SPACE LAW

Outer space: a possible safe haven and the jurisdictional scores on extradition

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Introduction

The obvious instinct for law offenders, upon commission of offence - to evade arrest, prosecution and possible sentence - has led to seeking hideout in different countries. While it may be easy for sovereign states to strike deals in the form of bilateral agreement on extradition to return fugitives back to the state where the crime is committed for the purpose of prosecution, it may not be so in other climes. The readiness to return fugitives is responsible for dozens of bilateral agreements between countries. Even when there is not any extradition treaty between two countries, there is always the willingness to surrender when needs be. This was seen in the case between the United States of America and China in 2014 when the US returned two corruption suspects to China ahead of a summit between the presidents of the two countries, despite the absence of a treaty. Similar arrangement may not be so easy in other hideouts, like outer space, as the pristine territory is clothed with the concept of common heritage, belonging to humankind and not to a particular country, international organisation or individual, whether juristic or natural. This environment, capable of habitation by human beings, is estimated to begin around 80km-100km above the surface of the earth and has special international legal regimes to regulate human activities. Thus, the question is: how will such a fugitive be extradited from places unimaginable like outer space, and under whose jurisdiction is the fugitive while in space? This article will assess the possibilities of fugitives escaping to Outer Space, and the legal consequences of their presence; i.e. under whose jurisdiction and the possibility or otherwise of their extradition from this environment.

In 2017, Joaquin "El Chapo" Guzman, a drug lord was extradited from Mexico to the United States of America for prosecution.[1] Extradition to requesting states is not limited to suspects who are citizens of the requesting states, but also is extended to citizens of the requested states. Such is the case with Guzman, a Mexican citizen. At the same time, extradition of nationals is greatly frowned on by many countries as seen with many civil law jurisdictions. Countries such as France, Qatar and Lebanon have codified the principle against extradition of nationals in their national law, while it is also in the constitutions of countries such as Greece and Germany.

Common law jurisdictions are open to extradition of their nationals, as countries such as the UK believe in the principle of territorial jurisdiction as opposed to the principle that a national can only be tried by a national judge. This is exemplified in the 1662 refusal of the Dutch Republic to grant the extradition request of the UK as the suspect was a Dutch national. While the Netherlands would surrender its citizens only after prosecution by the

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[1] Jonathan Masters, 'what is Extradition?' Council on Foreign Relations (New York, January 08 2020) http:///www.cfr.org/backgrounder/what-extradition> accessed 14 October 2021

requesting state, the suspect would be returned to Netherlands to serve his sentence in his country.[2]

Evolution of a series of bilateral treaties on extradition so far reflect the willingness of countries to surrender their nationals irrespective of jurisdiction, as the principle of territorial jurisdiction seems more accepted than national jurisdiction.[3] According to Julie, 'the opposition, between the well-established principle of territorial jurisdiction on the one hand, and the legitimate interest for a state to protect its citizens from foreign justice on the other, explains why there is no uniform rule prescribing or banning the extradition of nationals in international law or state practice'.[4] This assertion is exemplified in the bilateral arrangement on extradition between France and the United States, which states:

> there is no obligation upon the requested State to grant the extradition of a person who is a national of the requested state, but the executive authority of the United States shall have the power to surrender a national of the United States if, in its discretion, it deems it proper to do so.[5]

News that an individual secessionist (as in the case of Kanu) or elder statesman has fled the country in order to evade the legal consequences of his/her abuse of office is not new in African countries nowadays, especially, Nigeria.[6] The world has witnessed an increase in the number of political fugitives almost on a daily basis, especially in developed economies with well-regulated policing and an organised extradition system. Extraditions are serious business, often met with rigorous bureaucracies and political agenda irrespective of the presence of existing extradition treaties be it bilateral or multilateral.

