DRAFT CONVENTION ON MANNED SPACE FLIGHT

Institute for Air and Space Law, Cologne University (Karl-Heinz Bockstiegel); Institute of State and Law, Academy of Sciences of the USSR (Vladen Vereshchetin); Research and Study of Space Law and Policy Center, University of Mississippi (Stephen Gorove) 1990

The States Parties to this Agreement,

Noting that manned space flight constitutes one of the great achievements in the exploration and use of outer space,

Believing that further progress in the exploration and use of outer space will greatly depend on the development of manned space flight,

Desiring to encourage broad international cooperation in these flights, particularly if persons from more than one State participate,

Recalling that the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967, provides that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, and declares that astronauts are to be regarded as envoys of mankind,

Mindful of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 22 April 1968 and other international agreements which contribute to the safety of space flight, -

Have agreed on the following:

ARTICLE I
DEFINITIONS

For the purpose of this Agreement:
1. The term "manned space object" means a space object on which a person or persons effect a space flight.

2. The term "manned space flight" means a flight of a space object with a person or persons on board from Earth to outer space or in outer space and extends to the embarkation, launch, in orbit, deorbit, reentry, landing and disembarkation phases.

3. The term "international manned space flight" means a space flight in which persons of at least two or more States or of an international organization participate.

4. The Director of Manned Space Flight Operations is a person who is designated by the State exercising jurisdiction and control over the space object to be in charge of a particular manned space flight. This also applies in a case of international manned space flight unless the States whose persons participate in the flight agree otherwise.

5. The term "space flight elements" includes component parts of the space object, the launch vehicle and parts thereof as well as other objects on the flight, as specified by an agreement between States participating in an international space flight.

6. The term "crew" means persons who effect professional activities during a space flight.

7. The term "intellectual property" is understood to have the meaning of Art. 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967.


9. "The Rescue Agreement" means the Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space of 22 April 1968;


ARTICLE II
REGISTRATION

1. In accordance with the Registration Convention a manned space object shall be registered by the launching State. Separate flight elements may be registered by different States. Such registration and furnishing of the necessary information to the Secretary-General of the United Nations, as required by Article IV of the same Convention, shall be effected in the shortest possible time after the launch of a manned space object. The information shall be regularly updated.

2. In international manned space flight, and in case there is more than one launching State, the States concerned shall jointly determine which one of them shall register the manned space object or a separate flight element. Multiple registration is excluded.

ARTICLE III
JURISDICTION AND CONTROL

1. Pursuant to Art. VIII of the Outer Space Treaty, the State on whose registry the manned space object or flight element is carried shall retain jurisdiction and control over such object or element and over any persons thereof, while in outer space or on a celestial body, or on or in the high seas, or in another place beyond the limits of the jurisdiction of any State.

2. In an international manned space flight jurisdiction and control is subject to any agreement between the States Parties involved.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF PERSONS ON MANNED SPACE FLIGHT

1. The preparation of the manned space flight, determination of composition and functions of the crew and participation of other persons as well as their rights and obligations fall within the competence of the State exercising jurisdiction and control. The same applies to an international manned space flight, unless the States participating in the flight agree otherwise.

2. The commander of the manned space object shall (1) provide for the safety and well-being of all persons on board, and (2) provide for the protection of the space flight elements and any payload carried or serviced by the manned space object. The
commander shall have sole authority throughout the flight to use any reasonable and necessary means to achieve this end.

3. The authority of the commander extends to all persons participating in the space flight, irrespective of their nationality. It also extends to all manned space flight elements and payloads.

4. Directions of the commander are subject to implicit execution by all persons participating in a space flight.

5. The commander may, when he/she deems such action to be necessary for the safety of the manned space flight elements and persons on board, subject any of the persons on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

6. Under normal flight conditions (other than emergencies or when otherwise designated) the commander is responsible to the Director of Manned Space Flight Operations.

7. Before each manned space flight, the State exercising jurisdiction and control shall determine the order in which members of the crew shall assume the responsibilities and authority of the commander under paras 2-6 in the event that he/she is not able to carry out his/her duties.

8. All crew members remain accountable for their activities during their space flight to the Director of Manned Space Flight Operations.

9. A State Party to this Agreement exercising jurisdiction and control over the manned space object shall ensure that activities by the crew thereof shall be carried out in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.
ARTICLE V
ENSURANCE OF SAFETY

1. The States Parties to this Agreement shall conduct activities connected with the exploration and use of outer space and celestial bodies in a way which shall ensure, to the highest degree possible, the safety of the persons involved.

2. In order to avoid harmful space debris, pollution, contamination and harmful changes in the environment of the Earth and, in particular, to avoid risks therefrom to manned space flight, the States Parties shall study the feasibility of appropriate measures and shall make the respective information available to the Secretary-General of the United Nations for dissemination to all interested States.

3. If a State Party has reason to believe that the activities of another State or its nationals might interfere with the manned space flight of the State Party, it can request that international consultations be carried out. A State Party to which such a request is addressed is obliged to enter into such consultations in the shortest possible time.

