TREATIES CONCERNING CELESTIAL EXPLORATION AND THE CONCEPT OF NATURAL LAW

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INTRODUCTION

The recent moon landings focus attention upon the necessity for the creation of a legal order for outer space, based upon the rule of law. From the dawn of history, man has been confronted with the necessity of building legal orders for the administration of justice in all of the many societies in which he lives. As a result, the law of the tribe, the city-state, and the feudal organization gave way to state law which was created in the sixteenth century to meet the demands of the newly formed, politically organized societies or states. The basis of the modern concept of international law is the result of the emergence of these states. This law seeks to regulate the juridical relationship between these states in the international community.

Air law rapidly developed with the appearance of the airplane to solve the problems of inner space. With the jet age, outer space problems of justice were precipitated by the astonishing contributions of contemporary science. Man is now faced with the challenge of formulating a just and workable cosmic law. It must deal with telecommunication by satellites, space vehicles, and the ever increasing inventions, which have made possible the great adventure of landing men on the moon, and perhaps finally on planets other than the earth. Outer space is the new frontier of juridical craftsmen and planners of a legal-space order. Already significant developments have taken place in the creation of space law by way of treaty and agreement.

Great competing legal philosophies are now striving for control of the direction of this ever increasing body of outer space law. From these philosophies will come a space law of war and peace. It will be the purpose of this paper to show that the philosophy of objective natural law must prevail, with the recognition that the authority of

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space law ultimately comes from the imposed obligation of respect for the intrinsic dignity of the human race, rather than wholly from the wills of the contracting states, or from sheer physical power.

THE TREATY OF 1967 WAS A LANDMARK IN THE DEVELOPMENT OF A LEGAL REGIME FOR OUTER SPACE.

The Treaty of 1967 was the culmination of the 1959 Report of the *Ad Hoc* Committee on the Peaceful Uses of Outer Space made to the General Assembly of the United Nations, and of later General Assembly Resolutions. Significant was resolution 1962-XVIII of December 13, 1963. It was a declaration of legal principles governing the activities of States in the exploration and use of outer space. Emphasis was placed "upon the common interest of all countries in the right uses of outer space, regardless of their economic or scientific development, and upon the essential role of the 'international scientific community' . . . ."[1] Resolution 1962-XVIII was largely the basis of the Outer Space Treaty,[2] which entered into force on October 10, 1967.[3]

The treaty consists of a Preamble and seventeen articles.[4] The Preamble, in effect, stresses the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes. The most significant parts of the articles are as follows: Article I states that "(t)he exploration and use of outer space . . . shall be carried out for the benefit . . . of all countries . . . ." Article II provides that "(o)uter space . . . is not subject to national appropriation by claim of sovereignty . . . ." Article III affirms that "States . . . shall carry on activities . . . in accordance with international law, including the Charter of the United Nations . . . ." According to Article IV, "(t)he moon and other celestial bodies shall be used . . . exclusively for peaceful purposes." Article V provides that "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." Article VI affirms that "States parties to the treaty shall bear international responsibility for national activities in outer space . . . whether . . . carried on by govern-

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1. J. FAWCETT, INTERNATIONAL LAW AND THE USES OF OUTER SPACE 4 (1968).
2. The treaty was entitled "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies." It was signed in Washington, D.C., Moscow and London on January 27, 1967, by sixty states, and later by at least fifteen additional states. The United States Senate unanimously ratified the treaty on April 25, 1967. *See* Menter, *The Developing Law for Outer Space*, 53 A.B.A.J. 703 (1967).
3. FAWCETT, *supra* note 1, at 86.
4. The text of the treaty appears in FAWCETT, *supra* note 1, at 86-91.

mental agencies or by nongovernmental entities . . . ." Article VII provides that "(e)ach State . . . that launches . . . an object into outer space . . . is internationally liable for damage . . . ." According to Article VIII "a State . . . on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof . . . ." The thought is expressed in Article IX that "States . . . shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities . . . with due regard to the corresponding interests of all other States parties to the treaty." According to Article X "the States . . . shall consider on the basis of equality any requests by other States . . . to be afforded an opportunity to observe the flight of space objects launched by those States." It is stated in Article XI that "States . . . agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community . . . of the nature, conduct, locations, and results of such activities."

