

# Space Tourism and Space Law: Approach Based on the Law Applicable to Astronauts

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## **Abstract**

Although space tourism is still an embryonic activity and has been gradually developing through private companies, it is a subject that soon, contrary to what has been happening, should occupy the great international forums that are dedicated to the space theme, such as the United Nations Committee for the Peaceful Uses of Space (COPUOS). The present work has the objective, from the existing legal regime for astronauts, especially the Agreement on the Rescue of Astronauts and Restitution of Astronauts and Objects Launched into Cosmic Space of 1968, outlining some rights that may be granted to space tourists recognized either from a specific international convention or from the analogous application of the 1968 Rescue Agreement, which, under the rules of the Vienna Convention on the Law of Treaties of 1969, proves to be more difficult in international law to occur. In any case, it seems incontestable, as observed in the 1968 Rescue Agreement, that space tourists be guaranteed the right (and at the same time the duty of States) to be saved, assisted and restored in case of problems in re-entry from the cooperation of the State that carry out these efforts jointly with the company responsible for the flight. Thus, the need to construct a regime for space tourists emerges, especially through an international convention that provides for its minimum rights, as well as the obligations of companies and States.

**Keywords:** Astronauts; Space tourism; Space Law

## **1. Introduction**

The present work intends to analyse the legal regime of astronauts, as well as the particularities that involve space tourists.

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Based on the analysis of the main applicable international norms and the main doctrines in Space Law, it is intended to discuss the extension of the rights recognized to astronauts and to consider the application of these rights to astronauts.

Therefore, the work is structured, first, with the study of applicable rules to astronauts, then, with verification of the rights recognized to them and, finally, the discussion about space tourists.

The deductive method was used, to perform a narrowing of the theme, going from the broadest, the analysis of international norms, to the strictest, the legal situation of space tourists.

## **2. Development**

### **2.1. The Law Applicable to Astronauts**

First, the term "astronaut" must be conceptualized. Elena Kamenetskaya considers astronauts as people who exercise their "professional activities related to the exploration and use of outer space."<sup>1</sup> They are highly trained people who carry out their work in extreme conditions and who, for the progress of science, expose themselves in situations of great risk.

Astronauts are mentioned in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) as "sent from humanity". Their rights are more precisely regulated, however, in the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement).

This expression caused controversy when negotiating the 1967 Space Treaty, giving rise to controversial understandings and proposals, since, for example, as reported by Bin Cheng,<sup>2</sup> the Hungarian delegation understood that the expression would imply in granting immunity from jurisdiction to astronauts whenever they are carrying out peaceful activities. The Lebanese delegation, on the other hand, suggested that it would only be possible to consider astronauts in this way, if they were carrying out peaceful activities. Although the proposals failed, the expression has sparked serious controversies over its scope.

The doctrine is divided on the scope of the expression. For Bin Cheng,<sup>3</sup> "it was nothing more than a figure of speech, without really any legal relevance." However, for Wilfred Jenks<sup>4</sup> it is like a reinforcement of the

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1 Kamenetskaya, Elena. "Cosmonaut" ("astronaut"): an attempt of international legal definition. In: Proceedings of Thirty-First Colloquium on the Law of Outer Space, Washington: American Institute of Aeronautics and Astronautics, 1989, p.177.

2 Cheng, Bin. Studies in International Space Law, Oxford: Clarendon Press, 1997, p.259.

3 Cheng, Bin. Studies in International Space Law, Oxford: Clarendon Press, 1997, p.507.

4 Jenks, C. Wilfred, Space law, Nova York: Frederick A. Praeger Publishers, 1965, p.223.

general principle that the exploration and use of outer space is in the common interest of humanity, a principle from which important practical consequences can occur.

States affirmed rights and duties in international standards, starting from the Space Treaty, which in its only device on astronauts (article 5), deals with the rights and duties that they have with their peers. There is a duty of assistance on the part of States when the astronauts re-enter, as well as a duty of mutual assistance, among themselves, in cases of accidents occurring in outer space.

