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# International Dimensions

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# **International Dimensions**

*a journal of personal impression, experience and commentary  
on the subject of international law*

*published by members of the International Law Society,  
Golden Gate University  
School of Law*

## **Inaugural Issue**

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Letter from the Editor

#### Mission Statement

International law, perhaps more so than the law in any other field, operates on the level of the personal. In essence, international law is really nothing more than another form of diplomacy; albeit one which serves one of humanity's higher aspirations - that of coming to common agreeable terms under which we all can live and prosper. The substance of international law represents the fruits of the world community's gradual and sometimes hesitant attempts to exploit and develop those areas of common agreement which might possibly serve as a foundation for establishing a more complete regime of mutual cooperation and effective dispute resolution. International law is therefore simply a chronicle of the world community's piecemeal efforts to craft what might be termed the common law of nations..

With this in mind, we here at *International Dimensions* wish to welcome you to what we hope will prove to be a useful addition to the larger body of legal commentary; what we have in mind is a journal dedicated to exploring and examining the law as it actually plays out in practice, as described by those actively engaged in practicing it. In this respect, this is intended to be as much a journal of personal impression and experience as it is one of legal scholarship. After all, unless we are firmly grounded in knowing where we are and where we're coming from, how can we possibly have any idea of where we're going, even if we do know where we ultimately want to be?

Our hope, then, is that we have identified a field worth exploring and an approach worth taking. Whether we have or not will depend on your response. We hope you enjoy reading this, and find something of value in it.

Sincerely,

Brian Grantham  
Chief Executive Editor

# Investing in France:

## *A Survey of French Corporate Formalities*

by Erin Doherty Sarret  
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 San Francisco, California

### I. INTRODUCTION

For the foreign investor, French corporate law can be confusing due to its complexity. Beyond this first impression is the reality of the French Government actively encouraging investment in France. The corporate formalities allow the foreign investor a panoply of methods in which to conduct business in France.

This paper is designed to give a first-time investor an overview of the possible avenues of investments. However, no action should be taken without first consulting counsel, preferably local counsel with a strong international practice.

Of special interest is the DATAR, an agency designed to assist foreign investor by subsidizing their investments in France subject to certain requirements. The DATAR also works with the investor to help facilitate the overall investment process. Additionally, due to legislative changes in 1988 regarding direct investment, the foreign investor has been exempted from Treasury review if the investment is less than 5,000,000 French francs (equivalent to approximately one million dollars at the time of publication of this paper).

### II. DECIDING ON A CORPORATE FORM

To determine which corporate form is right for your business, you should first ask yourself the following questions:

1. How much control do you wish to retain?
2. Do you want your business in France to be privately or publicly held?

3. Do you wish your business venture to be known to the public?

4. To what extent is limited liability a concern for you?
5. How much do you want to invest?

Answering these initial questions will help put you on the right track to investing in France and deciding which of the business forms discussed below will work best for your interests.



### III. CORPORATE FORMS

#### A. The Liaison Office

In this status, the foreign business continues to operate as a foreign-owned company subject to foreign-laws. However, it is necessary to obtain the *carte de commerçant* to conduct business if the foreign investor is not an EEC national or does not possess the *carte de résident*.

The tax status of the liaison office will be sheltered from French income taxes where it is properly designated and not considered a permanent establishment. The OECD Model Tax Treaty Article 5(3) allows this exemption.<sup>1</sup>

#### B. The French Branch Office

If one decides to make a direct investment and open a branch office, extensive filing requirements apply. The law of the foreign jurisdiction where the parent company

was organized will apply but a branch manager must be appointed to have apparent authority to act on behalf of the parent company.<sup>2</sup>

The strict labor laws in France have prompted numerous collective bargaining agreements for almost every conceivable profession. Even lawyers are subject to a collective bargaining

agreement of which they may not opt out. Additionally, these same labor laws are fiercely protective of the worker and at-will employment is virtually unknown. Instead, as a branch office, the company will be subject to French labor laws as the contract for hire and the work to be performed takes place in France.

Additionally, the accounting must be kept in French francs to meet the tax compliance regulations and the parent company's records may be subject to review based on the business activities in France. It is for this reason that the foreign investor must be aware of the tax liabilities and Sécurité Sociale regulations regarding their employees in France.

#### C. Société en Participation: Joint Venture

Unregistered companies wherein the investors do not wish to make their activities part of the public record can fulfill their investment goals through the corporate form of a société en participation.<sup>3</sup> By not registering the business activity as a true corporate form however, the participants are not covered by the limited liability provisions of the corporate form and their business concern has no legal personality. The law governing partnerships also governs this type of business activity. Taxes are also assessed as a general partnership.

#### D. Société en Nom Collectif: General Partnership

Like its American counterpart, the SNC is not subject to corporate tax rates. Instead, the taxes are passed through to the general partners.<sup>4</sup>

The SNC differs from the SP in that the SNC

has a full legal personality and is subject to all of the registration regulations of French corporate law. In this manner, the partnership is substantially different from the flexible American model.

Disadvantages of the SNC include the following: Decisions must be made only with unanimous approval of all partners, no limit on liability and a business permit would still be required for non-residents.

Limited partnerships are known as société en commandite simple or SCS which resemble the American format of a partnership consisting of both general and limited partners. The SCS has the advantage of being able to elect to make the entire income of the SCS subject to corporate tax wherein the general partners are taxed as if their status was that of a limited partner.

#### E. Société en Commandite par Actions: Stock Partnership

This hybrid corporate form has the management rules of the SA with the stock regulations of the SCS. Owners are either general partners or solely shareholders who wish to be passive investors only.

Taxation of the SCA is akin to the SA and not the SNC which is a major difference between the SCA and the SCS. A distinguishing feature of the SCA is that its stock can be freely traded on the stock exchange.

#### F. Société Anonyme - General Corporation

The business form most akin to our general corporation is the société anonyme. The basic requirements for an "SA" are a minimum of seven shareholders and paid-in capital of 250,000 French francs prior to registration. The paid-in capital must be in a blocked account but half of the total requirement can be paid in at the time of registration with the additional half paid in over the next five years.

The corporate by-laws and articles of incorporation must be drafted and filed before the corporate entity is approved.

Again, if the investment is over 5,000,000 French francs, Treasury approval must be given before the corporate form is approved. Fortunately, once the complete filing is made, Treasury approval is deemed granted if no response is heard within thirty days of the filing.

A major difference exists between French and American corporate laws regarding the life of the corporation: in the U.S., a corporation is of infinite duration. In France, the life of the corporation is 99 years, which can be renewed.<sup>5</sup>

As in the U.S., French law governs the corporation by statute.<sup>6</sup> However, choice of forum is negotiable.

