

Marinich Volodymyr

PhD Candidate in Law of the

National University of Life and Environmental Sciences of Ukraine

Марініч Володимир Костянтинович

здобувач вищої освіти ступеня доктора філософії за спеціальністю «Право»

Національного університету біоресурсів і природокористування України

ORCID: 0000-0002-3206-1436

**FUNDAMENTAL PRINCIPLES OF OUTER SPACE (COSMIC) LAW
DEVELOPMENT**

**ФУНДАМЕНТАЛЬНІ ПРИНЦИПИ СТВОРЕННЯ КОСМІЧНОГО
ПРАВА**

***Summary.** The article presents the results of a philosophical and legal study on the search for fundamental principles on which Outer Space Law should be developed.*

The study substantiates the fact that Outer Space Law cannot be established by analogy with other types of law and it is undesirable to create it based on classical law.

The research identifies fundamental principles on which the entire process of Outer Space Law development can be based.

The first fundamental principle states that Outer Space (Cosmic) Law is a "Tabula Rasa Juris" (blank slate for law).

Under the second fundamental principle, the Cosmos has always remained the territory of "Res Communis Animal Rationale" (the territory available to all intelligent beings).

The third fundamental principle says that Cosmos is the territory of "Res Nullius Civitatis" (the territory that does not belong to any state).

That is, according to these three principles, the Cosmos is a common territory for all intelligent beings and does not fall under the jurisdiction of any state. Outer Space Law should be accessible to all intelligent beings who wish to participate in its development from the very beginning.

At the same time, based on the mentioned principles, it may be concluded that the regulation of human relations in the Cosmos (which also includes outer space and celestial bodies) and, accordingly, the creation of Outer Space Law is the exclusive prerogative of "Animal rationale" (except for Outer Space Public Law that regulates relations between or among states).

It is also possible that other principles may influence the process of Outer Space Law development. However, these principles cannot contradict the three fundamental principles outlined in this study.

Key words: *space, space law, space activity, fundamental principles, international law, legal theory.*

Анотація. *У статті висвітлено результати філософсько-юридичного дослідження пошуку фундаментальних принципів, на яких повинно створюватись Космічне право.*

Обґрунтовано те, що Космічне право не варто будувати за аналогією з іншими видами права, базуючись на класичному праві.

За результатами проведеного дослідження визначено фундаментальні принципи, на яких може ґрунтуватися весь процес формування Космічного права.

Перший фундаментальний принцип свідчить про те, що Космічне право є «Tabula Rasa Juris» (чистий аркуш для права).

Другий фундаментальний принцип обумовлює те, що Космос завжди залишається територією «Res Communis Animal Rationale» (територія, яка спільна для всіх розумних істот).

Третій фундаментальний принцип вказує на те, що Космос є територією «Res Nullius Civitatis» (територія, яка не належить жодній державі).

Тобто, відповідно до цих трьох принципів, Космос є спільною територією для всіх розумних істот і не потрапляє під юрисдикцію жодної держави, а космічне право має бути відкритим для всіх розумних істот, які бажають взяти участь у його створенні, починаючи із витоків.

Водночас, зважаючи на вказані принципи, можливо висувати, що регулювання відносин між людьми в Космосі (до якого також відносяться космічний простір і небесні тіла) і, відповідно, створення Космічного права є виключною прерогативою «Animal rationale» (окрім Космічного публічного права, яке регулює відносини між державами).

Також допускається існування й інших принципів, які можуть впливати на процес створення Космічного права. Однак, ці принципи не можуть суперечити трьом фундаментальним принципам, які окреслено у цьому дослідженні.

Ключові слова: *космос, космічне право, космічна діяльність, фундаментальні принципи, міжнародне право, теорія права*

Introduction

Problem Statement. As of today, figuratively speaking the process of regulating relations in outer space and on celestial bodies resembles frozen volcanic lava, which flowed in different directions, bypassing inconvenient areas, and now froze in different places, featuring a “patchwork” and “holey” blanket with a large number of patches.

