THE REGISTRATION CONVENTION: BACKGROUND AND HISTORICAL CONTEXT

Frans G. von der Dunk
International Institute of Air and Space Law,
Leiden – The Netherlands
F.G.vonderDunk@law.leidenuniv.nl

1. Introduction

The Convention on Registration of Objects Launched into Outer Space, usually going by the name of 'Registration Convention',[1] was the fourth treaty exclusively dedicated to outer space which was developed in the bosom of the United Nations Committee on the Peaceful Uses of Outer Space, after the 1967 Outer Space Treaty,[2] the 1968 Rescue Agreement[3] and the 1972 Liability Convention.[4] Only the 1979 Moon Agreement[5] was still to follow, which for general lack of success however heralded the end of a two-decade time-span in which COPUOS managed to develop the framework for international space law as far as binding legal instruments were concerned.

The text of the Registration Convention was, after some years of discussion and drafting, adopted in New York on 12 November 1974, and made public through a Resolution of the General Assembly – Resolution 3235(XXIX), which contained the text in the Annex and opened the Convention for signature as per 14 January 1975. It entered into force quite rapidly on 15 September 1976, after the fifth instrument of deposit had been received with the Secretary-General of the United Nations.[6]

2. The Registration Convention in the context of the other UN treaties on space

When evaluating the Registration Convention in the larger context of the *corpus juris spatialis internationalis* (in particular the other four treaties mentioned) and its development over time, the following further picture emerges. Compared to its three elder counterparts, the Registration Convention did not draw overly widespread ratification: only 44 states are parties to the Convention, with a further 4 states having signed but not (yet) ratified.[7] On the other hand, the Registration Convention distinguishes itself positively from the Moon Agreement not just by numbers but also by the importance of the states involved: in contrast to the latter treaty, most of the important space powers are party to the Registration Convention.

This 'middle position' is probably symptomatic for the Convention: a relatively simple and down-to-earth treaty consisting of just 12 Articles elaborating one rather straightforward concept: the registration of space objects. Whilst it would, on the one hand, from that perspective seem to provide few disincentives for states to ratify, ratification on the other hand would be directly relevant especially for those states actually launching space objects into outer space – which still constitute a minority amongst the states of this world.

From a slightly different perspective, the Registration Convention is closest to the Rescue Agreement and the Liability Convention, in that each of these are essentially elaborating one specific Article of the Outer Space Treaty which, as the framework treaty, provides for the fundamental principles.[8] For the Rescue Agreement this concerns Article V on astronauts as envoys of mankind, for the

Liability Convention Article VII on liability for damage caused by space activities, read space objects, whereas the Registration Convention elaborates Article VIII of the Outer Space Treaty which already posits both the concept of registration of space objects, and its major consequence, the possibility to exercise jurisdiction over the space objects so registered.

This very elementary similarity in approach and background also caused a considerable number of states, in considering their possible adherence to the space treaties, to treat these three as rather closely inter-related, and to ratify them together. In particular the Rescue Agreement and the Liability Convention were seen as almost constituting a package deal, balancing the interests of the space-faring nations in benign treatment of their astronauts and spacecraft with the interests of the non-space-faring nations in generous possibilities to see any damage caused by space activities compensated. The Registration Convention underpins this trade-off, as one major aim of the treaty is to enhance the chances of liable states being identified so that claims can actually be asserted.

3. The substance of the Registration Convention

Thus, upon second view, the relatively meagre ratification of the Registration Convention as compared to the other two probably indeed stems from the rather straightforward character of its subject-matter. Let me play a bit the role of the devil's advocate here: the benefits to the international community of ratification by the (still) select group of independently space-faring nations[9] are evident, but since the Convention only deals with the major parameters of the concept of registration and its major legal consequences, with one exception it does not contain any distinct rights or obligations for non-independently space-faring nations which would make it beneficial *for those states to ratify themselves.*[10]

The main rights such states could derive from ratification of the Registration Convention, as compared to simply being aware of its existence and the benefits if may offer in terms of identifying space objects having caused damage through a register accessible to everyone, amount to generic and rather basic ones. Only states party to the Convention are entitled to formally protest and bring forward legal claims in case another party to the Convention would fail to comply with its duties under it, since under general public international law only states parties to a treaty may consider their rights to be violated if another party does not fulfil the relevant obligations.

This is where the devil's advocate comes in. In the absence of substantive rights for non-registering states – with the one exception alluded to – this does not perhaps amount to much. In view moreover of the many loopholes and escape clauses and phrases which the Convention is saddled with (not to mention a general lack of sanctions and sanctioning mechanisms), as well as the fact that the UN Secretary General is supposed anyhow to represent the interests of such non-independently space-faring nations in adherence of the independently space-faring nations to the rules of the Convention, this perhaps provides a rather meagre incentive for such states to ratify.

