

I. Introduction

In general, international law may effect national law in such a way that States give up sovereign powers in favor of international bodies or the realization of international purposes.¹

Considering the title of our subject "Space Law As It Effects Domestic Law", one could discern a direct and an indirect legal impact of international space law on domestic law. Direct impact means a situation where rules of international space law are made applicable within a national territory in pursuance of measures taken by a state. An indirect impact means a situation where international space law plays a certain role during the domestic law-making process or during the updating with respect to already existing national rules. It is not always easy to make this distinction.

The United States of America is, according to the information available at present, the only country which set up national space legislation: i.e. the National Aeronautics and Space Act of 1958 and the Communications Satellites Act of 1962.² Some attention will be given to the relationship of this United States space legislation to international space law in part V of this article.

Furthermore, an attempt will be made to analyze the extent to which space law does have an indirect impact on domestic law through its principles and its more concrete international conventions.

II. *Space Law as a Law of Peace*

Before looking more precisely at international space law and its eventual effect on domestic law, a few words should be said on the unique character of space law as a branch of international law.

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¹Compare the remarks of Manfred A. Dausen, on The Relative Autonomy of Space Law: "the imperative requirements of growing international interdependence curtail states' freedom of action de facto and the resulting delegation of sovereign powers to international and supranational organizations entails new decision-making processes de jure which are, in return, at least rudimentarily reflected in the actual changes of world politics", *Proc. 18th Colloquium on the Law of Outer Space* 75 (1975).

²See *Space Law*, Selected Basic Documents, Staff Report Prepared for the Use of the Committee on Aeronautical and Space Sciences 417-19 (Dec. 30, 1976).

The International Geophysical Year (1957-1958) focused attention on Antarctica. At that time, fear existed that Antarctica might be used for military purposes. On December 1, 1959, the Antarctica Treaty was signed.³ In its preamble, it is recognized "that it is in the interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes". Furthermore, article I, paragraph 1 of the same treaty stipulates that "Antarctica shall be used for peaceful purposes only", although no unanimity existed on the definition of the term "peaceful".

Also as regards outer space, the same fear existed, *i.e.*, that the armaments race would be extended to this area.⁴ In the same period, the basic principle of peaceful use was made applicable to outer space and a notable United Nations General Assembly Resolution of December 12, 1959 declared that it recognized "the common interest of mankind as a whole in furthering the peaceful use of outer space" and "the great importance of international cooperation in the exploration and exploitation of outer space for peaceful purposes".⁵

Finally, after a long period of preparation and struggle, an official international convention incorporated this principle. It was the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, hereinafter to be called the Outer Space Treaty which was signed and entered into force in 1967.⁶

From this year on, an official international convention limited the use of outer space to peaceful purposes. This was a very significant step, especially for the Great Powers. The slow treaty-making process was caused by the unwillingness of States to give up some of their rights concerning the use of outer space and not in the least because of the latter's possible use for military purposes.

As activities in outer space affect all countries of the world, it would be most ineffective to leave it to the United States to regulate the different legal aspects of outer space activities in their national legislations. Joseph Kroell points out that space law can

³For the text of the Antarctic Treaty, see 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 72.

⁴Staub, "The Antarctica Treaty as Precedent to the Outer Space Treaty", *Proc. 17th Colloquium on the Law of Outer Space* 282 (1974); Faria, "Draft to an International Covenant for Outer Space, 122 (1960) and Mouton, "The Antarctic Treaty", *Recueil des Cours* 252-268 (III, 1962).

⁵Gen. Ass. Res. 1472/XIV of December 12, 1959, part A, paras. 1 and 4 of Preamble.

⁶The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, was signed on January 27, 1967, and entered into force October 10, 1967, 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205.

neither be national nor international but only world-wide, according to the universal nature of outer space itself.⁷

Having explained the unique character of international space law and its reason for existence, it must be stated that in international space law the freedom of movement of States concerning outer space activities is rather limited.

The basic convention of international space law is the Outer Space Treaty of 1967. In this treaty, the main principles of space law are laid down. First, some attention will be paid to the eventual influence of these principles on future state (legal) activity. Later on, the discussion will center around the three conventions and a draft treaty which form elaborations of the Outer Space Treaty and which are much more concrete in their formulating rights and obligations of States. The three conventions and the draft treaty are: the Agreement on the Rescue and Return of Astronauts and Space Objects of 1968, the Conventions on International Liability for Damage caused by Space Objects of 1972, the Convention on Registration of Objects Launched into Outer Space (1975) and finally the Draft Treaty Relating to the Moon (1975)⁸.