#### G. Société Anonyme-a Responsabilité Limité - Limited Liability Corporation

The SARL is used for smaller, usually family-held, companies. These businesses need the corporate formalities and their protections but do not possess the capital to start up an SA. The SARL requires 50,000 French francs as If one person is forming the SARL, it is known as an EURL (entreprise unipersonnelle a responsabilité limitée). Both the SARL and the EURL are subject to a 4.8% registration tax, even if incorporated outside of France.

The SARL is also limited to a duration of 99 years. The SARL is similarly required to draft by-laws and articles of incorporation. The stock of the SARL may not be publicly traded nor sold to third parties.

#### H. Société par Actions Simplifiées

The newest type of corporate form became effective on January 3, 1994 under a series of reform legislation known as "les lois Madelin" after congressman Madelin, more recently Minister of the Treasury, and now back to being a congressman.

The "SAS" has been used with increasingly regularity

over the traditional SA and SARL form since its inception. Its requires only two shareholders and paid-in capital of 250,000 French francs. The two shareholders may both be corporations or companies, even if not listed on the French Stock Exchange or "Bourse" and the shares of the SAS are privately held.

What the SAS has accomplished is a way to ensure the protections of the corporate laws but without the massive registration requirements and other demanding regulations of the SA and SARL.

#### I. GIE: Economic Interest Grouping

The groupement d'intérêt économique, or GIE, is a specialized corporate form with very flexible rules and regulations. The GIE has full legal personality and is comprised of owners known as "members". The purpose of the GIE is an extension of the economic activities of the members but in reality, is not limited to these activities.

The members of the GIE are jointly and severally liable. Taxes are assessed on the same basis as a general partnership with flow-through deductions for losses by the members. The members are subject to corporate taxation to the extent that any profit is realized on a pro rata basis.

The articles of incorporation must be filed with the clerk of the commercial court but not stated capital is necessary. The GIE is subject to the strict anti-trust laws of both France and the EEC which may be quite strict in light of the members' ideas regarding the direction of the business goals of the GIE.

The EEIG, or European GIE is another corporate form that is similar to the French model but allowed at the EEC level if at least two of the members are from different EEC countries. However, the EEIG is subject to

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much stricter regulations regarding the nature and extent of its business activities.

#### IV. CONCLUSION

Hopefully, the reader has gained insight as to the variety of corporate forms available in France. Again, one is cautioned to proceed with the assistance of counsel to avoid problems that can arise in addition to the potential conflicts due to the language and customs of France with which one may not be familiar. Depending on the individual needs of the

investor, there is a corporate entity that will allow the foreign investor to proceed with their business goals. The recent relaxation of the regulations regarding investment and obtaining Treasury approval in addition to the assistance of the DATAR make France a more than viable option for foreign business investment.

1 France: A Legal and Tax Guide, Francis Lefebvre, Paris, 1992.

2 Id.

3 Civil Code, Art. 1871 (Daloz, 1995-96)

4 Civil Code, Art. 1871-1 (Daloz, 1995-6)

5 Civil Code, Art. 1838 (Daloz, 1995-96)

6 Civil Code, Art. 1837 (Daloz, 1995-6)

#### About the Author

Erin Doherty Sarret received her B.A. in History and French from the University of California at Berkeley in 1989, she received her J.D. from University of the Pacific McGeorge School of Law, in 1994. Following her graduation from UC Berkeley, Ms. Sarret travelled to

Montpellier, France, where she was employed as a legal assistant for an attorney specializing in international law. After graduating with her J.D. from McGeorge, she returned to France to work in Lyon as an attorney in the field of international business transactions. Ms. Sarret is currently employed by Hanna, Brophy, McLean, McAleer & Jensen in San Francisco. She is married to a French citizen she met during her stay in Montpellier.



## How High Is the Sky — Views from an Aerospace Plane

by  
Kyle C. Frazier

### Introduction

In 1957, Sputnik-1 was placed in orbit above the Earth, followed by Laika, Yuri Gagarin, and finally Neil Armstrong's televised walk upon the moon in 1969. At present, man has the capacity to live and work in outer-space for extended periods. At the time of this writing, Russian and American cosmonauts are living together on the Russian space station Mir thousands of miles above the surface of the Earth. Eventually space stations may be the bases from which manned flights of space objects will be sent to Mars and beyond. However, despite scientific progress, most likely beyond the imagination of the sixteenth century mind, the more mundane task of discerning where the line between "air" and "space" lies continues to be elusive and amorphous, rendering any demarcation inherently arbitrary.

In the near future, man will have the capability to access outer space through the use of hybrid aircraft/space objects (hereinafter: aerospace planes)<sup>1</sup> equally adept at maneuvering within the atmosphere as without it.<sup>2</sup> These vehicles will require a set legal framework capable of attending to the diverse issues which will invariably arise therefrom.<sup>3</sup> The aerospace plane will unquestionably alter the future of transportation. It will 1) allow vehicular transportation of people and/or cargo to the opposite side of the Earth within two to four hours, and 2) bring people and/or cargo into the low orbit of the Earth, much like the Space Shuttle (except at a fraction of the cost). Thus, two purposes will be accomplished with this single new development. However, this multiple-tasking raises questions as to what law should be applied. In this respect the

aerospace plane is a legal chameleon.

It is this aerospace plane problem which this paper will attempt to address. Namely, whether a boundary between airspace and outer space (vertical horizon) should be adopted, and if so, where it should lie in light of the modern technological advancements, with the aim of suggesting the proper legal regime to pertain. Section I will briefly examine the significance of the demarcation issue, air law and space law, the distinctions between the two, and the ramifications of their respective differences. Section II will provide a cursory discussion of the many theories proposed to delimit the boundary between airspace and outer space. Section III will examine plausible approaches to the establishment of legal regimes and their applications to the aerospace planes of the future, with a special emphasis on Christol's "purpose and effects" approach. Section IV will contain an assessment of the beliefs as to the appropriate method of applying existing law to aerospace planes.

### I. An Examination of Air Law and Space Law

Although we know where airspace is and also where lies outer space, there exists a margin, or band, within which the exact location of the demarcation must lie if one is to be found at all. However, given the slow transition from airspace to outer space, it will be necessary in the near future to fix a boundary (vertical frontier) to facilitate space exploration and exploitation without uncertainty concerning the legal regime to be applied. This will be particularly germane when aerospace planes operate to provide both transportation between two points on the Earth and also to provide orbital access to cargo and/or personnel.

