International legal regime on outer space: Outer Space Treaty, Rescue Agreement and the Moon Agreement

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Introduction

During the lifetime of our generations, new areas were opened for the performance of activities of humankind that became important theatres for the newly developing international relations. This evolution has been effected under the conditions prevailing in the today's world, which are characterized, from the viewpoint of international order, by the nonexistence of a centralized power structure that distinguishes the world community from the internal legal systems of individual States. International law has been described as "a horizontal system of law" that "operates in a different manner from a centralized state system and is based on principles of reciprocity and consensus rather than on command, obedience and enforcement".[1]

Moreover, States, as members of the present international community, are unequal in strength, though all of them are considered as sovereign and equal in law. What has just been said about the international community and its members in general is particularly valid with regard to their participation in the development of activities in newly opened areas that have become fields of a global concern in which all States, in spite of their unequal capacities, wish to play an adequate role.

The present areas of global concern are: Antarctica; outer space, including the Moon and other celestial bodies; end oceans, particularly the high seas, and the seabed and ocean floor. In addition, the Earth's environment belongs more and more to "the global commons", as it became evident at the United Nations Conferences on Environment held in Stockholm, 1972, Rio de Janeiro, 1992, Johannesburg, 2002, and during the further developments. All these areas, which are of common concern to all nations, have offered them vast opportunities but, at the same time, many new responsibilities have emerged. The opportunities and problems, however, are not identical in each of these areas and the world community therefore did not decide to cope with them jointly by attempting to establish one single legal regime that would be valid for all of them. Instead, specific legal systems have been developed for each particular area, though the necessity to do so emerged during the same historical period. In the process of establishing the individual regimes for "global commons" and in the current results of these efforts, it is possible to identify a number of similarities. It is also necessary, however, to observe some significant differences that do not allow mechanical transfer and application of the solutions of issues relating to one specific area to the others.

[1] See *Peter Malanczuk,* Akehurst's Modern Introduction to International Law, Seventh revised edition, Routledge, London and New York, 1997, p. 6

The purpose of this paper is to discuss the legal regime of one of the "global commons"- that on outer space as it has been developed by the United Nations. As it is usually recalled, the up-to-date results of this development are included in five international treaties and five sets of principles, and these United Nations instruments as a whole offer an impressive picture of achievements in this particular legal field. Under the scope of this contribution, three of these instruments will be dealt with, namely the 1967 Outer Space Treaty, the 1968 Rescue Agreement and the 1979 Moon Agreement. The other United Nations space law instruments are analyzed in other papers presented at this Workshop.

I. The Outer Space Treaty and its Fundamental Significance for the Legal Regime of Outer Space

The 1967 Outer Space Treaty (OST)[2] laid down the foundations of the legal regime for human activities in those parts of the Universe surrounding our planet that have had a significant impact on our lives. Moreover, unless otherwise agreed upon in future, the principles established by the OST shall also apply to missions extending human activities deeper into our solar system and beyond. It is generally accepted that the OST created a solid basis for the progressive development of space law and belongs to the important law—making treaties of the whole system of contemporary international law[3].

Through the OST, an attempt was made to find a balanced compromise between the common interests of all nations, the aims of mankind as a whole, and the interests of individual States as members of the word community and traditional subjects of international law. This compromise is particularly evident from the principles inserted in the first three Articles of the Treaty. It should be emphasized that the architects of the OST avoided making an explicit and perfect definition of the legal status of the new area. Instead, they agreed on the purpose and orientation of space activities by saying that "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." It must be stressed that the phrase "and shall be the province of all mankind", as the whole leading principle of the OST, does not refer to outer space itself, including the Moon and other celestial bodies, but to its "exploration and use", which shall be carried out for the benefit and in the interests of all countries.

The second and third paragraphs of the same Article I declare two important freedoms that characterize the legal regime of outer space. One is the freedom of outer space, including the Moon and other celestial bodies, for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law. The other is the freedom of scientific investigation in this area, which shall be facilitated and encouraged by States through international cooperation.