The reason for this is that the regulation of space activities and space relations mainly occurred in a "manual mode" and most frequently after the fact (after certain events occurred in outer space). At the same time, the adopted international documents were largely based not on specific experience and fundamental principles but only on the assumptions of representatives of different states. Ultimately, the mentioned situation led to the emergence of numerous contradictions, misunderstandings, and violations of the rules of space activities. De facto, international law has already ceased to regulate space activities and is gradually turning into an atavism.

To change the situation, it is necessary to understand the basic principles on which the process of regulating space activities and space relations should be established, that is, to understand the conditions that should become decisive for the development of Outer Space Law.

The status of the issue. Many scientists and lawyers have studied the process of Outer Space Law development.

Conducting the research, the author has analyzed many works of famous legal scholars in the field of Outer Space Law, in particular: "The first quarter-century of spaceflight" Marcia S. Smith, "Studies in International Space Law" Bin Cheng [2], "The Law of Outer Space" Albert K. Lai [9], "The concept of state jurisdiction in international space law" Imre Anthony Csabafi [3], "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space" Asamoah O. Y. [1], "International Law and Outer Space Activities" Ogunbanwo O. Ogunsola [14], "An introduction to space law" Diederiks-Verschoor I. H. P. [4], "Essays on space law" Natalia Malysheva [10], "International space law" Grigorov O. M. [5], "Pioneers of space law" Stephan Hobe [6], "Soft law in outer space: the function of non-binding norms in international space law" Irmgard Marboe [11], "War and peace in outer space: law, policy, and ethics" Cassandra Steer and Matthew H. Hersch

[16], "International law" Malcolm N. Shaw [15], "Fundamentals of Space Law and Policy" Fabio Tronchetti [18], and others.

However, these works present the results of studies only of existing international instruments and legal mechanisms governing space activities, such as international treaties or United Nations resolutions, Declarations, and Conventions. At the same time, scientists mainly analyzed only those factors that became the reason for the legal regulation of space activities, and the legal principles that arose after the creation of Outer Space Law, that is, became its consequence.

In turn, no one has ever explored the fundamental principles based on which Outer Space Law was originally supposed to be developed.

The article is aimed at searching for theoretical, philosophical, and universal factors that could be formulated into fundamental principles based on which Outer Space Law should be developed.

In the future, the results of this study will make it possible to completely reconsider the approach to the development of Outer Space Law, which will subsequently eliminate its shortcomings and make Outer Space Law universal and effective.

The basic material. Fundamental principles for the development of Outer Space Law

The first principle of Outer Space Law development

When discussing conditions that are the determining factors for the Outer Space Law development, it is necessary to understand that Outer Space Law is a unique type of law. It cannot be established by analogy with other types of law, such as maritime or air law due to the fact these types of law regulate relations only within the boundaries of planet Earth. In turn, planet Earth is the natural habitat of a human, where one is born, grows up, and lives, and where all natural environments are interconnected with each other and with a human. However, the environment for the application of Outer Space Law is the Cosmos: open

outer space and celestial bodies beyond the Earth, which are not the natural habitat of humans and do not belong to anyone. That is, outer space and celestial bodies are an alien environment for a human, where one is only a guest. The entire legal space can be divided for humanity into a "domestic room" (in which people can set their own rules) and an "alien room" (in which people cannot set rules but can only agree on the principles of cooperation) [13].

In this regard, we should not expect from Outer Space Law the form in which people are usually accustomed to understanding "law" due to the exclusivity of the environment concerning which this new "law" is created [13].

Moreover, it is generally undesirable to develop Outer Space Law based on classical law, which has long turned into an artificially tangled labyrinth where both lawyers and common people get lost, and the builders of this labyrinth use its mechanisms to establish endless "*Fraus legi fit*", allowing them to achieve personal benefits.

It is necessary to understand that Outer Space Law is a new type of law that shall be created from scratch. In other words, concerning humanity **Outer Space (Cosmic) Law is "*Tabula Rasa Juris*"**, and this is **the first principle** that is the basis for its development.