Due to the rapid development of scientific and technological capabilities, two independent branches of international law have originated—air law and space law—the former stemming from advances subsequent to the initial foray into the air by the Wright brothers, the latter largely a product of the space race between the Union of Soviet Socialist Republics and the United States. Regulation and application of these two very different regimes is provided by international law, largely through international agreements. However, none of these defines the altitude of the upper limit of airspace (or as the Soviet Union characterized the matter, the "upper boundary of state territory"), nor the lowest limit of outer space, the latter being open to the use by mankind without restrictions and ramifications attendant upon territorial sovereignty acknowledged in air law.

Two issues arise from this set of circumstances. First, is there any necessity to delimit the border between airspace and outer space?<sup>4</sup> Many nations, including the United States,<sup>5</sup> take the position there is no need to define where outer space begins since in the history of space exploration there has been no instance where one nation has complained that another has violated its territorial airspace during launch or landing.<sup>6</sup> Indeed, Manfred Lachs and others have contended that space objects, upon re-entry, frequently enter the air space of other states without drawing protest from the subjacent sovereigns, despite failing to inform such nations of the impending overflight.<sup>7</sup> This has occurred for nearly forty years. Thus, it can be persuasively argued that this natural necessity of space navigation has become an unwritten rule of law derived from

international agreements and usages, if not indeed customary international space law.

On a teleological level, when the Outer Space Treaty declared that outer space should be free for States in its use and exploration in the interests of all mankind, it could be argued that the right to overflight was bestowed upon space faring nations.<sup>8</sup> Id For this purpose space has largely been considered a *res communis*, although there has been no attempt to create an international institution to enforce international control.<sup>9</sup> Indeed *res nullius* seems appropriate since it is used to denote an area capable of occupation and susceptible to ownership without necessarily ascribing any notion of national sovereignty, however, unfettered freedom is not necessarily attached to this latter designation.<sup>10</sup>

Another argument rests on the notion that any definition would be arbitrary since science cannot define exactly where outer space begins.<sup>11</sup> In a related vein, it could be stated that since satellites in geostationary orbits often have perigees much lower than their apogees, they could cross the border somewhere between perigee and apogee, thus exposing them to separate legal regimes on a daily basis.<sup>12</sup> Also, it can be debated that the process of negotiating an explicit agreement would lead nations to make immoderate and unacceptable demands on their claims to sovereignty. Lastly, detractors of the creation of a vertical horizon argue that the definition is of little practical importance since the minimum operational height of satellites is much higher than those of airplanes, limiting any likelihood that there will arise a situation where the delimitation issue will arise. But, as mentioned earlier, the development of the hybrid craft will soon contravene this rationale, which seemingly seeks to perpetuate the *status quo*.

On the other hand, although there is no unanimity of opinion among writers as to the proper relation of air law and space law and whether any definition of a vertical frontier is necessary, many nations and scholars assert that a definition is required because 1) it will be necessary for the future application of international law as science and technology continues to develop, 2) the lack of definition of outer space invites nations to test the sovereignty of other states which could create international unrest, and 3) a clear definition would allow nations to solidify domestic law concerning defense and exercise of sovereignty abiding by and

incorporating the accepted international definition. Building upon a notion enunciated by Manfred Lachs, which stated that there is a necessity for a clear definition and boundary since space law has evolved through the *verbum legum* of treaties which were formed and expressly designed for the regulation of outer space. As a consequence, a separate area of law has been formally created. It is apparent that the law controlling the aerospace plane requires formalities to clarify the application of law should a situation requiring an appropriate aerospace plane legal regime arise in the future.<sup>13</sup> It is believed that it would be appropriate to anticipate a problem arising. Furthermore, rather than deal with the aftermath of the problem, it would be beneficial and constructive to assemble the legal framework in advance of its necessity.

#### A. The Significance of the Delimitation Between Air and Space

In 1966 the United Nations Committee on the Peaceful Use of Outer Space was instructed to begin "studying questions regarding a definition of the concept of outer space and the use of outer space and celestial bodies."<sup>14</sup> To this date, despite significant progress in the *lex specialis* of space law, there has been no formal findings on the part of the commission. Although the demarcation question may appear academic at the present juncture, the import of the boundary between airspace and outer space is based on three very relevant and timely considerations, the last of which provides the focus of the present paper.

First, state sovereignty entails "complete and exclusive authority" over all airspace (atmospheric airspace) above its territory.<sup>15</sup> In a 1951 address, Prof. J.C. Cooper, a founder of the Institute of International Air Law asked, "How far upward in space does the territory of the state extend?"<sup>16</sup> Indeed, it is incontestable logic that at some point sovereignty ceases. An example of the type of sovereignty problems likely to occur in the future, without a formalized vertical horizon, is the December Declaration of 1976. In this instance eight equatorial states claimed territorial sovereignty over geostationary orbits located twenty seven thousand miles above the Earth's surface. Geostationary orbits are in limited supply and as such, are a valuable resource offering unique economic benefits.<sup>17</sup> The claims were rejected as the orbit was recognized as outer space, thus free and clear of imputations of state

sovereignty.<sup>18</sup> As will be discussed in further detail *infra*, customary international space law recognizes an altitude equal to that of the lowest orbiting space object to be the boundary between air and space. This designation, as will be discussed *infra* has its limitations where the hybrid craft is concerned. However, as a matter of sovereignty, it has been and will continue to be, a perfectly reasonable and utilitarian method to limit state sovereignty. This subject is worthy of an in-depth analysis, however, for the purposes of the present paper, a close study of the problem will be sacrificed for a more detailed examination of the hybrid craft problem.

The second consideration involves issues arising from events occurring at the present margin between airspace and outer space, and the necessity to decide which regime would pertain- air law or space law.<sup>19</sup> As with the issue of sovereignty, this topic merits in-depth discussion. However, given space considerations, only a brief outline of one of the most important of the ramifications will be examined, that relating to variances regarding liability under air law and space law.

In this regard, the consequences of the application of air law as opposed to space law is significant. In air law, under the Rome Convention of 1952,<sup>20</sup> and its amendments completed in 1978, persons injured on the ground may recover damages, upon proof that the injury was caused by a craft in flight (or persons or objects falling therefrom).<sup>21</sup> Not only must the injured party prove fault, but the compensation granted by the Rome Convention is limited. In contrast, under the Liability Convention, which governs liability for damage caused by space objects on the surface of the Earth, the launching state<sup>22</sup> is strictly liable and must provide *restitutio ad integrum*.<sup>23</sup>

Regarding collisions with aircraft in the air, although extremely rare, air law would apply fault-based liability, while space law would hold the launching state absolutely liable.<sup>24</sup> In respect to damage to goods, cargo, or passengers, under air law the Warsaw Convention<sup>25</sup> applies, while under space law the Liability Convention continues to apply. Under the Warsaw Convention, the air carrier (not the state) is liable for damages arising from injury in the form of loss of life or physical injury and damage to goods and cargo.<sup>26</sup> However, the air carrier will not be found liable if all necessary measures were taken to avoid injury, or if the

injury was caused due to the negligence of the injured party.<sup>27</sup> Under space law, liability would attach to the launching state for damages to passengers, cargo, or baggage, unless due to the negligence of the injured party.<sup>28</sup> Fault must be proven under the Warsaw Convention, which may be very difficult to prove. Thus, there are very significant differences relating to recovery of damages for injuries suffered, depending on the legal regime is applied.