Still regarding the provision, in addition to the duty of mutual assistance, States should inform any other or the United Nations Secretary-General of any discovery related to outer space that poses a danger to the life or health of astronauts.

The Rescue Agreement expands the list of astronauts' rights, as well as the duty to restore them and space objects that accidentally return to Earth.

The preamble to the Rescue Agreement mentions that the parties "moved by a feeling of humanity" established the said treaty. There is, therefore, an evident humanitarian character, which proves to be quite necessary and reasonable in view of the risks that astronauts are exposed to.

States have a duty under Article 1 of the Rescue Agreement to notify the launching authority or, if it is unable to communicate with it, to make it widely known, or to notify the Secretary-General of the United Nations, that it should disseminate information about an accident, danger situation or forced or involuntary landing in territory under the jurisdiction of the notifying State, on the high seas or in territory outside the jurisdiction of another State, of personnel on a spaceship.

There are controversies about the scope of the term "personnel". For Maria Orozco Saénz,<sup>5</sup> it is an unusual expression. On the other hand, for Bin Cheng,<sup>6</sup> it aims to expand the scope of the standard, in order to include everyone who is in a spatial object, such as passengers and visitors.

Accepting Bin Cheng's lesson, would demand to agree, for example, that space tourists, already mentioned, could enjoy the rights listed in the treaties now studied. However, this will be discussed at another time.

Articles 2 and 4 can be analyzed together. The first deals with the duty of States, whenever there is a landing by forced landing, for example, in their territory, to take measures to save the personnel of the spacecraft and to provide them with due assistance. Article 4, in turn, deals with the duty to return the crew to the representatives of the launching authority. This article appears as a logical link in relation to article 2, because, after the rescue and

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5 Saénz, Maria Orozco, Cuestiones jurídicas relacionadas con el estatuto jurídico del astronauta em el marco de las Naciones Unidas y de la Estación Espacial Internacional, Madri: Revista Electrónica de Estudios Internacionales, nº 23, 2012, p.6.

6 Cheng, Bin. Studies in International Space Law, Oxford: Clarendon Press, 1997, p.507.

assistance, the last step is, in theory, the return of the astronauts to the launching state. However, unlike Article 2, which refers only to landing “in the territory under the jurisdiction of a Contracting Party”, Article 4 imposes restitution in all admitted cases, in accordance with Article 1 of the Rescue Agreement: in the territory of a State Party, on the high seas or elsewhere outside the jurisdiction of any State.

In addition, Article 2 reinforces the duty to notify and make public the forced or accidental landing of a spaceship by the State Party where the landing took place. The launching authority and the Secretary-General of the United Nations must be reported. The same article also establishes that the launching authority must cooperate in relation to search and rescue operations with the State whose territory the landing took place, if assistance by the latter can contribute to the success of the operations.

However, the collaboration of the launching State will be subject, according to article 2 of the Rescue Agreement, “to the direction and control of the Contracting Party, which will act in close and permanent consultation with the launching authority”.

Article 3 of the Agreement is not so different from the articles before mentioned. According to him, which also arises because of Article 2, when States Parties become aware of the landing of a ship in a place outside the jurisdiction of any State, including the high seas, they should provide assistance if necessary and if they have the possibility of providing it. They must, however, inform both the UN Secretary-General and the launching authority of the measures that have been taken to provide for the rescue of personnel.

An issue not addressed by the Agreement on Rescue, of undoubted importance, concerns the expenditure that States have on search and rescue operations for astronauts and the recovery of space objects. Although there is silence on the subject, Manfred Lachs<sup>7</sup> suggests that, in relation to space objects, the launching State should return the State Party that recovered it, but, regarding to personnel, “there is a clear tendency to exclude any financial remuneration when it comes to helping to save human lives”.

## **2.2. Space Tourism and Space Law**

If, in relation to astronauts, the legal rules are few, in relation to space tourists they are non-existent.