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[2] See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, in: United Nations Treaties and Principles on Outer Space, UN doc. ST/SPACE/11, United Nations, New York, 2002, pp. 3—8. As to the status of the OST in 2005 see UN doc. ST/SPACE/11/Add.1/Rev 2.

[3] In this connection, see the assessment by Ram Jakhu expressed at a symposium held to celebrate the 30th anniversary of the OST on the occasion of the 36th session of the Legal Subcommittee of COPUOS in Vienna, on 1 April 1997: "I would like to join those scholars from all of the world who have almost unanimously been declaring the 1967 Treaty a big success in creating an appropriate order in outer space." /See Jakhu, Pam, Application and Implementation of the 1967 Outer Space Treaty, in: Proceedings of the 1997 IISL/ECSL Symposium, UN doc. A/AC.105/C.2/1997/CRP. 6, 8 April 1997, p. 1.

It may be said in this respect that in establishing the legal regime for outer space, the OST followed the example of the legal regime of the high seas, which crystallized during centuries of struggles and has been characterized by a series of “freedoms of the seas”. And similar to the high seas, 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”. This principle is wide enough to cover not only outer space as a whole but also any part thereof, and national appropriation cannot be effected by any means whatsoever, A weak spot of these provisions, and after all of the whole OST, rests in the silence of the Treaty on the delimitation of outer space, which shall be protected against any attempts at and forms of national appropriation and other violations of the legal order valid in this area.

Article III of the OST also has a fundamental meaning for the legal regime of outer space and activities developed in this area. In this provision the imperative of international legality of activities in the exploration and use of outer space is spelled out, for space activities shall be carried on “in accordance with international law, including the Charter of the United Nations”. Moreover, the necessity of keeping the peaceful character of such activities is emphasized “in the interest of maintaining international peace and security and promoting international cooperation and understanding”. This provision should be read in conjunction with the preambular paragraph of the Treaty in which the States Parties to this Treaty express their desire “to contribute to broad international cooperation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes”. The general principle that later became known as “maintaining outer space for peaceful purposes”, as spelled out in Article III of the OST, was accompanied by a number of measures for demilitarization of outer space that are stipulated in Article IV of the Treaty.

Other principles of the OST are also significant for characteristics of the legal regime of outer space. They include: assistance to astronauts, which are described as “envoys of mankind in outer space”, in the event of accident, distress, or emergency landing; international responsibility for national activities in outer space, whether they are carried on by governmental agencies or by non—governmental entities, and for ensuring that national activities are carried out in conformity with the OST; liability for damage caused by such activities to other States Parties to the Treaty or to their natural or juridical persons; registration of space objects and jurisdiction and control over such objects based on such registration; cooperation and mutual assistance in the exploration and use of outer space with a specific role for the United Nations and its Secretary—General in the development of such cooperation.

Finally, one more significant feature that characterizes the legal regime on outer space, as established by the OST and other United Nations space instruments, must be mentioned. While it was possible to create specialized organizations for administering other areas of international cooperation, such as the International Atomic Energy Agency (IAEA), the International Maritime Organization (IMO) and the International Seabed Authority, as well as the United Nations Environment Programme (UNEP) as a less formal body, in the field of space activities, no specialized organization of the United Nations system emerged. Instead, specific functions have been dispersed among several bodies and organizations with the focal role of COPUOS.

It may be said that the existing structure of international cooperation in space activities remains in harmony with the OST, which did not provide for establishing a specialized agency within the United Nations system that would deal with international cooperation in all relevant space matters. And it is probable that a more expanded structure in the form of a specialized agency will not emerge in the near future. There are, however, some issues of a global impact that

deserve a deeper interest of the world community. These issues include: control and improvement of the Earth's environment by using space technology, protection of the space environment, exploration and exploitation of natural resources from the Moon and other celestial bodies, energy from outer space, search for extra-terrestrial life and eventual communication with extra-terrestrial intelligence. Though some of them are often labelled as remote, these problems knock at our door and should be eventually considered by the United Nations in the interest of all humanity.