It is provided in Article XII that "all stations, installations, equipment, and space vehicles . . . shall be open to representatives of other States parties to the treaty, on a basis of reciprocity." According to Article XIII, "(t)he provisions of this treaty shall apply to the activities of States parties to the treaty . . . whether such activities are carried on by a single State . . . or jointly with other States . . . ." Article XIV provides that "(t)his treaty shall be open to all States for signature." Article XV states that "(a)ny State party to the treaty may propose amendments . . . ." Article XVI allows any State to "give notice of its withdrawal from the treaty one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification." Article XVII declares that "the Chinese, English, French, Russian, and Spanish texts are equally authentic . . . ."

The treaty does not define outer space. It does not state where sovereignty ends and free outer space begins. But Article IV does prohibit the orbiting of weapons of mass destruction. From this, it may be concluded that outer space does include the area wherein space craft are in earth-orbit or beyond. Hence, outer space is not at any fixed distance from the surface of the earth. But when the orbital area is reached, a subjacent state may no longer exercise its exclusive jurisdiction and control, as it may if it were air space.[5] In the instance of air space, the extension of the sovereignty of a state beyond the surface of the earth is analogous to the jurisdiction of a coastal state over its territorial sea.[6]

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5. *Id.* at 19.
6. *Id.* at 20.

According to the treaty, outer space becomes free by analogy with the freedom of the seas. Ever since the classical period of international law, as systematized by Suarez and Grotius, the concept of the freedom of the high seas has prevailed. In the words of Grotius: "the sea is an element common to all, since it is so vast that no one could possibly take possession of it, and since it is fitted for use by all...."[7]

It is to be noted that the treaty did not define outer space as that above airspace, with sovereignty ending at the uppermost level of airspace. Such a distinction was avoided because physical science has demonstrated that molecules of air exist in outer space.[8] Density varies in the high atmosphere by as much as a factor of ten, depending upon the time of year and the particular geographic position. Hence, a specific line cannot be drawn between airspace and outer space.

Although a subjacent state may not retain its sovereignty beyond its airspace, nevertheless it may exercise jurisdiction over its own spacecraft, carried on its registry, and take lawful measures of self-defense in outerspace.[9] Here Article 5 of the Charter of the United Nations would be relevent, recognizing as it does the right of self-defense. Under international law, this right would not cease in outer space.

Several traditional legal concepts of municipal and international law appear in the treaty. They are all from the field of tort law, as distinguished from criminal law. Thus, the concept of agency may be seen in the provision that astronauts represent mankind while in outer space. The idea of false imprisonment is recognized in the command to return landed astronauts safely and promptly to the state of registry of their space vehicle. The humanitarian doctrine of tort law is evidenced by the duty of rendering all possible assistance to the astronauts of other nations. The tort duty of disclosure is reflected in the provision that states must warn other states of dangerous phenomena discovered in outer space.

The principle of *respondeat superior* is expressed in the provision that a state is responsible internationally for the acts of both

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7. GROTIUS, COMMENTARY ON THE LAW OF PRIZE AND BOOTY (translated by Williams and Zeydel) 231 (1950). Analogies have been drawn between the high seas and Antarctica. *See* Article 2 of the "Geneva Convention on The High Seas" (April 28, 1958) and the "Washington Treaty on the Status of the Antarctic," December 1, 1959.

8. Menter, Manuscript of Paper at 6-7, presented at the Natural Law Institute, sponsored by the St. Thomas More Club of Loyola University of New Orleans, April 19, 1967. General Menter was former General Associate Counsel of the Federal Aviation Agency from 1959-1965 and thereafter Command Judge Advocate of the Air Defense Command. For a discussion and evaluation of the numerous theories for determining the demarcation of the boundaries of outer space, *see* GYULA GAL, SPACE LAW at 59-116 (1969).

