingly, this agreement outlines the legal framework governing activities on the station and stands for the application of domestic laws up to the nationality of the person concerned. However, in the authors’ presumption of the presented article, in the case of space tourists’ conceivable crimes, Article 2 of the Outer Space Treaty prohibits states from exerting their power during space activities. Jurisdiction can only be claimed over personnel in exceptional cases where the crime was committed specifically on a launched space entity. It is binding for the jurisdiction determination to recognize the module on the ISS where the crime occurred and under whose jurisdiction it is registered. This obliges establishing the applicable jurisdiction of the country to which the registered jurisdiction belongs.

This article delves into the regulation of the jurisdiction in space crime scenes, taking the example of the access to the bank information on Earth from the International Space Station. Just because it is in space does not mean it is not subject to law (Baker, 2019). Thus, the emphasis is on the limited application of the criminal jurisdiction at the ISS, as exemplified by the only known 2019 case involving NASA astronaut Anne McClain (Ryan, 2019) about the investigation of identity theft coming from accessing private financial records of her estranged spouse during Anne’s time aboard the ISS. The accusations against McClain were investigated by Michael Mataya, an investigator specializing in criminal cases in NASA’s Office of Inspector General, and another official (Baker, 2019). At the same time, an astronaut denied any wrongdoing. From the authors’ standpoint, applying this situation to the space tourist – a private individual signifies not a government employee – McClain’s actions would likely be subject to the laws of citizenship, any international laws to regulate the activity with criminal elements would be in question. If McClain had been found guilty, the US government would be responsible for any criminal proceedings, as outlined in the Space Station Agreement. Accordingly, the trial venue rightfully shifts to the domestic jurisdiction of the US courts under the citizenship principle of the US astronaut and the principle of territoriality due to the US quarters of ISS being deemed US territory because the astronaut was stationed there (Sachdeva, 2021, p. 229).

The legal framework for criminal offenses in space is still developing, and the jurisdictional issues enclosing private individuals committing crimes during human-manned spaceflights are in largely ought to be considered carefully as commercial space tourism and exploration become

more common. For instance, a Sharia’h’s (2015) study focuses on criminal jurisdiction in the ISS together with the examination of the principles of public international law applicable to outer space. The scholar indicates that the same principles governing jurisdiction on Earth shall also apply in outer space, and states may exercise jurisdiction there. Therefore, in the hypothetical scenario of a private individual committing a criminal offense during a human-manned spaceflight, jurisdictional issues would depend on the legal framework governing the activity of the individual with respect to nationality immunity. The residency of the individuals committing the crime is a factor, as their home country may have jurisdiction over their actions.

b. Approach No.2 Space crime scene in the Spacecraft during the flight

Another proposal is to differentiate a crime scene on the board of the spacecraft. In the authors’ opinion, the jurisdictional appreciation to process a crime would be subject to the laws of the country that owns the spacecraft or the laws of the country where the spacecraft is registered. This point of view is supported by research findings in the work of several scholars.

According to Hans P. Sinha (2004), in addition to the IGA and OST, conventions on space, municipal and international laws, and inter-agency codes should be applied. A long-standing debate concerns the unresolved issue of the boundary between the air-ending end and the beginning of outer space, as the sovereignty claim shall apply in the case of crimes committed between these two major outer zones. Another point highlighted by the author concerns the difference between criminal and command authorities, as the absence of a criminal code in the International Space Law leads to a duality regarding the body authority that should judge such cases. Moreover, different types of criminal offenses, including safety issues and national legislation, may arise. Therefore, the author suggests the implementation of an international outer space criminal code to address these issues.

Researcher Ouyangai-hui (2012) discusses the competency of the launching authority, which is the state administering the spacecraft. It is reasonable that the jurisdiction of space tourism should fall under both sides. However, there is a concern about the jurisdiction of various disputes between spacecraft and personnel in space. The author proposes to take examples of cases with jurisdiction over space flight participants. The main idea is that, in any case, the commercial space flight participants (space tourists) will be outside the power of the launching State. However,

any flight disputes encountered shall be referred to the state in which the spacecraft is actually administered.

