

THE 1968 RESCUE AGREEMENT AND THE COMMERCIALISATION OF OUTER SPACE ACTIVITIES DURING THE 21ST CENTURY - SOME REFLECTIONS

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ABSTRACT

The 1968 Rescue Agreement will celebrate its thirtieth anniversary this year. This Agreement was an elaboration of the provisions of Article V of the 1967 Outer Space Treaty which states that the parties are to regard astronauts as envoys of mankind and are obliged to render them all possible assistance in the event of accident, distress or emergency landing on the territory of another nation or on the high seas.

As we approach the 21st century, the launching of manned space-flight into outer space and beyond will become a normal business routine, and there will be more commercial and industrial space activities here on earth, in outer space, on the moon and on other celestial bodies. Private law subjects - natural and juridical persons, sovereign states and international organisations, will all be important actors in these activities.

It should be noted that the 1968 Rescue Agreement made by sovereign states, was a humanitarian expression of concern and care for the safety and lives of the representatives of the human race in outer space, that is the astronauts and cosmonauts.

Today we witness the expansion of outer space activities; preparation for enormous plans and programmes involving the exploration and exploitation of outer space, the Moon, Mars, and so on are being made by both nations and their peoples for the 21st century. The International Space Station (ISS), for example, is one of the projects planned for construction in outer space at the beginning of the 21st century.

The purpose of this paper is to reflect on some of the provisions of the 1968 ARRA in the light of these changes.

Introduction

In 1997, the 30th Anniversary of the entering into force of the **Magna Carta of the law on outer space or space law - The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies**, commonly referred to as the **1967 Outer Space Treaty (OST)**, was commemorated during the 40th IISL Colloquium on the Law of Outer Space. It is interesting to note that at this **41st Colloquium on the Law of Outer Space**, we will also be commemorating the 30th Anniversary of the entering into force of second United

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Nations space treaty - The 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (ARRA/Rescue Agreement), here in Melbourne. It is, moreover, interesting to note also that on 12th July 1979, the US Skylab 1 space station fell to the Earth over a wide region spreading from the Indian Ocean to south western Australia. Fortunately, there were no accidents in those areas.

The topic this Session 1 is: **Managing Space Resources and Revitalising Space Treaties**. It should be noted that sovereign states, including international organisations, bear international responsibility for these activities in outer space, including the moon and other celestial bodies. However, with the commercialisation of outer space activities in recent years, nationals of sovereign states - natural and juridical persons are becoming very active participants and actors in outer space activities. It was not surprising, therefore, that the topic of the 48th IAF Congress in Turin, Italy, 6th-10th October 1997, was: **Developing Business from Space**. The topic of the 49th IAF Congress here in Melbourne, Australia, 28th September-2nd October 1998, is the: **Pacific Rim: A Rapidly Expanding Space Market**.

It should be remembered that the 1968 Rescue Agreement was an elaboration of the provisions of Articles V and VIII of the 1967 Space Treaty (OST), which grants an ambassadorial status of astronauts/ cosmonauts as envoys of mankind. It is not my intention to make a detailed examination and analysis of the the 1968 Rescue Agreement. A lot has already been written on various aspects of its provisions by eminent experts on space law and policy.¹ However, it should be borne in mind that, in the examination and

analysis of these provisions, due consideration should also be given to Articles VI, VII and IX of the 1967 Outer Space Treaty.

Thus, bearing in mind the above observations, the purpose of my paper is to reflect on some of its provisions.

The 1968 Rescue Agreement

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space was opened for signature on 22nd April 1968, after its adoption by the UN General Assembly on 19th December 1967. It entered into legal force on 3rd December 1968. It consists of a Preamble and 10 articles. These articles impose more obligations and duties on the Contracting State Parties and fewer on the Contracting State Parties to the Agreement that are major space powers - relating to (i) notification, (ii) search, rescue and return of astronauts and cosmonauts (crew or personnel), (iii) return of objects launched into outer space. The 1968 Rescue Agreement has been ratified by 80 States.

Provisions relating to Astronauts and Cosmonauts

Article 1 provides that each Contracting State Party must notify the launching authority (State)² and the UN Secretary-General by all appropriate means of communication at its disposal, whenever it receives information concerning accidents and distress of the crew or personnel of spacecraft within its territorial jurisdiction or on the high seas or in any other place outside its jurisdiction.

Article 2 stipulates that the Contracting State Parties shall promptly take all possible steps to institute operations concerning the search and rescue of the crew or personnel of spacecraft in accident, distress, emergency or unintended landing within their territorial jurisdiction. It obligates the launching authority to co-operate with the Contracting State Parties in these operations. It also provides for these operations to be subject to the direction and control of the Contracting State Parties, which shall act in close and continuing consultation with the launching authority or State. The principle established in this Article is similar to that stipulated in Article 25 of the 1944 Chicago Convention on International Civil Aviation.³

Article 3 contains provisions concerning search and rescue outside the territorial jurisdiction of Contracting State Party - the high seas. It stipulates as follows: "If information is received or it is discovered that the personnel of a spacecraft have alighted on the high seas or in any other place not under the jurisdiction of any State, those Contracting Parties which are in a position to do so shall, if necessary, extend assistance in search and rescue operations for such personnel to assure their speedy rescue. They shall inform the launching authority and the Secretary-General of the United Nations of the steps they are taking and their progress".