9. Menter, *supra* note 2, at 707.

governmental and non-governmental agencies, and even of international organizations in which the state has participated. The conversion of launched objects and space installations is prohibited. The concept of nuisance occurs in the provision that harmful contamination shall be avoided. The idea of joint tortfeasors is present in the statement that one state may be liable for damages jointly with other states.

THE GENERAL PROVISIONS OF THE OUTER SPACE TREATY HAVE BEEN MADE MORE SPECIFIC BY THE ASTRONAUT TREATY AND BY THE DRAFT OF A LIABILITY TREATY NOW READY FOR SIGNATURE.

The general provisions of the Outer Space Treaty have been given specific factual and legal content within the past four years: first, by a treaty resulting from the adoption of an "Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched in Outer Space;"[10] and secondly, the completed draft of a liability treaty, by the legal subcommittee of the United Nations, submitted in September, 1971, to the General Assembly. The Assembly approved it on November 29, 1971, so that it is now open for signature by all the nations.[11] The legal content given to the Articles of the Outer Space Treaty is both substantive and procedural. The factual content has to do with the specific behavior required to meet the various legal obligations included.

First, the Assistance and Return Treaty has amplified Articles V and VIII of the Outer Space Treaty. Article V had dealt with astronauts, and Article VIII with objects launched. Article V of the Outer Space Treaty had imposed the obligation of all possible assistance in case of accident, distress, or emergency landing on the territory of another state party or on the high seas. But now Article 1 of the Astronaut Treaty commands that each state must immediately notify the launching authority and the Secretary-General of the United Nations as soon as it receives information or discovers that any of these situations have arisen. The obligation is now not only to the astronauts themselves, but to all of the personnel of the space craft. A public announcement must be made if it is impossible to identify or communicate with the launching authority. The Secretary-General

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10. *See generally* Dembling & Arons, *The Treaty on Rescue and Return of Astronauts and Space Objects*, 9 WM. & MARY L. REV. 630 (1968). This treaty was signed on April 22, 1968.

11. 66 DEP'T STATE BULL. 35-46 (1972). *See* remarks of Paul Dembling at the meeting of the Space Law Committee of the Federal Bar Association, National Convention, New Orleans, Louisiana, on Wednesday, September 8, 1971, on the subject of "Space Law — Current Status," Mr. Dembling is former General Counsel, National Aeronautics and Space Administration, former member of the United States delegation to the Legal Subcommittee during its third, fourth, fifth and sixth sessions.

of the United Nations must disseminate the information which he has received without delay.

Article 2 of the Astronaut Treaty deals specifically with what must be done if the crisis occurs upon the landing of the space craft in the territory of another state which is a party to the treaty. Such a state is duty bound to take all possible steps at once to rescue and assist. There is the duty of informing both the launching authority and the Secretary-General of the United Nations of the progress of the steps being taken. If necessary, the launching authority shall cooperate with the contracting party. The Outer Space Treaty had only included rescue operations by the state wherein the landing had been made.

Article 3 refers to the rescue of space craft personnel who have landed on the high seas or in any other place not under the jurisdiction of any state. Article V of the Outer Space Treaty referred to the duty of speedy rescue only when the landing was on the high seas. Since Article 3 relates only to astronauts who have "alighted" or come down, it does not include a case where the distress occurs while traveling in outer space. But the obligation of informing the launching authority and the Secretary-General of the United Nations as to the rescue efforts is stated.

Article 4 specifies the duty of safely and promptly returning the personnel of a space craft to the representatives of the launching authority. Article V of the Outer Space Treaty had referred only to astronauts who were to be safely and promptly returned to the state of registry. It is the opinion of Dembling and Arons that "(u)nder Article 4, the astronauts must be returned even though crimes have been committed"[12] despite even a request for political asylum.