Long Jie's (2019) analysis focuses on the registration of spacecraft as the main issue for jurisdiction and state responsibility in space activities. The author emphasizes the importance of strict approval and continuous monitoring of the full registration of objects launched into outer space to enhance space governance. The author also discusses the development of China's space law and the need to comply with the relevant recommendations of the Resolution adopted by the General Assembly on 10 January 2008 with No. 62/101 Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects for the establishment of a registration system for space objects. Additionally, the author highlights the involvement of the state and key elements of national and international registration systems for space objects. While China may be a co-launching partner, it may not register the object internationally, but it has overall knowledge and control over the space activities in which it is involved. Therefore, the author stresses the importance of registering space objects nationally to record relevant launch activities and information. For instance, No. 62/101 Recommendations provides information about the registration of space objects and recommends a new format of strong consistency to ensure that the registration content is as complete and transparent as possible as well as para 3 (d) stipulates that States should encourage launch service providers under their jurisdiction to advise the owner and/or operator of the space object to address the appropriate States on the registration of that space object.

Hence, the authors reach that the registration of space objects is important for space tourism because it guarantees accountability since launch service providers are responsible for launching space objects into orbit and can aid in compliance with international space laws; and believed would promote the safe process of commercial space flights activities sustaining the sustainability of the industry. Besides, authors support registration because it correspondingly controls collisions between space objects, as it facilitates space agencies or relevant institutions to track the location of non-astronauts. However, as the states differ in the regulatory burden and tax obligations imposed on the ships sailing under their flags, a common business practice, referred to as "flags of convenience", exists for ship-owners to register their ships in a state other than their own nationality (Lee, Steele, 2014, p. 262). This is vital for the

determination of jurisdiction matter with respect to both space tourists and other participants in orbit.

c. Approach No. 3 The lesson from the investigation of death at the South Pole

- Case study

In this section "Case study" authors propose the next case material according to the National Post of Toronto (Chapman, 2006) as follows below.

Rodney David Marks, 32, an astrophysicist from Australia who died more than 23 years ago at the Scott-Amundsen polar research station, may have been deliberately poisoned. The post-mortem showed he died from a heavy dose of methanol, but an initial inquest was adjourned in 2000. Dr. Marks was one of 50 people living at the base, which is operated by the U.S. National Science Foundation (NSF). He was employed by the Smithsonian Astrophysical Observatory to work on the Antarctic Submillimeter Telescope and Remote Observatory when his body was found in May 2000, at the beginning of the southern winter. New Zealand considers the US base to be part of the Ross Antarctic Dependency and asserts its claims. However, the US does not recognize the claim.

After flights resumed in the summer, the body was transported to Christchurch, New Zealand, and police launched an inquiry into his death for the coroner. New Zealand police had received little cooperation from the US authorities and contractor Raytheon Polar Services, even after approaching the US Department of Justice, the New Zealand Herald reported. "I am not entirely satisfied that all relevant information and reports have been disclosed to the New Zealand police or the coroner", said Detective Senior Sergeant Grant Wormald, who is leading the investigation. Mr. Wormald said there was still no definitive evidence as to how the deadly dose of methanol came to be in the victim's body. Dr. Marks had needle traces on his arms, but no illegal drugs were found during the autopsy. Someone might have spiked his food or drink "as a prank or other sinister intention", he said. "In my view, it is most unlikely that Dr. Marks ingested the methanol knowingly. Police have not ruled out that this was as the direct result of the act of another person, although there is no evidence that this occurred". He conceded Dr. Marks could have ingested methanol for "recreational effect" or in an attempted suicide. But, he added, "In my view, it is most likely Dr. Marks ingested the methanol unknowingly".

Methanol is used to fuel internal combustion engines. A wineglassful-drunk, absorbed through the skin, or breathed in as a vapour – is enough to

be fatal. The inquest heard that Dr. Marks was a binge drinker who used alcohol to control mild Tourette's syndrome, an inherited neurological disorder. But Mr. Wormald said there were ample supplies of genuine liquor at the base. He also dismissed the likelihood the man had committed suicide. "Dr. Marks had recently formed a close relationship with a woman at the base, he was active in his work and socially at the base", he said "He had no financial worries, and he was striving toward the completion of a significant piece of academic work".