The architects of the OST did not intend to work out a comprehensive legal instrument that would forecast and govern all possible aspects of the then ongoing and expected space activities. This is evident from the title of the Treaty, which was concluded only on principles governing such activities. And, of course, this character of the OST is also evident from its juridical content. The OST thus left the door open for a further development of space law by additional international agreements and sets of principles that were elaborated step—by—step and adopted during the three decades following the entry into force of the OST. All of them recall the OST as the basic legal document and reflect the desirability of maintaining a harmony between the concepts of the 1967 Outer Space Treaty and the subsequent instruments relating to outer space[1].

II. The Rescue Agreement

The first among the UN space instruments concluded after the OST was the 1968 Rescue Agreement. On 18 December 1967, the United Nations General Assembly adopted with unanimity its Resolution 2345 (XXII), which commended the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The governments of three powers: the United States of America, United Kingdom and the former Soviet Union were requested to open the Agreement for signature and ratification at the earliest possible date. On 22 April 1968, the representatives of 43 States signed the Agreement in Washington, the representatives of 25 States in Moscow and of 24 States in London, some of them having signed in all three cities, some others in one or two cities only. Signatures of other States as well as the first ratifications followed. By 2005, the Rescue Agreement collected 88 ratifications and 24 additional signatures of States, and also one international organization adhered to this Agreement[2].

Those who observed the lengthy negotiations that proceeded rather slowly, were somewhat surprised by the fact that the Agreement was adopted only one year after the conclusion of the OST. More reasons of different significance could be invoked to explain this sudden change. Without a doubt, that motion was expedited by the conclusion and early ratifications of the OST of 27 January 1967; for in its Article V, the States Parties to the Treaty already stipulated that they should "render to astronauts all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas". In the event of a landing, astronauts should be "safely and promptly returned to the State of registry of their space vehicles." Furthermore, the OST included in its Article VIII a principle

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[1] For an evaluation of this process see N. Jasentuliyana, A Survey of Space Law as Developed by the United Nations, in: Perspectives on International Law, Ed. by Nandasiri Jasentuliyana, Foreword by Boutros Boutros—Ghali, Kluwer Law International, 1995, pp. 349—383.

[2] See the text of the Rescue Agreement in: United Nations Treaties and Principles on Outer Space, UN doc. ST/SPACE/1l, United Nations, New York, 2002, pp. 9—12. As to the statue of the Agreement in 2005 see UN doc. ST/SPACE/11/Add.1/Rev. 2.

concerning return of objects launched into outer space or their component parts, found beyond the limits of the State Party to the Treaty on whose registry they would be carried, to that State Party. Hence, after the Space Treaty had been concluded, drafters of the Rescue Agreement had only to elaborate the already adopted principles in a specific document.

Nevertheless, the work on the Rescue Agreement would not have probably been completed so quickly without a special stimulus — two tragic events that affected emotions in all nations and pushed the major space powers to end the lengthy discussion on the subject: on 27 January 1967, when the OST had to be solemnly signed, a fire burst out on Cape Kennedy in the space capsule Apollo and in a few seconds the three US astronauts selected as the first American crew for the planned Moon landing perished; and on 24 April 1967 a new Soviet spaceship, Soyuz I, met with an accident and its commander also perished. If the first accident occurred at a ground test in the space center, i.e. without any possibility of international cooperation in rescue operations and probably without any possibility of rescuing the astronauts at all, the second occurred at the end of a mission, in a situation that might require the need for such cooperation.

The structure of the Agreement is relatively simple. The first group of provisions, inserted in four Articles, deals with assistance to astronauts and their return. All those provisions are based on humanitarian considerations: Article I provides for notification of accidents; then the Agreement proceeds with rescue of and assistance to the personnel of a spacecraft which either landed on the territory of a contracting party (Article 2), or alighted on the high seas (Article 3); in Article 4 the safe and prompt return of the personnel is unconditionally stipulated.

