

# PROSPECTIVE SPACE LAW

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## Introduction

The exploration of outer space and celestial bodies gave an unprecedented opportunity to legal science: an omni-comprehensive vision of present and future situations. Among the many innovations that it brought about, further remarks will be made on seven which relate to the following briefly indicated subjects and corresponding headings:

- 1) The recognition of new legal subjects, in particular the enshrinement of the concept of mankind as an international legal subject;
- 2) Abolition of the principle of sovereignty in space and its replacement by the principle of jurisdiction and control;
- 3) Full compensation for damages caused by space activities;
- 4) Outer space, celestial bodies and their natural resources regarded as the common heritage of mankind;
- 5) Astronauts regarded as envoys of humankind;
- 6) International cooperation as an obligation in space activities;
- 7) International liability of states for damages caused by space activities.

### *1) Recognition of Mankind as an International Legal Subject*

The first opportunity I had to express the need to recognize and proclaim mankind as a legal subject was in 1944. At the end of my examination on Public International Law, the tribunal asked me to speak about the meaning of 'international community'. I answered that it is improper to utilize the term community in connection with a reference to States, due to the fact that this word is applied to associations of persons with a superior aim. The exceptions to this would be the United Nations and the organs of its system. For this reason, the term is rightly spoken of with reference to religious communities, as well as human groups that gather scientists, writers, artists.

In 1962, I wrote that Space Law rules are applicable to all activities of man in outer space which serve an interest on Earth. The word man was taken, of course, in the sense of mankind. In my paper, I anticipated the emergence of mankind as a new subject created by Space Law.<sup>1</sup>

The 1967 Space Treaty in the first paragraph of its Preamble states: *Inspired* by the great prospects opening up before mankind as a result of man's entry in outer space. Thus, in this brief paragraph the word 'prospect' is used for the first time in an international instrument and

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<sup>1</sup> A. A. Cocca, *Basic Statute for the Moon and Heavenly Bodies*, 5 PROC. COLLOQ. L. OUTER SPACE 36 (1963).

'prospect' is used for the first time in an international instrument and mankind is recognized as a legal subject. It should be recalled that man is also recognized as a subject of Space Law. In the second line of the Preamble the concept of mankind as a legal subject is reaffirmed when reference is made to the *common interest of all mankind* in the progress of the exploration and use of outer space. The third paragraph of the Preamble also recognizes 'peoples' as legal subjects, when it states that the exploration and use of outer space should be carried on for the *benefit of all peoples* irrespective of the degree of their economic or scientific development. It may also be recalled that the equality among peoples is reinforced by this last phrase where the dignity of peoples is the criterion of their equality.

In view of the foregoing, man, peoples and mankind are recognized as legal subjects under Space Law, and so an end is put to the discussion of internationalists as to whether they should recognize, among others, the individual as a subject of international law.

### ***2) Abolition of the principle of sovereignty in space and its replacement by the principle of jurisdiction and control***

States have given up their right to exercise sovereignty in outer space and celestial bodies. This is of major significance because it was a decision that appeared in Resolution 1962 (XVIII) of December 13, 1963 entitled: *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space* which was adopted unanimously by the United Nations General Assembly. The procedure was part of the strategy of obtaining the recognition of principles through resolutions of the General Assembly prior to the consideration of the text of a treaty.

The text of Article II of the Outer Space Treaty contained no obstacle to its approbation in the General Assembly and cannot be more explicit: *Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.*

In replacing the principle of sovereignty, Article II established a clear and precise principle, full of legal content, that of *jurisdiction and control*.

### ***3) Full compensation for damages caused by space activities***

The limitations of liability in Air Law, Nuclear Law and other legal branches, were abandoned in the elaboration of Space Law. The reasons that brought about the liability limitation had lacked a valid legal content, they were derived from other causes and interests.

Those who had an opportunity to advance the concepts of the emerging Space Law felt the need to adopt a firm position towards the protection of a victim of space damage. It has been understood that no argument based upon the compensation and damage derived from aeronautical and nuclear activities could be sustained anymore because of

its lack of legal and ethical content. The discussions that went on in scientific meetings shaped the opinion of those who decided the question. So, when the debates in COPUOS took place, there were no differences regarding the proper criteria among its members.

**4) Outer space, celestial bodies and their natural resources regarded as the common heritage of mankind**

Common heritage is a principle born for and within Space Law. Once the International Institute of Space Law was created and the first Colloquium was held, the participants had the opportunity of advancing their thoughts in connection with the common heritage of mankind.

In the first Colloquium (The Hague, 1958), I stated that it was necessary: a) to declare the Moon open for utilization by the international community of nations; and b) to draw up regulations for the utilization of the Moon for peaceful purposes.