- Opinion in regard to the research question

The case of Rodney David Marks, an astrophysicist who died in Antarctica while working at a research station, provides an analogy for addressing jurisdictional issues in the event when a private individual potentially could commit a criminal offense during a human-manned spaceflight. In the case of Marks, who was employed by the Smithsonian Astrophysical Observatory, the research has shown, the death occurred at a research station operated by the U.S. National Science Foundation located in Antarctica's Ross Dependency. New Zealand police launched an inquiry into Marks' death because New Zealand claims the Ross Dependency, but the United States does not recognize this claim.

Hence, if a private individual commits a criminal offense during a human-manned spaceflight, the jurisdictional issues will depend on various factors such as (i) the location of the offense, (ii) the citizenship of the offender and victim, (iii) the ownership of the spacecraft, and (iiii) the applicable laws and treaties. If the offense occurs in space or on a celestial body, the research predicts that the jurisdictional point may become more complex because different countries and international organizations may have competing claims or interests. In the case of Marks' death, because of a judicial battle, the New Zealand police had difficulty obtaining cooperation from the US authorities and contractor Raytheon Polar Services. Furthermore, this situation suggests assessing challenges and extending law about obtaining evidence and conducting investigations in remote or international locations. Therefore, the lack of definitive evidence as to how the deadly dose of methanol came to be in the victim's body underscores the need for cooperation in investigating crimes that occur in isolated or extreme environments.

The outcome of the investigation will depend on various factors, including a) the cooperation of the involved parties, b) the applicable laws and treaties, and c) the availability of evidence. One potential solution to these jurisdictional formats

could be the establishment of international agreements or treaties that clarify the legal framework for commercial spaceflight where to address not only the matter of jurisdiction, but also liability, and interpretation of crimes committed in space. For example, the Outer Space Treaty of 1967 establishes the principle that outer space is not subject to national appropriation and that countries are responsible for the actions of their citizens in space. However, the Treaty does not address commercial activities in space, and, in the view of the research, requires additional legal frameworks. While there have been no (yet) criminal offenses committed by private individuals/space tourists during human-manned spaceflights, the case of Rodney David Marks demonstrates the emergence to adopt alike measures to prevent delay and difficulties in the investigation. Positive, universally agreed delimitation of territories should be encouraged in order to assure international stability and peaceful relations among States (Bittencourt Neto, 2015).

d. Approach No. 4 The regulation of space tourism by analogy to the Law of Antarctic

When considering the regulation of human-manned commercial space flights known as space tourism, it is important to address the problematic issue of such phenomenon regulation. One potential solution is to regulate this activity by analogy to the regulation of Antarctica, which shares similarities with the intent to regulate.

Both treaties, Treaty on principles governing the activities of States in the exploration and use of outer space, including the Moon and other celestial bodies or OST and AT established the territorial sovereignty of states or claims forces over territory, and they both prohibit the appropriation. Furthermore, the seemingly different spaces are similar in the direction that they are aimed at peaceful use, likewise, the AT Article 1 and OST Article 1, and consolidate freedom in exploitation. The importance of scientific investigation in human activity is reflected in the similarities between the exploitation of resources in outer space and Antarctica. This is exemplified by Article 2 of the AT and Article 1 of the OST. Additionally, both treaties emphasize the principle of free access to resources, as stated in AT Article 7 and OST Article 7. These similarities demonstrate the importance of adhering to international law and principles when regulating human activities in unexplored areas.

