The International Law of Space Activities 50 years after Sputnik-1

A Half-'Century of a Singular Legal System

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Contents

A. THE FACTS
§ 1. The Balance-Sheet of the first 50-year period 1
§ 2. The Incessant Challenges 3
§ 3. The Demands and Perspectives 5
B. THE NEEDS
§ 1. Preventing Weaponisation of Outer Space 7
§ 2. Guaranteeing the Rights of all Humanity 9
§ 3. Creating a World Space Organisation 10
C. THE MORAL
§ 1. Satisfying the Human Needs 11
§ 2. Sustaining the Human Dimension in Space Activities 12
§ 3. Maintaining Outer Space Perpetually Peaceful 12

«In Peace for all Mankind.»

«Peace is beneficial and power for the state; war ends at the demolition of the state.»
ANDOCIDES OF ATHENS (440-ca 391 B.C.) (ON THE PEACE PACT WITH LACONIANS [SPARTANS]. B.)

«Plant a tree of friendship and it will bear you fruit to your heart's content.»
HÂFEZ (or HAFIZ) (Persian Poet, 1325-1390 A.D.)

A. THE FACTS

«The heavens have become a part of man's world.»
RICHARD M. NIXON (1913-1994) (US President 1968-1974).

§ 1. The Balance-Sheet of the first 50-year period

1 The making of international law rules governing outer space or, more properly and precisely, human activities in outer space, has been the result from a necessary and inevitable mutual compromise between the 2 antagonists and adverse super-powers of the 1st ''Cold War'' era, during which international life had been essentially dominated by the terror and agony of a sudden nuclear holocaust. Thus, space law was in substance a law of necessity, derivative of international political and legal stabilizing understandings, arrangements and settlements for the world-wide drastic limitation and international control of nuclear and conventional weapons and the peaceful co-existence between the

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• This paper is a scholastic work, and thus contains facts and opinions which the author alone considered appropriate and correct for the development of his subject. It does not necessarily reflect the policy or the opinion of any agency, including the Government of Greece, the Hellenic MFA and the UN-COPUOS.

2 rival geo-strategic blocs of that time-period. Two worlds divided after Winston Churchill's expression by the ideological ''iron curtain'', that was raised in 1945 and lasted for almost a half-'century (end-1989). It has been on the one side the totalitarian ''Socialist World'' of the former USSR and its satellite communist states in Eastern Europe and all other like-minded tyrannical regimes around the globe with the gulags (=exile camps) reserved for the ''dissident'' or ''reactionary'' citizens or ''enemies of the people''. On the other side, the self-styled ''Free World'' composed of the USA and their NATO allies in Western Europe, as well their friendly cruel ''anticommunist'' dictatorships throughout the Earth. Of course apart from the above 2 grand politico-military coalitions a much larger in population group of nations had also been formed in early '60s comprising numerous developing countries belonging to the ''Non Aligned'' movement and constituting the so-called 3d World. But even though its partners were the majority of the UN membership, its political power, for various reasons, was not considerable. Unfortunately this really psychotic political situation is still alive even today –but hopefully in a slightly differentiated form.

2 Space law, examined in the light of the sociology of law, is an authentic, singular legal system *(ius singulare),* the main characteristic of which is the anticipatory enactment of its rules. That means that its provisions had been introduced before the crystallisation of the social relations it had regulated. Also, the formation of space law rules had followed an unconventional and unique genuine law-making process, completely different *vis-à-vis* the usual traditional method of creation of international public law rules, in general. More specifically, at the very beginning, an international customary rule had instantaneously been generated *ad silentia*, establishing a quasi-right of inoffensive passage of space objects trough the national air space of third states. Then, UN General Assembly had approved, roughly always by *consensu* of its members, its space-related resolutions and declarations of legal principles. Finally, the crowning of the whole process was the conclusion and signature of the 5 UN Treaties on the law of outer space. It is worth noting that the texts of those instruments had not been concluded and agreed upon as usually by an *ad hoc* diplomatic conference, but had been firstly elaborated and approved by the Legal Sub-committee of UN COPUOS, then endorsed by the latter, and finally adopted almost unanimously by a special resolution of UN General Assembly. Furthermore, apart from UN, some other UN Specialised Agencies had also contributed in the creation of international space legislation. They had at the head ITU, which had set the first in the History rule of positive international law on outer space matters. It has been followed too by UNESCO and World Meteorological Organisation (WMO).

