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Aldo Armando Cocca

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SOME COMMENTS ON A TRUE STEP TOWARD  
INTERNATIONAL CO-OPERATION: THE  
TREATY OF JANUARY 27, 1967

PROFESSOR ALDO ARMANDO COCCA\*

**T**HE JOINT efforts of several nations leading to the creation of a potentially beneficial product prevents the interests of one party from dominating. When the product of this joint effort actively involves all those who have contributed to its creation, efficient and co-operative results can be expected.

It is evident that the fundamental principles of outer space, which were extended to the Moon and celestial bodies by the Treaty of January 27, 1967,<sup>1</sup> have opened new and great possibilities for international co-operation. This co-operation is to be examined, principally, in the light of Law, which is the first area to achieve unity in view of the cosmic expansion of man. Such unity does not only include the Earth, but extends also to unexplored zones, where these sounders of outer space have not yet reached. Its subject matter is that of celestial bodies in general, either known or unknown.<sup>2</sup>

It is also true that the United Nations, through its specialized international agencies, has foreseen a wide and efficient co-operative plan in the field of space activity, as well as in fields other than law. However, due to the great importance of the enterprise and the resulting necessity of its being discussed at the highest levels, the United Nations has been selected as the receptacle of the desire of

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\* PROFESSOR COCCA is Professor of Law, at the University of Buenos Aires, Argentina and is Director of the National Institute of Aeronautical and Space Law.

Professor Cocca wishes to thank George Paul Sloup for providing annotations.

1. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. Done at Washington, London, and Moscow January 27, 1967. Entered into force October 10, 1967. 18 U.S.T. 2410, T.I.A.S. No. 6347.

2. The use of the phrase "outer space, including the moon and other celestial bodies" throughout the Treaty would seem to extend the provisions of the Treaty to cover all objects in outer space, including, but not limited to, stars, planets, moons, asteroids, meteoroids, comets, and clouds of interplanetary or interstellar gas and/or dust, as well as to cover the near-perfect vacuum of outer space itself.

all peoples to implement the principles contained in the Charter's Preamble,<sup>3</sup> by means of an extraterrestrial action, taking into account the difficulties arising in the international plane.

The Treaty of January 27, 1967 must not be viewed as a mere enumeration of good wishes nor as a moral recommendation for the subscribing states, for it is far more important. It has surpassed both the notion of the Nation-State, with all its selfishness, and the concept of international community, where egoism is somewhat moderated because of interdependency. A new subject has been created by the efforts of this latest activity of man, and, thus, the notion of Humanity has acquired a juridical content never before possessed.<sup>4</sup>

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, was enunciated by the procedure of general consensus. This consensus, when achieved at the General Assembly of the United Nations, may fittingly be described as universal. The text was adopted by acclamation as an annex to Resolution 2222 (XXI), on December 19, 1966. The instrument was open for signature at Washington, London, and Moscow simultaneously, on January 27,

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3. The Preamble of the United Nations Charter, signed at San Francisco June 26, 1945, entered into force for the United States October 24, 1945, 59 Stat. 1031; T.S. 993; 3 Bevans 1153, states the following: WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS. Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

The United Nations is currently composed of 127 states.

4. Individuals, of course, are still only objects, and not subjects, of international law. See 1 OPPENHEIM, INTERNATIONAL LAW 636-42 (8th ed. Lauterpacht 1955).

1967, and entered into force on October 10, 1967.<sup>5</sup> We are, consequently, dealing with fundamental principles, somewhat like the 12 Tables of Space Law, and not mere notions or current opinions.

Although it may not be possible to find an historical basis,<sup>6</sup> for the Treaty we cannot deny its juridical, and even rational, basis. In any case, its principles are dogmatic, due to the special nature of the questions to which the Treaty is to be applied. The Treaty is by no means only a juridical creation, nor is it a mere dogmatic regulation arising from the members of the United Nations Legal Sub-Committee on the Peaceful Uses of Outer Space. It emerges from a prior Resolution of the General Assembly of the United Nations, adopted unanimously, and possessing the highest rank given to documents discussed within the International Organization.<sup>7</sup> This Declaration (Resolution 1962, (XVIII), December 13, 1963), entitled "Declaration of Legal Principles Governing Activities of States in the Exploration and Use of Outer Space," contains nine essential points. Although

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5. The Treaty was opened for signature in the three capitals in order to insure that a maximum number of states, regardless of their political circumstances, would sign the Treaty.