Although the provisions of this Article do not mention outer space, the moon and other celestial bodies, it is submitted that the obligations stipulated therein are also mandatory on all Contracting Parties as well as non-Contracting Parties, who are technically capable of carrying out or providing such search and rescue operations, pursuant the provisions of Article V of the 1967 Outer Space Treaty.

Furthermore, it is encouraging to emphasise that the application of the principles of mutual assistance and co-operation between the Russian and the US space authorities contributed greatly to refurbishing the MIR space station after its dangerous technical dilemma in 1997. The primary objective of STS-86, for example, was the resupply of the MIR space station with food, water, clothing, experiment supplies, cosmonaut family packs, a MIR computer and spare equipment for MIR. In addition, Atlantis carried three air pressurisation units with breathing air to repressurise MIR airlocks following EVAs.⁴

After the completion of the search and rescue operations, the 1968 Rescue Agreement provides in Article 4, for the safe and prompt return of crew or personnel to the representatives of the launching authority.

Provisions relating to Space Objects

Article 5 contains provisions concerning notification, discovery and return of space objects or their component parts (paragraphs 1-3). Paragraph 4 provides for "a Contracting Party which has reason to believe that a space object or its component parts discovered in territory under its jurisdiction, or elsewhere, is of hazardous or deleterious nature may so notify the launching authority, which shall immediately take effective steps, under the direction and control of the said Contracting Party, to eliminate possible danger of harm." The expenses incurred in fulfilling the obligations contained in this Article are to be borne by the launching authority (para.5).

It is interesting to note that the 1978 Cosmos 954 Nuclear Satellite was the first major test case, which illustrated the problems relating to space objects carrying

nuclear power sources on board. The Soviets paid less than half of the \$15 million bill which was sent to them by the Government of Canada. It is encouraging, however, to note that to avoid such problems in the future, Principle 9 of the **1992 UN Principles Relevant to the Use of Nuclear Power Sources in Outer Space** provides (in paragraph 3) for compensation to include reimbursement of the duly substantiated expenses for search, recovery and clean-up operations, including expenses for the assistance received from third parties.

Conclusion

The 1968 Rescue Agreement was signed when only the two super powers the former Soviet Union (the Russian Federation) and the United States, were the major actors in the exploration and use of outer space, including the moon and other celestial bodies. During the past 30 years, more States in Europe, Canada, Asia, Latin America and Africa, including their nationals, are becoming active participants in outer space activities. Outer space in the 21st Century will be a new domain for commercial and business activities.

Thus, there is a need to develop specific operational technical rules in the form of a protocol or an annex to the Agreement. There are already international agreements and national laws regulating assistance, search, salvage and rescue operations on land, air and sea. Considering the very nature of outer space activities, there will be need for a closer co-ordination of these operations in the implementation of the provisions of the 1968 Rescue Agreement. For example, a consortium on search and rescue, with the participation of all States, international organisations and private State nationals, should be established for

the implementation of the provisions of the Agreement.

Furthermore, in order to revitalise the 1968 Rescue Agreement, with a view to encouraging broad participation by more members of the United Nations, it will be necessary for the Contracting State Parties to reconsider the terms of the agreement by incorporating the provisions of Articles VI, VII and IX of the 1967 Outer Space Treaty. I think that the omission of those provisions from the final text of the 1968 Rescue Agreement weakens its ratification and implementation. Outer Space as the **province of all mankind** requires the active and effective participation of all States in all the law-making processes, taking into consideration the interests of all concerned.⁵

1. For more details, see, for example, Lachs, M., **THE LAW OF OUTER SPACE**, SIJTHOFF, Leiden (1972), pp.79-95; Diederiks-Verschoor, I. H. Ph., **AN INTRODUCTION TO SPACE LAW**, Kluwer Law and Taxation Publishers, Deventer, The Netherlands (1993), 29-31; Cheng, Bin, **STUDIES IN INTERNATIONAL SPACE LAW**, Clarendon Press, Oxford (1998), pp. 265-284; Böckstiegel, "THE TERM "LAUNCHING STATE" IN INTERNATIONAL SPACE LAW", in **PROCEEDINGS, IISL 37th Colloquium on the Law of Outer Space**, Jerusalem, Israel (1994), pp. 80-83; Gorove, Stephen, "DEFINITIONAL ISSUES PERTAINING TO "SPACE OBJECTS", in **PROCEEDINGS, IISL 37th Colloquium on the Law of Outer Space**, Jerusalem, Israel (1994), pp. 87-98. It should be noted that during the IISL 11th Colloquium in 1969, many papers were presented on the interpretation of the Rescue Agreement. For more details, see **PROCEEDINGS**, pp. 85-142.

2. It should be noted that term "launching authority" is synonymous with the term "launching State", including international intergovernmental organisation, as defined in Article 6 of the 1968 Rescue Agreement and Article 1 of the 1976 Registration Agreement. For detailed discussion, see, Böckstiegel, Karl-Heinz, *ibid.*, pp. 80-83.

3. It states as follows: "Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or the authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention."

4. For more details, see, for example, **Spaceflight**, Vol.40 No.1 (1998), pp.10-12; Vol. 40 No. 6 (1998), pp. 212-215; Vol. 40 No. 7 (1998), pp.237-240. For an account of the Mir crises, see, Kruger, Jeffrey, "A Bad Day in Space", in **TIME**, (November 3, 1997), pp. 46-53.

5. I also share in the suggestion given by Professor Bin Cheng concerning the Agreement in his latest book. See, *ibid.*, op. cit., p.285.