III. Principles of Space Law

As has been stated by Zhukov⁹, the principles of space law extend to the most general rules of conduct by which the states must be guided in their space activities. What will follow now is a short analysis of the principles of space law as especially laid down in the 1967 Outer Space Treaty.

(a) *Freedom of exploration, use and scientific investigation in outer space: Article I, Outer Space Treaty*¹⁰

⁷Kroell, "Einem Weltraumrecht entgegen", 1 *Zeitschrift für Luftrecht*, 246 and *seq.* at 249, (1952).

⁸Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space, April 22, 1968, [1968] 19 U.S.T. 7570, T.I.A.S. No. 6599, 672 U.N.T.S. 119.

Convention on International Liability for Damage Caused by Space Objects, March 29, 1972, [1973] 24 U.S.T. 2389, T.I.A.S. No. 7762.

The Convention on Registration of Objects Launched into Outer Space, was opened for signature on January 14, 1975, and entered into force on Sept. 15, 1976; T.I.A.S. No. 8480. For text of the Draft Treaty Relative to the Moon, see: UN Doc. A/AC.105/196, Annex I, Appendixes D and E (Apr. 11, 1977).

⁹Zhukov, "Tendencies and Prospects of the development of Space Law: The Soviet Viewpoint" in E. McWhinney and M.A. Bradley (eds.), *New Frontiers in Space Law* 73-88 (1969).

¹⁰One could ponder the question whether this principle, the concept of international cooperation, solidarity and peaceful uses, is binding upon noncontracting parties. According to Dausen, *supra* note 1 at 77, it is sufficient for the creation of rules of international customary law if the great majority of states adopt the law creating usage while the remaining minority do not oppose it.

Article I belongs, together with Articles II and III to the so-called fundamental principles of outer space law. This freedom is limited by Article I itself as it prescribes that states, in the exploration and use of outer space, must consider the benefit and interests of all countries.

(b) *Nonappropriation of outer space: Article II of the Outer Space Treaty*

The consequence of this principle for the conduct of states is that no sovereign power is admitted or permitted in outer space, neither is private property. This concept is the key rule of the law of outer space.

(c) *The activities of states must be in accordance with international law, including the Charter of the United Nations: Article III, Outer Space Treaty*

In order to maintain international peace it is necessary also in the field of State activities in outer space that States be guided by fundamental principles of international law such as the universally recognized principle of nonaggression, the principle of pacific settlement of disputes which is contained in the United Nations Charter (Article 2, para. 3 and Chapter VI), the principle of prohibition of war propaganda and last but not least the principle of disarmament. This last principle is contained in Article II of the United Nations Charter.

(d) *Limited use of military means in outer space and on celestial bodies: Article IV, Outer Space Treaty*

Insofar as far as states are concerned, this principle means a clear limitation on their freedom of military activities.

(e) *Providing for all assistance to astronauts in the event of accident, distress, or emergency landing; their safe and prompt return and the mutual assistance between astronauts of different States in Outer Space and on celestial bodies: Article V, Outer Space Treaty*

This principle contains obligations for states in the aforementioned cases.

(f) *International responsibility for national activities in outer space*

This principle includes international liability for damage caused by space objects incorporated in Articles VI and VII of the Outer Space Treaty.

(g) *The principle of states' retention of jurisdiction and control over an object and its personnel launched into outer space: Article VIII*

The consequences of this principle are that the State of registry has jurisdiction arising beyond its territory.

According to Lachs, the term "control" implies that "the State of registry has a right to require other States to refrain from interfering with the direction and supervision of the object or with any of the technical arrangements necessary for the fulfillment of its mission of exploration and use of outer space." It should also be interpreted as implying certain obligations for the State concerned, in particular those of insuring (a) that the object or the personnel thereof do not infringe the legitimate rights of other States and (b) that the mission they are intended to perform does not conflict with the rules of law of outer space.¹¹

- (h) *The principle of international co-operation in the exploration and use of outer space and celestial bodies and solidarity*

This principle is codified by the preamble, Article I and Articles IX-XI of the Outer Space Treaty. As it has been stated before, for the first time in legal history, international law imposes on States the obligation to carry out the exploration and use of outer space in the common interest of all mankind (*bonum commune*).

These principles have to be materialized in state practice and eventually in national law. It must not be forgotten, however, as Meuwissin¹² points out that there is no such thing as a sharp distinction between a principle and its realization: what represents the realization of a principle may, in turn, serve as a principle for further materialization.

