

Introducing a New Term to Space Law: “OUTER VOID SPACE”

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I. Initial use of the term “OUTER SPACE” in United Nations resolutions relating to Outer Space

At the initial stage of the space age, the United Nations in its resolutions relating to outer space constantly distinguished between “outer space” and “celestial bodies”. Thus in Part A of the well-known Resolution 1721 (XVI) of 20 December 1961, the first substantive resolution relating to outer space, the General Assembly commended to States the following principles:

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“(a) International law, including the Charter of the United Nations, applies to outer space *and* celestial bodies;

“(b) Outer space *and* celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation.”¹⁾

Similarly in its Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space adopted on 13 December 1963²⁾, the General Assembly solemnly enjoined that States should be guided *inter alia* by the following principles:

“2. Outer space *and* celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law.

“3. Outer space *and* celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”³⁾

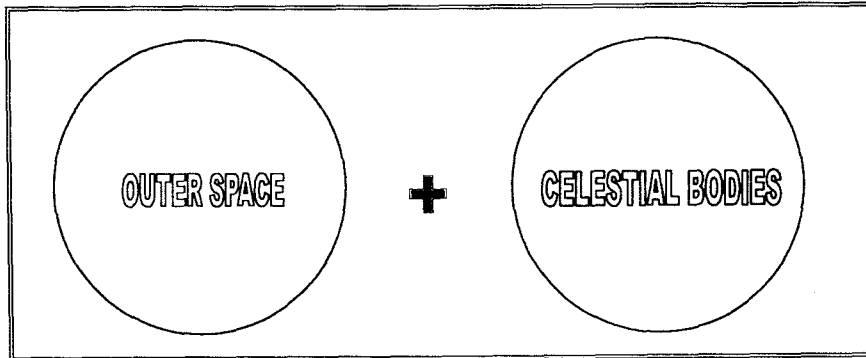
Extraterrestrial space consists, therefore, according to this terminology, of first “outer space” and then “celestial bodies”. Celestial bodies are thus treated as a category apart from outer space as such, as illustrated in Figure 1

1) Italics added.

2) Resolution 1962 (XVIII).

3) Italics added.

Figure 1 : MEANING OF "OUTER SPACE" UP TO AND INCLUDING THE 1963 RESOLUTION



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However, it must be recognised that the United Nations usage of these terms might not have been altogether consistent or always precise. Thus it is much to be doubted whether in, for example, the same resolution the United Nations, when speaking of outer space, intended to refer exclusively to the space in between all the celestial bodies and consciously to exclude the celestial bodies themselves. Thus in the same Declaration of Legal Principles, the General Assembly laid down also *inter alia* the following principles:

"1. The exploration and use of *outer space* shall be carried on for the benefit and in the interests of all mankind.

".....

"4. The activities of States in the exploration and use of *outer space* shall be carried on in accordance with international law, including the Charter of the United Nations....."⁴⁾

Now, it is quite clear that the General Assembly did not intend these and other principles in the Declaration which mentioned only *outer space* and not *celestial bodies* not to apply also to the latter.

4) Italics added.

II. Use of the term “OUTER SPACE” from the 1967 Space Treaty onwards

It was little wonder, therefore, that the 1967 Space Treaty⁵⁾, which expanded on the 1963 Declaration and turned it into a treaty, amended the usage of the term “outer space” and adopted a new formula, used already in the title of the Treaty, namely, “outer space, including the moon and other celestial bodies”. Thus the above quoted Principles 1 and 4 of the 1963 Declaration were reformulated in the Treaty as follows:

“Article I. The exploration and use of *outer space, including the moon and other celestial bodies*, shall be carried out for the benefit and in the interests of all countries……”

“Article III. States Parties to the Treaty shall carry on activities in the exploration and use of *outer space, including the moon and other celestial bodies*, in accordance with international law, including the Charter of the United Nations . . .”⁶⁾

This new formulation has since been consistently followed by the United Nations in all its subsequent treaties and resolutions relating to outer space. It is more precise and explicit than the previous practice, and avoids any possible argument *a contrario* that celestial bodies are not included, whenever reference is made only to outer space. Henceforth the moon and other celestial bodies are no longer treated as being separate from outer space as such, but form part of it. Reference to outer space automatically includes celestial bodies. In principle, this would be so even if there were no express inclusion of the celestial bodies.