Except for some countries such as South Africa, Ghana, Ethiopia and Nigeria, the subject of outer space is still viewed in the abstract in most African countries. Even those African countries that have participated in the use of space have not gained the best of potential on space exploitation. Hence, discussion that a fugitive may seek hideout in outer space may seem mundane and unimaginable to some ears. Efforts of African leaders, as observed in its AU Agenda 2063 and the African Space Policy, is highly commendable, promoting an ideal African space-based program to enable Africa to be a responsible and peaceful user of outer space. This article will assess the possibilities of fugitives escaping to Outer Space, and the legal consequences of their presence and extradition from this environment. It also covers further and more general aspects relating to the law of Outer Space.

Outer Space: a common heritage

The narratives on individual nation's attitudes to extradition are apt as they reflect national beliefs, interest, jurisdiction and, above all, sovereignty. The reason for different legislations or principles on extradition rules rest on the principle of sovereignty, whereby respective states or international regional organisations determine what happens to its nationals on extradition request. This is because it has absolute control and power over it territory without

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[2] Serving a foreign sentence in the Netherlands<https://www.government.nl/topics/sentences-and-non-punitive-orders/serving-a-foreign-sentence-in-the-netherlands> accessed 27 January 2022

[3] *George Udeozor v Federal Republic of Nigeria* (2007)LCN/2249 (CA), (2007)LPELR-CA/LA/376/05

[4] William Juliw, 'The Rule against the Extradition of National: Overview and Perspectives' http://www.ibanet.org/article/22AF1681-37A0-487A-A660-3ACA32938540> accessed 15 October 2021

[5] *Extradition Treaty between France and United State* Signed in Paris on 23 April 1996 and came into force on 1 February 2002. Art. 3

[6] Taiwo Ojoye, 'Terrorism charge: Nnamdi Kanu flees, goes into hiding' Punch, Nigeria 17 September 2017 https://punchng.com/terrorism-charge-nnamdi-kanu-flees-goes-into-hiding/ accessed 7 June 2022.

interference.[7] Outer Space on the other hand is not a subject of domestic regulations,[8] but, stricto sensu, that of international affairs with special International legal regimes.[9] It is a subject of its own kind, shrouded in the principle of common heritage, i.e. *res communis.*

The environment is the area outside the atmosphere of the Earth where the other stars and planet are situated. According to Scott, providing an exact definition of Outer Space has proven to be an issue and suggestions on the point of demarcation range between 80km to 100km.[10] In fact, issues on spatial delimitation have affected how 'outer space' is described in the domestic laws of some states. For instance, the National Aeronautics and Space Act defines Outer Space as "the areas outside the Earth's atmosphere",[11] while the National Space Law of South Africa defines it as "the space above the surface of the Earth from a height at which it is in practice possible to operate an object in an orbit around the Earth."[12]

This is in tandem with the proposition of the Soviet Union (Russia) on spatial delimitation at an altitude of 100km, based on the theory that:

> "An Aircraft, as the main subject matter of most of International and Local air law, would never be able to reach such altitude in view of 'their dependency, for purposes of lift, upon a density of air not available in those regions."[13]
>
> "…space objects orbiting the earth would not descend below such an altitude, as the atmosphere would be dense for staying up in their orbit, the attendant atmospheric drag no longer being compensated by the centrifugal forces resulting from their velocity."[14]

On another hand, Article 2 of the Jordan Civil Aviation Act defines an aircraft as "any machine whose continuous flight in aerospace is derived from air and other reactions above the surface of the Earth"[15]

According to the Outer Space Treaty 1967, 'Outer space, including the moon and other celestial bodies, *is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'*[16] (Author's italics). This pristine environment or any part of it does not belong to any country, individual (natural or juristic) or inter-governmental or non-governmental organisations It belongs to everybody, to mankind,

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[7] Chicago Convention. Article I. *NSW v Commonwealth* (1975) 135 CLR 337 (the *Seas and Submerged Lands Act Case*) at 479, Jacobs J, '*Island of Palma's case*' (1928)2 UNRIAA, 829; *Legal Status of Eastern Greenland* 1933 PCIJ Ser. A/B No.53:22; *Clipperton Island Case* (1932) 2 UNRIAA, 1105. Chris McGrath. 'Principles of Sovereignty under international law' http://envlaw.com.au/wp-content/uploads/handout_sovereihnty.pdf> accessed 15 October 2021

[8] States are however required to put in place measures for registration and licensing of space activities.

