

THE TEACHING OF THE MINIMUM ELEMENTS OF SPACE LAW

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Abstract

Space law is already consolidated, but its teaching – with exceptions though – is not as widespread as it should be for its correct enforcement.

This produces distortions and may give rise to disputes.

To turn this situation upside-down, I consider that the IISL must promote a wider spreading of teaching of its minimum elements.

We are proud in Argentina to be pioneers in such teaching, thanks to the contributions of Prof. Cocca at different levels, even in non-juridical ones, since the 50's.

It is taught in Law Schools in the main universities together with aeronautical and maritime law and in certain cases together with international law.

Following the new syllabuses, it is nowadays taught in transport law courses. The latter will make up the basis for this proposal; its brief teaching in those legal subjects to which it is related.

In the mentioned course, before studying space transportation, we first provide a brief introduction to space law in general.

We consider that we can not teach space

law, if nothing is known about the environment in which it is applied, the necessary means to fulfill it, the people who take part in it and the legal relations arising from the interaction of the mentioned elements.

Following this criteria, we believe that in an independent course about liability, before teaching space liability as such, these basic elements should be taught first.

The same applies to other branches or subjects suchs as penal, administrative, labor, natural resources, telecommunication, insurance, contract, environment, registrar, tourism, nuclear law, etc., etc.- these are not restrictive examples.

Even in courses that may not be related to it, such as family law, it is important to know such elements, to be able to frame the different kinds of relationships it regulates - many of them held by private international law – that will be affected by specific situations in their particular environment.

Four inevitable topics, must be taught following this idea: the legal regime of outer space; space objects and vehicles; people involved and liability.

The IISL, by a Board made up of jurists from different legal systems or encouraging its Members to carry it out individually, should write a guideline to for use by everybody concerning these basic principles.

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In this way, we will educate better professionals who will accurately apply the existing space regulations.

1. Introduction

It would seem presumptuous to repeat Space Law's principles.

Far from that purpose, it is our intention – in this short presentation - to recall those principles that must be taught to people who approach Space Law for the first time, as well as to students or professionals who will take a specific course about space activities.

It would be appropriate to present a logical systematization beginning from the principles and focusing on their eminent aspects, leaving typical details for the more advance courses.

They are likely to be used for non-jurists such as engineers, doctors, accountants and managers who follow a space course.

Because of the lack of time or the excessive specialty, many punctual Space Law courses around the world are dictated without such introduction.

It is essential to provide a general introduction to Space Law. This way, it will be easier for the attendants to pass from global principles to the main course's topic.

Some commentaries about Space Law in Argentina will be used as a criteria, following as an example my chair on "Transport Law, Maritime, Air and Space Law" at the School of Law of the Universidad de Ciencias Sociales y Empresariales.

2. The Argentine Experience

I think it is important to briefly recall the evolution of Space Law teaching in my country.

Because of distance and language, these courses are rarely known.

We have been pioneers in Space Law teaching, thanks to the contributions of

Prof. Aldo A. Cocca. He gave a course called "Space Law For The Great Audience"⁽¹⁾, (1957) on National Radio. This course was immediately published by the National University of Litoral.

It was incorporated as a subject in Law Career - University of Salvador, 1960 - and it was included as an autonomic subject in PhD courses of the National Institute of Aeronautic and Space Law. Both courses were given by Prof. Cocca.

From that moment, it has been part of careers and Ph.D courses of several Universities.

Now it is taught in Law Schools together with Aeronautical and Maritime Law and, in certain cases, with International Law or Transportation Law. It is independently taught in PhD courses.

In order to have an idea of its wide diffusion, let's briefly recall the starting date, subject's name, Professor and assistant Professor, University's name and city.

1960, "Space Law", Dr. Cocca, del Salvador University, Buenos Aires.

1963, "Space Law", post-graduate, Prof. Cocca, Catholic University and del Nordeste University.

1964, "Space Law", Prof. Cocca, Catholic University, Córdoba

1965, "Navigation Law", Dr. Ray and Dr. Fernández-Brital., University of Buenos Aires.

1965, "Space Law" post-graduate, Prof. Cocca, del Sur National University.

1966, "International Public Law", Dr. Damianovich Oliveira and Dr. Fernández-Brital., University of Morón, Moron.

1966, "Navigation Law", Dr. Ortiz Guinea., National University of Litoral, Santa Fé.

1968, "Aeronautical and Space Law", Dr. Videla Escalada - Dr. Fernández-Brital, del Salvador University, Buenos Aires.

1971, "Navigation, Aeronautic and Space Law", Dr. Arrola de Galandrini, National University of Mar del Plata, Mar del Plata.

1975. "Navigation Law", Dr. Maldonado - Dr. Monteverde, e. National University del Litoral., Santa Fé.

1980, "Transport Law", Dr. Grunauer de Falu, National University, Tucumán.

1982. "Transportation Law." Dr. Robinson, Santo Tomás de Aquino North University. Tucumán.

1984, "Navigation Law", Dr. Monteverde. National University del Litoral, Santa Fé.

1989, "Navigation Law", Dr. Fernández-Brital, Universtiy of Buenos Aires.

1991, "International Public Law", Dr. Williams, University of Buenos Aires.

1996, "Transportation Law", Dr. Arrola de Galandrini., Groups' Fraternities Santo Tomás de Aquino University, Mar del Plata.

1999, "Transportation Law", Dr. Fernández-Brital, U.C.E.S. University. Buenos Aires.

1999, "Navigation Law", Dr. Arrola de Galandrini., South National University, Bahía Blanca.

