

**IISL-ECSL Symposium Celebrating the 30th Anniversary of the Outer Space Treaty**  
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**SOME COMMENTS ON THE SIGNIFICANCE OF**  
**THE 1967 OUTER SPACE TREATY FOR THE ESTABLISHMENT**  
**AND DEVELOPMENT OF SPACE LAW OF OUR TIMES**

by

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I have got a difficult task to comment on three substantive contributions to the IISL/ECSL Symposium on Celebrating the 30th Anniversary of the 1967 Outer Space Treaty, which differ both in their approaches to the subject and in their content. Moreover, Dr. G. Lafferranderie, Chairman of the European Centre for Space Law, is about to make a presentation of a book on "Outlook on Space Law over the Next 30 Years", which represents a major collection of essays devoted to the anniversary of the Outer Space Treaty. All these papers have brought many valuable observations and suggestions dealing with the past and future of the Treaty. My intention is to comment only on some of these thoughts and to leave the other for the discussion. But prior to offering some substantive comments, let me make a historical remark.

In the first paper, Prof. Y.M. Kolosov paid a tribute to a great number of lawyers from many countries who paved the way towards the successful outcome of the United Nations efforts in establishing the foundations of a legal order for space activities. He mentioned that his listing of a number of names was not complete and I would like to propose still some other names to be added to his list. First, let me recall the name of Prof. Vladimir Mandl, who was author of the first monographical study dealing with the subject of space law published as early as 1932. Dr. Mandl as an attorney-at-law in the city of Plzen (Pilsen) and later on became Professor of Industrial Law at the Czech Technical University in Prague. His study on space law was published in Germany under the heading "*Das Weltraum-Recht: Ein Problem der*

*Raumfahrt*" (The Law of Outer Space: A Problem of Space Flights), because its author wished to draw the attention of the international specialized community to these issues. Mandl commanded the German language because following his studies at the Law Faculty of Charles University in Prague, he made his post-graduate studies at the University of Erlangen in Germany. Mandl's study of space law issues was based on the assumption that the prospects of reaching outer space by means of rockets would raise new questions not settled by air law, which regulated only the legal regime of airspace. As he wrote, "beyond these Earth coastal spaces is space which does not have any relations whatsoever with our globe, nor with individual parts of the Earth surface either, which no longer has any pertinence to the Earth and is therefore free on any state power, coelum liberum. In this area, spaceship traffic is completely free." (Cf. p. 33 of Mandl's study)

Recently, an English translation of Dr. Mandl's monographical study was provided by the care of Dr. Stephen Doyle, a former representative of the United States to COPUOS Legal Subcommittee, who effectively participated in its work for several years. It will be included in extenso in Dr. Doyle's book on early learning on space law to be published soon.

Similarly, the name of Wolf Heinrich, Prince of Hanover, should be recalled in this context. Prince of Hanover wrote the first doctoral dissertation on Air Law and Space in 1953, still before the launching of the first satellites, and defended it successfully at the Georg-August University in Göttingen,

Germany.

The list and role of international and national non-governmental institutions in the development of space law and drafting of appropriate legal agreements for this purpose should be also enlarged. In the Institute of International Law (l'Institute de Droit international), at its 1963 session at Brussels, the legal regime of outer space was considered and a resolution was adopted, including the issues which were later on covered in the United Nations Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space as approved by the United Nations General Assembly on 13 December 1963. The International Law Association (ILA), another important international non-governmental organization dealing with different subjects of the development and codification of international law, worked out, through its space Law Committee, a number of drafts, particularly on the topics of Settlement of Space Law Disputes and of the Protection of the Environment from Damage Caused by Space Debris. Also the Hague Academy of International Law included from time to time special courses on space law in its programmes of lectures, e.g. the course presented by Prof. Manfred Lachs of Poland, the first Chairman of COPUOS Legal Subcommittee and later on Judge and President of the International Court of Justice.

The work of a number of national institutions, such as the Institute of Air and Space Law, McGill University in Montreal, Canada, which was initiated by Prof. John Cobb Cooper of the United States, who was later on succeeded by Prof. Eugène Pépin of France, should not be omitted in our assessment of efforts that paved the way to the United Nations legislative efforts in the field of space activities. Similarly, the work of the Institute of Air and Space Law of the University of Cologne, Germany, originally founded by one of the pioneers in these disciplines, Prof. Alex Mayer, and now led by Prof. Karl-Heinz Böckstiegel, should be recalled when discussing the beginnings of space law.

Certainly, the 30th anniversary of the conclusion of the Outer Space Treaty gives an

opportunity for celebrating this important international legal instrument and also for an assessment of the law of outer space as a whole. In this evaluation, all positive elements should be taken into account, but also a number of weak spots and gaps in the existing legal order for space activities should be brought to the foreground.