At the same time, when creating Outer Space Law, it is necessary to remember the way the Ancient Roman jurist *Ulpianus* described the essence of the law: «*Est autem a justitia appellatum: nam, ut eleganter Celsus definit, jus est ars boni et aequi*» [8, p. 18] (the author's translation: "it comes from the word 'justice', for according to Celsus' excellent definition, the law is the art of goodness and equity").

It could therefore be said that for the first time, humanity has the opportunity to create a new, fair, and effective law, avoiding all previous mistakes. And this new law can eventually turn into a global law for the entire Universe - «*Universum juris*» [13].

The second principle of Outer Space Law development

In turn, today Outer Space Law is an object of great interest to many states on Earth, which are directly involved in its creation. Perhaps this is why modern Outer Space Law is the product of states solely and the United Nations. Although the Resolutions and Declarations of the General Assembly of the United Nations have stated many times that the Cosmos does not belong to states but is the common heritage of mankind [19], [20], humanity does not have access to the formation of Outer Space Law. Admittedly the main reason for this state of affairs is the restrictions on the relevant access to the development of Outer Space Law based on formal bureaucratic features by states and the United Nations. However, other reasons prevent people from participating in the creation of Outer Space Law, based on the division by borders, languages, and ideologies. In this regard, a certain system of inequality arises when people living in a space superpower have more rights and opportunities to take part in the creation of the Outer Space Law and receive more benefits from space activities than people living in another state.

Therefore, even the Bible includes many allusions to universal equality, for example: in the "Book of Job" (chapter 3 verse 19 and chapter 33 verse 6) [7, p. 1555, 1629] and in "Letter to the Colossians" (chapter 3 verse 25) [7, p. 3878], as well as in other parts. Muslims also tell us that the prophet Muhammad preached universal equality. This has also been repeatedly stated in the Constitutions of many countries. Moreover, we can say that there is a generally accepted and universal concept according to which all individuals are equal in rights, including Cosmos. However, it is important to bear in mind that this concept of equality is dual - that is, it assumes that only those individuals who understand the principles of equality and consider themselves equal to others can be equal to each other. That is to say that for individuals to have equal rights in a society, these individuals shall understand what "equality" is. Thus, individuals need reason to comprehend the concept of "equality." Accordingly, it can be concluded that only a rational individual (an "*Animal*

Rationale" or rational being) is capable of recognizing and accepting the concept of equality of rights.

In this case, it can be shown that only intelligent individuals (which can include both humans and extraterrestrial beings) rights can be equal concerning the Cosmos. For such individuals, **the Cosmos has always been the territory of the "Res Communis Animal Rationale"** (the territory common to all intelligent beings) [13]. And this is **the second principle** of the formation of Outer Space Law.

The third principle of Outer Space Law development

At another point, as Irish and British writer and philosopher Jonathan Swift correctly noted, not all individuals can be considered "*Animal Rationale*" (a rational being). In most cases, the individual is only "*Animal capax Rationis*" (capable of reason) [17, p. xxxiv]. He proceeded from the fact that for "*Animal rationale*" only knowledge of the way to act correctly (that is, knowledge of fair principles of equality) is sufficient to act correctly. In turn, "*Animal capax rationis*" requires clearly defined norms that would indicate the mode of conduct and punishable actions.

It was "*Animal capax rationis*" who developed the first systems of norms, based on which states were created. At the same time, the wonder is not how it happened, but that it happened at all. At some point in time, at birth, a human turned out to be not only a human but also a citizen of the state. And although the first cry is not a request for citizenship, one receives it automatically with all the fair and unfair rules of life in such a state.

In this regard long time ago ancient Roman lawyer Ulpianus declared correctly: «*cum iure naturali omnes liberi nascerentur*» [8, p. 24] (the author's translation: "all men are by nature free"). However, in modern realities, it is necessary to recognize that a person is not born free but from the moment of birth one immediately becomes a servant of the legal system of the state, which one never chose and consented to. Growing up, a person is forced to accept this

legal system, and one pledges loyalty, realizing the risk of becoming a stateless person and the discard of society. Regardless of the place on Earth, one cannot hide from the pursuing state legal systems that seek to prove their legitimacy even on the high seas ("*terra nullius*").