The second group of provisions, concentrated in five paragraphs of Article 5, concerns recovery and return of space objects. It is based on a different approach than the foregoing stipulations, for it is derived from ownership of objects launched into outer space and requires indemnity for services rendered for their recovery and return.

Finally, Article 6 has a special significance: in explaining the term “launching authority”, this provision determines the position of international inter-governmental space organizations under the Agreement.

Articles 7 to 10 have a formal character. Although they include some interesting problems relating to the law of treaties, for purposes of this paper they may be left aside.

Returning to Articles 1 to 4, which deal with the personnel of a spacecraft, situations may occur in which rescue of and assistance to the personnel will be inseparable from the search and recovery of their spacecraft. Under such conditions, humanitarian reasons should prevail and the accomplishment of the action should be governed by provisions concerning assistance to and rescue of astronauts, in spite of the fact that States assumed the duty of an unconditional assistance and return with regard to astronauts only. If it may be possible to separate the assistance to astronauts from the rescue of the spacecraft the dividing point will very probably occur in the process of recovery of the spacecraft. Certainly the return of the personnel can be arranged separately and will be already governed by different provisions than the return of the spacecraft

As to assisting personnel on a spacecraft that landed in a territory under the jurisdiction of a Contracting Party, according to the stipulation inserted in Article 2, launching authorities assume the duty to cooperate with the territorial State. It is not sufficiently clear, however, whether such a duty becomes impending upon a request by the territorial State, whether the launching authority has not only a duty to offer but a right to require its participation in the

accomplishment of search and rescue operations as well, or an agreement among them is expected. The general principle of sovereignty and the structure of the whole stipulation (first the duty of the territorial State to take all possible steps, second the information of the launching authority, third the duty of the launching authority to cooperate) and, in particular, the final clause of Article 2 ("subject to the direction and control of the Contracting Party, which shall act in close and continuing consultation with the launching authority") speak in favour of the dominant position of the territorial State. On the other hand, the purposes of all assistance ("to help to effect a prompt rescue" and "to contribute substantially to the effectiveness of search and rescue operations"), as well as the principle of cooperation indicate that the territorial State is not completely free in its decisions.

As to assistance to the personnel of a spacecraft that landed outside the territory of a Contracting Party, the stipulation inserted in Article 3 seems to assume a priority of assistance of the launching authority concerned that will be primarily interested in the rescue and will regularly dispose of means and facilities for this purpose. Nevertheless, whenever the launching authority itself is unable to act, or would be too late, other contracting parties "which are in a Position to do so**"** shall assist the personnel concerned immediately. They will act without any request and according to their own judgment and decisions, their only duty being to inform the launching authority and the United Nations Secretary-General of their steps.

A similar effect would have insufficient rescue operations undertaken by the launching authority. In such a case, the other contracting parties remain obliged to assist, both under Article V of the Outer Space Treaty and Article 3 of the Rescue Agreement.

In practice, all parties involved should cooperate in good faith in order to avoid confusion and failure.

Article 4 includes a simple stipulation concerning return of the personnel of a spacecraft, be it astronauts who landed, "owing to accident, distress, emergency or unintended landing" in a territory under the jurisdiction of a Contracting Party or those that have been found on the high seas or elsewhere outside the jurisdiction of any State. In all such situations, "they shall be safely and promptly returned to representatives of the launching authority". Although the wording of that provision was not quite adequate to the dignity of "envoys of mankind", it should be stressed that it does not contain any conditions or quasi—reservations. Neither can any condition be derived from the principle included in Article V of the OST, which is recalled in the preamble of the Agreement.

The mandatory wording of Article 4 does not permit any delay in the return of astronauts, be it based on their doubtful mission or on a delict committed by them that should probably be punished by States of their nationality.