[9] See Article. III of the Outer Space Treaty 1967.

[10] Scott J.S, '*The Tragedy of the Common Heritage of Mankind*' (2008) Stanford Environmental Law Journal Vol. 27: nn 2008 pp 101-157.http://ssrn.com/abstract=1407332>accessed on 7 July 2014.

[11] Section 51, USC S 40302 (5) 2010.

[12] Space Affairs Act 1993 [No. 84 of 1993] G 14917. S.1 (xv).

[13] Yuri Kolossov and Dmitry V. Gonchar, 'Delimitation of Airspace and Outer Space: A Legal View' (2018) Revista Brasileira de Direito Aeronàutico e Espacial. < http://www.sbda.org.br/revista/Anterior/1780.html> accessed 15 October 2015.

[14] Ibid.

[15] Civil Aviation Act No.1 of 2007.

[16] See Article II.

therefore neither capable of being owned nor being legislated upon be a sovereign state. Further:

> The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind. Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there *shall be free access to all areas of celestial bodies.* There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.[17] (Author's italics)

The Moon Treaty 1979 provides more stringent rules on appropriation of the moon and other celestial bodies (Outer Space inclusive),[18] that:[19]

> The Moon and its natural resources are the common heritage of mankind, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article. The Moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means. Neither the surface nor the subsurface of the Moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person. The placement of personnel, space vehicles, equipment, facilities, stations and installations on or below the surface of the Moon, including structures connected with its surface or subsurface, shall not create a right of ownership over the surface or the subsurface of the Moon or any areas thereof. The foregoing provisions are without prejudice to the international regime referred to in paragraph 5 of this article. States Parties have the right to exploration and use of the Moon without discrimination of any kind, on the basis of equality and in accordance with international law and the terms of this Agreement.[20]

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[17] See Article. I.

[18] The provisions of this Agreement relating to the Moon shall also apply to other celestial bodies within the solar system, other than the Earth, except insofar as specific legal norms enter into force with respect to any of these celestial bodies. For the purposes of this Agreement, reference to the Moon shall include orbits around or other trajectories to or around it. Article 1.

[19] Notwithstanding these provisions on non-appropriation, many individuals and states have been seen to lay claims to this environment. See Bogoto declaration 1976, Articles1-3; Countries like the Soviet Union, U.S.A and china have planted flags on the moon, Younis Dar, '*Why China is the third country, not second, to put their flag on the surface of the Moon*, (2020) <http//:wwweurasiantimes.com/why-china-is-the-third-country-not-second-to-put- their-flag-on-the-surface-of-the-moon/?amp> accessed 18 October 2021; Robert K, "*Nemitz vs. United States,* A Case of first Impression, Appropriation, Private Property Rights and Space Law before the Federal Court of the United States*"* (2004) Journal of Space Law Vol. 30. 297-309. See also Wayne W, *"Nemitz vs U.S,* The First Real Property Case in United States Courts" (2004) Proceedings 47th Colloquium (Vancouver) 339-351, and Diederiks-Verschoor I.H.Ph & Kopal V, "*An Introduction To Space Law"* (Third Edition. Wolters Kluwer Law & Business 2008)155-156

[20] Moon Treaty 1979, article. 11

Having laid the foundation for the fundamental difference between the legal status of Outer Space and Earth surface, it is pertinent to discuss and assess the habitability of the environment. In other words, can humans actually live and survive in space?

Is outer space habitable?

