Overview of International Space Law

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Evolution of the thinking on space law before and after the beginning of space activities

Years before the first man-made space object was launched into orbit around the Earth, legal aspects of this new kind of human activities had become a subject of legal thinking. It was not surprising that the early writers on space legal problems mostly approached the subject with a background of air law, which developed during the first half of the 20th century. However, not all of them were able to properly distinguish between the legal principles of aviation and the legal problems arising from the prospective or newly effected space flights.

The progress in the rocket technology and the preparations for the International Geophysical Year /IGY, 1957-58/, which also anticipated the peaceful exploration of the Earth and its neibourhood by means of artificial satellites orbiting our planet, advanced the expectation that the first man-made space objects would be soon successfully launched into outer space. Those prospects also gave rise to a number of legal papers dealing with issues that seemed to be of imminent importance to be considered and resolved, in particular with the questions of defining outer space and its legal status. However, while a certain consensus concerning basic principles of space law was emerging, different opinions prevailed on the approach to developing space law. Some authors were suggesting to conclude a general treaty along the lines of the 1944 Chicago Convention on International Civil Aviation, other specialists rather expected a series of agreements, gradually arrived at, on particular subjects.

Besides individual scholars, some international non-governmental organizations played a significant role in the development of the space law doctrine, which should lead to an appropriate regulation of space activities.

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The Congresses of the International Astronautical Federation /IAF/, which was founded in 1950 and has been dealing with all aspects of space flights, also began to bring some reports on legal issues relating to space activities. In 1958, the first Colloquium on the Law of Outer Space was held under the scope of the International Astronautical Congress at the Hague /Netherlands/. At the second Colloquium of this kind, which was heldin London /United Kingdom/, it was decided to establish an International Institute of Space Law /IISL/ as a permanent non-governmental institution of the IAF. It began its activities after the adoption of its Statute in 1960 at the International Astronautical Congress in Stockholm /Sweden/. The Proceedings of the IISL, which include the papers presented at the annual Colloquia held since 1958 up to date, bring regularly a collection of articles on principles and different aspects of space law.

The Institute of International Law /L'Institut de Droit International/, which was already founded in 1873 and gained merits for the development of general international law and its codification, also contributed to establishing a basis for the legal régime of outer space by adopting a resolution on this subject in 1963.

Another old non-governmental organization, the International Law Association /ILA/, also founded in 1873, established a special Space Law Committee, which formulated in subsequent years a number of codification projects, such as a Draft Convention on the Settlement of Space Law Disputes, finalized in 1988, and a Draft International Instrument on the Protection of the Environment from Damage Caused by Space Débris, which was adopted by ILA in 1994.

Beginning of the development of international space law at intergovernmental level.

The consideration of space legal problems at intergovernmental level started shortly after the first space flights of artificial satellites in orbit around the Earth. The expected impact of space activities on maintaining the peace in international relations, and also a vision of possible benefits therefrom for all nations, initiated a great interest and simultaneously concerns

of the whole world community. Therefore, the United Nations became the theatre for discussions and possible agreements on this issue.

The establishment of a special body within the UN, first as an Ad Hoc Committee /1958/ and one year later as a permanent Committee on the Peaceful Uses of Outer Space /COPUOS/, became essential steps for the development of this trend. In resolution 1721 /XVI/ of 20 December 1961, a programme for multilateral cooperation in the exploration and use of outer space was unanimously adopted by the UN General Assembly. In its first part, fundamental principles were commended for guidance of States in their space activities and the COPUOS was invited to study and report on the legal problems, which might arise from the exploration and use of outer space.

Furthermore, two Subcommittees, one Scientific and Technical /STSC/, another Legal /LSC/, were established by the COPUOS for detailed considerations of specific proposals raised by its Member States. An important conclusion concerning the decision-making was also reached in the COPUOS: All decisions of the Committee and its Subcommittees should be subject to agreement without need for voting /the rule of consensus/.

Finally, within the UN Secretariat, an Outer Space Affairs Division /OSAD/ was set up in the then Department of Political and Security Council Affairs in New York. In 1990s, the OSAD expanded into the present Office for Outer Space Affairs /OOSA/, which then moved from New York to the United Nations Office in Vienna. Since then all sessions of the COPUOS and both its Subcommittees have been held there. Vienna also became the theatre of three UN Conferences on the Peaceful Uses of Outer Space held in 1968, 1982 and 1999.

