ПОВІТРЯНЕ, КОСМІЧНЕ, ЕКОЛОГІЧНЕ ПРАВО

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SPACE LAW AND HUMAN RIGHTS

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Purpose: *international space law, consisting of five international agreements and 7 resolutions of the United Nations General Assembly does not contain directly any provision that would hint to human rights. It cannot however be realistically perceived that there is any field of international law that would not be affected by human rights. Space Law provides an opportunity to be influenced by human rights. Article III of the Outer Space Treaty of 1967 allows the application of other areas of international law, such as human rights, in case of this area not being mentioned by the lex specialis of space law.* ***Research methods:*** *general-scientific and special-legal methods of scientific knowledge, in particular: system-structural and functional methods, method of observation, method of generalization, methods of analysis and synthesis have been applied.* ***Results:*** *in this short paper it will be assessed under which circumstances and with which effect human rights can be applied to the lex lata of international space law.* ***Discussion:*** *should no help be provided to an astronaut in distress? Should not the behaviour of astronauts on board the international space station be directed by the idea of human rights? Shouldn't in the future any living together of human beings on celestial bodies like Moon or Mars be directed through human rights?*

Key words: *space law; human rights; astronaut; celestial bodies; international law.*

Problem statement and its topicality. International space law consists of only five international agreements and a number of United Nations General Assembly Resolutions. Within the five treaties one does not explicitly find any provisions that protect human rights. It is only in an indirect way that Article 2 of the Rescue Agreement of 1968 appeals to member states to rescue astronauts endangered by accidents, distress, emergency or unintended landing. This fundamental right to help is always considered as an elementary duty of humanity [1].

Analysis of recent research and publications. One could consider whether Article I, para 1 of the Outer Space Treaty appeals to the realization of human rights if this provision pleads that exploration and use of outer space "shall be carried out for the benefit and in the interest of all countries irrespective of their degree of economic or scientific development and shall be the province of all mankind" [2, p. 36]. This provision makes it clear that not only the wealthy and technology possessing countries shall benefit from space travel but also those underdeveloped countries that need the technological knowledge and the gain of knowledge through space travel for the betterment of their living conditions. And, as is well known in human rights doctrine, this does in principle affect the notion of third generation human rights – human rights as rights of solidarity [3, p. 67].

The purpose of this paper is to study the point, that, in principle the entire space legislation lacks

any explicit mentioning of human rights. Therefore, in the following it will be considered how via Article III of the Outer Space Treaty specific human rights may be introduced as accompanying human activities in outer space [4, p. 64]. It should also be mentioned that this short essay wishes to highlight only some aspects of this much broader subject matter [5, pp. 225-237].

Main material.

I. Human rights via Article III of the Outer Space Treaty (OST)

1. Art. III OST

Article III of the Outer Space Treaty reads as follows:

"States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, 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."

Today the dogmatic discussion has advanced the opinion of correctly denying that space law constitutes a so-called self-contained regime, e.g. a legal regime that apart from the rest of international law contains all the rules as a special legal regime in itself and does not need to have recourse to any other part of international law [6, pp. 5-8].

Moreover, it can be taken today that a considerable majority is of the correct opinion that space law via the same Article III of the Outer Space Treaty is considered to be *lex specialis* vis à vis general international law [7]. This means that insofar as space law possesses specific rules those rules must be used in order to solve conflicts. As soon as there are no such rules recourse can be had to the general rules of international law.

And as we have seen in the introductory remarks space law does not contain any specific rules on human rights. This does by no means say that there are no human rights if human beings will be active in outer space. Rather, as we all know, human beings *eo ipso* are born in dignity which they therefore take with themselves either into rockets, on board a space station or on celestial bodies.

Therefore, in principle the Universal Declaration of Human Rights of 1948 [8], the International Covenant on Civil and Political Rights [9, p. 171] as well as on Economic, Social and Cultural Rights of 1966 [10, p. 3] to name only the most general ones with regard to human rights can be applied when human beings as astronauts are carrying out space activities. Moreover, the International Convention Against the Taking of Hostages [11] can be applicable for the travel to celestial bodies and the Declaration on the Elimination of All Form of Intolerance and of Discrimination based on Religion or Belief [12] are also applicable for the activities in outer space. In total one must take account of the fact that human rights have their effectiveness when engaged in the relationship ´between a supreme authority and a human actor. It is the commander on Earth or a commander on board of a rocket or of the International Space Station who has normally the supreme authority with regard to human activities in outer space. So normally governance is executed. The effectiveness of human rights can thus be directed against space agencies which generally are public entities. For the life on celestial bodies, it will be very important to fully develop the concept of effectiveness of human rights among civilians. This so-called third-party effectiveness seems to be possible as soon as the arrival of settlers on celestial bodies finds all of them in the same position. Therefore at least after some time of emancipation from the life on Earth we would have real cases of third-party effectiveness of human rights.

2. Satellite Applications

As regards satellite applications two activities are particularly in the forefront: direct satellite broadcasting and remote sensing by satellites to both of which non-binding Resolutions of the United Nations General Assembly (UNGA) are devoted.

