THE LAW OF WAR AND NEUTRALITY
IN OUTER SPACE

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The title of this paper looms as a defiance to common sense. Human experience in the upper regions of space is still at its inception. A German scientist at the Ninth Astronautical Congress held at Amsterdam in 1958, declared that it was all a comedy for 97%, fog and mist for 2% with 1% of science. Therefore the topic would seem to be unsuitable for legal scrutiny, inadequate for statement of standards and principles. Indeed, two incontrovertible arguments may be adduced against consideration of those matters:

First, law is a secondary science, which follows the facts and human behaviour with regard to those facts. Facts come first and provoke human reactions of different, at the outset very often wavering and versatile, types. Later, with intensified practice and consolidated behaviour, it becomes feasible to draw up a set of rules.

It is clear that facts of and in outer space are still in the making. It is highly probable that outer space will not be subject to a single law but that different strata or rather diverse layers or bands will require a distinguished legislation. On the other hand, no human being has, as yet, entered outer space and it is rash to state facts relying solely on scarce data registered by scientific instruments. Outer space is still terra ignota, a mystery. The unknown cannot be regulated, even less juridically organized i.e. reduced to clear-cut, mandatory terms.

Secondly, when new facts come into being, it is usual for jurists to call upon analogy with similar existing bodies of law in order to contrive a tentative regulation. The case of private International Law originating with the glossators of Roman Law in Northern Italy or the more recent and parallel case of analogy with Maritime Law paving the way for Air Law come readily in our minds. However, it has been shown elsewhere in this work that the argument of analogy with Maritime Law used for Air Law purposes, is often misleading. It has certainly no overall validity and can be used only on a functional basis.
Some authors are looking for analogies in their quest for the law of Outer Space. Knauth cites the law of the Antarctic, the law of the seabed, the law of the High Sea and that of the airspace superincumbent upon the High Seas. It is submitted that, in the case, the tool of analogy is weaker than in other fields. Summing up those risks one may state: outside gravitation lies a medium different from any terrestrial type, rules of warfare on earth would be out of context, no one may take for granted what human behaviour would be, no one may guess what would be the means and behaviour of other planetarians and we cannot test our legality on theirs.

Notwithstanding the weight of these arguments, there is an urgent need for action in matters which are at present, beyond doubt, number one of the forces which shape the destiny of mankind. For everybody it is a question of bare existence, for space and nuclear powers it is also the crossroad of aggression and self-defense. Rockets have gone up to 600 miles and — unexpectedly — come back to earth, massive destruction may topple overnight, weather may be changed or controlled, polar ice may melt away driving the oceans overland. The American general Gavin depicts the war of 1965 in terms of missiles and outer space satellites. He challenges the slogan of the "Atom Century", claiming that this is the Century of Space. The decisive power of our age is Outer Space. In his opinion bomber aircraft will be obsolete. The only weapon of aggression will be the guided missile. His vision, based on first hand experience, provides winning and dining indeed for the pessimists.

Cannot and shouldn’t the lawyer contribute, albeit only with mere goodwill, to a containment of the forces of destruction?

War and neutrality in Outer Space may be of manifold design. War may be waged between terrestrial Powers in or through the outer space medium: this is likely to be at least part of future warfare. War may break out also between our earth and other planets or between planets or satellites settled and colonized by our earthly specimen. Insurrections may occur in other planets or against our earth from manned satellites, etc. For reasons stated above no attempt will be made to distinguish types and problems of outer space warfare. In view of the undetermined status of outer spaces and of the contiguous spaces of satellites and planets, any juridical research must be limited to general considerations and choice illustration. It would be utterly preposterous to go into detail problems of warfare. On the other hand, the share of nuclear weapons in outer space is only part of the more general problem of nuclear warfare and cannot be elicited in this particular chapter.