Outer space, unlike the cold atmosphere misconception, has no temperature because of the absence of mass. Hence, without oxygen, human beings would not survive up to 15 minutes. Sprigel[21] asserts that:

> …the absence of normal atmospheric pressure (the air pressure found on Earth's surface) is probably of greater concern than temperature to an individual exposed to the vacuum of space [1].Upon sudden decompression in vacuum, expansion of air in a person's lungs is likely to cause lung rupture and death unless that air is immediately exhaled. Decompression can also lead to a possibly fatal condition called ebullism, where reduced pressure of the environment lowers the boiling temperature of the body fluids and initiates transition of liquid water in the bloodstream and soft tissues into water vapor [2]. At minimum, ebullism will cause tissue swelling and bruising due to the formation of water vapor under the skin; at worst, it can give rise to an embolism, or blood vessel blockage due to gas bubbles in the bloodstream.[22]

Human survival in space is very much dependent on an adequate supply of oxygen. The travel to space and presence in space, even with a spacesuit is not without its attendant dangers because of radiation; i.e., the longer the travel and presence in space, the greater the risk of survival. Space scientists are tasked to develop technologies that can ensure human presence and survival for an unlimited period in space[23]

As dangerous as it sounds, astronauts and cosmonauts[24] have been living in ISS[25] since it was launched in 2000.[26] NASA, space corporations and other space Agencies are working towards commercialisation of space in which the environment will not only receive scientist and engineers, but ordinary individuals who are merely tourists. According to Paul Kostek, space travel will only be limited to people who are willing to pay tens of millions of pounds. He stated that the price for space travel as at March 2021 is around US$ 250,000, which is considered lower than before. As with the early years of commercial aviation market, the price was high, deemed risky and uncomfortable, but with technological advancement it was subsequently seen safer, leading to its popular demand and then a continuous reduction in

[21] Mark Springel is a research assistant in the Department of pathology at Boston Children's Hospital.
[22] Mark Springel, 'The Human Body in Space: Distinguishing Facts from Fiction' 30 July 2013 Science in the News, Harvard University <https://sitn.hms.harvard.edu/flash/2013/space-humam-body/> accessed 18 October 2021.
[23] Ibid. Setlow RB, 'The Hazards of Space Travel' (2003) 4 (11). EMBO Reports 1013-1016.
[24] Russian astronauts are usually referred to as cosmonauts.
[25] International Space Station conceptualised and jointly owned by the U.S, Japan, Canada, Russia, UK and members of the European Space Agency (Belgium, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden and Switzerland) is a co-operative programme between these states for the joint development, operation and utilization of a permanently inhabited space station in low orbit. 'International Space Station Legal Framework' <https://www.esa.int/Science_Exploration/Human_and_robotic_Exploration/International_space_station_legal_framework> accessed 22 October 2021.
[26] Michael Greshko, 'Humans have been living in space for 20 years straight' Science News:National Geographic 28 October2020https://www.nationalgeographic.com/science/article/humans-have-lived-on-international-space-station-20-years-straihgt accessed 18 October 2021.

price. This is what is envisaged with space travel; in the long run and with technological development, it will reach and even surpass the level of commercial air transport. Is in this spirit that some companies are already exploring the use of rockets for commercial travel between continents, with a high cost for a quick trip.

Outer space is one of the most sought after areas with abundant resources.

The universe of potential has rich and diverse minerals such as water, oxygen, inert gasses, metals, non-metals and water that can be used to provide raw materials and energy to sustain human existence.[27] According to Duke,[28] longer term application of space resources include new earth orbital operations architectures, construction of solar power satellite (or lunar satellite that beams energy unto the earth), low-valued major constituent of asteroid (water and metals) for use in space, high-valued major constituent of asteroid (e.g. Pt, Pd, Ir) for use on earth, 3He from the Moon for fusion energy, and a wide range of materials for space industrialisation (product manufactured in space for use on earth).[29] Therefore, the future of space travel is imminent and beneficial to attract commercialisation whereby states, NGOs, corporations and individuals are interested.[30] *The n*eed to state that the world's first space hotel, Voyager Station, is scheduled to open in 2027.[31]

With the presence of rare natural resources, free access to all areas of space, the prospect of commercial space travel, and the availability of hotel in outer space, the possibility of it been a possible safe haven is indeed a possibility which requires law to be pro-active in its regulation.