We see for example that the principles on direct broadcasting by satellite as enshrined in the UNGA res. 37/92 of 10 December 1982 [13, pp. 184] describe the legal permissibility of specific activities like broadcasting beyond frontiers, an activity that is heavily influenced by political considerations. Free flow of information versus prior consent [14] is the combat of two ideologically inspired opinions, namely whether all kind of information including politically influenced propaganda can be sent via outer

space beyond the own territory as freely flowing information or whether this can only be done in a way that pays tribute to other countries sovereignty. This was a hot potato in the 1970ies and nineteen eighties and is again on the agenda in the era of the internet where theoretically all opinions can be sent everywhere with the exception of such countries that have disconnected themselves from the internet, again mostly for political reasons.

A somewhat similar situation can be found with regard to remote sensing by satellite, another activity that was explicitly codified in UNGA resolution 41/65 of 3 December 1986 [15]. Here it is astonishing that for reasons that will be briefly analyzed now there was a relatively clear majority in favor of the permissibility to sense countries from outer space and to make profit with the images of such mapping activity. Making images from a country via outer space looks at first glance like an activity that interferes with the sovereignty of the sensed state [16, p. 204]. And exactly this opinion was forwarded by the sensed states mostly countries from the global South [17]. But the general freedom of activities, involving the exploration, use and investigation in and from outer space became the leading argument that was considered to be stronger than any protection of sovereignty [18, p. 439]. And it should be mentioned that an important additional argument was the upcoming remote sensing industry, developing into its privatization phase that spoke in favor of allowing such activities even without any preferential treatment of any (sensed) state and even if these states would belong to the developing world [19].

II. Future Space Settlements and Human Rights

With regard to the settlement of human beings on celestial bodies however, it must be discussed in how far human rights still possess their validity. General international space law has it that for example the permanent settlement on celestial bodies cannot be considered – because of the value of art. II OST [20] - to be on the basis of property of certain areas on celestial bodies. Moreover, it is quite questionable whether the taking of resources on celestial bodies is allowed and as a consequence could be based on human rights if general space law prohibits such activities – and there is a lot of reasons for which this result should be upheld – than the strict provisions of space legislation would override human rights. But is this true for other activities on celestial bodies [21, pp. 388] ?

Generally speaking we must take first into account that due to the preamble of the Universal Declaration of Human rights “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family as foundation of freedom, justice and peace in the world” are the very foundation of this declaration. This means, as has already been emphasized that human beings are born in dignity and cannot lose this dignity wherever they are. Thus as a first important conclusion we can hold the place where human rights are mentioned and claimed is not relevant in principle. The only possibility that this could be regarded differently would be if a human being in outer space would be subject to such a completely different legal environment that he/she would lose his / her dignity. And to just mention this leads to the correct conclusion that this cannot be the case. We can agree that the dignity of all human beings and thus their human rights in outer space is a given. It has therefore to be concluded that all human beings in outer space are generally bearer of human rights at least insofar as the *lex specialis* in the form of outer space law does not deny this. Thus one must first clarify the tention among the human right to acquire property of land as incorporated in *habeas corpus* rights on the one hand, and the denial of this right in art. II of the Outer Space Treaty of 1967 on the other hand. As becomes clear from general rules the *lex specialis* rule of international space law does govern the situation with the effect that no settler can acquire property rights over land on celestial bodies or on specific spaces in outer space. And as the human right to acquire property does not belong to such human rights that list under the *jus cogens* rights one must hold that the rule of art. II of the Outer Space Treaty is valid.

Generally speaking it is therefore up to the agreement among space settlers in case of the settlement on celestial bodies in which way they want to form their living together on celestial bodies. We have little experience as to this relationship. It seems that for this peculiar way of living together new rules must be enacted. It will probably be the work of the

first generation of human settlers on celestial bodies to adopt such rules which will without any doubt also have a human rights dimension.

Conclusion. Therefore, in principle we can state that international human rights are applicable to human activities in outer space and on celestial bodies. But this is true only insofar as the clear provisions of international space law as leges speciales may allow for their application. They are enforceable via the means that the laws on human rights foresee. Their effect is directed only against any superior power and does in principle not include any kind of third-party applicability. But it may in the future come to new developments that regulate in a new and unforeseen way the relations among human beings on celestial bodies in case these humans may decide to live permanently on the celestial bodies. For the time being one must accept that human rights are applicable only insofar as humans are affected by their sovereign authorities.

It may however be added that even in case of a permanent settlement of humans on celestial bodies there is a high likelihood that human rights my play an important role.

References

1. See for details Marboe/Neumann and Schrogl, Rescue Agreement, in: Hobe/Schmidt-Tedd/Schrogl (eds.), *Cologne Commentary on Space Law,* vol. II, Cologne et.al. 2013, pp. 9 et seq.