6. Although the 1967 Space Treaty has been compared to the Antarctic Treaty, signed at Washington December 1, 1959, entered into force for the United States June 23, 1961, 12 U.S.T. 794, T.I.A.S. 4780, 402 U.N.T.S. 71, there are differences, two of the most important being: (a) In the Antarctic Treaty, claims of sovereignty are suspended for at least 30 years (Article XII (2)(a)), while in the Space Treaty, claims of sovereignty over any part of outer space, including the moon and other celestial bodies, are completely forbidden (Article II); (b) In the Antarctic Treaty, states may keep those claims of sovereignty which they had before the Treaty was entered into (Article IV).

7. While United Nations General Assembly Resolutions do not create rules of international law in and of themselves, they do indicate a consensus of opinion, which, especially if the Resolutions were adopted unanimously, cannot be ignored. See Bin Cheng, *United Nations Resolutions on Outer Space: "Instant" International Customary Law?*, 5 INDIAN J. INT'L L. 23 (1965); and Bleicher, *The Legal Significance of Re-Citation of General Assembly Resolutions*, 63 AM. J. INT'L L. 444 (1969).

The recognized sources of international law are listed in Article 38 of the Statute of the International Court of Justice (which is annexed to the Charter of the United Nations): 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

the Declaration is three years older than the Treaty,<sup>8</sup> it includes broader conceptions, and, therefore, has greater juridical content, than the Treaty, which consists of thirteen substantial articles and four final ones.

Although the Treaty introduces innovations regarding fundamental principles, which have been entirely modified in some areas, it took only a short time to be promulgated, adopted, and signed; between January 27 and October 10, eighty-four countries had already signed it. Perhaps the greatest merit of the Treaty as a juridical instrument is that of its accord with the new universal mentality. It is interesting to point out that in this case legal norms have preceded technical achievements, as the field for which this legislation is meant still is not widely known to scientists. Principles are created for outer space and celestial bodies without any limitations or exclusions, regardless of the fact that not even the moon is known in its full extent. This is the biggest triumph of Law as a science over the natural sciences.<sup>9</sup>

Before beginning to analyze this document, reference shall be made to some of the essential points which support such a new juridical architecture, or otherwise, it will not be possible to interpret authentically its text nor to seize its real content.

First, it is important to stress that space law is of a planetary nature, and is perhaps the only truly universal law. It concerns human beings as such, either on the earth or during cosmic travels, regardless of the geographical latitude or position in space. Space law does not take into account technological or economic development. No doubt it is a total law, a *jus humanitatis*, the law of mankind.

The object of this new law is the exploration and use of outer space for peaceful purposes. A new subject of the law created is not to act together with the international community, but to serve as a

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8. A prior resolution which was also adopted unanimously was U.N.G.A. Resolution 1721 (XVI) of Dec. 20, 1961. It provided, *inter alia*, that "a) International law, including the Charter of the United Nations, applies to outer space and celestial bodies; b) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation."

9. It shall be pointed out, however, that the 1967 Space Treaty leaves many questions unanswered, such as which theories of liability will be used for space or space-related accidents and how the problems of the appropriation of natural resources will be solved.

substitute for such community. This newly born subject, established by the international community, is none other than mankind. A transfer of rights, but not yet a transfer of obligations, is made towards the new subject.<sup>10</sup> Obligations include only the States, either acting on their own, or together with other States or forming part of international organizations. Full emphasis must be given to the fact that all of mankind is the subject which the principles of the Treaty involve. Otherwise, it is not possible to seek any logic, nor is it possible to find the juridical security required by an instrument of such a wide scope.

The new subject is given a specific patrimony, in accordance with its nature, the largeness of the new field and the powers of the human mind: outer space as a whole, including all its applications, as well as the moon and celestial bodies. We have been calling this inner-related doctrine, *res communis humanitatis*, which is an expression with a greater content than the *res communis omnium*. *Res communis humanitatis* is an expression that could not exist except for the cosmic expansion of man.

Finally, after this new subject has been created and given a specific status, its character must be emphasized by means of an adequate representative power. This new status and its patrimony are represented in outer space by the cosmonauts whom the Treaty calls "envoys of mankind",<sup>11</sup> therefore exercising its representation by law, and not by other means.