Now a few words on the recovery and return of space objects. The complex and fragile provisions dealing with the recovery and return of space objects, which are inserted in paragraphs 2 and 3 of Article 5, represent one of several compromises that paved the way to the adoption of the Agreement. The duty to return a recovered space object is a logical consequence of the principle inserted in Article VIII of the OST. According to it, ownership of objects launched into outer space and of their component parts is not affected by their presence in outer space or on a celestial body, or by their return to Earth. This principle, however, does not mean that the launching authority could not resign on its ownership and abandon a space object or its component part in the return of which it would no longer be interested. With regard to the practice of launching certain objects without publication of more precise data on their missions, the launching authority

may face a dilemma, either to communicate identifying data prior to its request for return or not to insist on the return at all. On the other hand, the contracting party that recovered a space object or its parts and recognized their identity is not obliged to insist on the submission of identifying data and may be willing to return them without any condition.

A special significance belongs to the obligation of the launching authority under Article 5, paragraph 4, to take effective steps to eliminate possible dangers or harm from a space object of a hazardous or deleterious nature. The provision concerns eventualities, such as the use of fuel or instruments, that would be, in the case of an accident, dangerous to its environment.

The last paragraph of Article 5 deals with the problem of expenses incurred in fulfilling the obligations to recover and return a space object or its component parts, which shall be borne by the launching authority. Unlike rescue of astronauts, the recovery and return of space objects, though serving purposes recognized by the OST, will be mostly in favour of the launching authority and it is therefore only the expenses that will be borne by the launching authority alone. Such obligation is balanced by the benefit the launching authority will get by the carrying out the recovery and return. And since there is no specific procedure provided, an agreement between the parties concerned seems to be the expected method of fixing the amount of expenses to be paid by the launching authority.

The international character of the Rescue Agreement does not exclude any participation of private persons and means in such operations, so far as they may be useful (e.g. rescue by private vessels on the high sea, search and rescue by private aircraft in distant territories, etc.). Of course, such persons do not act as direct subjects of international rights and duties. Neither do they act as representatives of the respective State, unless explicitly authorized by it. That State will bear an indirect responsibility for their eventual wrongful acts or omissions.

Beside States, international intergovernmental organizations responsible for launching of space objects may become beneficiaries of rights and addressees of duties arising from the Agreement if they deliver a declaration of acceptance of the rights and obligations provided for in the Agreement and if the majority of the Member States of the organization are Contracting Parties to the Agreement and to the OST. By their declarations of acceptance, intergovernmental organizations are entitled to all rights and obliged to fulfill all duties arising from the Agreement, except those that remain connected with the territorial basis of individual States and with their position of Contracting Parties to the Agreements. Thus, the position of international intergovernmental organizations that would make the required declaration could be qualified as a kind of adhesion to a treaty[3].

The 1968 Rescue Agreement reflects the level of space flight technology, and practice of the period of its origin[4]. During the subsequent periods, new conditions and problems emerged, which had not been known during the earlier stages of space activities. While the fundamental principles governing assistance and rescue of astronauts, their return and the return of space

[3] To date only the European Space Agency (ESA) made such a declaration.

[4] For a contemporary assessment of the Rescue Agreement and its comparison with analogous instruments of maritime and air law see Vladimir Kopal, The Agreement on Rescue of Astronauts and Return of Space Objects, in: New Frontiers in Space Law, Ed. by Edward McWhinney and Martin A. Bradley, A.W. Sijthoff, Leyden, 1969, pp. 103—123. For the process of negotiations on that instrument, see Roy S.K. Lee, Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, in: Manual on Space Law, Vol. I, Compiled and edited by Nandasiri Jasentuliyana and Roy S.K. Lee, Oceana Publications, Inc. and Sijthoff and Noordhoff, 1979, pp. 53—81

objects remained to be valid, the need for additional appropriate legal rules emerged. Those rules should deal with assistance to and rescue of astronauts in the event of distress or emergency when they are still on board their spacecraft or if they entered the free space and cannot return safely without an appropriate cooperation. Assistance and rescue should also be internationally regulated in favour of the personnel of space stations in orbit, and on celestial bodies in the future. Under the present conditions of a growing commercialization of space activities, the participation of private persons, including space tourists, in space flights should also be considered and adequate rules for the new categories of space activities worked out. This is more or less a general problem of the further development of space law in our times.

