SPACE TOURISM: private law implications

By

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Abstract

Space tourism, as envisaged at the time of writing in 2008, still rather experimental and potentially hazardous in nature, does not seem to call for new private international law instruments, in the form of treaties or otherwise. Existing freedom of contract, equality of bargaining power, contract law, tort law, the law of obligations, insurance law, private international law, and the law of conflicts will be able to solve liability and other private law issues arising out of space tourism activities. This stands in contrast with future, more elaborate space *transportation* systems where new private international law instruments might be required.

Text

Exactly thirty years ago, in the summer of 1978, Professor Hamilton DeSaussure and the author of this paper met on the shores of Lake Champlain in upstate New York to write an article, entitled "A Unified Multinational Approach to the Application of Tort and Contract Principles to Outer Space".[2] At that time, there was a lot of speculation about man's 'living and working in outer space'. In retrospect, a good deal of this proved to be science fiction like speculation, and certainly the presence of the 'ordinary' man, the non-professional astronaut in outer space, has been rather less extensive than foreseen. Much later, the scientific, technical and legal literature would move on to the subject of space transportation systems: ultra rapid transportation from one place on earth to another by a hybrid vehicle, with space shuttle capabilities, possessing characteristics of both aircraft and spacecraft, through air space and 'near' outer space, perhaps as successor to the now defunct civilian supersonic jet aircraft.[3] Today, 'space tourism' is a topical subject, but to date there are only two known applications: tourism to and from the International Space Station (ISS),[4] and Richard Branson's Space Ship Two which should be operational in 2009, operated by Virgin Galactic, initially expecting some 200 interested tourists to travel to a height up to 120 kilometers from the surface earth, in suborbital flight.[5]

In 1978, DeSaussure and Haanappel pleaded for a private international law approach, a conflicts of law approach to private law implications of torts and contracts (obligations) in outer space, possibly reinforced by a private international law convention or agreement unifying conflict rules.[6]

It is submitted that the two currently foreseen forms of space tourism are not extensive enough in scope to call for international private law conventions either unifying the substantive law applicable to such activities or the conflict rules surrounding their applicability.

Contracts for the transportation of private citizens to and from the ISS are so rare and expensive that complete freedom of contract between, presumably, parties of roughly equal bargaining power should govern them, including risk allocation for mishaps,

insurance provisions (if insurance is at all possible), choice of applicable law and forum for dispute settlement.

Virgin Galactic contracts may not become commonplace, calling for international conventions or agreements governing them, but they are, it is submitted, consumer type contracts where the supplier of services dictates the contents of the contract to the consumer, the client, the tourist. This writer has not been able, on short notice, to register as a Space Ship Two client, let alone to obtain price and conditions of contract. May be the explosion that occurred during a Space Ship Two fuel flow test on 26 July 2007, killing three and injuring two persons, have set things back. At any rate, it begs the question whether Virgin Galactic / Space Ship Two is (still) a hazardous activity and whether it is insurable, both of which have a bearing on liability questions. This author would hope that EU Directive 90/3141 EEC on package travel would apply to trips on board Space Ship Two.

Not until we get to real space transportation systems will international conventions unifying substantive law or conflict rules become necessary. Perhaps the Warsaw 1929 / Montreal 1999 air transport liability system can server as a model or be declared applicable.[7]

References

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2 Published in (1979) Syracuse J. of International Law and Commerce 1-15.

3 See Haanappel, *The Law and Policy of Air Space and Outer Space, A Comparative Approach*, Kluwer Law International, The Hague / London / New York, 2003, at p. 161-163.

4 The first passenger / tourist being Mr. Dennis Tito who, in 2001, traveled from earth to the ISS and back on board the Russian Soyuz: *ibidem* at p. xiii and 161. To date, there have been five such passengers / tourists, paying large sums of money for the trip (reportedly some 20 million dollars). See also von der Dunk and Brus, eds., *The International Space Station, Commercial Utilisation from a European Legal Perspective*, Nijhoff, Leiden / Boston, 2006.

5 Thus, just at about what most consider being the boundary between airspace and outer space, and that at about one tenth of the price mentioned *supra* in footnote 4.

6 Cf. the website of the Hague Conference on Private International Law for treaties unifying conflict/ private international law rules, and also Haanappel, *Product Liability in Space Law*, in: *The Role of Private Enterprise in Outer Space: International Legal Implications*, (1979) 2 Houston J. of International Law 55-64.

7 On this subject, see Haanappel, *op.cit.* footnote 3, at p. 99-101.