The first four articles of the Assistance and Return Treaty, therefore, implement Article V of the Outer Space Treaty. The next article, however, amplifies Article VIII of the Space Treaty, which had imposed the obligation only of returning space objects to the state of registry, provided identifying data were furnished upon request prior to their return. But Article 5 of the new treaty goes further and requires that notification be given to the launching authority and the Secretary-General of the United Nations. But "no urgency is attached to the notification and therefore no public announcement is required in the event that the launching authority can not be immediately identified,"[13] as was the case under Article 1, when the lives of space craft personnel were in danger. Besides, under Paragraph 2 of Article 5, the contracting state has only the duty of taking "such steps as it finds practicable."[14]

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12. Dembling & Arons, *supra* note 10, at 653.
13. *Id.* at 654.
14. *Id.* at 654 n. 74.

The old treaty is broadened by the new treaty in Paragraph 4 of Article 5 which provides that if the space object or any of its component parts is believed to be of a hazardous or deleterious nature, then the contracting party may merely notify the launching authority "which shall immediately take effective steps, under the direction and control of the said Contracting Party, to eliminate possible danger or harm."[15] Also in the new treaty is the language of Paragraph 5 of Article 5 that "(e)xpenses incurred in fulfilling obligations to recover and return a space object or its component parts . . . shall be borne by the launching authority."[16] It may be noted that no mention had been made of the payment of expenses by the launching party in connection with the rescue and return of personnel.

In the new treaty, the ownership of space objects is determined by what state is the launching authority. In the old treaty, it was a matter of registry. Article 6 of the new treaty defines launching authority as a state or an international organization, such as the European Space Research Organization (ESRO) and the European Launcher Development Organization (ELDO), on the condition that it "declares its acceptance of the rights and obligations provided for in this Agreement,"[17] and that a majority of the states which are members of the organization are parties to this Agreement and of the Outer Space Treaty. This provision is important for a number of states carrying on their space activities through international organizations.

Under Article XIII of the old Treaty, a contracting party had the option to deal either directly with an international organization, or with one or more members of the organization, parties to the Outer Space Treaty. But now it is necessary for a contracting party to deal directly with an international organization, as long as it has rights under the Agreement. Disputes under this article are to be resolved by diplomatic procedure or agreement.

The remaining articles, *i.e.*, 7, 8, and 9, repeat the content of the Outer Space Treaty in the area of "procedures of accession, ratification, deposit of instruments of ratification, entry into force, dissemination of information as to signatures, and registry of the Agreement pursuant to Article 102 of the Charter of the United Nations."[18]

As in the case of the Outer Space Treaty, Article 9 of the Assistance and Return Agreement allows withdrawal from the treaty one year after its entry into force by written notification to the Depository Governments.[19]

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15. *Id.* at 656 n. 78.
16. *Id.* at 657 n. 79.
17. *Id.* at 658 n. 81.
18. *Id.* at 660.
19. *Id.* at 661.

Secondly, the treaty draft, now ready for signature, on liability for damage resulting from the launching of objects into outer space, was the result of more than ten years of work by the Legal Subcommittee of the United Nations. During this time, many provisions had been agreed upon, but not the method for the settlement of disputes. Apparently the Russian and American concepts of arbitration were dissimilar so that in the final draft there is no provision for arbitration in the sense of a binding result by the authority of a third person.[20]

The Liability Treaty is an amplification of Article VII of the Outer Space Treaty, which affirmed international liability for damage to another state party to the treaty, or to its natural or juridical persons by launched space objects or their component parts. Article VII did not set forth the limits of liability or establish procedures for the recovery of damages. But the liability treaty does both.

Article 2 of the Liability Treaty provides for absolute liability. It is applicable if the damage caused is on the surface of the earth. But Article 3 discusses a different type of liability, namely, fault or negligence. It is relevant if the damage occurs in outer space.

The proposed Liability Treaty sets up procedures for deciding liability and quantum of damage in regard to claims made under the authority of the treaty. These procedures prescribe the manner in which claims are to be filed, the allowable period for filing, documentary requirements, and the like.[21]

It may be noted that in June, 1971, Russia proposed a new moon treaty. The Russian proposal would repeat many of the principles already contained in the Outer Space Treaty. But in addition, it would expressly call the moon a celestial body. This proposal would specify that lunar space is outer space.[22]

THE MAXIMUM EFFECTIVENESS OF THE OUTER SPACE TREATY, WITH ITS SUBSEQUENT AMPLIFICATION, AS AN INSTRUMENT OF WORLD PEACE, WILL BEST BE ACHIEVED IF IT IS REGARDED AS THE IMPLEMENTATION OF OBJECTIVE NATURAL LAW.