IV. The Rights and Duties of States According to the International Space Conventions Following the Outer Space Treaty.

- (a) *The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space*

This agreement is the first example of an elaboration of the principles of the Outer Space Treaty and is broader than the provisions of that treaty dealing with assistance to distressed astronauts. This agreement mentions in detail the rights and obligations of the Contracting Parties relating to the rescue, assistance, and return of distressed astronauts and the return of space objects.

National rescue services are to be engaged in the realization of the obligations contained in this agreement.

- (b) *The 1972 Convention of International Liability for Damage Caused by Space Objects*

¹¹Manfred Lachs, *The Law of Outer Space* 69 (1969).

¹²Meuwissin, "The relationship between international and municipal law and fundamental rights", 24 *Netherlands Int'l L. Rev.* 191 (Special issue 12, 1972).

The impact of space law on international law and on national law can be made clear by the 1972 Liability Convention. The negotiations concerning this space law convention make perfectly clear why the 1972 Convention prescribes an international liability for States engaged in space activities. It would be a rather complicated situation if it were left to every State to deal with damage claims in this field according to their national legislations.

Article XI, paragraph 1 of the Liability Convention stipulates that the convention does not require the prior exhaustion of any local remedies which may be available to a claimant state or to natural or juridical persons it represents. However, paragraph 2 of this article allows the respective person or State to pursue a claim in the courts or administrative tribunals or agencies of a launching State. States may not act simultaneously under the convention and under national law. The convention's impact on international law in general can be analyzed as follows:

The Convention has set forth the traditional remedy of diplomatic protection of nationals,¹³ though with significant modifications; first, by eliminating the classical requirement of exhaustion of all domestic remedies, and second, by permitting States to press claims before an international claims commission.

The Liability Convention does not prevent a State "from pursuing a claim in the courts or administrative tribunals or agencies of a launching State". Those courts will have to act in conformity with this convention.

A question which arises in this respect is whether the regulation of liability as contained in the convention must not be incorporated in national legislation in order to enable municipal courts to settle claims in accordance with the convention. This concerns to a lesser degree those States where ratified conventions are considered to be integral parts of national legislation, *i.e.*, in the United States of America treaties are the law of the land.

(c) *The Convention on Registration of Objects Launched Into Outer Space of 1975*

This convention is closely connected with liability for damage; otherwise it is not possible to check the identity of a certain space craft.

Of primary importance is the requirement that "Each launching State shall inform the Secretary General of the United Nations of the establishment of such registry"

¹³Claims are to be presented by a State or an international organization (having assumed the rights and obligations under the convention). In such case, the injured natural or judicial person must request its' State to present its' claim through diplomatic channels (*i.e.* diplomatic protection of nationals).

(Art. 1). The subsequent articles require that States furnish supplementary information relative to any changed circumstances, such as a previously registered object which is no longer in earth orbit.

(d) *The Draft Treaty Relating to the Moon and other Celestial Bodies*

According to the Draft Treaty,¹⁴ all military installations and activities on the moon (and other celestial bodies) shall be forbidden, while the use of military material and personnel for peaceful goals shall not be prohibited. This treaty also provides for freedom of scientific investigation and freedom to establish stations. Also in this treaty one finds the basic principle of international space law that space exploration is exercised for the benefit of all.

V. *The United States National Aeronautics and Space Act of 1958 and the United States Communications Satellite Act of 1962*

The United States together with the Soviet Union were the only countries capable of initiating outer space activities. In the United States, the National Aeronautics and Space Act of 1958 was created "to provide for research into problems of flight within and outside the earth's atmosphere and for other purposes."¹⁵

The influence of the existing international space law on United States legislation can be shown by citing some parts of sections of the above-mentioned acts.

Title I, Sec. 101 (a) of the National Aeronautics and Space Act of 1958 reads:

"The Congress declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind."

Section 102 (c) (7) provides for:

"Cooperation by the United States with other Nations and groups of nations in work done pursuant to this Act and in the peaceful application of the results thereof."

The Communication Satellite Act of 1962 made it possible that commercial communications by satellite would be developed by a private company for profit. Title I, Sec. 102 (a) and (b) reads:

"The Congress hereby declares that it is the policy of the United States to establish, in conjunction and cooperation with other countries, as expeditiously as practical a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national

¹⁴*Supra* note 8.

¹⁵See *Space Law, op. cit. supra* note 2 at 417.

objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding. "... [I]n effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed"

The basic principles of peaceful use of outer space and the principle of international cooperation are embodied in the aforementioned two Acts.