The Treaty follows the same line of thought in its preamble, general provisions, and final clauses. The entry of man, not of vehicles, into outer space, offers mankind a very wide range of possibilities. Progress in the exploration and use of outer space, which is to be carried out for the welfare of people, is of general interest to all humanity. International co-operation should be sufficient, both in its scientific and juridical aspects, to permit the development of mutual

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10. Although individuals are only objects under international law (*see supra* note 4), they have been made liable for the performance of certain international duties, such as the duty not to commit piracy and the duty not to commit war crimes. OPPENHEIM, *supra* note 4, at 341-42.

11. 1967 Space Treaty, Article V. While the Treaty actually uses the word "astronaut," the two words (*i.e.*, cosmonaut and astronaut) should be regarded as being synonymous. Any attempt to differentiate between the two terms would be based only upon superficial political considerations.

understanding and the security of friendly relations among peoples. It is interesting to recall the resolutions adopted by the General Assembly of the United Nations from 1957 onward: 1.) Resolution 110 (II) of November 3, 1947, which has been considered applicable to outer space; 2.) Resolution 1884 (XVIII), of October 17, 1963, forbidding the placing in orbit around the Earth of any objects carrying nuclear weapons or any other kind of weapons of mass destruction, as well as their installation in celestial bodies; 3.) Resolution 1962, (XVIII) December 13, 1963, concerning the declaration of legal Principles that governing Activities of States in the Exploration and Use of Outer Space, the model of which was followed by the Treaty; and 4.) the 1969 General Assembly Resolution on Friendly Relations between Nations.

The difficulty in seeking an answer to this new situation within the field of old solutions is easily understood. Article 1 of the Treaty, in its three paragraphs, states this idea quite well:

The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.<sup>12</sup>

Article II states that "[o]uter 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." This statement can be summarized in the classical expression *res communis humanitatis*, duly brought up to date by the new developments in space law. The guideline of these two articles, and of the whole Treaty as well, is that both outer space and celestial bodies are the common patrimony of mankind, and therefore, individual States cannot unilaterally exercise any type of appropriation,

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12. The last paragraph of Article I would protect the right of the United States or any other state to take rocks, soil samples, and other such things from the moon or any other celestial bodies for *scientific purposes*. It would not, however, sanction the appropriation of such things for purely commercial purposes.

within this *res communis* of Humanity. Article III completes the statement of the space legislator's intention:

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 co-operation and understanding.

It would perhaps have been wiser to refer to the principles of the law of outer space, which, until article III, derogate the norms and principles of international law, in a manner both express and without precedent. If the new law was not to be included in a Treaty elaborated by the United Nations, it should have stated "in accordance with the principles of this Treaty", thus avoiding the incongruence and without prejudicing the inclusion of the rest of the article. No doubt international law offers supplementary principles to fill the blanks of recently created space law. In our opinion, the order of precedence of the provisions should be the following: 1.) norms of outer space; 2.) principles which still have not become law; and 3.) international law, with a view to cover deficiencies and situations which have not been foreseen.

There is another very important question. The Treaty does not mention the competent jurisdictional organ to act in the solution of controversies arising from interpretations of the Treaty or transgressions of the principles stated therein. Apparently, the references made to International Law and the Charter of the United Nations in article III, would give rise to the possibility of taking the controversies before the International Court of Justice, the competence of which, in space matters, has generally been denied.<sup>13</sup>

Article III ends by saying "in the interest of maintaining international peace and security and promoting international co-operation and understanding." This is not just a phrase added as a result of mentioning the Charter of the United Nations; but rather, it is in accordance with activity in a common field and achievement of practical results for the benefit of all. Here is where the notions of subject and patrimony in relation with space law come into the picture.

Article IV is divided in two parts. The first deals with the ban-

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13. See generally Sloup, *Peaceful Resolution of Outer Space Conflicts Through the International Court of Justice: "The Line of Least Resistance,"* 20 DEPAUL L. REV. — (1971), found elsewhere in this volume.



ning of nuclear weapons placed in orbit around the Earth. The banning reaches any other type of weapon of mass destruction. Such weapons are not to be installed on celestial bodies nor in outer space in any manner. The second part of article IV is somewhat misleading, giving rise to several interpretations. Instead of starting with the usual formula "outer space including the moon and other celestial bodies," the paragraph begins "[t]he moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes."<sup>14</sup>

Another difference related to the common text of the Treaty can be noted; the second phrase of this paragraph states that "[t]he establishment of military bases, installations, and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden." Any mention of the Moon has been omitted. There are two interpretations of this article: those which favor a literal reading of this individual article and those who would consider the Treaty as a whole. I favor the latter approach.<sup>15</sup> Article IV finishes by establishing that "[t]he use of military personnel for scientific research or for any other peaceful purposes shall not

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14. The omission of "outer space" from the second paragraph of Article IV is a realization by the framers of the Treaty that states may conduct certain legitimate military activities in outer space, for instance, reconnaissance and communications. The United States and the Soviet Union have, in the past, disagreed as to whether activities of a military nature are per se aggressive. See MATTE, *AEROSPACE LAW* 268-72 (1969).