The consideration which imports significance to the delimitation issue in the present paper revolves around the rapid development of the modern aerospace plane, which presents a unique and novel question- which law should apply to such a vehicle (and indeed whether differing regimes should be used upon exit and re-entry into the atmospheric airspace). On May 14 and 15, 1991, an international colloquium was organized by the French Society for Air and Space Law. The purpose of the colloquium was to create awareness of the legal problems which may arise when hybrid spaceplanes become a reality, and also to propose solutions. Indeed, the importance of the regime to be applied to the aerospace plane will have an effect on foreign policy, science, and economics (both in the government and the private sectors). Also, a predetermined regime will provide stability to the field, avoiding potentially detrimental confusion. Also, the designation of the applicable regime will have an effect on liability and possibly also on sovereignty.

#### **B. Air Law and Space Law**

Space law is distinct and separate from air law, much like maritime law is independent of and separate from air law.<sup>29</sup> Implicit in any discussion of air law versus space law is the assumption of a pre-existing

dividing line. The Outer Space Treaty alone refers to "outer space" 37 times, yet nowhere defines the use of the term, nor suggests a likely method of discerning an acceptable altitude at which it may lie. There are several important differences between air law and space law which must be examined to provide a focal point for further discussion on the import and implications involved in determining where a line of delimitation should be drawn as to a vertical horizon, if any. Therefore it will be beneficial to examine the different regimes, their basic applications, and the ways in which they differ.

##### **1. Air Law**

While in a traditional common law view, a state's control over its airspace was considered to extend to the end of the universe,<sup>30</sup> this boundless sovereignty (including "effective control" as a salient characteristic) was restricted somewhat by the 1919 Paris Convention, which was prompted by increased use of aircraft during WWI, necessitating the advent of a rule of international law regulating international flights. The Paris Convention resolved to establish each state's exclusive control over its "superadjacent airspace." In 1944, The Chicago Convention further extended the Paris Convention.

The Chicago Convention, defines an aircraft as "any machine that can derive support in the atmosphere from the reactions of the air." The Chicago Convention also inspired the creation of the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations, to provide cohesion and cooperation between nations in the area of civil aviation. Today, millions of passengers are handled, and about four hundred jumbo jets fly over three million miles every day.<sup>31</sup> Under air law, bilateral air service

agreements provide authorization for international flights, thus transit is restricted in the absence of these agreements. Also, registration of aircrafts need only be carried out in the nation of origin (flag state), and there are standards of safety which must be observed.<sup>32</sup> Thus, the Chicago Convention, bilateral air service agreements, and the various conceded "freedoms," all combine to provide the framework within which international travel and transport operates.

##### **2. Space Law**

Space law consists primarily in the five major treaties and public international law since states are the primary actors.<sup>33</sup> As pointed out by Prof. Diederiks-Verschuur, there is an analogy between space law and the Antarctica Convention of 1959, which waived national needs and claims to sovereignty in the interests of freedom of use, although Antarctica has clearly defined boundaries.<sup>34</sup>

The primary underlying premise of space law is freedom of use.<sup>35</sup> Although, it should be noted that private entrepreneurship may soon engage in endeavors involving the exploration and exploitation of outer space. The cornerstone of space law, the Outer Space Treaty, is not universally lauded. Harry Almond, Professor of International Law at the National Defense University in Washington, D.C., has deemed the treaty "insufficient in scope, ineffective for control, and unavailing for implementation and enforcement of regulations."<sup>36</sup> The Outer Space Treaty provides that all activities in outer space must be conducted in accordance with international law, including the Charter of the United Nations, with the intention of maintaining international peace and security and promoting international cooperation and understanding.<sup>37</sup> This treaty also prescribes that all nations, on the basis of

equality and without discrimination, are free to explore and use outer space, characterizing outer space as the province of all mankind.<sup>38</sup> Also, states are to refrain from appropriation of space and celestial bodies,<sup>39</sup> and to register with the U.N. information regarding the launch of space vehicles.<sup>40</sup> Also, liability attaches regardless of fault if the injury occurs to an aircraft in flight or on the surface of the earth, while fault liability applies if the injury occurs in outer space.<sup>41</sup> In general, States bear responsibility for their activities in space.<sup>42</sup> It must also be noted that there are no safety standards or licensing bodies to clear flight and establish flight requirements for objects launched into outer space.

#### **C. The Differences Between Air Law and Space Law**

As mentioned previously, the primary distinguishing factor between air law and space law is that the former is based on sovereignty and the latter is based on freedom of use. The following will briefly outline these differences. First, as promulgated under air law in the Paris Convention and further reinforced in the Chicago Convention, each state is granted complete and exclusive control over the airspace above its territory along with effective control. The opposite is true of space law where freedom of use prevails. But there are also several other important aspects of air law that need to be discussed in connection with the differences between it and space law. In air law, there are registration and authorization requirements for overflight, a recognized freedom to fly over high seas, and other flight worthiness requirements. In space law none of these exist. The Chicago Convention applies to civil aircraft engaged in international flights, while space law is concerned with the

activities, rights, and liabilities of states. A carriage by air is considered "international" if its place of departure and destination are in different countries or if the carriage begins and ends at the same place or in the same country, but makes a stopover in a foreign country.<sup>43</sup> According to space law, there is no distinction to be made between international and domestic activities.

Air law also utilizes separate national registries,<sup>44</sup> while international space law requires that each state register each object launched into orbit in a national registry and also supply information to the Secretary General of the United Nations.<sup>45</sup> Under space law the space object must be re-registered each time it is launched into outer space, whereas airplanes need only be registered upon their first use under air law. It is furthermore worth noting, that nations need only provide such information to the Secretary General as they deem necessary under space law.

