Chapter Two

Space Law

2.1. Introduction

Space law is a newly developed field of law with a relatively short history. The discussion of space law began in the 1950s following related technological developments achieved by the end of World War II. Space development originated with the invention of a long-range liquid fuel rocket by the German army. The German V-2 rocket, completed in 1942, was able to fly outside the Earth’s atmosphere and became the foundation for the first artificial satellite.\(^1\) The incentive for space technology was then driven forward by the subsequent Cold War, in the form of an arms race between the Soviet Union and the United States.

On October 4, 1957, the Soviet Union took the lead in the race – first by placing Sputnik-I, the first man-made satellite, successfully into orbit in outer space. Following the launch of Sputnik, the need for a legal regime governing outer space became apparent and the legal status of outer space suddenly became an urgent and real question to resolve – rather than merely a theoretical and speculative matter.\(^2\)

The fundamental question was the legal status of outer space in terms of sovereignty: specifically, whether or not sovereignty recognized in airspace extended to outer space. US air law expert J.C. Cooper contended that

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sovereignty did not extend to outer space; this view prevailed, and the legal status of outer space based on that view continued to be recognized in the context of reconnaissance satellites.

The permissibility of observing foreign territories from space was first proposed by the United States. The official step toward legitimizing remote sensing for reconnaissance purposes was the proposal for an Open Skies Policy by President Eisenhower to allow the United States and the Soviet Union to monitor each other’s territory to avoid a surprise attack. Although rejected by Moscow at the time, afterwards the policy was accepted by the two superpowers on a *de facto* basis as they started to monitor each other’s territories with reconnaissance satellites in the 1960s.

The next question concerned where the boundary between airspace and outer space lay. There was no clear answer, since air law had never established a definition of airspace with a precise boundary. After Sputnik, numerous theories were proposed in attempts to determine the demarcation of outer space. Cooper and common law experts believed that outer space simply stopped at the point below which an orbit could not be sustained. The higher boundary of airspace meant more protection against unfriendly overflights, as sovereignty was extended in airspace. In the UN COPUOS, the Soviet Union proposed to fix the boundary line at an altitude of 100–120 km above sea level, and most delegates were in agreement. At present, there is still no agreement as to the boundary of outer space. From this history, one can clearly see that space law

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9 Chicago Convention on International Civil Aviation 7 December. 1944, Article 44, 15 *UNTS* 295. [Hereafter: Chicago Convention].

10 ITN Doc-A/AC-105/C-2/L-12.

11 The critical reason for this is military interest. The higher boundary of national sovereignty means more protection against unfriendly overflight. Spacefaring nations had no incentives to clarify the ambiguities. Indeed, the principal focus of American policy was always protection of spy satellites.