15. The moon is certainly a celestial body, and omission of the term "moon" should not exclude it from the proscription of the particular part of Article IV in question. The inclusion of the term "moon" in most of the Treaty provisions is probably best looked upon as an elaboration of the phrase "outer space and celestial bodies," rather than as a substantive part of it. This viewpoint can be substantiated by a realization of the fact that the moon is much closer to the earth than any other celestial body of substantial size. This is why the moon has received considerably more attention than any other celestial body.

The following analogy will assist in understanding this: "Let the sun be the size of an orange; on that scale of sizes the earth is a grain of sand circling in orbit around the sun at a distance of 30 feet; the giant planet Jupiter, 11 times larger than the earth, is a cherry pit evolving at a distance of 200 feet, or one city block; Saturn is another cherry pit two blocks from the sun; and Pluto, the outermost planet, is still another sand grain at a distance of ten city blocks from the sun. On the same scale the average distance between the stars is 2,000 miles. The sun's nearest neighbor, a star called Alpha Centauri, is 1,300 miles away. . . . The Galaxy, on this scale, is a cluster of oranges separated by an average distance of 2,000 miles, the entire cluster being 20 million miles in diameter." JASTROW, *RED GIANTS AND WHITE DWARFS* 13 (1967). Using the same scale as the above analogy, the moon would be a grain of sand one-third the size of the grain representing Earth, and it would be revolving around the Earth less than one *inch* away.

be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited."<sup>16</sup>

The legal treatment of astronauts has not been adequately provided for by the documents of the United Nations. The essential object of their mission and juridical condition has not been sufficiently studied. In 1961, at the IV International Colloquium on Space Law, held at Washington, we tried to give an answer to those two questions. We said: "Since the cosmonaut is a civil explorer of space who answers to a policy, whose character is to be at the service of mankind, it must be established without any further consideration the obligations of assistance and salvage."<sup>17</sup> In this way we had two guidelines: a civil explorer of outer space and celestial bodies, and a representative of mankind. Two years later Resolution 1962 (XVIII) of the General Assembly of the United Nations was adopted and in principle 9 states:

States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of a foreign State or on the high seas. Astronauts who make such a landing shall be safely and promptly returned to the State of registry of their space vehicle.

One of the two legal characteristics of astronauts had been established, that of being a "representative of mankind," although the term used, "envoy," is hardly accurate. In 1967, the Permanent Delegate of Argentina before the United Nations Subcommittee for Peaceful Uses of Outer Space proposed that there be debate in connection with this important matter, which never had been sufficiently dealt with within the international organization. The formula to be included in the chapter concerning definitions was as follows: "An astronaut is a civilian explorer, exclusively for peaceful purposes, who is carrying out his duties as a representative of mankind in outer

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16. This is similar to Article I of the Antarctic Treaty, which provides that "1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons. 2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose."

17. PROCEEDING OF THE FOURTH COLLOQUIUM ON THE LAW OF OUTER SPACE, UNIVERSITY OF OKLAHOMA, NORMAN, OKLAHOMA, 151 (1963).

space, including the Moon and other celestial bodies.”<sup>18</sup> It is not easy to understand how a specified activity must be regulated when the juridical nature of that activity is not definite. The proposal was not considered during that period of sessions due to time considerations. Meanwhile, the 1967 Space Treaty was to be open for signature on January 27, 1967. It reproduces point 9 of the Declaration and completes the areas of salvage and return with certain other specifications:

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space and 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. In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties. States Parties to the Treaty shall immediately inform the other States Parties to the Treaty 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. (Article V).