3 Concerning, now, the substance of space law rules, the following unique, unprecedented, original and innovative fundamental legal principles had been established:

a) the consecration of outer space as inalienable common heritage *(patrimoine commun)* or province *(apanage)* of all Humanity;

b) the general interdiction of any form of national appropriation of any parts of outer space;

c) the recognition of astronauts as envoys (ambassadors) of Humanity;

d) the dedication of all uses of outer space to exclusively peaceful purposes, for the benefit and in the interests of all countries, irrespective of their degree of economic, social, scientific or technological development, taking the needs of developing countries into consideration; and,

e) the denuclearisation and demilitarisation of outer space.

4 Also, space law was characterised by a number of other important particularities resulting from the geopolitical and geo-strategic conditions mentioned above, prevailing at the time of birth and first steps of growth of its rules. Those circumstances, as already said, had driven to the segregation of the post-World-War II international community. Thus space law has been born of a clearly utilitarian compromise between the 2 nuclear super-powers of that era. Indeed former USSR and USA, for obvious political motives, had preferred to disguise their substantially *de facto* bilateral relations into a formally extended multilateral association. For that reason space-related UN General Assembly resolutions and treaties had solemnly and constantly referred to international law, including the UN Charter, and international cooperation as the legal foundations of space activities. Therefore all individual national activities of the 2 Biggs in that new international extraterrestrial domain, from almost the very beginning and for at least 20 years (during '60s and '70s), had achieved their formal legal and socio-political justification in that type of international relationship.

5 In consequence, instead of an overall, systematic and integrated uniform international legal regulation of the new political and social realities that had emerged from human activities in outer space a series of rudimentary and atrophied rules had been enacted. Therefore international legislation on space activities had inevitably been adjusted to their own dual destination, *i.e.* the exploration and the use of the extraterrestrial cosmic *milieu* respectively. Accordingly, outer space was regarded, even today, under two-fold standpoints, *i.e.* as a limitless field for scientific research and as a huge reservoir of usable natural and technological resources. For that particular reason the legal regulation of space activities accomplished in the rising direction from Earth to outer space were governed by an innovatory, open and even revolutionary spirit, really celestial. On the contrary, all understandings, arrangements and settlements concerning space activities performed in the descending way from outer space back to Earth were distinguished by traditionalism, conservatism, inflexibility and stagnation. From that almost strange situation many antinomic concepts and antithetical practices were unavoidably formed regarding chiefly on the one hand the peaceful uses and on the other hand the technologies and space equipment of dual-use –civil and military. This situation had driven to exclusions, institutionalisation of transgressions and abuses as well as formal and substantial ineffectiveness of the relevant legal rules.

§ 2. The Incessant Challenges

6 As a matter of fact, despite all spectacular technological advancements and truly tectonic geopolitical transformations arisen during the last half-'century, outer space had not yet become an area of peace, welfare and happiness for all inhabitants of the globe, without exception or distinction. Instead, it continued, unfortunately, to be a field open for the development of extremely expensive ''smart'' weapon systems hundred of times more disastrous *vis-à-vis* the homicidal American A-bombs that had ravaged Hiroshima and Nagasaki in August 1945. This incredible and paranoiac action for the militarization and weaponization of outer space had very early been undertaken by the 2 old adversaries, USA and former USSR (now Russian Federation), which became the first worldwide ''teachers'' in ''anti-satellite'' weaponry. Both of them in doing so had constantly projected as legalistic pretext the safekeeping of their national defence and security interests and also, very recently, the global response against ''international terrorism'',[1]

[1] SAUL, B. DEFINING TERRORISM IN INTERNATIONAL LAW. Oxford: Oxford Univ. Press, 2006. *passim.*

evoking, at the same time, their inherent (legitimate) right of individual or collective self-defence, as provided for in UN Charter.[2] In addition some other advanced space-faring nations had also currently jointed that horrific bipolar antagonism, having at the head China, followed by Japan, India and the slowly-walking European Union.[3] Therefore that particular activity of those states in outer space constitutes an extremely dangerous behaviour, visibly contradictory *vis-à-vis* the already mentioned fundamental principles of space law. For that easily explainable reason, this inconceivable situation reminds us no so much the mythological Roman god Janus, this two-faced, cheerful and sad, door-watcher of houses. It mainly takes us back to the Victorian era schizophrenic Dr Henry Jekyll and Mr Edward Hyde, this nice physician of the day and atrocious murderer of the night, hero of the well-known homonymic novel of the Scottish writer Robert-Louis Stevenson.[4]

7 Certainly, the determinant factor for the current and further evolution of space law was the influence exercised on international life by the almost recent geopolitical and economic changes world-wide, due to 2 main causes: firstly, the dissolution, 20 years ago, of the Soviet empire and the subsequent end of the 1st ''Cold War'' that had led to the US monarchy or monopoly of power in international life, including space activities; and secondly, the commercialisation of space technology applications and so-called ''globalisation'' of space services markets, particularly satellite services of radio communication, remote sensing and radionavigation, as well as the privatisation of several space activities, mainly launching services.