2000, "Environmental Law", Dr. Esquivel, Belgrano University, Buenos Aires.

2000, "Naviagation Law – Maritime, Aeronautic and Space", Dr. Cosentino-Dr. Esquivel.

2000, "Aeronautical, Maritime and Space Law", Dr. Fernández-Brital, Federal Police University, Buenos Aires.

3. Outer Space

As happened at the beginning of Maritime and Aeronautical Law, the juridical environmental regime where space activity would be developed was the first topic addressed by specialists.

Because of those famous 'beep, beep' coming from 'Sputnik I', we all remember rising doubts.

They were like a triumphal march or like an ominous sound, depending on people's opinion.

Its fast rotations around our spatial home were further away than those 'boring' aquatic and airy adventures, till that moment.

Then many questions about rights and rules were stated.

Our Institute and its professionals have dedicated plentiful studies to those questions.

UN General Assembly Res. 12-13-1963, unanimously approved, has represented the first step in the legal regulation of these new human activities.

Free access to any region and total prohibition of national appropriation was the first principle adopted by the Resolution. Later, this principle was consolidated in the Outer Space Treaty (art. 1).

3.1. The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies and the 1979 Moon Agreement

The Outer Space Treaty is the first conventional document and it establishes the principal rules at the same time. It is a kind of frame and it requires other complementary texts.

Concerning this idea, several principles must be recalled. Others will be considered later.

It must be recalled that outer space is a regulated environment. It shall be the province of mankind, and benefit every country.

The exploration and use must be in accordance with International Law and international cooperation must be promoted.

Argentine Doctrine, initiated by Ferrer, has held this cooperation as a condition for all lawful activities.

The result does not allow any national appropriation under any circumstances. Neither military bases nor weapons of mass destruction are accepted.

We find more detailed rules in the Moon Agreement.

The moon and other celestial bodies are part of outer space depending on our geo-centralist point of view.

This text repeats several of the principles we have already stated for the whole area.

Although asymmetries and certain new rules are discussed, they are beyond our present topic.

For example, "Any threat or use of force or any other hostile act or threat of hostile act on the Moon is prohibited...", Moon Agreement, Art. 3.

4. Objects and Space Vehicles

For the first time, the Treaty conventionally considers the means that men use to get to that environment.

The 1967 Treaty's first mention of space objects, "... not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction..." in Art. 4 represents the fears of those initial days.

Article 7 clarifies the liability relations between the States engaged in launches. Finally, Art. 12 states that stations, installations, equipment and space vehicles "...shall be open to representatives of other States parties...".

The 1968 Agreement further elaborates the rules concerning the rescue and return of astronauts as well as the return of objects that were launched into space. There are some other important

cases like those with a dangerous nature

The 1972 Liability Convention and the 1976 Convention on Registration of objects, with more specific texts, close the system. They constitute an international juridical statute.

"Space object" is kind of a legal universality concept, and not only means a unit, but also its parts and propellers are important.

Then we must mention registration. There are two registries: one belongs to the States, the other one under de UN Secretary. All space objects must be marked and numerated, but there is no international identification as with aircraft.

The 1962 Principles have solved problems concerning jurisdiction as well as possible agreements between two or more states.

5. Astronauts

Men's incursion in outer space raises completely new technical and legal challenges.

In order to develop an activity, it has never before been necessary to deal with so many physical and technical conditions.

We can remember a famous phrase about the first selected American spacemen: "they are abnormally normal."

It may not appear as a strange physical requirement.

They have received a legal denomination as "envoys of mankind" (Rescue Agreement, Art. 5).

A brief explanation will be provided. After that, some other hypotheses that have not yet been studied will be considered.

The Treaty begins with duties related to others in the same conditions - and from

international cooperation in dangerous situations or in latent menaces.

Astronauts' rescue and return as well as return of outer space objects details these previous ideas.

In short, the main point is that astronauts must be returned in the best conditions as soon as possible to their own countries, particularly for crew that has suffered difficulties.

6. Liability

This topic does not have the same characteristics as in other Law branches. Its main lines are regulated by the Treaty (Arts. VI, VII) and they are specially itemized in the 1972 "Convention on International Liability for Damages caused by Space Objects". The State constitutes the passive subject. Even though it does not mention it, the State bears absolute legal responsibility, including activities by public or private governmental organisms.

In case of joint activities, there is also a solidarity principle.

The text concerning "absolute responsibility" (art. 2) is structured according to the environment's damages, involved people, guilt relationships and solidarity reiterations. There are procedural rules about presentation of claims and the organisms which may receive them.

7. International Cooperation

According to Ferrer's proposal, most of Argentine doctrine accepts that legal activities must be performed under a complete international cooperation condition.

It is a position not unanimously accepted.

The Treaty (arts. IX, X) provides a guideline for activities: "... cooperation and mutual assistance..."

The next article has an example of how to promote such cooperation.

In the 1996 "Declaration on International Cooperation..." we find more detailed rules on this issue.

Conclusions

I will compare this issue to a Medicine's focus.

Minimum principles are as little as Homeopathy's quantities: "similia similibus curantur."

They constitute a systematic work for their development and self-feeding.

Once these bases are exposed, students will manage a synthetic main idea. They will be able to comprehend as well as value others.

I think the IISL should constitute a commission in order to elaborate a general guideline about the most important principles.

We need a common basis for our specific courses. Far from an attempt against each one's academic freedom, it will provide uniformity in basic teaching.

Note

- 1) Pepin, Eugene. "L'Enseignement du Droit aérien dans le monde." McGill Law Journal. Vol. 4, p. 43 - 111 and Vol. 5. P. 79 - 83.