In my view, the existence of natural resources on the Moon is an evident fact. It is therefore necessary to lay down regulations for their exploitation.<sup>2</sup>

On the occasion of the Fifth Colloquium (Varna, 1962), I proposed to declare that celestial bodies were to be considered *res communis omnium for all mankind*, regardless of the nation that had reached and occupied them.<sup>3</sup>

During the Sixth Colloquium (Paris, 1963), I said: The intellectual and cultural capital of all humanity transforms the *celestial products* into *res in commercium*, hence all humanity has the right to share in the benefits of production.<sup>4</sup>

In the Seventh Colloquium (Warsaw, 1964), I stated: The wealth contained in the celestial bodies or their natural resources is a *res communis humanitatis*, much as the celestial body itself, the reason being that the wealth contained forms part of the celestial body and no separation has taken place. On the other hand, a celestial product is a portion of a celestial body, separated from its substance.<sup>5</sup>

In connection with the codification of Space Law, the principle of the common heritage of mankind was utilized and explained on June 19, 1967, in Doc. A/AC.105/C2/SR75 (Spanish, English and French texts), corresponding to the Inaugural session of the COPUOS of that year. This means that the principle was introduced in Space Law by the Argentine Delegation prior to the Note Verbale of 17 August 1967 of the Embassy of

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<sup>2</sup> A.A. Cocca, *Principles for a Declaration with Reference to the Legal Nature of the Moon*, 5 PROC. COLLOQ. L. OUTER SPACE 36 (1958).

<sup>3</sup> A.A. Cocca, *Basic Statute for the Moon and Heavenly Bodies*, 5 PROC. COLLOQ. L. OUTER SPACE 39 (1962).

<sup>4</sup> A.A. Cocca, *Determination of the Meaning of the Expression "res communis humanitatis" in Space Law*, 6 PROC. COLLOQ. L. OUTER SPACE 69 (1963).

<sup>5</sup> A.A. Cocca, *Legal Status of Celestial Bodies and Economic Status of the Celestial Products*, 7 PROC. COLLOQ. L. OUTER SPACE 19 (1964).

Malta, which naturally had received the documentation of COPUOS being a representative to the United Nations.<sup>6</sup>

*5) Astronauts as envoys of humankind*

To reinforce the nature of mankind as a legal subject, Article V of the Space Treaty establishes that States parties to the Treaty *shall regard astronauts as envoys of mankind in outer space and celestial bodies*. In this sense, States shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the State of Registry of their space vehicle. Article V also establishes the duty of assistance by astronauts of a State Party to other astronauts of another State Party in outer space. Finally, Article V determines that States Parties to the Treaty must immediately inform other States Parties or the Secretary-General of the United Nations of any phenomena they discover in outer space, including the Moon and other celestial bodies which could constitute a danger to the life or health of astronauts.

As we can observe, the Treaty establishes specific rules for the astronauts. In this regard, it offers a new concept and a new extent of representation in Article V (envoy of mankind). The term "envoy" has a precedent in diplomatic law, that of an envoy extraordinary. An envoy ranks just below an ambassador and always is an agent, a messenger. The reason for this unique concept lies in the fact that astronauts have been vested with the legal representation of all mankind in outer space and celestial bodies. No former representation has ever been as wide and, politically, it goes beyond the most audacious ambition. On the other hand, this investment was recognized in the General Assembly by unanimity and acclamation.

*6) International cooperation as an obligation in space activities*

International cooperation is a goal in international law. In Space Law it is an obligation. In this sense, Article I of the Outer Space Treaty (OST) establishes two principles: freedom of scientific investigation jointly with the duty of facilitating and encouraging co-operation in such investigation. Article XI determines that, in order to promote international co-operation in the peaceful exploration and use of outer space, States

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<sup>6</sup> This appeared in the following document of the First Committee "Examination of the Question of the Reservation Exclusively for Peaceful Purposes of the Sea Bed and the Ocean Floor and Subsoil thereof, Underlying the High Seas beyond the Present Limits of National Jurisdiction, and the Use of their Resources in the Interest of Mankind." (Emphasis added). See UN GAOR, 22nd Sess, Supp. No. 16, UN Doc. A/C.1/Pv. 1515 (1967).

parties conducting activities in outer space agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. The Secretary-General of the United Nations, on receiving the said information, should be prepared to disseminate it immediately and effectively.

Until this approbation of the OST, there was no other text so explicit and binding in connection with international cooperation.

**7) *International liability of states for damages caused by space activities***

According to Article VI of the OST, States parties shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental or non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions of the Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies require authorization and continuing supervision by the appropriate State Party to the Treaty. When such activities are carried on by an international organization, responsibility for compliance with the treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization.

As it can be seen, the State bears the primary responsibility for any activity in outer space and for these purposes the traditional interpretation to regard an international organization as a legal subject is ignored.

**The Strategy to Put the Innovations in the Preamble**

In the same way as the United Nations Charter, the Space Treaty put many substantial innovations of legal science in its Preamble. The principles and concepts contained in the Preamble of the Charter lasted without difficulties during the 22 years that separated one instrument from the other. The 1967 Space Treaty reinforces the 1945 Charter and certifies to the success of the strategy used.

One of the reasons that the OST entered so rapidly into force is the method utilized in the discussions of its principles. As soon as the deliberations started, the method of consensus was adopted. This means the consent of *all*, not the majority, of the persons that constitute a corporation or assembly. It implies coincidence, conciliation, concord, harmony, good faith.

Consensus expressed in international organizations or diplomatic conferences implies the responsibility of the one who gives it. It is a compromise of each one in a process more complex than vote and denotes conciliation. It is affirmative by the way in which it is expressed: it is a sum of affirmative attitudes and is positive in its consequences. It is,

therefore, a practical procedure. Everything is clear, nothing is left to be clarified.

The major consensus towards which mankind is expected to go is the universal consensus for peaceful coexistence. It is a special merit of Space Law to have incorporated this procedure as a course of action to create itself.