Air law focuses on navigation and commerce,<sup>46</sup> and places restrictions on the ability to utilize territorial airspace.<sup>47</sup> Under air law the first two "freedoms" refer to overflight and transit rights. These freedoms include the freedom to fly over the flag state's territory non-stop or for a non-traffic purpose (refueling for example), and are governed primarily by bilateral air service agreements.<sup>48</sup> However, no nation has ever protested the passage of a space object over its territory (as discussed *supra*). Although this may not constitute a customary rule of international space law, it is a significant departure from air law. Another difference between the two regimes concerns the "commercial freedoms" of air law for an aircraft to carry cargo, baggage, and passengers from or to the flag state. Under space law these "freedoms" are covered by

launch contracts between the parties involved in the launch, and there is at present no established customary international space law on this topic. Finally, air navigation is subject to air traffic control, while the aircraft itself is under the complete control of the captain, who, as representative of the flag state, has complete jurisdiction on board the craft. Space objects, on the other hand, remain under the direct control of the flight director on the ground.<sup>49</sup> It is as yet unclear what role astronauts play and the status they are granted.<sup>50</sup> Indeed they are envoys of mankind, but the question whether they are to be considered passengers is an important question that must be addressed.

There is also a broad consideration under space law which is overlooked in air law. Due to the primarily private and civilian nature of international agreements concerning air law, no express provision in the regime focuses on disarmament and/or arms control as in space law. Indeed, there are separate restrictions regarding military aircraft, which are beyond the purview of the present article.<sup>51</sup> As cursorily discussed in the preceding section, there are significant differences between air law and space law which would have an effect, not only on the administration and operation of the aerospace planes, but also upon the liability attaching to the responsible party.

## II. Whereabouts of the Demarcation

As evidenced by the preceding, the problem of delimitation has been the subject of disagreement for decades.<sup>52</sup> In light of the seeming necessity for a definition of outer space,<sup>53</sup> this definition could be based on scientific (geophysical) considerations, technological considerations, or operational considerations. Indeed, many scholars note that the "indivisibility principle"

supports the notion that air and outer space are merely different degrees of one another. Thus, any definition would be contrived. However, a decision making process that incorporates social, cultural, economic, historical, and political needs would be no more arbitrary than any other conceptual definition and should be explored. The following section will discuss various alternative methods for defining outer space and attempt to briefly outline the arguments, in favor of and opposed to, each respective method.

C u s t o m a r y international space law<sup>54</sup> fixes the boundary of space at the lowest possible position that space objects can safely orbit above the Earth's surface.<sup>55</sup> This is also known as the "Satellite Operation Theory", initially suggested in 1958.<sup>56</sup> Presently, this places the boundary at approximately 100 to 110 kilometers. However, the altitude of the boundary is subject to change and will continually decrease as technological advances allow for orbits with lower perigees. As a result, customary international space law currently follows, and will continue to follow, the evolution of technology. The problem with this is that it does not provide a stable and predictable legal environment, which, given the large investments of time, money, and research necessary for the development of space resources, seems preferable to a constantly shifting line demarcating the altitude at which international space law is applied. Therefore, unless a treaty agreement is concluded, setting the boundary at the present altitude, or one at a similarly reasonable altitude, the integrity of this approach will remain in question due to its inherent instability.

The "Airspace Theory" posits that the altitude to which the atmosphere extends should be considered as the boundary of

outer space. This position finds its impetus in the language of the major air law agreements, including the Convention on the Regulation of Aerial Navigation, the Spanish-American Convention on Aerial Navigation, the Convention on Commercial Aviation, the Paris Convention, and the Chicago Convention, all of which explicitly refer to their respective applicability regarding sovereignty over "airspace" above a states' territory.<sup>57</sup> The expression "airspace" is understood here, in its usual sense, to mean the region above the Earth's surface where air exists.<sup>58</sup> However, the problem with this theory is that the air service agreements were signed before the advent of space flight. Given this lack of cognizance of future application and the effects of temporal and technological disjunction, the use of this terminology as a basis for a modern definition of airspace is inappropriate and of limited merit. Indeed, at 80 kilometers air density is one-millionth of what it is at sea level. This can hardly be considered air space. There is not enough air to support winged flight. Minute traces of atmospheric components have been detected as far out as 400 kilometers, and may technically be considered still within the confines of air space. This theory seems an improbable and unworkable approach.

The "Aerodynamics Theory" suggests that the delimitation should exist where air density is such that it cannot produce the aerodynamic reactions necessary for aircraft flight.<sup>59</sup> However, this theory places outer space in the stratosphere at approximately 30 kilometers, which is far below the operational level of space objects. Also, aerodynamic reactions to air are a function of speed. Thus, as technology advances, the altitude at which airplanes can operate will rise, thereby constantly altering the

definition of outer space. This approach faces the same problems as discussed under the international customary space law/satellite operation theory.<sup>60</sup>

The "Limit of Effective Control Theory" says that space should be determined by extending the altitude of airspace as far as a state can effectively enforce its sovereignty.<sup>61</sup> It is also suggested, under this theory, that a second zone would exist for self-defense up to approximately 480 kilometers, which would be called "contingent space", and would allow for a right of passage for non-military vehicles. Above this contingent space, all space vehicles would have the complete freedom granted to legal uses in the present system of international space law. However, this theory (which was proposed by the advanced spacefaring nations early in the history of space exploration and exploitation) has been largely abandoned as a potential method for delimiting the boundary of space, since developing nations would remain at a clear and unacceptable disadvantage compared to nations with space capabilities.<sup>62</sup> Furthermore, it would produce multiple boundaries, varying according to the technological advancements of the subjacent states.

A variety of other theories have been suggested from the "van Karman line," where "lift" need not be the only support, while the line would be drawn up to the point where any aerodynamic lift is available,<sup>63</sup> to the height at which the atmosphere will no longer sustain human life.<sup>64</sup> However, these theories also suffer from flaws associated with the inherent inability of science to adequately determine a natural boundary line.

An altogether different alternative, which is one of the most interesting suggestions, was espoused by Cooper, who

suggests an attempt to merge the two areas of law into one cohesive area of law called "aerospace law". This idea is based on the fact that both areas of law have respective strengths which are applicable to man-made flight. The definition of aerospace as propounded by Cooper is: "the earth's envelope of air and the space above it, the two considered as a single realm for activity in the flight of air vehicles and in the launching, guidance and control of ballistic missiles, earth satellites, dirigible space vehicles and the like."<sup>65</sup> However, the construction of an entirely new legal regime would likely create more problems than it would solve, assuming agreement could be achieved as to the components to be integrated from air law and space law.