On the other hand, the AT lacks a clarification for cooperation among member states in the event of a crime involving nationals from different countries since Article 8 only offers a vague provision for dispute resolution. Additionally, the

treaty does not establish international cooperation on jurisdiction and prosecution increasing the likelihood of jurisdiction and prosecution issues in the event of a criminal incident. Therefore, the AT could not be a good example forward to regulate crimes committed in outer space during space tourism activity. To support this point of view, the authors refer to the case study about Dr. Rodney Marks, an Australian astrophysicist, who died mysteriously in Antarctica in 2000. His death was initially thought to be natural, but subsequent examination revealed lethal levels of methanol in his system, raising suspicions of foul play. The investigation into his death brought to light the jurisdictional issues surrounding the Antarctic Treaty, as both the United States and New Zealand had a stake in the investigation due to Marks's ties to the US and the location of the research station in a New Zealand territorial claim. Despite efforts to uncover the truth, the case remained unsolved as of 2008. Legal experts have since called for reforms to the Antarctic jurisdictional system to prevent similar incidents in the future. Dr. Marks's death in Antarctica raises concerns about establishing criminal jurisdiction in space tourism services provided in an outer space environment. The legal framework governing activities in Antarctica is tricky to apply to outer space, as the Member States have no power to enforce jurisdiction over non-nationals who instigate incidents in their bases/installations. The format to apply analogies from known legal frameworks may not be appropriate for future requirements posed by the commercial space flight phenomenon. The solution lies in developing new laws specifically for the conditioning of space tourism, as the laws governing Antarctica may not be the best example for establishing criminal jurisdiction.

To determine the legal status of tourists in outer space, we must redefine the concept of "personnel" to include all persons, including "non-astronauts", involved in manned spaceflight, not just those in scientific or administrative roles. When Dennis Tito became the first space tourist in 2001, the question arose as to whether he would be considered "personnel" in the event of an emergency. Defining "personnel" solely as scientific or administrative staff would exclude non-astronauts like Tito from legal protection. According to the research, a major challenge in regulating space tourism is the lack of clarity regarding the legitimization of the "touristic purpose" of such flights, and how commercial companies use this terminology. This has created a significant gap in understanding the true purpose of such flights. The AT system provides a valuable

framework for addressing jurisdictional issues in cases of violation. For instance, AT Article 8 specifies the subject of applicable liability to a tourist and prolongs the notion that the person is subject to national law instead of international law. Indeed, it is proposed to use the Antarctic law as an example to regulate violations of space laws by so-called tourists or non-astronauts during space flights. An important point is the legitimization of "tourist purposes" for commercial private flights, which are not defined under the OST, and therefore it is recommended to take the subject of liability – tourists – to assess the OST jurisdiction.

By recognizing the parallels between the regulation of Antarctica and outer space, we can establish effective guidelines for the peaceful exploration and utilization of these areas. On the other hand, the authors emphasize that although both the exploitation of Antarctica and space are driven by the pursuit of profit, there are significant differences between the two. In Antarctica, there is no colonization, commercialization, or asteroid mining, making it distinct from space in terms of its applications. Thus, the two treaties share similarities only concerning their general intent. It is believed, examining the Antarctic Treaty, and its system can provide valuable insights into how to regulate space tourism in a manner that aligns with the principles of the OST.

Accordingly, the authors criticise the uncertain assessment of commercial activities in outer space, and acknowledge the need for reforms, but also argue that adherence to OST and government action must forego changes underlining the need to prioritize peaceful purposes for human manned space flights. The task of creating laws and boundaries for space tourism is a complex challenge for legal experts and theorists. While adopting laws similar to those used in Antarctic outposts may seem like a potential solution, however, such law has proven ineffective in dealing with the unique jurisdictional issues. Therefore, the responsibility lies in the appropriate state to assure that the activities carried out by private companies in relation to suborbital commercial spaceflights are performed according to international law (Sikorska, 2014, p. 1067). Alternatively, the Antarctic Treaty's framework stipulating tourism can offer valuable insights into determining the status and purpose of space tourists during commercial space flights.

CONCLUSIONS. The article focuses on the urgent need to develop international norms to regulate commercial space flights known as space tourism, considering the increasing interest in space travel, especially in cases of potential criminal scenarios involving space tourists. The lack of

clarity regarding the legitimization of the “touristic purpose” of space flights and the conflicting interests of states further complicate the matter. In this regard, the authors offer jurisdictional appreciation relevantly to the potential situation when a private individual commits a crime during a human-manned spaceflight. Under the research, the justice for crimes committed in outer space still should be based on the general principles of criminal jurisdiction, including territoriality, and nationality immunity including criteria of citizenship and residency. Therefore, it is visible to solve a legal matter based on the location (scene) of the committed crime: the International Space Station and spacecraft. On the other hand, the studied case of Anne McClain characterizes the limited application of criminal jurisdiction in the ISS. Moreover, nevertheless, the Antarctic Treaty system is a solution for the regulation of space tourism by analogy, yet jurisdictional appreciation is weak according to the case of Dr. Rodney David Marks because it is practically demonstrating the jurisdictional battle in the scenario of state claim to the evidence concerned, and lack of cooperation for investigations in questionable territories.