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space<sup>19</sup> hereinafter referred to as the 1968 Astronaut Agreement develops these basic principles in six articles, determining conceptions with precision, and enlarging the scope of obligations concerning the astronaut, whose individual character disappears in view of the fact that the new instrument speaks of “the personnel of a spacecraft.” Due to the replacement of the figure of the astronaut by that of the crew, the United Nations lost the opportunity of establishing a juridical basis for man in space. Article V of the 1967 Space Treaty employs the word “envoy,” and has to be duly interpreted in face of its uncertainty. The first deep analysis of the 1968 Astronaut Agreement was performed one month after it was open for signature, at the 2nd National Journeys of Air and Space Law, organized by the Cordoba University, Argentina, between May 20-23, 1968. Professors and experts in air and space law arrived at the following conclusions: “the duty of a cosmonaut in no way alters its nationality; the activity performed by a cosmonaut is meant for the benefit of humanity; the cosmonaut is a space member of the crew and, he is a civil explorer of outer space

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18. Doc. A/AC. 105/c. 2/L. 23. June 23, 1967.

19. Done at Washington, London and Moscow April 22, 1968, entered into force December 3, 1968, 19 U.S.T. 7570, T.I.A.S. 6599.

representing humanity." In this way it is possible to interpret and harmonize the Treaty of January 27 and its basic principles with the provisions that intended giving a more "concrete expression" to these principles, *i.e.* the Treaty of April 22, 1968.

The fundamental question concerning liability is foreseen in more than one article of the Treaty. Sometimes the word "liability" is used expressly and specifically; at other times it is to be deduced from the exercise of rights or the performance of activities in outer space or celestial bodies. Article VI establishes the international liability of States, either acting separately, jointly, or forming part of an international organization. All this is irrespective of the fact that the primary liability may concern another subject (governmental organism or non-governmental entity). Prior authorization is required as well as constant supervision on the part of States in connection with national activity performed by non-governmental entities. Joint liability is foreseen for the International Organization and States Parties to the Treaty belonging to said organization. Article VII establishes the international liability of States for damage caused to another State or its natural or legal persons, by space vehicles or any parts therefrom, on the Earth, in the airspace or outer space, including the moon and other celestial bodies. This article considers four basis of liability: 1.) State of launching; 2.) State promoting the launching; 3.) State from which the launching takes place; and 4.) State from the facilities of which the vehicle is launched. Article VIII states that the State of registry of the launched vehicle retains jurisdiction over all personnel on board the vehicle and over the vehicle itself, so long as it is in outer space or on a celestial body. Also, "[o]wnership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth." We may appreciate here the liability emerging from jurisdiction and control, as well as from the right of property. All this is linked to the registration of the space vehicle, and thus a State may be considered responsible merely by registering the vehicle, even though it may not launch, promote, nor use its territory or facilities for the launching of the vehicle.<sup>20</sup> Such is the case of the launching

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20. The state of registry of a spacecraft thus becomes what for ships and aircraft is called the "flag state." See the American Law Institute's RESTATEMENT (SEC-

of the satellite San Marco 1, by the United States, in which Italy, the country of registration, assumed international responsibility for the damage that might have been caused. The last part of article VIII is principle No. 7 of Resolution 1962 (XVIII), establishing that in the case of "[o]bjects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return." The obligation to return and the right to receive the vehicles and their component parts, was regulated in five paragraphs within article 5 of the Agreement of April 22, 1968, which is the largest part of this international instrument.

The Treaty of 1967 includes an interesting provision, referring to harmful contamination and adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter (Article IX).<sup>21</sup> It also states that if a State Party has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with the activities of other States Parties in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, *it shall* undertake appropriate international consultations before proceeding with any such activity or experiment. When this activity or experiment is carried out by another State, *it may* request consultation concerning the activity or experiment.

The provisions of Article X are also new, and relate to requests made by other States to observe the flight of space vehicles; these requests shall be considered on a basis of equality.

Article XI provides for the notification, information, and diffusion of information regarding space activities. It states:

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OND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, §§ 28, 29, 31, and 32 (1965).

21. Article IX of the 1967 Space Treaty provides in regard to the problem of contamination that "[S]tates Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extra-terrestrial matter and, where necessary, shall adopt appropriate measures for this purpose." This covers both types of contamination—"front" (the pollution or contamination of the outer space environment by Earth substances), and "back" (the pollution or contamination of the Earth environment by a substance from outer space).

In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the moon and other celestial bodies, 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. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively.

"[I]nform the Secretary-General" should read simply "notify;" on the other hand, the public is "informed." With these stylistic amendments, diplomatic law will be respected and each word is given its genuine juridical value.

Without determining what in Argentine doctrine is called "area of activity" in celestial bodies, the Treaty makes reference to this area in Article XII, in stating that

[a]ll stations, installations, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity. Such representatives shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited.