In light of scientific and technological advancements, it may eventually be the case that the maximum altitude of airplanes will overlap with the minimum altitude of power assisted satellites. In this scenario, typical air activities could be conducted at altitudes higher than some typical space activities.<sup>66</sup> Thus, it seems necessary that some border be established, if for no other purpose, than to clarify matters which are likely to arise in the future.<sup>67</sup>

### III. The Application of Law to the Aerospace Plane

#### A. The Spatial Approach

A spatial approach to the application of law to the aerospace plane would utilize a physical boundary, as discussed in the previous pages, between air space and outer space to determine the legal regime controlling the hybrid vehicle. This boundary, of course, would impute space law if the vehicle is above the line, and air law if below the line which encircles the Earth. This approach examines both the physical relation of the craft to the earth

and the physical environment where the craft is located. Pursuant to the classifications enunciated by Christol,<sup>68</sup> these are "objective" considerations. Among other objective considerations to be examined are the craft's abilities to maintain itself for an extended time in an environment lacking in large degree from the physical elements associated with atmosphere. Indeed, according to the definitions of a space vehicle as set forth in the Registration Agreement and Liability Convention, these considerations would qualify such a vehicle as a space object.<sup>69</sup> As Haanappel has suggested, such a vehicle must be capable of operating long enough to survive more than a brief encounter with "near space".<sup>70</sup> It is Christol's belief that there is no rational basis for favoring one boundary approach over another, since the identification of which would not account for the purpose for which a craft is sent up.<sup>71</sup> Christol further believes that the advent of the aerospace plane requires an approach that takes all objective and subjective considerations into account, without relying on arbitrary lines drawn a hundred miles in the sky.

#### B. Functionalist Approach

The functionalist approach, asserts that since the aerospace planes will be engaged in identifiable activities, these activities should determine which legal regime would apply.<sup>72</sup> Adherents to this theory argue that, due to the inherent difficulties surrounding the establishment of a viable geophysical or technological approach to the delimitation problem, a distinction should be made as to whether the activities are aeronautical or astronautical.<sup>73</sup> Thus, if an object is performing activities of an astronautical nature, it would be governed by space law, regardless of its altitude. The

implication of this theory is that there is no necessity for a boundary between air and space, because they can be considered as part of each other, taking into account the gradual transition which is known to exist as the atmosphere cedes to space.<sup>74</sup>

The arguments in support of this theory are varied.<sup>75</sup> First, it is pointed out that space law covers movement through outer space, thus implicating any transit that encounters outer space.<sup>76</sup> However, this argument is a tautology since without any definition of where space begins, there can be no value to the statement. Also suggested as a rationale bolstering the functionalist approach is based on the language of the major air agreements mentioned earlier<sup>77</sup> as taken in their usual sense—"airspace" meaning the area above the Earth where air is present. As discussed earlier, this sort of literal interpretation of language implemented before cognizance of future space travel is of little value as a rationale for any assertion as to the validity of a potential theory of demarcation, be it a spatial or a functional approach.

Other notions claimed to support the functional approach include: 1) the fact that in the area between the highest altitude modern aircraft can fly and satellites can currently orbit there is a "mesospace" where no specific law should pertain; 2) the notion that so long as spacecraft has an objective in outer space that does not violate any space treaties and the safety of subjacent nations is secure, there is no reason to establish a specific boundary between air and space; 3) the notion that the Space Treaty, which itself does not define outer space, is a functionalist treaty due to its very nature. However, as to this latter notion concerning the space treaty, it is believed that reasoning to mirror that of the questionable application of words discussed under the "airspace theory" which preceded

technological advancements, rendering any interpretation of those terms in the present day inappropriate and uninfluential. Indeed, whatever merits or drawbacks which may underlie any of the above rationals for the functionalist approach, they together certainly convey the difficult nature of the problem of demarcation.

#### C. Christol's Approach

As evidenced by the various and competing theories discussed, there is much disagreement as to the method through which it should be determined which legal regime is to apply when aerospace planes become a technological and legal reality. Christol has suggested a potential legal regime which seems eminently logical and adaptable, and thus may provide, if not a solution to the problem, a greater understanding of the question and a general indication of where a solution may lie. The following section will briefly outline Christol's approach and identify its strengths and weaknesses.

Christol's thesis is based on the premise that there are two areas which should be focused upon: 1) the intended purpose of the vehicle, or 2) the effects of the vehicle's activities. Pursuant to this, Christol believes that the capabilities of the craft, both subjective and objective, should be considered. Thus, if a vehicle's purpose or effect is to act as "an aircraft it should conform to the regime of air law." The same reasoning would also apply if the vehicle's "purpose or intent" was that of a space craft. Under this theory, there is no need for a formal boundary between air and space as the application of law would depend upon the characterization of the craft's "purposes or effects", not upon a formal boundary.

Christol feels a new option must be developed for ascertainment of the appropriate regime of law since the spatial

and functional approaches are both incapable of properly confronting the legal ramifications of an aerospace plane operable in both air and space. As Christol explains, both the spatial and functional theories account for "objective" considerations, but fail to consider how the craft is to be used or its effective uses (the so-called "subjective" factors). Given the basis for the development of these aerospace planes- the movement from place to place over the surface of the Earth (an air activity), to accomplish certain tasks in orbit (a space activity)- it seems appropriate to apply the law which most closely comports with the objective of the mission. Thus, under this theory, if a craft's announced purpose was to transport cargo between two points on Earth while briefly finding itself above the point where customary international space law delimits the boundary of air and space, the craft would continue to be ruled by air law. Likewise, if a craft with the announced purpose of engaging in space activities should travel through airspace it would be treated under space law. This framework, Christol argues, would "facilitate an expanded use of the hybrid vehicle."

Christol further argues that even though the criteria of ascertaining which law would apply is subjective on the part of the state engaging in hybrid flights, there is no danger of misconduct on the part of these nations due to the built in and implicit elements of his approach. Regarding the announcement of the purpose, he states that since a purpose can be announced and implied from conduct, there is no danger of misdesignation of purpose used to the advantage of the state launching the aerospace plane. This is supported further, in Christol's view, by the fact that the Registration Agreement would apply to space activities,

and the fact that the place of departure and pattern of transit would be "difficult to conceal." Thus, based upon the reasoning of Christol, all problems concerning spatial and functional approaches are avoided, and the law to be applied can simply be determined through the announced or declared purpose or the *de facto* intent as implied by the actions of the state employing the hybrid vehicle. Christol further points out that, "most importantly", international air and space law would still pertain. Indeed, Christol's approach is very persuasive and eminently logical. By focusing not on the vertical horizon or the actual operational capacity of the craft, and instead basing the application of law upon the designated purpose of the craft, there would be no confusion as to the applicable law.