Furthermore the objectives of the National Aeronautics and Space Administration International Programs are as follows:

"The international activities of the national aeronautics and space administration are planned to demonstrate the peaceful purposes of space research and exploration by the United States, to provide opportunities for the participation of scientists and agencies of other countries in the task of increasing man's understanding and use of his spatial environment, and to support operating requirements for the launching and observation of space vehicles and craft".¹⁶

VI. Final Remarks

Regarding subjects which are discussed within the Committee on the Peaceful Uses of Outer Space, such as remote sensing and direct communication satellites, States could have great influence in forbidding remote sensing of their territories or the use of detailed information obtained by remote sensing without their express consent and in the prohibition of certain programs broadcast by direct broadcasting satellites.

There is a possibility that national laws will be created to protect the populations against unwanted consequences of the above-mentioned activities. Even if, as could be seen in the previous pages, space law is mainly international law nowadays and its influence on domestic law is still limited, in my opinion its impact will grow in accordance with its development. One also has to take into consideration the development of the space shuttle and the cooperation between States, for instance, the European Space Agency. In this respect, rules of general law shall be applicable and not specific rules of space law.

Spacecraft have just started to become more common vehicles. Their future influence will be great, also upon municipal law, even though, just as in air law, international conventions will probably play the most important role.

¹⁶ *Id.* at 449.

I.

U.S. PRESIDENTIAL DECISION MEMORANDUM 37*

The President directed under a Presidential Review Memorandum that the NSC Policy Review Committee (PRC) thoroughly review existing policy and formulate overall principles which should guide our space activities. The major concerns that prompted this review arose from growing interaction among our various space activities.

The review examined and the resultant Presidential Directive establishes:

A government policy oversight system to review and revise space policy as needed;

Ground rules for the balance and interaction among our space programs to insure achievement of the interrelated national security, economic, political, and arms limitation goals of the U.S.; and

Modifications to existing policies, the appropriate extent of the overlapping technology, and product dissemination by the sectors.

This Presidential Directive establishes an NSC Policy Review Committee to provide a forum to all Federal agencies for their policy views, to advise on proposed changes to national space policy, to resolve issues referred to the Committee, and to provide for rapid referral of issues to the President for decision as necessary. This Committee will be chaired by the Director of the Office of Science and Technology Policy, Frank Press. Recognizing that the civilian space program is at the threshold of change, the President has asked the PRC to assess the needs and aspirations of the nation's civil space program. The United States has built a broad national base in space and aeronautics. At issue is how best to capitalize on prior investments and set the needed direction and purpose for continued vitality in the future.

Under the Presidential Review Memorandum the emphasis was to resolve potential conflicts among the various space program sectors and to recommend coherent space principles and national space policy. In focusing upon these issues, the Policy Review Committee concluded that our current direction set forth in the Space Act of 1958 is well founded and that the preponderance of existing problems was related to interactions and resultant stresses among the various space programs. For this reason, the classified portion of the recently signed Presidential Directive concentrates on overlap questions. It does not deal in detail with the long-term objectives of our defense,

*White House Press Release, June 30, 1978.

commercial, and civil programs. Determining our civil space policy, outlined above, will be the next step.

As a result of this in-depth review, the President's Directive establishes national policies to guide the conduct of United States activities in and related to space programs. The objectives are (1) to advance the interests of the United States through the exploration and use of space and (2) to cooperate with other nations in maintaining the freedom of space for all activities which enhance the security and welfare of mankind. The space principles set forth in this Directive are:

The United States will pursue space activities to increase scientific knowledge, develop useful commercial and government applications of space technology, and maintain United States leadership in space technology.

The United States is committed to the principles of the exploration and use of outer space by all nations for peaceful purposes and for the benefit of all mankind.

The United States is committed to the exploration and use of outer space in support of its national well-being.

The United States rejects any claims to sovereignty over outer space or over celestial bodies, or any portion thereof, and rejects any limitations on the fundamental right to acquire data from space.

The United States holds that the space systems of any nation are national property and have the right of passage through and operations in space without interference. Purposeful interference with space systems shall be viewed as an infringement upon sovereign rights.

The United States will pursue activities in space in support of its right of self-defense and thereby strengthen national security, the deterrence of attack, and arms control agreements.

The United States will conduct international cooperative space activities that are beneficial to the United States scientifically, politically, economically, and/or militarily.

The United States will develop and operate on a global basis active and passive remote sensing operations in support of national objectives.