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Fawcett: International Law and the Uses of Outer Space

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INTERNATIONAL LAW AND THE USES OF OUTER SPACE. By *J. E. S. Fawcett*. Manchester, England: Manchester University Press; Dobbs Ferry, N.Y.: Oceana Publications. 1968. Pp. vii, 92. \$4.

This slender book by the outstanding English international law scholar, James Fawcett, Fellow of All Souls College at Oxford, consists of the Schill lectures given at the Manchester University Law Faculty in 1968, and it represents the best short course in print on the subject of outer-space law. Tracing the rapid development of that law during the past decade, Fawcett outlines the way in which legal rules have been formulated for outer space by United Nations General Assembly resolutions, by treaty, and by practice. He also indicates the respects in which there must be continued legal developments if we are to reap the full benefits of free and common use of this resource.

Mr. Fawcett considers in separate chapters (1) the effects in international law both of the resolutions of the General Assembly beginning in 1961, and of the Outer Space Treaty; (2) the character and limits of national jurisdiction and control over spacecraft; (3) the military uses of outer space and the celestial bodies; (4) the management of space operations and control of their side-effects, including responsibility for damage; and (5) the use and regulation of space communications. Tightly written and lucidly expressed, these lectures convey maximum information within minimum space.

To Fawcett, the General Assembly resolutions are more important to legal development in this area than is the Treaty—a con-

clusion which will not meet with universal acclaim. The 1961 resolution on *International Co-operation in the Peaceful Uses of Outer Space*¹ "commended" to states for their "guidance" the principles that outer space and celestial bodies are within the jurisdiction of international law, "including the Charter of the United Nations"; that they are "free for exploration and use" by all states in conformity with international law; and that they "are not subject to national appropriation" (pp. 4-5). The subsequent *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*² went further, stating that under existing legal principles states had equal rights of access to, and use of, outer space, but could not appropriate it or celestial bodies "by claim of sovereignty, by means of use or occupation, or otherwise" (p. 5). The resolution also declared that states were responsible not only for acts of governmental agencies, but for outer-space activities carried on by nongovernmental national bodies; that states would be deemed to own and control space craft even when those craft are derelict; and that states are bound to assist astronauts in distress. Additional resolutions³ called on states to refrain from placing in orbit objects "carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space" (p. 7).

Fawcett considers the question whether the declared principles are rules of law or only directive principles. He first notes that the sponsoring states had "authority to make the declarations" (pp. 7-8) and that the declarations "serve a common interest" (p. 8). Nevertheless, Fawcett concludes that the declarations are not operative as rules of law, because he feels that it is not clear that the principles contained in the declarations "are capable of functioning as rules of law without further elaboration" (pp. 11-13), and because he cannot say that the sponsoring states "intended to observe [the declarations] as rules of law" (p. 13). It appears by inference from these statements that if Fawcett had felt that these conditions had been met, he would have been prepared to consider the principles to be rules of law, even though they were cast in the form of General Assembly resolutions. While he recognizes the interaction and the mutually reinforcing aspects of resolutions and Treaty, he deplores the Outer Space Treaty of 1966 because it elaborates little upon the resolutions, makes no provisions for its own authoritative interpretation, does not provide for settlement of disputes over the Treaty's application, and contains no provision for sanctions for nonobservance. The Treaty, he believes, is not only "ill-

1. G.A. Res. 1721A, 16 U.N. GAOR 6, U.N. Doc. A/5026 (1961).

2. G.A. Res. 1962, 18 U.N. GAOR 15, U.N. Doc. A/5656 (1963).

3. G.A. Res. 1884, 18 U.N. GAOR 13, U.N. Doc. A/5571 (1963).

constructed" and "precarious"—since it is denunciable on one year's notice—but could be considered a "retrograde step" (pp. 14-16), as compared with the resolutions.

The relative importance of these propositions, apart from any question of their merit, seems dubious in the context of the outer-space resolutions and the Treaty. Without reopening that hardy, perennial legal debate about whether General Assembly resolutions expressly declared in legal terms to be "recommendations," can be transformed, without more, into binding "law" because of the circumstances of their passage and content, it is clear that whether one does or does not accept the proposition that outer-space resolutions are "law" is not of overwhelming importance. If states act upon the basis of what they "intended" in the Declaration—that is, if they abide by its principles—it makes little difference whether it is "law" which they abide by or whether it is "principles" not yet ripened into law. And if they do not live by the Declaration, while they will in the one case be deemed guilty of disregarding "principles" which they proclaimed, and in the other of violating "law," the effects reflected in public opinion or elsewhere will be hardly distinguishable.

Likewise, the Treaty, giving enhanced legal stability to the principles, serves a useful purpose even without sanctions and without provisions for the settlement of disputes. In this kind of treaty among superpowers such as the United States and the Soviet Union, a failure to abide by the formally and "solemnly" pledged word immediately frees the other to take equivalent steps. This fact provides a powerful built-in brake upon any inclination to cut corners, and thus renders much less important ancillary devices which may be of some use in less national and less security-infused situations.

But these are essentially cavils. Professor Fawcett has so admirably encapsulated the subject of international law as it applies to outer space that his book can be recommended cheerfully to all who are curious about their relationship.

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