#### IV. Conclusion

There exists a wide variety of thought concerning the topic of legal regimes and their applicability to the aerospace plane. Indeed, spatialists suggest that a demarcation, in the form of a vertical horizon between air and space, would best serve to regulate the aerospace plane. The most persuasive argument behind this approach is based on the fact that given the large number of international agreements which purport to apply to "airspace" or "outer space" respectively, there is a necessity to establish when these agreements lose or acquire efficacy. This can only be established by the demarcation of a vertical horizon. Indeed, as discussed earlier, there are also several other important ramifications attendant upon the delimitation of a line between airspace and outer space such as sovereignty and the application of law to aerospace plane involved in both air and space activities.

The functionalist

approach, on the other hand, has a very appealing simplicity. If an aerospace plane is engaging in the activities of an airplane, it should be governed by air law, but while engaged in the activities of a space object, it should be governed by space law. As logical as this appears, the functional approach fails to clarify the altitude at which airspace gives way to outer space, thus perpetuating the vagueness of the major air and outer space agreements mentioned earlier. If the functional approach were adopted in conjunction with an international agreement which established the altitude of the vertical horizon, however, this approach would be acceptable. Nonetheless, for all the simplicity and logic of the functionalist approach, it is believed that there exists a preferable alternative approach.

Regarding the aerospace plane, it seems Christol's approach, which lacks several of the drawbacks of the spatial and functional approaches, is the most plausible solution to the advent of the aerospace plane. Christol's approach would apply the regime that applies to the mission's stated purpose. Although nations may be tempted to designate a mission as an air mission when in fact the hybrid craft is truly engaged in space activities, in an effort to avoid absolute liability which is applied under the Liability Convention, the danger of this is limited by the simple fact that it would be apparent from the activities of the craft, what activities it was conducting.

However, Christol overlooks (as do the functionalists) the possibility that a future aerospace plane may be capable of engaging in a mission with both an air activity and a space activity. In this situation, trouble would arise determining which law would supersede the other, or if both regimes should concurrently or successively apply. It is suggested that both

Declaration of Human Rights when it prohibited the county from not considering medical care and clothing costs when it sought to reduce the amount of the minimum subsistence for housing and food costs under general assistance.<sup>37</sup> And in *Lipscomb v. Simmons*,<sup>38</sup> a three judge federal panel invalidated an Oregon statute that denied state funds to foster children living with relatives. The court supported its decision with various references to the 1948 Universal Declaration of Human Rights, the Civil and Political Covenant and the International Covenant on Economic, Social and Cultural Rights, even though the United States is not even a signatory to the last convention.<sup>39</sup> The Ninth Circuit reversed the district court, by declining to treat the children as a suspect class, and finding the Oregon statute was rationally related to a legitimate state interest.<sup>40</sup>

As these examples illustrate, international human rights law, as an *interpretation* mechanism can be used as a defense when the state prosecutes those living where they are forced or chose to live in violation of an ordinance to not sleep in particular areas.<sup>41</sup> Because of the obstacle created by self-execution requirements, the interpretive application is one way the defense can mount an argument to increase the stakes for an arrest and prosecution by the local authorities and change the overall bargaining leverage in the criminal processes.

Ultimately, what rights really exist is a moral question as well as structural legal issue. What a society values, and the method of enforcing those rights is subject to political viewpoints and the will of its people. For example, what are the implications under the right to be treated with dignity in a state that does not make assisted suicide illegal?<sup>42</sup> If that state is a signatory to the Civil and

Political Rights Covenant, and interprets the international obligation of right to privacy to be consistent with domestic non-criminal status, will that domestic application be allowed as an interpretive aid in United States courts as an defense to criminal prosecution for violation of assisted suicide laws? What if the defendant was from another state where ignorance of the law is a recognized defense and assisted suicide is a matter of human dignity and criminal wrongdoing? What if a defendant from a foreign state visiting the United States assists in a suicide and faces prosecution under statute or common law? Would an international interpretive application of these factors provide a defense? These are some of the issues that will arise as international law becomes a more influential norm in domestic law. Or stated in the form of a question: Will international norms become influential in the application of legal adversarialism?

Whether an international instrument is or is not a source of law under United States law may not be the ultimate issue. As the above cases illustrate, the Courts in their wisdom, for better or worse, are recognizing the power of international law as an interpretive aid to determine the validity of laws. Where the law is going in this regard is not certain, but it is not unclear. As the world becomes a more proximate in time, space and communication, the international dimension of international norms will have a more local influence. That influence is not limited to political rights or the rights of the homeless. It reaches into business practices and affairs; environmental and territorial jurisdiction. It wraps itself in comparative practice as well as conflicts of law application. There are thousands of international treaties and

declarations of which the United States is a party. How those treaties and customary international law play at the local level is a matter of creative application by practitioners. The cost of invoking international norms may be minimal, and the potential rewards may well outweigh any risk. This note, as a pedagogical tool, suggests one such example of international law to local application.

<sup>0</sup> See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559-60 (S.D. Fla. 1992) where homeless sleeping in parks in violation of City of Miami Code §§ 38-3, 37-34 and Fla. Statutes § 810.08 trespassing, were arrested and permanently deprived of possessions under threat of prosecution.

<sup>1</sup> See, e.g., M. Janus, *An Introduction to International Law 2* (Little, Brown & Co. 1993). For purposes of this note, references to "state" means "nation", and reference to "municipal" refers to law that is domestic to the United States, whether it be federal or state law.

<sup>2</sup> See *Pottinger*, 810 F. Supp. 1551. See also, *The Case of S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 9, where Turkey's enactment of state law criminalizing affects to its citizens originating outside jurisdiction led to a dispute with France over power to enact laws that resulted in prosecution within the territory for extraterritorial acts.

<sup>3</sup> In part, the distraction is due to the exclusive powers of Congress and the President to have the say in foreign relations with other nations. U.S. Const. arts. I § 8, II § 2, VI; *Missouri v. Holland*, 252 U.S. 416 (1920).

<sup>4</sup> *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976)[hereafter Civil and Political Rights]; *International*

*Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976)[hereafter ECOSOC].

<sup>5</sup> See *Filartiga v. Pena-Irala*, 630 F.2d 876, 884 (2nd Cir. 1980).

<sup>6</sup> L. Adler, *SOS for SSI: The Unfulfilled Promise to Homeless Americans*, 1 Geo. J. on Fighting Poverty 304, 316 n.1 (1994).

<sup>7</sup> *Id.*

<sup>8</sup> See S. Landesman, *Commentary: Tuberculosis in New York City-The Consequences and Lessons of a Failure*, 83 Am. J. of Public Health 766 (1993); see also, K. Brudney & J. Dobkin, *Resurgent Tuberculosis in New York City: HIV, Homelessness and the Decline of TB Control Programs*, 144 Am. Rev. Respiratory Disorders 745 (1991).

