

60th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
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IndiaIMMUNITIES OF ASTRONAUTS IN AN ERA OF COMMERCIALISATION - IS THE SPACE LAW  
REGIME ADEQUATE?**Abstract**

Since 1968 the conception of space flight has moved far beyond the notion of governmental activity. Thus, despite the broad wordings of the Outer Space Treaty, which serve as an umbrella framework on the principles of international space law, the *lex specialis* regimes fall short of addressing the more pertinent problems as demanded in this day and age. None of these is starker than those in relation to the interpretation of the Rescue Agreement.

Primarily the obligation on state parties is to return “personnel” under Article 2 of the regime. However, despite the humanitarian nature of the regime while read in conjunction with Article 5 of the Outer Space Treaty speaking of astronauts as “envoys of mankind”, the relevant extension still uses the term personnel in Article 7. This has created widespread disparity in the concrete extension of the term personnel to all passengers on a space flight. With a eminent scholars, expressing the need for inclusion of only those individuals who exercise certain operational functions of space vehicles to be included within the meaning of the term – the same would render space tourists incapable of availing protections in the entire space law regime. This problem is compounded by state interests in not providing privileges and immunities to travellers who are not part of the activity for the purposes of the country’s own research and mission on board a sub-orbital transport vehicle. Additionally, definitional issues arise with respect to the nature of the vehicle in operation itself. The question of whether a sub-orbital vehicle may indeed be considered a space object depends on the profile of the mission, in cases where a distinction is made on the basis of altitude needed to qualify as a space object, it would result in distinct statuses of the travellers on board before and after the launch.

Thus, these issues showcase a more endemic shortcoming of the regime, requiring immediate course correction. The travaux of the Rescue Agreement clearly indicates its application to flights that exclusively of an “experimental and scientific” nature thereby completely excluding commercial space flight. This coupled with international space law not reaching a concrete position in terms of the definition for the status of passenger make it obligatory on us to create a solution, either by way of a new convention or subsequent agreement to clarify the position of space tourists in favour of a more humane interpretation.