From a strictly positivistic point of view, the treaty and its elaboration is really not law, but only morals. From a qualified posi-

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20. Remarks of General Menter at the meeting of the Space Law Committee of the Federal Bar Association, National Convention, New Orleans, Louisiana, on Wednesday, September 8, 1971, on the subject of "Space Law — Current Status." The proposed treaty is entitled the "Draft Convention on International Liability for Damage Caused by Space Objects." *See* E. Galloway, Outer Space Treaties in Force, *Proceedings of the Thirteenth Colloquium on the Law of Outer Space* 61, 64-65, International Institute of Space Law of the International Astronautical Federation (1971).

21. *Id.*

22. Remarks of Mrs. Eilene Galloway at the meeting of the Space Law Committee of the Federal Bar Association, National Convention, New Orleans, Louisiana, on Wednes-

tivistic approach, it may be regarded as tentative international law, binding the contracting parties, but only *pro tem*, *i.e.*, only as long as they want to be bound. Only from the point of view of natural law jurisprudence may the treaty be considered genuine international law, binding the signatories irrevocably to its basic obligations, as well as all present and potential space users, who have not signed the treaty.

In the first place, if a positivistic type of legal philosophy is followed, the treaty amounts to no more than a statement of agreement upon certain moral principles. It does not set forth real law, because there is no sanction or penalty prescribed by way of punishment or liability to be imposed upon those who violate its terms. Hence, it is binding only upon the consciences of the leaders of the signatory states, with reference to the inner forum of morality. It does not bind in the outer forum of international law for the common good of world society. Besides, there is the positivistic defect that the treaty is not the manifestation of the will of a political world sovereign, since there is no world state, and in final analysis all law requires the stamp of such a sovereign.

In this connection, there is a parallel between the Outer Space Treaty, signed by sixty-two nations, and the Treaty of Paris of 1928, when more than sixty nations agreed to outlaw war as an instrument of national policy. No criminal or other sanction was contained in the Treaty of Paris of 1928, so that the defendants at the Tokyo and Nuremberg trials denied that any law had been created by that treaty.[23] Their defense on this ground would be allowable if a positivictic interpretation of the effect of the treaty is granted.

In the second place, if the underlying philosophy of the treaty is positivistic, but qualified, then enforceable law has been created, but only in regard to the signatory states and only as long as they choose to be bound. This is so because under this theory, the signatories have created the obligations, which they have reduced to writing, by the authority of their own wills. It is in this sense that Professor Fawcett called the treaty "weak"[24] and referred to it as "a rigidly contractual instrument, in essence a bilateral arrangement between the principal space-users."[25] Treaties which bind only the parties do not create genuine international law because they do not embody a universal obligation.[26] They do not become part of

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day, September 8, 1971, on the subject of "Space Law — Current Status." Mrs. Galloway is Senior Specialist in International Relations, Congressional Research Service, the Library of Congress.

23. J. KEENAN & B. BROWN, CRIMES AGAINST INTERNATIONAL LAW 80 (1950).

24. J. FAWCETT, *supra* note 1, at 16.

25. *Id.* at 15-16. Apparently, according to socialist legal philosophy, the authority of the treaty rests on the consent of the ruling classes of the respective state. *See* GYULA GAL, *supra* note 8, at 39.

26. Brown, *Extradition and the Natural Law*, 16 N.Y.L.F. 578, 586-87 (1970).

the legal order necessary for the control and regulation of that society.