Building-up of the international legal basis for space activities and its present state

The UN Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, approved by the General Assembly resolution 1962 /XVIII/ on 13 Decem-

ber 1963, became the first major outcome of the law making process. The Declaration was not a treaty, but it brought a number of important principles, which could then be transformed into a legally binding instrument. This was effected by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies /OST/, which was signed simultaneously in London, Moscow and Washington on 27 January 1967. The OST became the fundamental legally binding instrument of the present international space law. It now has 100 States Parties and was signed by 26 additional States.

/a/ The 1967 Outer Space Treaty

In its Article I, the OST incorporated the principles declaring the benefit of all countries; the freedom of exploration and use of outer space, the Moon and other celestial bodies by all States; and the freedom of scientific investigation. The principle of Article II remained identical as it had already been spelled out in the 1963 Declaration and in one brief but comprehensive sentence banned national appropriation of outer space, including the Moon and other celestial bodies, by claim of sovereignty, by means of use or occupation, or by any other means. Article III then restated the duty to conduct space activities in accordance with international law, including the UN Charter. Such activities shall be carried on in the interest of maintaining international peace and security and promoting international cooperation and understanding.

In Article IV of the OST, the first legal basis for demilitarization of outer space was laid down, though only some limitations of military activities in the space environment were agreed at that time, namely: not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner. More farreaching limitations of military activities concerned only the Moon and other celestial bodies, but not space per se. In Article V of the OST, basic principles concerning assistance to be rendered to astronauts in the event of accidents, distress, or emergency landing on the territory of other States or on the high seas have been included.

Special attention should be drawn to Article VI, which incorporated the principle of international responsibility of States for national space activities, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the OST. The adoption of this principle was the result of a compromise, which reconciled the opposing views of different groups of States concerning the participation of private entities in space activities. After longer consultations on that issue, the negotiating delegations agreed on the participation of both the public and private subjects in space activities and thus opened the way to the private sector for conducting them side by side with States and international intergovernmental organizations. At the same time, however, the respective States assumed a direst responsibility not only for their own space activities, but also for the activities of private legal persons of their nationality. The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the respective States.

One of the early discussed problems of international space law was also international liability for damage caused to another State or its nationals and for damage caused to third parties by launching of objects into outer space. The liability for damage belongs to the special category of responsibility for activities, which due to their hazardous nature may cause harm to be compensated if it really occurs, though such activities are not prohibited by law and do not violate any rule of international law. Such principle has been provided in Article VII of the OST.

Furthermore, the principle of retaining jurisdiction of a State "on whose registry an object launched into outer space is carried" and control over such object, and over any personnel thereof, while in outer space or on a celestial body, has been declared in Article VIII. It provided a basis for registration of space objects and established a link between the registration and the exercise of jurisdiction of the State of registry over the respective object.

The formulation of some provisions included in the 1967 OST reflects the limits, which the drafters of the Treaty were not able,

or did not want, to cross at that time. In particular, this concerned Article IX that provided for undertaking of appropriate international consultations before proceeding with an activity or experiment, which would cause potentionally harmful interference with activities of other States Parties. But neither such consultations nor the outcome thereof have been clearly made obligatory.

The 1967 OST did not bring any principles that would regulate economic activities the purpose of which would be to explore and exploit natural resources of outer space, the Moon and other celestial bodies, or to produce energy therefrom. Attempts at resolving any issues of this kind were considered as premature and the opening of discussions on them would have delayed the conclusion of the Treaty, which was thought to be impending.

/b/ Other UN Space Treaties

During the period of twelve years following the entry of the OST into force, four other UN Space Treatie were developed.

The 1968 Rescue Agreement dealt almost exclusively with accidentson Earth in the territories under and outside the jurisdiction of States Parties, and with the return of the personnel and space objects or their component parts. It did not elaborate specifically the assistance and rescue during the activities in outer space and on celestial bodies.

The 1972 Convention on International Liability for Damage Caused by Space Objects enacted inter-State methods of the settlement of disputes, which would prevail even if damage of and compensation to private persons should be resolved. The Convention, however, does not provide for a compulsory solution of disputes relating to claims for compensation for damage.

In the 1975 Convention for Registration of Objects Launched into Outer Space its States Parties agreed to register their objects launched into space by means of an entry in "an appropriate registry", which they should maintain. Moreover, they agreed to establish a central "Register" for such objects to be maintained by the UN Secretary-General.