The legal status of individuals in space

Since outer space is an international subject, it relevant to first view the status of an individual in the area under the international regimes regulating that sphere, more especially since the discussion is on extradition of individuals (that have committed an offence on earth) from an environment not subject to state sovereignty. Generally, outer space is regulated by five major legal regimes - the Outer Space Treaty 1967,[32] the Moon Treaty

[27] 'Resources in space: A Universe of Potential' Luxembourg Space Agency <http://space-Agency.public.lu/en/space-resources/ressources-in-space.html> accessed 04 October 2021
[28] Michael Duke, 'Space Resources' <http://www.sciencedirect.com/science/article/abs> accessed 11 October 2021.
[29] Ibid.
[30] Private Companies now provide services to facilitate Space travel. This can be seen in Ventures like Virgin Galactic, which had its first flight with tourist on board in 2008. Simon Hattenstone, Joy Ride, The Guardian weekend, 11 November 2006 at 20.
[31] 'World's first hotel scheduled to open in 2027' CNN Atlanta, US 5 March 2021 <https://edition.cnn.com/travel/article/voyager-station.scn/index.html> accessed 20 October 2021.
[32] "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty", adopted by the General Assembly in its resolution 2222 (XXI)), opened for signature on 27 January 1967, entered into force on 10 October 1967

1979,[33] the Registration Convention 1976,[34] the Liability Convention 1972[35] and the Rescue Agreement 1968.[36]

By the provision of article VIII,

> *A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body*. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return.[37] (Author's italics)

When issues of international relations are raised, states are regarded as actors and parties. It is the assent and consent of states that give life to relevant international treaties. Hence, an individual who finds him/herself in outer space is under the jurisdiction of the state of registry and not necessarily the state of nationality. This, in effect, gives credence to the provision of the Registration Convention, Art. II, which mandates that, 'when a space object is launched into earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain. Each launching State shall inform the Secretary-General of the United Nations of the establishment of such a registry.'[38] An inter-governmental organization is also deemed a State of registry under the Convention, especially when all its members are parties to the Treaty. Therefore, a state of registry that doubles as the launching state retains control and jurisdiction over persons that are in space via its space object. This provision is also reiterated in the Moon Treaty, hence: 'States Parties shall retain jurisdiction and control over their personnel, vehicles, equipment, facilities, stations and installations on the Moon. The ownership of space vehicles, equipment, facilities, stations and installations shall not be affected by their presence on the Moon'.[39]

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[33] The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the Moon Treaty)," adopted by the General Assembly in its Resolution 34/68), opened for signature on 18 December 1979, entered into force on 11 July 1984

[34] The Convention On Registration Of Objects Launched Into Outer Space (The Registration Convention)" adopted by the General Assembly in its Resolution 3235 (Xxix)), opened for signature on 14 January 1975 and entered into force on 15 September 1976

[35] The Convention on International Liability For Damage Caused By Space Objects (the Liability Convention" adopted by the General Assembly In Its Resolution 2777 (XXVI)) Opened For Signature On 29 March 1972, entered Into force On 1 September 1972

[36] The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the "Rescue Agreement)", adopted by the General Assembly in its Resolution 2345 (XXII)), opened for signature on 22 April 1968, entered into force on 3 December 1968.

[37] Article I (C) 'The term State of registry" means a launching State on whose registry a space object is carried in accordance with Article II'

[38] In this Convention, with the exception of Article VIII to XII inclusive, references to States shall be deemed to apply to any international inter-governmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Convention and if a majority of the States members of the organization are States Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

[39] Article 12(1).

The Rescue agreement is obvious evidence of communal cooperation amongst States and provides for the rescue and return of personnel of spacecraft and space object in distress to the launching state by any state that has information about the distress or accident. Upon such information reaching a state that a spacecraft landed prematurely, the state is required to render all necessary assistance to rescue and return the astronauts and the space object. Such a state is even encouraged to render such necessary assistance and to furnish details of expenses to the launching state for the purpose of reimbursement.[40]

The Liability Convention is particularly concerned about the damage caused by a space object. Accordingly, damage means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations.'[41] It establishes regimes for compensation for both damage caused to property and persons, space objects and persons on board a space objects on the surface of the earth, and to aircraft and outer space.[42]