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., 810 F. Supp. 1551, 1554-5 (S.D. Fla. 1992).

<sup>11</sup> See Civil and Political Rights, arts. 6, 7, 9, 12; ECOSOC, arts. 1, 11; see also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948), arts. 1, 3, 12, 13, 25.

<sup>12</sup> U.S. Const. art. VI, § 2. The Supremacy clause provides: "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of Any State to the Contrary notwithstanding."

<sup>13</sup> *The Paquete Habana*, 175 U.S. 677, 700 (1900); see also *Diggs v. Shultz*, 470 F.2d 461, 466 (D.C. Cir. 1972, cert denied, 411 U.S. 931 (1973)).

<sup>14</sup> 175 U.S. at 700, where such works are "resorted to by judicial tribunals, not for what... the law ought to be, but for trustworthy evidence of what the law really

is."

15 The Court decides if a treaty is to be self-executing, and if the plain ordinary language the treaty is precise, clear and definite that no other implementing act is required to make it enforceable, it will be self-executing and is to be interpreted in a liberal spirit as to give construction to a treaty even where a local law is inconsistent. *Baker v. Carr*, 369 U.S. 186, 204 (1962); see *Foster v. Nielson*, 27 U.S. (2 Pet. 253, 314 (1829)); see also *Asakura v. Seattle*, 265 U.S. 332 (1924); but cf. *Sei Fujii v. State of California*, 38 Cal. 2d 718 (1952). Once a convention or treaty has been signed and ratified, there is a presumption that Congress or the state will not act in derogation of its international obligation under the treaty, unless there is subsequent congressional action that is clear to displace the prior treaty. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804); see also *Cook v. United States*, 288 U.S. 102, 120 (1932). The court can only enforce the treaty to the extent it is self-executing or there is implementing legislation adopted as to be enforceable against the United States.

16 See 175 U.S. at 700.

17 See, e.g., *Filartiga* at 884-85. "While the ultimate scope of those rights will be subject for continuing refinement and elaboration, we hold now that the right to be free from torture is now among them."; see also Restatement (Third) of the Foreign Relations Law of the United States, pt. VI (1987), 102(2).

18 *Id.* at § 102(3)

19 630 F.2d at 884. At one time torture was considered a routine concomitant of criminal interrogation in many nations, yet in more modern times it has been universally renounced.

20 U.N. Charter arts. 55, 56.

21 There is a practical distinction between the rights emerging from these two covenants which

was primarily due to political accommodations based on distinct regional and hemispheric "values". In the theoretical context of indivisibility, both covenants have been described by scholars as different sides of the same coin, meaning that without one set of rights, the other is meaningless. See e.g. Marks, *Emerging Human Rights: A New Generation for the 1980's*, 33 Rutgers L. Rev. 435, 451-2 (1981). However, each is recognized to the extent it has been incorporated into the law of the particular state. See, e.g., 175 U.S. at 700.

22 ECOSOC, arts. 2, 11.

23 Art. 25 of the 1948 Universal Declaration of Human Rights provides: "Everyone has the right to a standard of living adequate for the health and well-being of himself and family . . . including housing . . . [for] lack of circumstances beyond his control."

24 M. Bowman & D. Harris, *Multilateral Treaties* 304 (Butterworths 11th ed., 1992 (Supp. 1995)).

25 Art. 6; see also Bowman & Harris at 223 (Supp.).

26 Art. 12 specifically provides that everyone lawfully within the territory of a state shall have the right to liberty and freedom to choose his residence.

27 *Id.*

28 Bowman and Harris, *supra* note 24, at 233 (Supp.). Moreover, no implementing legislation has been adopted to make articles, as 11 and 17, effective in domestic law.

29 See note 16, *supra* page 5.

30 See note 14, *supra* page 5. A state is bound to obligations of the treaty to the extent the treaty is ratified and self-executing.

31 See, e.g., *Fujii v. State of California*, 38 Cal. 2d 718, 722-23 (1952).

32 *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1571-80.

33 *Id.* at 1584. For example, sleeping on a park bench.

34 *Thompson v. Oklahoma*, 487 U.S. 815 (1987).

35 *Id.* at 830-1, n. 34.

36 *Boehm v. Superior Ct.*, 223 Cal. Rptr. 716 (Ct.App. 1986).

37 *Id.* at 721.

38 *Lipscomb v. Simmons*, 884 F.2d 1242 (9th Cir. 1989).

39 *Id.* at 1244, n. 1.

40 *Lipscomb v. Simmons*, 962 F.2d 1374 (9th Cir. 1992).

41 See *Pottinger*, 810 F.Supp. at 1584.

42 See Civil and Political covenant. Art. 7 provides that no one shall be subjected to degrading treatment or medical experimentation without permission. Art. 17 provides no one is to be subject to interference with their privacy by the state.

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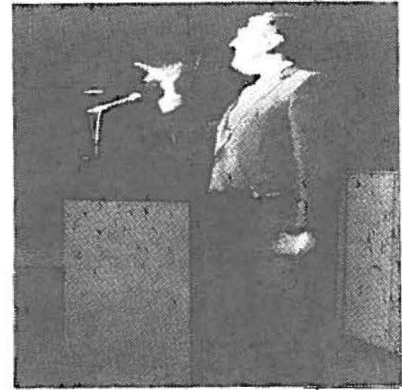
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## Logic dictates...

that the number of hours spent in Workshops should be no more than necessary to accomplish your goal.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
EVIDENCE 1	EVIDENCE 2	CONSTITUTIONAL LAW 1	CONSTITUTIONAL LAW 2	MULTISTATE WORKSHOP EVIDENCE/CON. LAW
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
CONJUNCTION PROPERTY	ESSAY WORKSHOP EVIDENCE/CON. LAW/CONJUNCTION PROPERTY	WILLS	TRUSTS	REMEDIES 1

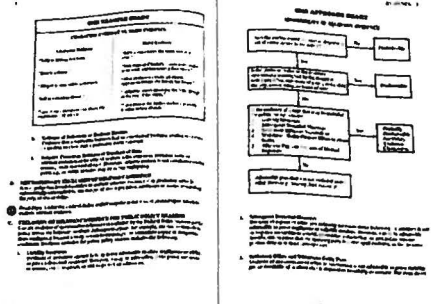
*Sample Lecture Schedule*

## Logic dictates...

that a study outline be just that, *an outline*, not an overly cumbersome explanation of the law.

## Logic also dictates...

that there should be a special capsule outline summarizing the vast amount of detail of the law, highlighting major areas of law tested on the Bar Exam.



*Conviser Mini Review*

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