First, you can't confuse astronauts and space tourists. Astronauts perform work activities for the benefit of humanity. Space tourists go to space for recreational or leisure purposes. So, it is not possible to say that space tourists fall under the concept of astronauts or even “people”.

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<sup>7</sup> Lachs, Manfred, *El Derecho del Espacio Ultraterrestre*, Madrid: Fondo de Cultura Económica, 1977, p.120.

Second: under the rules for the interpretation of treaties, provided for in the Vienna Convention on the Rights of Treaties, it is simply not possible to enforce the rules of Space Law for space tourists. None of the articles relating to the interpretation of treaties gives scope for an expanded interpretation of the rules of Space Law, especially since, at the time they were concluded, it was not even considered that activities such as tourism were carried out. Space tourists cannot be considered “sent from humanity”.

Thus, the third question arises, regarding the absence of applicable international standards. Even though space tourism activities are carried out by private companies, such as Virgin Galactic, States must converge to lay down rules on the liability of these companies for damage caused to other space objects, as well as for the integrity of tourists. In fact, there is a need for a general rule that can serve as an “umbrella” (like umbrella treaties), through which national laws can be created in accordance with the respective legal systems of States.

Thus, in practical aspects, and by analogy, the person who makes a space flight is called a space hiker, as he stayed less than 24 hours outside airspace, while one who stays in a space station, or visits a lunar base is called space tourist because, within the classification of tourist, it remains for a period longer than 24 hours and less than a year.

In addition, issues of a commercial nature also arise. This is because how to assure the purchaser of tickets on orbital flights, that he is really leaving the air space and reaching outer space? Considering the absence of a legal delimitation of the border between airspace and abroad, providing a safe answer to this question is a complex task.

The guarantee, to space tourists, that in fact they were in outer space depends on the resolution, by Space Law, where the outer space begins, resolving the impasse that has been discussed at COPUOUS.

In fact, COPUOUS and other subjects of international law, such as the World Tourism Organization and even entities formed with the specific purpose of cooperating for the legal regulation of space tourism, must make efforts to do so.

### **3. Conclusions**

The legal regime applicable to astronauts is insufficient. There are predictions that they are “sent from humanity”, however, this expression does not have, by far, the legal load that it suggests to have. States recognize the importance of astronauts, due to the risks they are exposed to, to develop activities of interest to them and to humanity, but the list of rights is negligible.

The Rescue Agreement provides for rights that are intuitive and do not demonstrate the real need to have been made positive; others that could be remembered were unfortunately not. States have duties of a moral nature

that, in theory, would not need to be confirmed in this international document.

On the other hand, as suggested by Manfred Lachs,<sup>8</sup> these rights of astronauts and personnel on the spacecraft can be divided into a three-step procedure: 1. Notification; 2. Help and Rescue; 3. Return. Likewise, there is a duty of mutual assistance foreseen in the Outer Space Treaty.

An example of a failure of the Rescue Agreement is the lack of a rule on the duty of assistance, by States, to astronauts, in activities performed in outer space. The international treaty is limited, as stated, to providing for hypotheses regarding situations of re-entry.

Furthermore, who is the "staff" to which the Agreement refers? For someone to be in space, in an activity for a launching state, shouldn't this be an astronaut? Excluding space tourists, who else can engage in such an activity but an astronaut? This is yet another gap that needs to be filled.

We believe that all those who, not being space tourists, and who exercise activity by a launching State should be considered as astronauts, regardless of the adoption of the term "personnel". After all, what characterizes these is the fact that they are developing activities in space, in addition to their rigid preparation for them to be there. Therefore, regardless of their role in the mission and/or in the spaceship, all of them must be considered astronauts and not members of the "personnel", an option that suggests some differentiation in relation to the people who are part of a mission. Therefore, in relation to tourists, it is essential that international society starts to look at the theme, so that a legal regime, deeper than that of astronauts, can be structured, sufficient to deal with all the legal aspects relevant to this activity.

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8 Lachs, Manfred, *El Derecho del Espacio Ultraterrestre*, Madrid: Fondo de Cultura Económica, 1977, p.109-114.