The Cosmos is the only place where states do not have power and cannot dictate their terms and rules provided Cosmos is outside their jurisdictions, and for them, as subjects of the political organization of society, **Cosmos is the territory of "*Res Nullius Civitatis*"** (the territory that does not belong to any state) [12]. That is the third principle for the formation of Outer Space Law.

Conclusion and prospects for further research. In the course of research, the author has identified fundamental principles on which the entire development of Outer Space Law can be based.

In this case, it is only about three basic principles, according to which the Cosmos is a common territory for all intelligent beings and does not fall under the jurisdiction of any state. Outer Space Law should be accessible to all intelligent beings who want to participate in its creation from the very beginning.

At the same time, based on these principles, we can conclude that the regulation of relations among people in the Cosmos (which also includes outer space and celestial bodies) and, accordingly, the creation of Outer Space Law is the exclusive prerogative of "*Animal rationale*" (except for Outer Space Public Law that regulates relations between or among states).

It is also quite possible that other principles may influence the process of Outer Space Law development. However, these principles cannot conflict with the three fundamental principles outlined in this study.

Literature

1. Asamoah O. Y. Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. *The Legal Significance of*

- the Declarations of the General Assembly of the United Nations.*
Dordrecht : Springer Netherlands, 1966. P. 129–160.
2. Cheng B. *Studies in International Space Law.* Oxford University Press, 1997. doi: 10.1093/acprof:oso/9780198257301.001.0001.
 3. Csabafi I. A. *The Concept of State Jurisdiction in International Space Law.* Dordrecht : Springer Netherlands, 1971. 197 p.
 4. Diederiks-Verschoor I. H. P., Kopal V. *An introduction to space law.* 3rd rev. ed. Alphen aan den Rijn, The Netherlands : Frederick, MD : Kluwer Law International; Sold and distributed in North, Central and South America by Aspen Publishers, 2008. 249 p.
 5. Григоров О.М. *Міжнародне космічне право.* Харків : Право, 2023. 130 с.
 6. Hobe S. *Pioneers of space law.* Leiden; Boston : Martinus Nijhoff Publishers, 2013. 212 p.
 7. Holy Bible: English Standard Version. Wheaton, Ill : Crossway Bibles, 2001. 3794 p.
 8. Justinian IUSTINIANI AUGUSTI DIGESTA, SEU PANDECTAE : IMPERATORIAUS JUSTINIANO DIGESTAI, arba PANDEKTOS. ed. S. Vėlyvis., R. A. Misevičiūtė. Vilnius : VĮ Registrų centras, 2010. 319 p.
 9. Lai A. K. *The cold war, the space race, and the law of outer space: space for peace.* Milton Park, Abingdon, Oxon; New York, NY : Routledge, 2021. ("Routledge studies in modern history" Series).
 10. Малишева Н.Р. *Нариси космічного права.* Київ : Алерта, 2010. 296 с.
 11. Marboe I. *Soft law in outer space: the function of non-binding norms in international space law.* Wien : Böhlau Verlag, 2012. 407 p. ("Studien zu Politik und Verwaltung" Series).
 12. Marinich V. K., Myklush M. I., Yara O. S. *Outer Space Public Law: the 1958-1963 period. Part 1. The collection of «Uzhhorod National University*

Herald. Series: Law». Vol. 2, Issue 79. DOI: 10.24144/2307-3322.2023.79.2.54.

13. Marinich V. K., Myklush M. I. Space Law, Subjects and Jurisdictions: pre-1963 period. *Analytical and Comparative Jurisprudence*. Issue 4. P. 569–581. DOI: 10.24144/2788-6018.2023.04.90.
14. Ogunbanwo O. O. *International Law and Outer Space Activities*. Dordrecht : Springer Netherlands, 1975. 272 p.
15. Shaw M. N. *International law*. 5th ed. Cambridge, U.K.; New York : Cambridge University Press, 2003. 1288 p.
16. Steer C., Hersch M. H. *War and peace in outer space: law, policy, and ethics*. First edition. New York : Oxford University Press, 2021. 313 p. ("The Oxford series in ethics, national security, and the rule of law" Series).
17. Swift J., Rawson C. J., Higgins I. *Gulliver's travels*. New ed. Oxford ; New York : Oxford University Press, 2005. 362 p. ("Oxford world's classics" Series).
18. Tronchetti F. *Fundamentals of Space Law and Policy*. New York : Springer, 2013. ("SpringerBriefs in Space Development" Series).
19. UN General Assembly (16th Sess.). *International co-operation in the peaceful uses of outer space. Resolution 1721*. 1961.
20. UN General Assembly [18th Sess. 1280th plenary meeting]. *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*. 1962.