The answer given for solving the practical problems which arise from space activities performed by international organizations does not seem very convincing (Article XIII).<sup>22</sup> The fundamental problem depends on the granting or not of sufficient personality to international organizations, particularly intergovernmental organizations, in the face of the States that compose them. Until an international organization devoted to these activities is erected (I venture to say that space tasks shall only exceptionally be carried out by one single State, the general rule being they must be performed by international organizations.) the solution adopted may be feasible. The merit of Article XIII is the establishment of a uniform régime for individual

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22. Article XIII: "The provisions of this Treaty shall apply to the activities of States Parties to the Treaty in the exploration and use of outer space, including the moon and other celestial bodies, whether such activities are carried on by a single State Party to the Treaty or jointly with other States, including cases where they are carried on within the framework of international intergovernmental organizations.

Any practical questions arising in connection with activities carried on by international inter-governmental organizations in the exploration and use of outer space, including the moon and other celestial bodies, shall be resolved by the States Parties to the Treaty either with the appropriate international organization or with one or more States members of that international organization which are Parties to this Treaty."

Activity, as well as joint activity, of States and international intergovernmental organizations.

As the law of outer space and celestial bodies is the law of Humanity, it follows that Article XIV should state that the Treaty be open for signature to all States (parties or not of the United Nations, or any of its specialized agencies, having accepted the statute of the International Court of Justice or otherwise). Such a wide expression has led the United States Government, one of the Depositary Governments, to declare that this clause does not imply the recognition of a government nor the existence of a State. In fact, this is a standard provision of outer space law. The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America were designated Depositary Governments. This is not advisable from a technical point of view, but such an attitude is based on other instruments, where political reasons have prevailed over those of a more technical nature. It is surprising that the Treaty should enter into force with the ratification of only five governments (including the depositaries) considering the fact that it was open to all States. The reasons for this situation are beyond the scope of this paper.

The provision of Article XV providing for the possibility of proposing amendments, is very wise. Certainly, every international instrument may be perfected, especially when regulating new subject matter, and purporting to be the summary of the feeling of all peoples and a result of their several juridical systems. The second part of article XV, however, states that amendments shall enter into force for each State Party to the Treaty accepting the amendments upon their ratification by a majority of the States Parties to the Treaty, and thereafter for each remaining State Party to the Treaty on the date of acceptance by it. A new procedure belonging to international law has thus been incorporated in spite of the fact that we are dealing with another law, the law of outer space and celestial bodies. It should have been stated that any modification to the Treaty must be carried out in the same way it was adopted, by general consensus, by means of elaboration within the Outer Space Committee and approval by the General Assembly of the United Nations. The text of the Treaty, in force from October 10, 1967, reflects this feeling and is the expression of *all* States forming part of the United Nations,

whereas an amendment, which may be substantial and even modify entirely the erected régime, enters into force when accepted by the *majority* of States Parties to the Treaty. This fact leads again to the observation that the final clauses of international instruments are in many cases of a fundamental, rather than a formal, nature.

Withdrawal after one year of being in force may be accomplished by means of notification. This notification shall be effective one year after it is received (Article XVI). The authenticity of the texts in the languages of the United Nations is declared in the last article (XVII).

The Treaty has not included the principles of Resolution 110 (II), adopted by the General Assembly of the United Nations on November 3, 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, although in the preamble it is theorized that such a resolution may be applicable to outer space. As it is a formal omission, it therefore must be taken as a dogmatic principle of outer space and celestial bodies.

There are more important omissions, such as those dealing with the applicability of space law and the competent jurisdictional organ. Also problems relating to the moon's richness and celestial raw materials have been bypassed, as these subjects have not yet been placed on the agenda of the United Nations Subcommittee for Peaceful Uses of Outer Space. It would be convenient to regulate in the Treaty the use of celestial bodies in aspects other than their raw materials. However, it is well known that some of these omissions have been deliberate, as the world has not yet achieved a juridical unity. The only present indication of an integrated planetary civilization and a culture anxious to expand in a cosmic way, is the law of outer space and celestial bodies.

These problems are simple, provided we follow the cardinal conceptions stated at the beginning, which are the essence of the new law. At the same time, the norm of general law by which contracts bind not only what is formally established therein, but all consequences that may be involved, must not be lost from sight.

This last decision not to regulate all that was offered before in the field of outer space and celestial bodies when the difficulty was



greater, may be seen with optimism as well. A mere excision in a monument of such solid construction could crumble to pieces principles which are too important to be exposed to a cracking of unforeseen consequences.