8 On this opportunity it is worth stressing that the most manifest proof of the above mentioned situation resulting from Reagan's US national space policy was the enactment in August 2006 of the controversial executive order of the past-President George W. Bush Jr establishing the new American space policy for the decade 2007-2017. By virtue of this formal regulatory act, cosmic space has been proclaimed vital domain for the US national interests, including national defence and security. Therefore a *de facto* American national domination has been imposed over extraterrestrial activities, absolutely conflicting with space law rules in force commanding that space activities must serve the interests of all countries. It is also useful to underline that the phraseology of this US presidential decision had directly conducted us to the memorable arrogant declaration made in 1955 by Dr Wernher von Braun, father of the deadly German combat rocket V-2 and a Major of Nazi Waffen-SS, acceded to American Army in spring 1945 and subsequently working for the US space programmes, who responding to several American journalists strongly opposed to his naturalization as US citizen, arguing that: «*once Nazi, forever Nazi*», had provocatively raised the following purely nationalistic argument: «*Space constitutes the new frontiers of the USA.*».

9 In addition, the semantics of the above Bush's executive order had unavoidably produced –at least to the non missing memory elders and the non ignorant of history juniors– an odious referential association with the paranoiac Adolf Hitler's nationalistic and racist paroxysm stemming from his *Mein Kampf*, the Bible of Nazism, as well as his world-ruling mania manifested in his expansionist doctrine on Germans' *Lebensraum* (=vital domain). It is well-known that those ideas had been the political foundations of the detestable and brutal 3rd German Reich Nazi regime (1932-1945) that had cost to the

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[2] Article 51.

[3] SPACESECURITY.ORG. SPACE SECURITY 2009. Waterloo, Ontario: Project Ploughshares, 2009, pp 160 *& seq.*

[4] STEVENSON, R.-L. STRANGE CASE OF DR JEKYLL AND MR HYDE. London: Longmans, Green & Co, 1886.

Humanity the loss of almost 50 millions of lives and innumerable terrible material catastrophes in 3 Continents. It is something that the world never and by no means would live again. Therefore it is now very hopeful that the US new President Barack Obama had last July decided to officially submit that regrettable Chart currently governing American space activities to a single *(sic)* review only, concerning particularly the pertinent US posture *(sic)*. Of course he had, for apparent reasons, hesitated to going further and proceeds to a substantial revision, correction and completion of all vexed provisions of his predecessor's legislative act. But on the other hand he also had at the same time very correctly chosen to ask from the European Union to help him in that extremely difficult political endeavour. And fortunately a constructive dialogue is now in progress between EU and USA in the framework of the below referred recent common European initiative for the adoption of a general Code of Conduct in Outer Space (CO-COS).

§ 3. The Demands and Perspectives

10 Existing needs for international legal regulation of space activities are mainly amounted to 2 sets of fundamental problems and parallel requirements. The first one comprises the safeguarding of equal and just participation of all Earth's inhabitants in the enjoyment of fruits of space exploration and the strengthening of international cooperation, solidarity and assistance to feeble peoples and countries. And the second one includes the preservation of natural integrity and harmony of extraterrestrial cosmic ecosystem, its protection from orbital debris and, finally, the complete and definitive ban of its militarization and weaponization. As Greece, first among all other countries, had already stressed from 2001 before the UN-COPUOS (by author's interventions), the concern of international community regarding near and farther future of space activities and their impact on human lives and terrestrial and extraterrestrial natural environment, is today, much more than in the past, directly and firmly connected with the future of Humanity and the analogous fears and anxieties as well as hopes and perspectives of all nations. Because these days, Earth is in danger of disaster not only from the breakout of a nuclear war, but also from man-made modification and destruction of natural environment and their obvious present and forthcoming inevitable repercussions. Among them the first one was the radical change of Earth's climate and its effects on the existence of not only humans, but also fauna and flora on our planet. The most typical warning signs of that horrible situation are the decrease of ozone layer in Polar Regions, the acid rain, the thaw of ice-fields, the shortage of water, the disappearance of forests, the desertification of rural areas, *etc*.

