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ONE STEP BACK? DUTIES RELATING TO THE RESCUE OF ASTRONAUTS IN ORBIT UNDER
THE ARRA

Abstract

Five Space Treaties were drafted under the auspices of the United Nations between 1962 and 1979. The OST establishes the major principle for activities in outer space, which are elaborated by the ARRA, the LIAB, the REG and the MOON. However, the ARRA falls short of the principle stated in Art. V para. 2 OST, that “[I]n carrying on space activities in outer space [...] astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties”. Even though the wording literally obliges astronauts to render assistance it clearly meant to commit the State Parties to this duty. (Individuals cannot be the subject of duties assigned by international treaties, thus Art. V para. 2 OST can only oblige States. This question is therefore not addressed in this paper.) The principle still raises the question of the meaning and the scope of ‘all possible assistance’.

While Art. 4 ARRA addresses the return of the personnel of a spacecraft which “have been found on the high seas or in any other place not under the jurisdiction of any State”, thus also including personnel found in outer space, it solely obliges States to inform the launching authority with regard to situations of distress in orbit (cf. Art. 5 para. 1 ARRA). Further amplification is made concerning rescue and assistance to the personnel of a spacecraft that “have alighted on the high seas or any other place not under the jurisdiction of any State” (Art. 3 sentence 1 ARRA). Nevertheless, the ARRA does not explicitly elaborate on an obligation relating to assistance to and rescue of astronauts in orbit.

This paper undertakes to address the lacuna in the ARRA and the question, which duties are owed to astronauts experiencing situations of distress in orbit under other relevant international instruments. Taking into account the drafting history and the technical developments since the drafting, the authors will show, whether the current legal regime is sufficient or needs further elaboration. If further elaboration is necessary, an approach to provide an appropriate solution will be presented.

The planned paper is well in line with the topic of the 5th Young Scholars Session “Space Law – Future Challenges and Potential Solutions”, as with the advent of touristic/commercial uses of outer space, it is desirable to clarify the question of in-orbit rescue to address probable future incidents.