Interestingly, aside the Liability Convention, which covers damage to persons other than personnel of space activities, the other regimes do not deal with ordinary private individuals that may make their way to space as envisaged by this article. The only individuals identifiable under the Treaties are astronauts, space scientists and military personnel. Aside this, the space regimes do not envisage a situation where the suspect itself is an astronaut, space scientist or military personnel, hence the reason for the total absence of a regime on extradition from Outer Space. Hypothetically, A, an astronaut with a series of accomplished missions to space, murders his wife days before another mission, and puts her in a place where she may not be noticed until after he had left the earth. How will such a person be extradited? The answer to this may not be that simple where the suspect is not a national of the launching state, or while in space moves to the facility of another launching state where his duty is ordinarily assigned but got to space via the space object of another launching state. Assuming the US is the launching state and the suspect is a citizen of Nigeria, which state is expected to extradite in this situation? Returning to the provision of both the Outer Space Treaty and the Moon Treaty that provide that the launching state has jurisdiction over personnel, is the US expected to extradite the suspect to Nigeria? This is important as who bears the expenses for extradition as space travel/launch involves huge capital.

The International Space Station Agreement 1998 is worthy of assessment at this point. This defines the rights, control and jurisdiction of the owners of the station housing different elements where astronauts and scientist work and live while in space. Article 5(2) provides that, 'pursuant to Article VIII of the Outer Space Treaty and Article II of the Registration Convention, each 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 nationals…'[43]

Simply, as is the case under the Outer Space Treaty, the Moon Treaty and the Registration Convention, each partner of the International Space Station (hereinafter referred to as 'ISS')

[40] If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party, it shall immediately take all possible steps to rescue them and render them all necessary assistance. Article. 2.
[41] Article I(a).
[42] See Article II-IV.
[43] Agreement among the Government of Canada, Governments of Members States of the European Space Agency, the government of Japan, the government of Russian Federation and the government of United of America Concerning cooperation on the civil International space Station 1998. United Kingdom joined in 2012.

retains control and jurisdiction above and over their respective elements registered under the relevant registration regime and over their personnel who are their nationals**.** What then is the implication of an astronaut or personnel who is not a citizen of the ISS partner within the context of the hypothesis raised earlier? The possibility of non-national personnel being in space/ISS on a mission facilitated by a member state is not far-fetched. This situation is envisaged in the Agreement. Accordingly, members are mandated to ease the entry and residence of person who are citizens of another member (and the person's families into the territory of another member) and who is in that territory in order to carry out functions necessary for the implementation of the Agreement.[44] In this event, under whose control and jurisdiction is such a non-national personnel while in space, most especially for the purpose of extradition?

Notwithstanding the confusion embedded in the provision on control and jurisdiction over non-national personnel, and unlike the regimes discussed earlier, the ISS Agreement makes provision on extradition of personnel in space. The provision creates a regime on criminal jurisdiction to the effect that:

> where the act of a national of a member results in personal injury, safety or loss of life of a national of another member or where a misconduct happened in or on or causes damage to flight element of another member, the State, whose national commits the act shall join force with the affected state as regards their respective prosecutorial interest. Where after 90 days or within the agreed date of consultation between the two members, the injured state may assume criminal jurisdiction on the offender where the state of offender agrees to such jurisdiction or neglect to assure the other state of competent prosecution of the offender.[45]

This article is, however, more interested in Article 22(3),[46] which states that:

> If a Partner State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Partner State with which it has no extradition treaty, it may at its option consider this Agreement as the legal basis for extradition in respect of the alleged misconduct on orbit. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested Partner State.

This provision is welcome as it provides for an extradition regime of suspects from space by contracting states. What is not clear is whether this is only applicable to States that make 'extradition conditional on the existence of a treaty'. Hence, a state without the condition cannot effectively request or oblige such a request under. Unfortunately, the provision on extradition is merely limited to member states and worse, it is *only* applicable where the act done is in orbit. The Agreement, just like other space regimes, do not provide for extradition of individuals in space who have committed a crime on earth and found their way to space and neither does it accommodate crimes committed on earth by personnel of ISS for the purpose of extradition back to the situs.