ARTICLE VI
MUTUAL ASSISTANCE IN SPACE

1. In accordance with Art. V of the Outer Space Treaty and the respective provisions of the Rescue Agreement, the crew participating in a manned space flight of a State Party to this Agreement shall render all possible assistance, including, if necessary, the provision of shelter on their manned space objects, to persons who are experiencing conditions of distress in outer space or on celestial bodies.

2. To facilitate such assistance, the States Parties to this Agreement shall study and exchange information on possible steps to ensure the compatibility of manned space objects and technical means for carrying out rescue operations in outer space.

3. Any information received by a State Party to this Agreement concerning an emergency on a manned space object of another State shall be immediately transmitted to the launching State and to the Secretary-General of the United Nations in accordance with Art. I of the Rescue Agreement so that any State may come to the rescue of the persons experiencing conditions of distress.
4. In the event of an emergency situation arising on a manned space object, the States Parties to this Agreement shall ensure by all possible means that communication to and from the manned space object in distress shall be available and that they shall not interfere with such communication.

5. Unless otherwise agreed by the States Parties concerned, the expenses incurred by a State Party or by another State in rendering assistance to a manned space object in distress shall be borne by the launching State of that object, if the launching State has been informed in advance of the assistance and has not objected.

6. States shall regard any person in outer space as an astronaut within the meaning of Art. V of the Outer Space Treaty and as part of the personnel of a spacecraft within the meaning of Art. VIII of the Outer Space Treaty and the Rescue Agreement.

ARTICLE VII
RESPONSIBILITY AND LIABILITY

1. The States Parties to this Agreement bear international responsibility for manned space flights, irrespective of whether they are carried out by governmental or non-governmental entities, in accordance with the norms of international law including Art. VI of the Outer Space Treaty.

2. The States Parties to this Agreement are liable for damage caused by a manned space object in accordance with the Liability Convention.

3. Actions by persons in the course of the manned space flight shall be subject to the responsibility, liability and other consequences provided for in the law of the State of registry unless otherwise agreed by States participating in an international space flight.

ARTICLE VIII
INTELLECTUAL PROPERTY

1. Subject to the provisions of this Article, for purposes of intellectual property law, an activity occurring in or on a manned space object or a separate space flight element shall be deemed to have occurred only in the territory of the State Party to this Agreement that has registered the space object or flight element respectively.
2. In respect of an invention made by a person who is not a national or resident of the State of registry, a State Party to this Agreement shall not apply its laws concerning secrecy of inventions so as to prevent the filing of a patent application (for example, by imposing a delay or requiring prior authorization) in any other State Party to this Agreement that provides for the protection of the secrecy of patent applications containing information that is classified or otherwise protected for national security purposes. This provision does not prejudice (a) the right of any State Party to this Agreement in which a patent application is first filed to control the secrecy of such patent application or restrict its further filing, or (b) the right of any other State Party to this Agreement in which an application is subsequently filed to restrict, pursuant to any international obligation, the dissemination of an application.

3. The temporary presence in the territory of a State Party to this Agreement of any articles, including the components of a space flight element, in transit between any place on Earth and the manned space flight station or any space flight element registered by another State Party to this Agreement shall not in itself form the basis for any proceedings in the first State Party for patent infringement.

ARTICLE IX
CONSULTATION AND SETTLEMENT OF DISPUTES

1. A State Party to this Agreement may request consultations with another State Party if it has reason to believe that the other State party is not fulfilling the obligations incumbent upon it pursuant to this Agreement or that the other State Party interferes with the manned space flight of the requesting State. A State Party receiving the request shall enter into such consultations without delay.

2. If within three months, the consultations do not lead to a mutually acceptable settlement and the States Parties concerned are unable to settle the issues by other peaceful means of their choice, at the request of one of the concerned States Parties, the dispute shall be decided by an Arbitral Tribunal. The Arbitral Tribunal shall be appointed in the same manner as provided for the Claim Commission in Arts. XV to XVII of the Liability Convention. The Arbitral Tribunal shall determine its own procedure and shall give its decision as promptly as possible. The decision shall be final and binding. The concerned States Parties undertake to carry out the Tribunal's decision promptly.

3. Unless otherwise agreed between the concerned States Parties, implementation of this Agreement and of any other agreement between the concerned States Parties concerning
manned space flight will continue and will not be held in abeyance pending settlement or decision of issues under this Article.

ARTICLE X
APPLICATION TO INTERNATIONAL ORGANIZATIONS

In this Agreement references to States Parties shall be deemed to apply to any international intergovernmental organization which conducts space activities, if the organization declares its acceptance of the rights and obligations provided for in this Agreement.

ARTICLE XI
CONCLUDING PROVISIONS

To be inserted later in accordance with international practice regarding,

- no effect on other international agreements,

- signature and ratification by States Parties,

- entry into force,

- procedure for amendments,

- procedure for withdrawals by States Parties,

- authentic languages of Agreement.