According to the authors’ vision, each partner of a commercial space flight, likewise, both (i) the state (a representative of public interests), and

the organization of a flight under the auspices of a specific country and (ii) the space company and/or service provider (a representative of private interests), must register space objects as elements of flight. In such a matter, each of the relevant partners retains the jurisdiction and the appreciation over the commercial space flight and its structured elements that it has registered. Accordingly, it is proposed to expand the list of partners of space flights and to single out not only the participating states but also to recognize commercial companies that provide space tourism services as partners of the relevant international treaty on space.

Additionally exploring space commercialization, the authors would suggest looking for further research on the conceit of the Roman doctrine of “spatium” and its liberum, nullius, and communis categories. Nevertheless, the perspective jurisdiction of space tourism crimes is forecasted for the appreciation in accordance with one of three categories: (i) complete freedom for both private and public activities, (ii) no private or public activities allowed but occupation is permissible, or (iii) no private or public flights with societal flights for the benefit of the nation but without appreciation.

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ПІДХОДИ ДО ВИЗНАЧЕННЯ ЮРИСДИКЦІЇ ЗЛОЧИНІВ, СКОЄНИХ ПІД ЧАС КОМЕРЦІЙНИХ КОСМІЧНИХ ПОЛЬОТІВ

Досліджено юрисдикційну дилему щодо визначення прийняттого підходу для застосування до злочину, що потенційно може бути вчинений під час космічного польоту з туристами на борту, шляхом оцінки місця його вчинення. Крім того, дослідження спирається на співставлення за такими джерелами міжнародного права, як Договір про Космос (OST) і Договір про Антарктику (АТ). На основі аналізу окремих статей цих документів запропоновано регулювання комерційних космічних польотів за прикладом виокремлення «туристичного елемента». Такий підхід базується на тому, що стаття 8 Договору про Антарктику конкретно вказує на туриста як суб'єкта відповідальності і те, що особа з туристичними цілями підпадає під захист національного права. Тому для належного міжнародного врегулювання космічного туризму та вдосконалення Договору про Космос рекомендовано легітимізувати туристичні цілі, а також виокремити статус туриста-неастронавта з метою встановлення відповідальності за ті чи інші діяння злочинного характеру.

Для доведення зазначених ініціатив як приклад наведено дві справи: про астронавтку Енн МакКлейн та доктора Родні Девіда Маркса. Так, у першій справі наголошено на обмеженому застосуванні кримінальної юрисдикції на міжнародній космічній станції, яка, як правило, вирішується за правом країни громадянства особи. Друга справа демонструє, що Договір про Антарктику хоча і може слугувати прикладом для врегулювання космічного туризму, однак битви за юрисдикцію між державами на території об'єкта місця інциденту із криміногенним елементом підірвали його ефективність. На основі цього зроблено висновок про необхідність запровадження конкретних міжнародних правил для регулювання комерційних космічних польотів, де аспект юрисдикції при розслідуванні злочину, скоєного туристом-неастронавтом, має бути першочерговим.

Зазначено, що кожен партнер космічного польоту, як держава (у випадку публічних інтересів) та/або ті чи інші організації польоту, що діють під егідою конкретної країни, так і космічна компанія та/або надавач відповідних послуг (у випадку приватних інтересів), повинен зареєструвати комерційний космічний політ і його структурні об'єкти як елементи польоту. У такому разі кожен із зазначених партнерів зберігає юрисдикцію та контроль над зареєстрованими складовими.

Ключові слова: космічний туризм, турист-неастронавт, юрисдикція космічного простору, астронавтка Енн МакКлейн, вчений Родні Девід Маркс, Договір про Космос, Договір про Антарктику.

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