References

1. Asamoah, O.Y. (1966). *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. The Legal Significance of the Declarations of the General Assembly of the United Nations*. Dordrecht: Springer Netherlands, 129–160.

2. Cheng, B. (1997). *Studies in International Space Law*. Oxford University Press.
3. Csabafi, I.A. (1971). *The Concept of State Jurisdiction in International Space Law*. Dordrecht: Springer Netherlands.
4. Diederiks-Verschoor, I.H.P., & Kopal, V. (2008). *An introduction to space law*. 3rd rev. ed. Alphen aan den Rijn, The Netherlands: Frederick, MD: Kluwer Law International; Sold and distributed in North, Central and South America by Aspen Publishers.
5. Hryhorov, O.M. (2023). *Mizhnarodne kosmichne parvo [International space law]*. Kharkiv: Pravo [in Ukrainian]..
6. Hobe, S. (2013). *Pioneers of space law*. Leiden ; Boston: Martinus Nijhoff Publishers.
7. Holy Bible: English Standard Version (2001). Wheaton, Ill: Crossway Bibles.
8. Justinian (2010). *IUSTINIANI AUGUSTI DIGESTA, SEU PANDECTAE: IMPERATORIAUS JUSTINIANO DIGESTAI, arba PANDEKTOS*. Edited by S. Vėlyvis and R.A. Misevičiūtė. Vilnius: VĮ Registrų centras.
9. Lai, A.K. (2021). *The cold war, the space race, and the law of outer space: space for peace*. Milton Park, Abingdon, Oxon; New York, NY: Routledge (Routledge studies in modern history).
10. Malysheva, N. (2010). *Narysy kosmichnoho prava [Essays on space law]*. Kyiv: Alerta [in Ukrainian].
11. Marboe, I. (2012). *Soft law in outer space: the function of non-binding norms in international space law*. Wien: Böhlau Verlag (Studien zu Politik und Verwaltung, Bd. 102).
12. Marinich, V.K., & Myklush, M.I. (2023). *Space Law, Subjects and Jurisdictions: pre-1963 period*. *Analytical and Comparative Jurisprudence*, 4, 569–581. doi: <https://doi.org/10.24144/2788-6018.2023.04.90>.

13. Marinich, V.K., Myklush, M.I., & Yara, O.S. (2023). Outer Space Public Law: the 1958-1963 period. Part 1. *The collection of «Uzhhorod National University Herald. Series: Law»*, 2(79). doi: <https://doi.org/10.24144/2307-3322.2023.79.2.54>.
14. Ogunbanwo, O.O. (1975). *International Law and Outer Space Activities*. Dordrecht: Springer Netherlands.
15. Shaw, M.N. (2003) *International law*. 5th ed. Cambridge, U.K. ; New York: Cambridge University Press.
16. Steer, C., & Hersch, M.H. (2021). *War and peace in outer space: law, policy, and ethics*. First edition. New York: Oxford University Press (The Oxford series in ethics, national security, and the rule of law).
17. Swift, J., Rawson, C.J., & Higgins, I. (2005). *Gulliver's travels*. New ed. Oxford; New York: Oxford University Press (Oxford world's classics).
18. Tronchetti, F. (2013). *Fundamentals of Space Law and Policy*. New York: Springer (SpringerBriefs in Space Development). Available at: <https://link.springer.com/10.1007/978-1-4614-7870-6>.
19. UN General Assembly (16th Sess.) (1961). *International co-operation in the peaceful uses of outer space*. Resolution [Preprint].
20. UN General Assembly [18th Sess. 1280th plenary meeting] (1962). *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*.