In the third place, the treaty has the force of genuine international law only if it is regarded as the implementation of natural international law. Under this concept, the signatories of the treaty did not create the obligations therein contained, but only discovered them by reason in the objective moral order. These obligations must be regarded as the implementation of natural international law, which imposes duties because of their intrinsic reasonableness, and not solely because they are the product of the will of a world political sovereign, much less the wills of the signatories of a treaty. Hence, according to naturalistic thinking, the Outer Space Treaty is genuine international law, despite the absence of enforcement provisions and a tribunal to interpret and apply it. This was the position taken by the prosecution at the Tokyo trial in regard to the Treaty of Paris of 1928.[27] The dominant premise of that trial was that if law fails to implement any part of the objective moral order, which is required for purposes of necessary social control, then that part has the quality of law.[28]

The subject matter of the treaty is so closely related to the protection of human life and the preservation of world peace as to involve the basic *conclusions* of natural law, as distinguished from the *determinations* thereof. The former are invariably and irrevocably binding, while the latter are allowable alternative choices of behavior, provided none is contrary to a basic part of the natural law. The determinations are optional according to the time and place, while the conclusions are not.

When the states signed the Outer Space Treaty, they affirmed obligations already imposed upon them by natural international law, and similarly imposed on all the states of the earth. It is otherwise with reference to the precise formal procedures agreed upon in the Astronaut Treaty and the potential Liability Treaty. These are only determinations of the natural law, though they are subject to the natural law requirement that they meet the standard of the reasonable man under the circumstances. Only the contracting states are bound, however, to follow these precise procedures. It may be noted the "the reduction of the natural law obligation to treaty form, of course, has the effect of adding a quasi-statutory obligation and of creating a legal custom, if the process is repeated."[29]

Natural law doctrine is required, therefore, to establish the fact that the Space Treaty is genuine international law, permanently

27. J. KEENAN & B. BROWN, *supra* note 23, at 80.
28. *Id.* at 50.
29. *Id.* at 77.

binding its signatories, as well as all other present and potential space users. Such doctrine is also necessary to make available universal and rational criteria for the interpretation of the terms of the treaty and provide solutions for problems resulting from the absence of national positive law. Many of these problems come within the area of state jurisdiction.

Many expressions will be given definite content during the formactive stage of the treaty. Such expressions as "peaceful purposes," "act of aggression," "discrimination," "international law," "principle of cooperation," "interests," and "sentiments of humanity," may be understood in a moral or an amoral sense. Unless these expressions are given a moral connotation, they may not maximally contribute to the ultimate purpose of the treaty, namely, world peace through justice and charity.

The treaty is silent as to the questions: whose law is to be applied for the ordering of human society on the moon, and by whom will it be administered. The principal fields of law related to this ordering are criminal and tort law. But the applicable law in these areas, or any other, may not be the positive law of any particular state, because the treaty has forbidden the exercise of sovereignty by any state on the moon. Such fundamental questions as what acts are crimes or torts when committed on the moon, can be answered only in the light of natural international law. It is well known that the criminal and tort law of the respective states greatly varies, not only as to the nature of these offenses, but also with reference to the extent of the punishment or penalty, the method of administration of the law in question, and the like.

It is true, of course, that Article VIII of the Outer Space Treaty provides for retention of jurisdiction over personnel while in outer space or on a celestial body. Likewise, the administration of justice will not take place on the moon, but upon the earth after the return of the spacemen. The launching state may apply its own law to its own space personnel. But many legalistic problems of jurisdiction are certain to arise due to the absence of positive municipal or national law on the subject.

Under the jurisdictional doctrine of territoriality, the criminal jurisdiction of a state depends on the fact that the offense was committed within the territory over which the state has political sovereignty. Many states follow this doctrine, for example, the United States. If the offense were committed on the moon or anywhere in outer space, there would be no jurisdiction, in the absence of legislation.[30] At the present time, the United States Code of Military

30. *See Jurisdiction with Respect to Crime,* Comment by the Harvard Research in International Law (1935), cited by L. ORFIELD & E. RE, INTERNATIONAL LAW 592 (1965). *See* United States v. Flores, 289 U.S. 137 (1933).