Domestic legislation on extradition from space

[44] See Article 18.
[45] See Article 22 (1-2).
[46] Ibid.

Domestic regimes on supervision of individual space activities can be found in laws such as the United States Special Maritime and Territorial Jurisdiction Legislation.[47] This is 'applicable to: all space vehicles in flight from the moment when all external doors are closed on earth following embarkation until the moment when one such door is opened on earth for disembarkation or in the case of a forced landing, and until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.'[48] Further, Sweden's Swedish Act on Space Activities is "applicable to Swedish natural or juridical persons, even if not in the territory of Sweden,"[49] and the Finnish's Criminal Code is "applicable to any offence committed outside Finland where the severity for punishment of the act (regardless of the law of the place of commission), is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland."[50]

Hence, the opportunities given to nationals[51] of States and International Organization to participate in outer space activities do not include appropriating the territory to itself, despite some authors asserting that the drafters of the Treaty did not intend to abolish States' exercise of jurisdiction in outer space totally and that such is the reason for this provision.[52] Arguments to substantiate this assertion include the question on how could a State be held internationally responsible for the activities of its governmental and non-governmental entities if it had no right to exercise both formal authority and effective control over them? This is supported by the fact that activities of non-governmental organisations in Outer Space must remain under the supervision of the appropriate State.[53] Again, State responsibility for individual space activities do not include that carried on the surface of the earth to which he has incurred liability because of a breach of contract. This could be applicable to individual manufacturers (involved in space commercial transactions) of a space object whose product has been held defective and held liable to pay compensation, or fulfill certain remedies either in tort or breach of warranty. This is because such liability and responsibility are not envisaged the Outer Space Treaties. The domestic law would adequately cover this aspect.

The UK extradition rules are governed by the Extradition Act 2003, the country's extradition arrangements designated into category 1 or Category 2 depending on the territory. Category 1 deals with member states of the European Union and Gibraltar (British Overseas Territories),[54] while others[55] are under Category 2.[56] So far, the UK has made several

[47] United States Constitution. Article VII.
[48] Ibid, S.7 [6] 2006.
[49] See Section 2 & 5 Swedish Act on Space Activities 1982.
[50] Section 7 Chapter 1 of the Finish Criminal Code
[51] Dennis Tito was the first Tourist to visit Outer Space (in 2001) as a guest of the Russian Government; therefore, he was significantly under the government control. Thomas-Rankin R, "Space Tourism Fanny Pack, Ugly T-Shirts and the Law in Outer Space" (2003)36. 695. Suffolk University Law Review Journal
[52] Stephen G, 'Developments in Space Law: Issues and Policies (Netherlands. Martinus Nijhoff Publishers, 1991), 24
[53] Ibid.
[54] Part 1, Extradition Act 2003. It should be noted that since the UK pulled out of EU, Extradition or surrender between it and EU is now governed by EU-UK Trade and Cooperation Agreement 2021. Anand Doobay. 'Extradition: United Kingdom-England & Wales' 26 May 2021 <http://globalinvestigationsreview.com/insight/know-how/extradition/report/united-kingdom> accessed 27 October 2021
[55] Approximately 92 countries including Nigeria, Turkey, Macedonia, Sri Lanka, Canada, Cuba, Fiji, Ghana, South Africa, U.S etc.
[56] Part 2 Extradition Act 2003.

bilateral extradition arrangement with many countries such as the US,[57] Philippines,[58]Algeria,[59] and Brazil.[60] Unlike the UK, with substantive domestic law on extradition interplaying with relevant bilateral and multilateral treaties, extradition to and from US is also a function of treaties between it and the intending country or countries.[61]Nigeria, like the UK, has her extradition Act of 1966 playing along with extradition treaties. To this end several extradition requests have been made under these two regimes on extradition from Nigeria, as exemplified in several cases such as *George Udeozor v Federal Republic of Nigeria;*[62] *Kashamu Buruji v A.G. FRN,*[63] and *Emmanuel Okoyomon, former Managing Director* and *Chief officer of the Nigerian Security Printing and Minting Company (NSPM) v A.G. FRN.*[64]

Looking at the trend of extradition treaties, it is clear that it is intended that extradition of suspect is to be from one country or sovereign nation to another. Hence, climes like outer space do not fall within domestic extradition discuss.