III. The Moon Agreement

The drafters of the fifth UN legal instrument — the 1979 Moon Agreement[5] — also elaborated a number of principles of the 1967 Outer Space Treaty, particularly those relating to the Moon and other celestial bodies. The relevant principles of the OST had to be restated and completed in a new agreement for the purposes of building up a specific legal regime for the natural satellite of the Earth in light of the expected landing of human beings on its surface. Thus, for example, the provisions of the OST relating to the peaceful status of the Moon were amplified by a prohibition of "any threat or use of force or any other hostile act or threat of hostile act on the Moon".

Likewise, the Moon Agreement prohibited "to use the Moon in order to commit any such act or to engage in any such threat in relation to the Earth, the Moon, spacecraft, the personnel of spacecraft or man-made space objects."

Moreover, the 1979 Moon Agreement included a number of new elements, some of them quite significant. They concern different forms of international cooperation relating, for example, to mutual assistance in the exploration of the Moon, establishment of manned and unmanned stations on the Moon, safeguards of life end health of persons conducting space activities, and last but not least, preservation of the Moon environment.

But when negotiating the Moon Agreement, its drafters were not in a position to rely on the OST when dealing with the issue of economic activities on the Moon, because the OST remained mostly silent in this respect. An attempt to reach a generally acceptable compromise was made by joining the confirmation of the freedom of scientific investigation, and the exploration and use of the Moon as a right of all States, with the stipulation to establish an international regime governing the exploitation of the natural resources of the Moon, as such exploitation is about to become feasible. However, this solution has failed to attract so far the interest of many nations, as evident in the limited number of signatures and ratifications of the Moon Agreement to date.

The most controversial provisions of the Moon Agreement are included in its Article 11, in which the Moon and its natural resources are declared as "the common heritage of mankind". In paragraph 5 of the same Article, States Parties to this Agreement undertake "to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible". Furthermore, in paragraph 7 of Article 11, the main purposes of this international regime that is to be established

[5] See the text of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, in: United Nations Treaties and Principles on Outer Space, UN doc. ST/SPACE/1l, United Nations, New York, 2002, pp. 28—36.

are enumerated, including "an equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the Moon, shall be given special consideration."

These provisions of the Moon Agreement reflected similar endeavours that resulted in the provisions of Part XI of the 1982 United Nations Convention on the Law of the Sea and its relevant annexes with regard to the area of the seabed and ocean floor beyond the limits of national jurisdiction. Though the 1979 Moon Agreement was finalized on the basis of consensus, and like the other United Nations treaties was adopted and commended by the United Nations General Assembly, a sharp opposition, perhaps more silent than loud, against that instrument emerged, mostly due to its provisions concerning the common heritage principle and the undertaking to establish an international regime to govern the exploitation of the natural resources of the Moon. As is known, only a limited number of States have become parties to the Moon Agreement to date[6].

It must be observed, however, that in comparison with the Sea Law Convention, which includes detailed rules and provides for the establishment of a fullscale international organization - the Seabed Authority - and also for a system of dispute settlement with a special international sea law tribunal, the 1979 Moon Agreement is a modest instrument. It has not yet established the promised international regime. States Parties to the Agreement only undertook that such a regime would be set up as its need becomes really impending. Its creation would depend on the adoption of amendments to the Agreement, which would enter into force only for States Parties accepting such amendments. Moreover, the undertaking to establish such a regime for the Moon refers only to the exploitation of the natural resources. Other provisions of the Moon Agreement explicitly guarantee the right to the exploration and use of the Moon as well as the freedom of scientific investigation of the Moon, the right to collect and remove from the Moon samples of its mineral and other substances, and the right to use these substances for the support of space missions[7].

It should also be recalled that the ratifications of the 1982 Sea Law Convention, in which a detailed implementation of the common heritage principle has been incorporated, including a complex system of prospecting, exploration and exploitation with a central role for the International Seabed Authority has also proceeded slowly for years. But the main obstacles that hindered this process were removed in 1994 by an Agreement relating to the implementation of Part XI of the Convention, in which the ways and means of how to place into effect the controversial part of the Sea Law Convention were found. Since then, most countries of the world, both developed and developing, adopted the 1982 Convention and the 1994 Agreement. Hopefully, other States may be expected to do so in future[8].