The exception arises in Article VI of the Registration Convention, providing a state having become the victim of damage resulting from space activities with the right to be assisted by those states with relevant monitoring and tracking facilities for the

purpose of trying to identify the launching state(s) of the space object at issue. This clause however, whilst most directly linking the Registration Convention to the Liability Convention as an effort to enhance the chances of identifying the liable state(s) and thus of considerable potential benefit to non-independently space-faring nations, upon closer view might not offer too much incentives for ratifying either.

On the one hand, it only provides for an obligation of effort (the duty to respond on the part of the state with monitoring and tracking facilities is qualified as "to the greatest extent feasible"), on the other hand it still requires "agreement between the parties concerned" – which anyway can also be arranged *without* referring to the Convention or being a party to it.

In other words: wrongly or rightly, non-independently space-faring nations might have considered (and might still do so) their interests in the Convention to be sufficiently served by comprehensive ratification *on the part of the independently space-faring nations*, without the need arising for their own ratification.

One should not be allowed to forego the benefits of Article VI of the Convention so easily, however; and this should probably be the main aim of reinforcing the Registration Convention.

4. Concluding remarks

So where does that leave us by way of introduction from a historical and background-perspective? Perhaps the Registration Convention should not be considered such an only-halfway successful treaty when it comes to its role and impact; in view of the partisanship of most relevant independently space-faring nations as well as the character of the substance of the treaty's rules, the mere number of ratifications does not provide us with the full picture.

At the same time and for that very reason attention is, or should be, largely redirected to reinforcing the Registration Convention in terms of substance, rather than simply exhorting non-parties to ratify. The treaty should, put plainly, be made of (even) more interest to (especially) non-independently space-faring states by indeed making it more effective – that also would be the best way to mount further political pressure upon those independently space-faring nations not yet having ratified.

Tightening and expanding the parameters to be registered respectively to be made available to the UN Secretary-General; including parameters necessary as a consequence of practical – read commercial – developments such as private ownership of satellites or leases-on-orbit and sales-on-orbit; ascertaining that another new and specific development – the UNIDROIT Convention and Protocol – will not dilute or interfere with the impact of the Registration Convention: those would be the focal points for near-term future legal development and codification.

This is therefore, what the current symposium has set out to contribute to. Since practical sense and reason tell us not to try and reinvent the wheel all over again, finally, presentations on the above issues are backed up by some examples of relevant practice *re* registration of space objects. All this, in order to set the tone for further beneficial development of the Registration Convention and its impact and relevance in practical terms.

[1]. Convention on Registration of Objects Launched into Outer Space (hereafter Registration Convention), New York, adopted 12 November 1974, opened for signature 14 January 1975, entered into force 15 September 1976; 14 ILM 43 (1975); 28 UST 695; TIAS 8480; 1023 UNTS 15.

[2]. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter Outer Space Treaty), London/Moscow/Washington, adopted 19 December 1966, opened for signature 27 January 1967, entered into force 10 October 1967; 6 ILM 386 (1967); 18 UST 2410; TIAS 6347; 610 UNTS 205.

[3]. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (hereafter Rescue Agreement), London/Moscow/Washington, adopted 19 December 1967, opened for signature 22 April 1968, entered into force 3 December 1968; 19 UST 7570; TIAS 6599; 672 UNTS 119.

[4]. Convention on International Liability for Damage Caused by Space Objects (hereafter Liability Convention), London/Moscow/Washington, adopted 29 November 1971, opened for signature 29 March 1972, entered into force 1 September 1972; 10 ILM 965 (1971); 24 UST 2389; TIAS 7762; 961 UNTS 187.

[5]. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (hereafter Moon Agreement), New York, adopted 5 December 1979, opened for signature 18 December 1979, entered into force 11 July 1984; 18 ILM 1434 (1979); 1363 UNTS 3.

[6]. See Art. VIII(3), Registration Convention.

[7]. As per 1 January 2003; see the web-site of the United Nations Office for Outer Space Affairs (UN OOSA), at http://www.oosa.unvienna.org/SpaceLaw/treaties.html. For the Outer Space Treaty, the Rescue Agreement and the Liability Convention the corresponding figures are, respectively, 98/27, 88/25, and 82/25; for the Moon Agreement by contrast 10/5. In addition, it may be mentioned that one intergovernmental organisations has deposited a relevant declaration accepting rights and duties under the Rescue Agreement, two have done so with respect to the Liability Convention, and two have done so with respect to the Registration Convention.

[8]. The Moon Agreement from this perspective represents an elaboration of roughly all of the Outer Space Treaty's substance with respect to specific *parts* of outer space, i.e. the moon and other celestial bodies.

[9]. The concept of 'independently space-faring' nations is meant to contrast with the majority of states which as of now undertake space activities, if at all, only within an international framework represented by intergovernmental organisations such as ESA, EUMETSAT, Intersputnik, Interkosmos and Arabsat, or under other, looser bilateral or multilateral arrangements.

[10]. This is in stark contrast with the Liability Convention, where partisanship is required for becoming a claimant under it (Art. VIII) and for enjoying all the rights of claimants (Artt. IX-XIII) up to and including the right to establish a Claims Commission (Artt. XIV-XX).