2. See Hobe, in Hobe/Schmidt-Tedd/Schrogl, (eds.), *Cologne Commentary on Space Law,* vol. I, Cologne et al. 2009, random note 45 et seq., pp. 36 et seq.

3. On the notion of solidarity rights see e.g. Fremuth, *Menschenrechte - Grundlagen und Dokumente,* Bonn 2016, pp. 67 et seq.

4. See on art. III OST Ribbelink, in. Hobe/Schmidt-Tedd/Schrogl (eds.), *Cologne Commentary on Space Law,* vol. I, pp.64 et seq.

5. See e.g. Freeland /Jakhu, The Intersection between Space Law and Human Rights Law, in: Jakhu/Dempsey (eds.) *Routledge Handbook of Space Law,* 2016, pp. 225-237.

6. See Hobe/Freeland (eds.), In Heaven as on Earth? The Relationship of Public International law and the Legal Regulation of Outer Space, Cologne 2013, pp. 5-8; Ribbelink in Hobe/Schmidt-Tedd/Schrogl, vol. 1. OST, Art. III, random note 11 et seq.

7. Ribbelink, note 5, random note 13.

8. Universal Declaration on Human Rights see UN/RES/217/A (III) of 10 December 1948.

9. UNTS vol. 999, p. 171.

10. UNTS vol. 993, p. 3.

11. UNGA Res. 34/146 (XXXIV), UN Doc. A/34/786 (1979).

12. UNGA Res. 35/55, Doc. A/36/648 (1981).

13. See e.g. Hobe, Die rechtlichen Rahmenbedingungen der wirtschaftlichen Nutzung des Weltraums, Berlin 1992, pp. 184 et seq.

14. UNGA Res. 37/92 of 10 December 1982.

15. UNGA Res. 41/65 o 3 December 1986.

16. Se eon these arguments Hobe, note 14, pp. 204 et seq.

17. See e.g. proposals of Brazil UN Doc. A/AC. 105/122 and UN Doc. A/AC.105/133, as well as the common proposal of Argentina and Brazil Un Doc. A/C.1/ 1047 in the UNCOPUOS and in the UN General Assembly.

18. See in this direction clearly the draft of the USA UN Doc. A/AC.105/C.2/L.103.

19. See Malanczuk, Erdfernerkundung, in: Böckstiegel (ed.), *Handbuch des Weltraumrechts,* 1991, pp. 439 (441).

20. See Freeland / Jakhu, Art. II, in Hobe/Schmidt-Tedd/Schrogl, *Cologne Commentary on Space Law,* vol. I, random note 63 et seq.

21. See inter alia, Freeland/Jakhu, OST, Art. II, in Hobe/Schmidt-Tedd/Schrogl, *Cologne Commentary on Space Law,* vol. I, pp. 44 et seq. and Jakhu/Freeland/Hobe/ Tronchetti, Moon Agreement, Art. 11, in: Hobe/Schmidt-Tedd/Schrogl, *Cologne Commentary on Space Law,* vol. 2, pp. 388 et seq.

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КОСМІЧНЕ ПРАВО ТА ПРАВА ЛЮДИНИ

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Мета: *міжнародне космічне право, що складається з п'яти міжнародних угод і 7 резолюцій Генеральної Асамблеї ООН, прямо не містить жодного положення, яке б натякало на права людини. Проте неможливо реалістично сприйняти, що існує будь-яка сфера міжнародного права, на яку права людини не впливають. Космічне право дає можливість вплинути на права людини. Стаття III Договору про космос 1967 року дозволяє застосовувати інші галузі міжнародного права, наприклад права людини, якщо ця сфера не згадується в lex specialis космічного права.* ***Методи дослідження:*** *застосовані загальнонаукові та спеціально-правові методи наукового пізнання, зокрема: системно-структурні та функціональні методи, метод спостереження, метод узагальнення, методи аналізу та синтезу.* ***Результати:*** *у цій короткій роботі буде оцінено, за яких обставин і з яким ефектом права людини можуть застосовуватися до lex lata міжнародного космічного права.* ***Обговорення:*** *чи не слід надавати допомогу космонавту, який потрапив у біду? Хіба поведінка астронавтів на борту міжнародної космічної станції не повинна керуватися ідеєю прав людини? Чи не повинно в майбутньому будь-яке спільне життя людей на таких небесних тілах, як Місяць чи Марс, спрямовуватися через права людини?*

Тому можна стверджувати, що міжнародні права людини застосовні до діяльності людини в космічному просторі та на небесних тілах. Вони підлягають виконанню за допомогою засобів, які передбачені законами про права людини. Їх дія спрямована лише проти будь-якої вищої влади і в принципі не включає будь-яку можливість застосування третьою стороною. Поки що потрібно визнати, що права людини застосовуються лише в тому випадку, якщо на людей впливає їх суверенна влада.

Проте можна додати, що навіть у разі постійного поселення людей на небесних тілах, існує велика ймовірність того, що права людини відіграють важливу роль.

Ключові слова: *космічне право; права людини; космонавт; небесні тіла; міжнародне право.*

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