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INTRODUCTION TO SPACE LAW

DR. EUGÈNE PÉPIN

THE first lawyer who foresaw the necessity of construing a "space law" is a Belgian, Mr. E. Laude, who wrote, as early as 1910, in the "Revue juridique internationale de la locomotion aérienne", the following prophetic sentences:

"Air Law will only apply to the law governing the air so to speak, that is the layer of breathable gases. Does this mean that we could not foresee juridical solutions which our descendants will have to find to all questions raised by the use of the layer of unbreathable air and of the layer of ether in which our planet is bathing? A new law will govern the new juridical relations. This law will no longer be air law. But, surely it will be spoken of as the Law of Space."

Today the technical achievements of the last decade towards the conquest of space and the various projects which may become realities in a very near future are creating the necessary conditions for the development of a space law. However, if it is essential to maintain the law at the same level as the scientific progress in the field, it is no less essential not to impair the technical progress by legal academic discussions or strict regulations.

I

THE development of space law at the present time might be considered as premature by certain persons who would prefer that more scientific experiments be conducted with actual results, before discussing the legal consequences thereof. Such views are not realistic and are in opposition to the example of what happened with respect to the development of air law.

The study of the legal problems arising from the use of atmosphere by aircraft started some years before the first flight of a heavier than air machine. The First International Congress on Aeronautics in 1889 and the second one in 1900 discussed among many technical questions certain practical legal items such as licenses for airmen, liability of airmen towards passengers, public and landowners; in 1900, an International Aeronautical Commission was established and submitted to subsequent congress reports on matters more and more

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complicated, but dealing only with the international regulation of air navigation. In the same year 1900, i.e., three years before the first flight of the Wright Brothers, *l'Institut de droit international* introduced in its agenda the question of the legal status of aircraft in time of peace and in time of war; during ten years, lawyers of various nationalities were active in discussing principles: should states extend their sovereignty or jurisdiction over the atmosphere above their territories? Or should the circulation of aircraft be entirely free through the atmosphere? No unanimous view was realized. Fortunately, in 1910, at the First International Conference on Air Navigation, the plenipotentiaries of the states represented agreed unanimously not to discuss academic problems like the legal status of the atmospheric space, but to concentrate their studies on the use of that space in order to promote and facilitate aerial navigation.

We are today with respect to space in the same situation as in 1910 with respect to the atmosphere. The legal status of what is called either "outer space", or "upper space", or "extra atmospheric space", the upper limit of the atmosphere or airspace, a possible division of airspace into zones with different legal status, are the main subjects of theoretical discussions, which are in fact the continuation of controversies on the real meaning of Article 1 of the Chicago Convention, 1944, on International Civil Aviation, and of controversies on the extent in altitude of state sovereignty.

If such discussions are interesting from an academic point of view, there are other immediate problems which may be considered and resolved without defining the legal status of space or its lower limit.

II

THE increasing number of launchings into space of instrumentalities which are not aircraft as defined by the International Civil Aviation Organization and the circulation of these spacecraft (rockets, missiles, satellites, and others not yet invented) with possible landings are creating new problems for the international lawyers.

(a) Certain problems, the most urgent and perhaps the easiest to be resolved, are partly similar to those concerning normal air navigation, i.e., navigation of aircraft within the atmosphere, partly new.

Spacecraft are crossing the atmosphere when ascending or descending; therefore they may interfere with the movements of aircraft, cause accidents to aircraft and, on their return to earth, may

cause damage to persons and property on the ground. Should existing conventions or regulations concerning aircraft be extended to spacecraft?

With respect to spacecraft circulating in space, without insisting on a danger of collision, we should be sure that they will not interfere with the earthly telecommunications through their radio frequencies and that their circulation will not be disturbed as long as they remain peaceful machines.

The scientific cooperation realized for the International Geophysical Year should also be maintained in order that the precious information collected by spacecraft continue to be available to all states.

An agreement between all states of the world on these problems is necessary.

(b) Other problems are entirely new and will depend on the achievement, perhaps in a near future, of certain projects.

Spacecraft might land on the moon or on a planet; what would be the consequences of such landing and of a temporary or a permanent establishment in the landing place? Should the rules of international law concerning occupancy of territories be applicable?

If space stations or landing platforms are constructed, as it is foreseen by some scientists, what should be their legal status and the conditions of their operation?

It seems certain that new principles should govern new situations.

III

Most of the above-mentioned activities do not take place within the jurisdiction of states, but outside any national jurisdiction. Therefore their eventual regulation can only be prepared by an international or supra-national authority.

Such authority is to be established by an international conference convened, either by the International Civil Aviation Organization which has a large experience of the control of circulation over the earth, or by the United Nations which has up to now generally considered the problems of space in relation to disarmament. On the agenda of the next General Assembly there is already a proposal submitted on March 15, 1958, by the U. S. S. R. for "the establishment within the framework of the United Nations of an agency for international cooperation in the study of cosmic space."

It is hoped that the creation of such agency may be dissociated from other questions concerning disarmament in order to arrive at an early decision, and also that in the meantime lawyers will continue to express their own views as is the case in the present issue of the *NEW YORK LAW FORUM* in order to contribute to the study of the various legal aspects of space exploration and to the development of the new branch of law, the Space Law.