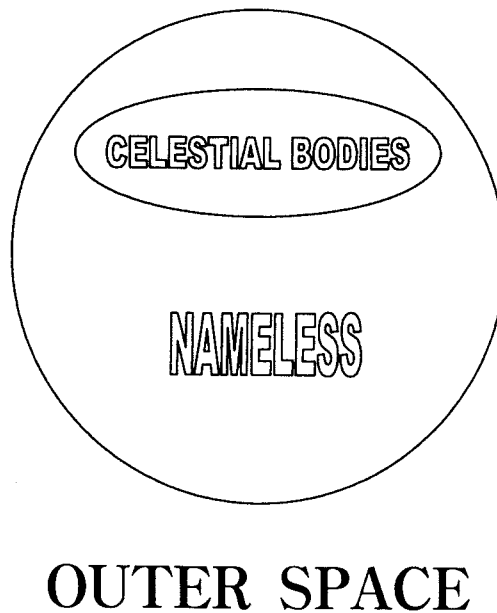
5) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies, London, Moscow and Washington, 27 Jan. 1967, 610 UNTS 205.

6) Italics added.

III. The space in between the celestial bodies becomes nameless

However, one of the consequences of this change in the use of the term outer space is that the vast space in between all the celestial bodies (including in this case also the Earth) has lost any specific designation. It has become nameless, as Figure 2 seeks to show.

Figure 2 : MEANING OF "OUTER SPACE" SINCE THE 1967 SPACE TREATY



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The problem with this new nomenclature in depriving the vast void in outer space of a name is that it can cause a great deal of confusion and misunderstanding.

For instance, there is a very prevalent misconception that, because Article IV(2) of the 1967 Space Treaty provides that “[t]he moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes”, this means that the whole of outer space, including the whole empty space in between the celestial bodies, has been reserved exclusively for uses for peaceful purposes, but this is far from the truth. This vast empty space has not been totally demilitarised.

Only certain restrictions have been placed on its military use by Article IV(1) of the Treaty under which “States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction,…… or station such weapons in outer space in any other manner.” Otherwise, the States Parties remain entitled to use this empty space for any military purpose they wish, subject only to the observance of international law and treaty obligations, including the United Nations Charter.⁷⁾

This misunderstanding can easily have arisen because of the lack of a term to describe this vast empty space.

IV. Need to introduce the term “OUTER VOID SPACE”

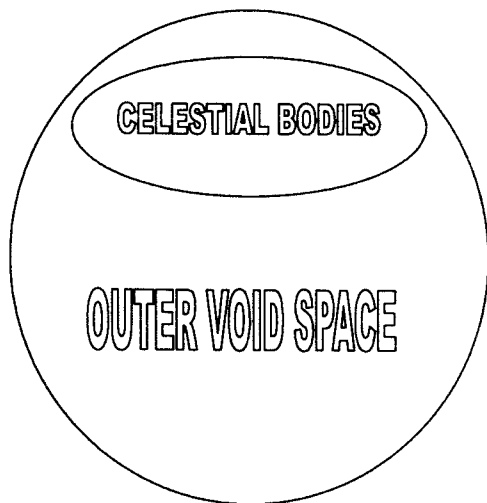
What I have done is to name this empty space the “outer void space”⁸⁾,

7) See further Bin Cheng, *Studies in International Space Law*. Oxford: Clarendon Press. 1997, Part V: Military Use of Outer Space, pp. 513-538; and “Military Use of Outer Space: Article IV of the 1967 Space Treaty Revisited”, *The Utilization of the World's Air Space and Free Outer Space in the 21st Century*, Proceedings of the International Conference on Air and Space Policy, Law and Industry for the 21st Century, organised by the Korean Association of Air and Space Law and the Republic of Korea Air Force Academy, 23-25 June 1997, Seoul, Korea (awaiting publication).

8) See B. Cheng, *op. cit.* in note 7 above, e.g., p. 327; “The 1967 Space Treaty: Thirty Years On”, Keynote address at the International Institute of Space Law's special dinner to celebrate the 30th anniversary of the Space Treaty, 40 *Space Law*

as can be seen in Figure 3.

Figure 3 : NEED TO INTRODUCE THE TERM "OUTER VOID SPACE"



OUTER SPACE

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It is to be hoped that this term will be generally adopted.

Colloquium (1997), pp. XVII-XXIX, s. III.1: Filing in *Lacunae*, e.g., "Outer Void Space", at p. XIX; "The 1967 Outer Space Treaty: Thirtieth Anniversary", 23 *AIR & Space LAW* (1998), pp. 156-165, at p. 157.