Conclusions and recommendations

It is safe to state at this point that the world community has let its guard down by not realising or thinking that Outer Space may or can be a safe haven for suspects or criminals in a bid to escape the hands of the law upon the commission of an offence. This has led to the inertia on this possibility, thereby resulting in the absence of laws or procedure for (a) the prevention of an escape to outer space; and (b) extradition from space for the commission of offences committed on the earth. That Outer Space is or would be habitable for humans shows that technology never ceases to amaze us. Hence, there is the need to put effective regimes on extradition of suspects from outer space into force, i.e. a Space Extradition Treaty. This regime must be informed by different pointers in order to cater for many lacunas. As space commercialisation becomes realistic, there is the need to put in place an effective investigative regime to check on the criminal records of intending space farers before they embark on the journey. This can be achieved by checking with the authorities of the states of the travelers to ascertain if the suspect is not on the wanted list, in a pending matter before the court, or has another issue with the authority and thus not expected to leave the country.

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[57] Extradition treaties between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America. Entered into force 26 April 2007.
[58] Extradition treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Philippines. Entered into force 26 April 2007.
[59] Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of People's Democratic Republic of Algeria on Extradition 2006.
[60] Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on mutual Legal assistance in Criminal Matters 2005.
[61] An example is the US-Nigeria Extradition Treaty of 22 December 1931 signed by the UK while Nigeria was a protectorate. The Treaty has been ratified in subsequent laws such as the Extradition Act 1966, the Extradition Modification Order, 2014 and the Extradition Act (Proceedings) Rules, 2015. <http://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud-/1138858/a-look-at-the-law-of-extradition-in-nigeria-vis-a-vis-buruji-kashamu-and- the-possible-implications-for-dcp-abba-kyari> accessed 27 Jan 2022.
[62] [2007] LCN/2249 (CA).
[63] [2009] 3 PLR/65, CA/L/688/2011, CA/1030/2015, CA/1030A/2015.
[64] [2014] FHC/CS/670, 'Cases and Materials on Extradition in Nigeria', United Nations Office on Drugs and Crimes, Country Office, Nigeria, United Nations Abuja 2016 <http://unodc.org/documents/nigeria/publications/Anti-Corruption=Projet-Nigeria/Cases_and-_Materials_on_Extradition_in_Nigeria.pdf> accessed 27 Jan 2022.

Another issue is who is to be responsible for the extradition. It is easier to request for extradition, since knowing the actual station or place where the suspect is not usually a problem. The problem would be in carrying out the request. On whose account is the cost of extradition going to be? Worse, if the station or mission were sponsored by many states, which state would be responsible? There is also the need to ascertain responsibility and liability between the launching state and state of registry for the purpose of the extradition. The Space extradition regime should determine the state that would be responsible for extradition, the state that bears the cost of extradition, and the state that would be liable for any damage caused during the course of extradition. I addition, it should specify the state that would receive the suspect, whether astronaut or not, and the modalities for the onward movement of the suspect to the requesting state. There is also the need to determine the type of acts that may warrant a person being extradited from outer space. This would limit an extradition request by forestalling or preventing any arbitrary request. State partners to an ISS Agreement should also amend Article 5 of the agreement to accommodate extradition of astronauts for crimes committed on earth. Limiting the extradition requests for crimes committed on orbit is inadequate. A time will come that a space region would need an effective policing system such as Interpol to further implement and administer space extradition regimes. This article further recommends that state parties to the Outer Space Treaty be encouraged to adopt regimes on extradition of individuals from space, since space belongs to everyone and must be opened to enter into bilateral or multilateral relationship with other states in respect of space extradition.