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[6] As of 2005, 11 States have became parties to the 1979 Moon Agreement and 5 other States signed the Agreement but have not ratified it yet. See Status of International Agreements Relating to Activities in Outer Space as at 1 January 2005, UN doc. ST/SPACE/11/Add.1/Rev.2.

[7] See Article 11, para. 4 and Article 6, paras. 1 and 2 of the Moon Agreement.

[8] See the text of the United Nations Convention on the Law of the Sea and the 1994 Agreement, in: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, The Law of the Sea, United Nations, New York, 1997. For the status of the United Nations Convention on the Law of the Sea, which entered onto force on 16 November 1994, and the status of the Agreement adopted by the United Nations General Assembly on 28th July 1994, as at 31 March 2002, see Law of the Sea, Bulletin No. 48, United Nations, New York, 2002, p. 13 et seq.

The methods, by which obstacles were removed to enable a wide acceptance of the United Nations Sea Law Convention, might be considered as an example of how to proceed with the issues pertaining to the 1979 Moon Agreement and, particularly, how to reach an agreement on the implementation of Article 11 of the Moon Agreement, which might be initiated by informal consultations at an appropriate time in the future. Such an attempt would be in accord with the repeated appeals of the United Nations General Assembly addressed to States that have not yet become parties to the international treaties governing the uses of outer space, to give consideration to ratifying or acceding to those treaties. The list of instruments referred to in these appeals also includes the 1979 Moon Agreement[9].

Let us also note in this context that an item on the agenda of the Legal Subcommittee of COPUOS, certified "Review of the status of the five international treaties governing outer space" has been discussed in the Subcommittee for several years. According to the sponsors of this item, its consideration should enable the Legal Subcommittee "to propose mechanisms towards achieving the fullest adherence to the five outer space treaties"[10]. As to the fifth treaty - the 1979 Moon Agreement - this aim is also important with regard to its possible application "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."[11]

Conclusions

The 1967 Outer Space Treaty laid down the cornerstones for the whole building of international space law. In spite of its general character, its main principles are valid and useful. This conclusion also relates to those provisions that established the legal regime of outer space, including the Moon and other celestial bodies, as a "global common". As such, the OST does not need any revision. At the same time, however, some provisions of the OST, and also those of the other United Nations space treaties, need clarification and their application should be adapted in the light of new phenomena and issues. And some basic principles of the OST should be supplemented by further instruments.

Taken as a whole, the present international law of outer space must be considered as a legal system that forms a part of contemporary international law. However, unlike the whole system of international law, which "may now properly be regarded as a complete system"[12], space law is not yet a complete system; more than any other branch of international law, space law has a progressively developing character. Notwithstanding that, the principles and norms included in the United Nations space treaties and other legally relevant documents have established a specific political and legal status of outer space and provided a special body of rules, the purpose of which is to govern different categories of all activities in this areas They represent a legal complex that is based on the 1967 Outer Space Treaty, to which other parts of the whole are linked, being at the same time all mutually interrelated.

Space law, as established by the United Nations, has become an important part of international law and a significant contribution to the rule of law in international relations. And its progressive development must continue during the years to come.

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[9] See e.g. the General Assembly resolution 51/123 of 13 December 1996, paragraph 2 and Note 4.
[10] See Report of the Legal Subcommittee on the work of its Thirty-Sixth Session /1-8 April 1997/, UN doc. A/AC.105/674, 14 April 1997, pp. 10 and 22-23
[11] See Article 1, para. 1 of the 1979 Moon Agreement.
[12] See Oppenheim's International Law, Ninth Edition, Vol. I Peace, Introduction and Part I, Edited by Sir Robert Jennings and Sir Arthur Watts, Longman, England, 1992, p. 12.