

SOLIDARITY AND HUMANISM IN THE OUTER SPACE TREATY

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Background

The creation of the International Astronautical Federation (IAF) in Paris, 1950, offered a new field for the scientific research and technical applications of astronautics. Law was present in the reflections and deliberations.

As Vladimir Kopal rightly said, the congresses of the International Astronautical Federation began including reports on legal issues relating to space flights as early as 1952, Congress of Stuttgart (Prof. A. Meyer). Reports on legal topics were also presented at the 1954 Congress in Innsbruck (Dr. A.A. Cocca) and at the 1956 Congress in Rome (Dr. A.A. Cocca and Dr. E. Pépin).¹

In the 50's international academical organizations offered a valuable contributions to the development of the Space Law doctrine: Institut de Droit International, International Law Association, The Hague Academy of International Law.

In addition there are also regional and national institutions devoted to international law, including topics of space law in its programs and meetings; there are as well, centers on Air Law that broaden their researches to Space Law.

Within the framework of the IAF, a Permanent Legal Committee to study the legal problems of space was created on the occasion of the First Colloquium on the Law of Outer Space (The Hague, 1958). At the Second Colloquium (London, 1959) the Permanent Committee became into the International Institute of Space Law (IISL) which obtained its Statute in Stockholm, 1960.

The real enforcement of the doctrine in Space Law is due to the annual Symposia of the IISL, that generates the more complete reference, bibliography, and discussions on Space Law matters. The Institute represents the international academical forum for jurists who, whichever their place of residence or the legal régime to which they belong to, have a common feeling: to create new concepts, new principles and new legal rules.

The Outer Space Treaty on the line of the UN Charter

The principles enshrined in the United Nations Charter needed to be deeply examined and explained in all their scope. The Charter is explicit in establishing that the peoples are the addresses of the benefit previewed by the international organization.

The UN Charter gives, as non international instrument did before, a specific legal value to the expressions: *peoples, generation, mankind, fundamental human rights, dignity and worth of the human person, social progress and better standards of life in*

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larger freedom.

The progressive development and codification of international law is a mandate received by all nations half a century ago in the opportunity of the enforcement of the UN Charter. We take from the Charter the following concepts:

Peoples:

The first line of the Preamble of the Charter recognizes a new dimension to the international subjectivity of peoples. The **peoples** of the United Nations express themselves in this text, and they do so speaking in first person.

Generation:

A new concept in international law linked with the fundamental human rights which legal content has been analyzed considering necessary its insertion together with the concepts of people and mankind. This concept embodies all human beings without any distinction and for this reason it is a basis for the concept of solidarity. Generation implies all the persons born at about the same time or living in the same period of time.

Mankind:

Without any doubt is in the Space Treaty and in other international instruments derived thereof that it is offered to the juridical science a legal content of the human race, individuals taken collectively, all human beings.

Fundamental human rights:

It is well known that the history of Law is the history of man fighting for his individual rights. These rights were contemplated by the *Ius Gentium* and the *Ius Inter Gentium*. The Universal Declaration on Human Rights, adopted by the UN General Assembly in 1948 represents a main step for recognition and expansion of human rights around the

world. But it is in the Outer Space Treaty and in its following international instruments that this aperture consolidates and aims its present dimension. The expression *mankind* as a concept entitling human rights is enshrined in the Space Treaty. In accordance with its Preamble the Parties got inspired by the great prospects that the man's entry into outer space meant for mankind. There is also a recognition of the common interest of *all mankind* in the progress of the exploration and use of outer space for peaceful purposes. The Parties also explain their belief on the benefit for all *peoples*, and remark that this is irrespective the degree of their economic and scientific development.

Article I of the Treaty establishes a new concept: *the province of all mankind* (l'apanage de l'humanité toute entière; incumben a toda la humanidad). This concept implies a recognition of something that always existed but needed of a legal text.

Article V explains the concept of astronaut (cosmonaut) as *envoy of mankind*.

Dignity and worth of the human person:

This principle is enlarged in the Space Treaty from the individual to mankind.

Social progress and better standards of life in larger freedom

Many provisions of the Space Treaty are inspired in this concept, as it happens with the enshrinement of the principle that all activities must achieve the benefit for all mankind and that space must be used and explored with peaceful purposes, among other.

The step given by the Space Treaty must be considered englobed within the progressive development of international law.

It is opportune to remark that the observance of the Treaty is entrusted to the Secretary General of the United Nations, who has specific functions at this regard.

Codification of Space Law

The last international instrument elaborated by COPUOS was the Agreement Governing the Activities of States on the Moon and other Celestial Bodies, adopted on 5 December 1979, opened for signature on 18 December 1979 and entered into force on 11 July 1984. In the last 18 years the activity of the Legal Sub Committee was elaborating principles related to international Direct Television Broadcasting, Remote Sensing of the Earth from Space, Use of Nuclear Power Sources in Outer Space and International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of all States, Taking into Particular Account the Needs of Developing Countries.

In the Report of the Legal Sub Committee of COPUOS last session,² mention is made about the review of the principles concerning International Direct Television Broadcasting and Remote Sensing of the Earth from Outer Space with a view of possibly transforming those texts into treaties in the future.

We must also recall the importance of the offered cooperation of non governmental organizations like IAF, IISL, International Academy of Astronautics (IAA), International Law Association (ILA), among other and international professional associations in the last years. This cooperation has been reflected in matters as settlement of Space Law Disputes, Space Débris, SETI, in accordance with the interest and concern

of the jurists and in view of plenty of doctrine available.

As it could be proved five years ago when celebrating the International Space Year, the growth both in quantity and variety of space activities, had as a consequence the expansion and development of the scope and substance of Space Law.³ Nevertheless, there are some differences in the interpretation of the terms opportunely adopted, for instance the *common heritage of mankind* principle, enshrined in the Moon Agreement, a concept created in 1954 in order that the exploration and use of outer space be done having mankind as beneficiary.⁴

Peoples have a new legal concept that succeeds interdependency and integration: solidarity. And this concept is a guarantee of future development of Space Law in its own cosmic dimension.

The hope now focus towards to the Third UN Conference on the Exploration and Peaceful Uses of Outer Space. One of the topics relates to the benefits space applications can provide to life on Earth.⁵

Footnotes

¹ V. Kopal, Evolution of the Doctrine of Space Law, in *Space Law Development and Scope*, ed. by N. Jasentuliyana, published by Praeger, USA, 1992, p. 25.

² Report of the Legal Subcommittee on the Work of its Thirty-sixth Session 1-8 April, 1997, A/AC.105/674, 14 April 1997, N° 40, p. 9.

³ N. Jasentuliyana, Introduction, *Space Law, Development and Scope*, cit., p. xvii.

⁴ A.A. Cocca, Die Rechtliche Natur des Weltraums, *V Internationalen Kongress*, Innsbruck 1954, Springer Verlag in Wien, 1955, p. 270.

⁵ Further information in German Journal of Air and Space Law, 2 / 97, Carl Haymanns Verlag, June 1997, p. 235.