Justice confers criminal jurisdiction over military personnel, apart from the territoriality principle. But it would be necessary to amend Title 18 of the United States Criminal Code to give criminal jurisdiction over spacemen who are not members of the armed forces.[31] Legislation would also be required to extend civil law jurisdiction.[32]

According to natural law thinking, crimes and torts committed in outer space would primarily be offenses against international law, and only secondarily, against national law. In the former sense, jurisdiction over them would be assertable in the name of international society. Such legalisms as the doctrine of territoriality would be irrelevant. It would not be material whether the offense was committed by military or civilian personnel, on board a space craft or object, or on the moon, or other celestial body. Any nation having custody of the accused would have jurisdiction to administer international criminal law, written and unwritten, on the authority of international society by such fair and just methods and procedures as right reason would dictate.[33] Since outer space crimes would be crimes against international law, they would be punishable by *ad hoc* tribunals similar to those at Tokyo and Nuremberg.[34]

Since the artificial person of the state exists for the benefit of the individual, the Space Treaty and its elaborating instruments have been made for his good. In the proposed Liability Treaty, the individual has been given express remedies, and the state which has authority to represent him *must* present his claim.[35] The leaders of the states in question are manifestly included when the word state is used. Here the interpretation of the 1928 Treaty of Paris by the Nuremberg and Tokyo Tribunals would afford a legal precedent.[36]

Space law is for the common good of man in space, and ultimately for the cosmic common good. It must always be regarded, therefore, not only for man in outer space, but also as potential cosmic law, intended for other rational creatures, who may possibly inhabit the universe. Only a natural law philosophy can provide the necessary transcendental point of view for the emancipation of space law from the limitations of formalism, existing in the legal systems of earth law.

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31. Menter, *supra* note 2, at 705.

32. Remarks of Professor Stephen Gorove, Chairman of the Graduate Program of the School of Law, University of Mississippi, at the meeting of the Space Law Committee of the Federal Bar Association, National Convention, New Orleans, Louisiana, on Wednesday, September 8, 1971, on the subject of "Space Law — Current Status."

33. J. KEENAN & B. BROWN, *supra* note 23, at 139-153.

34. *Id.* at 1-13.

35. Remarks of General Martin Menter at the meeting of the Space Law Committee of the Federal Bar Association, National Convention, New Orleans, Louisiana, on Wednesday, September 8, 1971, on the subject of "Space Law — Current Status."

36. J. KEENAN & B. BROWN, *supra* note 23, at 79.

CONCLUSION

Considerable progress has been made in the creation of a legal regime for outer space since the launching of the unmanned Soviet Sputnick satellite on October 4, 1957. The Treaty of 1967 was indeed a landmark in this development. Important too was its elaboration by the treaty the following year which specified the steps to be taken for the rescue and return of astronauts and the return of space objects. Another great step was taken with the completed draft of a liability agreement submitted to the General Assembly of the United Nations in September 1971. But the maximum effectiveness of these international undertakings will depend upon their acceptance as the effectuation of objective natural law. In the words of Professor Fawcett:

> (T)he exploration and uses of outer space call international law back to its prime source in the law of nature. The law of nature is a general name for the principles that neither man, as an individual nor the State, as a Machiavellian prince, can be a law unto themselves; and that if man will understand and respect his natural framework he can advance, but that if he ignores it he will be destroyed . . . .[37]

37. J. FAWCETT, *supra* note 1, at 67. Natural law is "metalaw" in the sense that it is above human positive law, which has the obligation to implement it. But no other kind of metalaw is necessary, for it will be adequate to govern relations with other cosmic intelligent creatures since they are rational and hence, of the same essential nature as man. Hence, there can be no cosmic metalaw in the sense of a law which would subordinate natural law. To the contrary, however, *see* Haley, *Space Law and Metalaw, a Synoptic View*, Proceedings of the VIIth IAF Congress, Rome, 1956, at 3, cited by Gyula Gal, *supra* note 25, at 40. *See* A. HALEY, SPACE LAW AND GOVERNMENT 29, 31-32 (1963). Natural law is divine law. The juxtaposition is between natural and supernatural law, not between natural and divine law.