Without doubt, the 1967 Outer Space Treaty has been one of the significant law-making treaties which contributed in an outstanding manner to the progressive development of international law of our times. For it enshrined a set of fundamental principles to govern space activities, which have been recognized by the present international community and established a firm basis for the development of space law for the subsequent decades. Freedom of exploration and use by all States of outer space, including the Moon and other celestial bodies, for the benefit and in the interests of all countries, non-appropriation of any part of outer space, assistance to astronauts in the event of accidents, international responsibility for all space activities and liability for damage caused by such activities to other States Parties to the Treaty or to their natural or juridical persons, registration of space objects and jurisdiction and control over such objects based on such registration, cooperation and mutual assistance in the exploration and use of outer space, as well as important steps towards ensuring the maintenance of outer space, the Moon and other celestial bodies for peaceful purposes - these are the essential elements of the Outer Space Treaty. Prof. Kolosov showed us today how these principles were agreed upon and Prof. Ram Jakhu analyzed them in greater detail in his thoughtful paper.

On the other hand, the foregoing speakers made it clear that not all issues were resolved and some of them were only bridged by rather vague compromise formulas. Moreover, new problems emerged since then. For example, an important category of questions had arisen in connection with the growing volume of private activities in outer space. Both Prof. Jakhu and Dr. von der Dunk demonstrated what kind of issues are at stake. The latter offered a valuable comparison of national laws dealing with this subject in which

the principles of nationality and territoriality for establishing the national jurisdiction over such activities have been applied. He also indicated some discrepancies existing between individual national laws in this respect.

At present, "space law" consists of two layers.

The first one is represented by the international law of outer space that governs activities of international persons (States and international intergovernmental organizations). International space law established by the United Nations has created a basis that should be respected by all nations and international organizations, and also by individuals. A growing number of bilateral and plurilateral treaties mostly devoted to international cooperation between two or more States and for international organizations complete the international layer of space law.

The second layer has been filled by national laws regulating space activities of individual nations and their nationals, both physical and juridical persons. The national laws should remain in harmony with international obligations arising from the international law of outer space that has been recognized by the States concerned.

This growth and character of space law is more or less similar to the development of air law, the law of the sea/maritime and the law of the environment.

The 1967 Outer Space Treaty laid down the cornerstones of the whole building of space law. As such, it does not need any revision, its main principles are valid and useful. We probably could not agree on any other principles to replace those enshrined in the Treaty. At the same time, some provisions of the Outer Space Treaty, and also those of the other United Nations Space Treaties, need clarification and their application should be adapted in the light of new phenomena and issues. Basic principles of the Outer Space Treaty should be supplemented and developed by further instruments. During the years that followed the conclusion of the 1967 Outer Space Treaty, a number of examples have been given on how to proceed further in the progressive development of international space law. Four other United Nations treaties were concluded, by which some individual principles

of the main Treaty were successfully elaborated in more specific instruments. Why not to continue in this process by using the same method?

In my opinion, the Legal Subcommittee should now start studying the newly emerging legal issues and report on them regularly to the Committee on the Peaceful Uses of Outer Space and through it to the General Assembly. In these endeavours, the Legal Subcommittee should closely cooperate with the Scientific and Technical Subcommittee and *vice versa*. After all, a close cooperation and interaction of both Subcommittees was one of the aims of COPUOS when it was establishing them as its subsidiary bodies. One of the early subjects to be studied by both Subcommittees might be the protection of space environment against the generation of space debris. This issue has already been included in the agenda of the Scientific and Technical Subcommittee which adopted its work plan for studies of this subject that is being implemented. The work of the Scientific and Technical Subcommittee should be followed soon by the studies of legal aspects involved in the Legal Subcommittee. A thorough analysis and evaluation of the relevant provisions of the 1967 Outer Space Treaty and other United Nations space treaties, whether and to what extent they were applicable to the issue of space debris, would be an appropriate beginning of these studies. The 1967 Outer Space Treaty and its subsequent instruments aimed at developing international cooperation in an protecting of space activities carried out by means of space objects as active and functional tools of space programmes. But the up-to-date legal instruments did not care about the proliferation of remnants of such objects which have ended their missions. Is it not logical to think about appropriate remedies, including some adequate legal measures to ensure safety of life and property in space navigation?

1997 has been the year of several anniversaries related to the development of space activities and space law. As already mentioned, the space era started 40 years ago by launching the first artificial satellites of the Earth. This symposium has been devoted to the 30th anniversary of the conclusion of the

Outer Space Treaty. Perhaps another anniversary - a modest one but not without any significance - should be also recorded, namely that 35 years ago both Subcommittees of the United Nations Committee on the Peaceful Uses of Outer Space were established and started their regular work by holding their first sessions in Geneva, in the spring of 1962. In the Legal Subcommittee, this was the beginning of the legislative process in the field of international law of outer space which continues until these days. We should now think in a constructive way on how to improve the further develop its work in order to reach a rewarding success in our future endeavours.