11 Of course, current perspectives for a direct and constructive response to all above mentioned urgent and distressing demands of Humanity by introducing specific international conventional legal provisions are not quite promising. However some UN and UNESCO not legally binding recommendatory texts were useful enough to revolutionize existing unfortunate and sometimes even perilous situation. In fact, those international texts are surely adequate for the establishment of appropriate rules of conduct both for states and private entities dealing with space activities, in order to serving the interests and working for the benefit of all Humanity. In that context the following 5 basic questions are now raised:

a) Is it a necessity to form a new set of ethical rules for space activities in parallel to the already existing international legal rules?

b) Apart from existing international legal rules, are there and other not legally binding

principles or standards of conduct governing extraterrestrial activities? And if yes, what is their relationship with international space legislation in force?

c) Are existing there extra-legal or ''pre-law'' or ''meta-law'' rules of conduct being respected and implemented by all actors of space activities (states, international organisations and private entities), although they are not formally consecrated by a binding international treaty?

d) Are those extralegal principles of conduct contained into not legally binding space related declaratory or recommendatory acts of the UN General Assembly and other above mentioned intergovernmental organisations?

e) What is the reason for which actors of space activities are feeling bound to comply with the said extra-legal principles or standards of conduct?

12 To those really critical questions it seemed proper and sufficient to give the following single, common and uniform reply: It is crucial to build-up a new legal, political and social framework for the human activities in outer space the soonest feasible. A framework emancipated and free from all past ideological stereotypes and geopolitical egoisms, completely liberated from all terrestrial scleroses and psychoses that had dominated international life during the just expired 20th century. And also inspired from the principles determined by the universal obligation to serving the vital living (physical, psychological and intellectual) needs, common to all human beings. For that reason the distinguished international lawyer Wilfred Jenks, from the initial already phase of the space era (1965), had rightly emphasized that: *«We cannot afford to imprison the development of space law in concepts and prejudices derived from an earlier stage in the development of international law, in which responsible international lawyers no longer believe. The cloven hoof of sovereignty and sterile semantics of inductive positivism have no place in space law.»*.[5]

13 All these thoughts, of course, practically mean that it is indispensable to rapidly enact a series of binding international law rules of general approval and universal application, which will impose to all –governmental and private– actors of space activities the following, *inter alia*, obligations:

a) to maintain outer space free from weapons and orbital debris;

b) to preserve the integrity and genuine nature of extraterrestrial cosmic ecosystem;

c) to diffuse the scientific and technological knowledge and experience acquired from space activities all over the world;

d) to refrain using the resources from space activities in order to transform Earth into a military target and a Orwel's detestable totalitarian farm of spineless and pathetic animals;[6]

e) to respect the cultural identity and different socio-political opinions of all nations;

f) to protect human rights, including those of future generations.[7]

Consequently, every international legal regulation of space activities has to take the needs and rights of not only contemporary, but also forthcoming generations into con-

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[5] JENKS, C.-W. SPACE LAW. London: Stevens & Sons, 1965, p. 315.

[6] ORWELL, G. ANIMAL FARM: A FAIRY STORY. London: Secker & Warburg, 1945 (Also, Burnt Mill: Longman, 1991); NINETEEN EIGHTY-FOUR («1984»). London: Secker & Warburg, 1949.

[7] ROUCOUNAS, E. *Y-a-t-il place pour des «Droits de l'homme des générations futures»? in*: UNIVERSITY OF ATHENS, «CHARMOSSYNON» - STUDIES IN HONOUR OF A. MANESSIS. Athens: A.N. Sakkoulas,1999, v. III, pp. 615-620.

sideration, in order to protect individual persons and peoples of our planet from all abusive and dangerous uses of those amazing and precious delicious fruits that outer space continuously produces and generously provides to all human beings, without exception or distinction.

B. THE NEEDS

> ***«It is not possible to make valid regulations unless one is also concerned with principles.»***
> RICHARD E. BUTLER (ITU Secretary-General 1982-1989)

§ 1. Preventing Weaponisation of Outer Space

14 The drastic limitation of all armaments world-wide, clearly including outer space, constitutes a specific imperative international legal obligation for all UN member-states. Indeed, UN Charter in order to promote the establishment and maintenance of international peace and security provided for the minimisation of the diversion *(détournement) (sic)* for armaments of the world's human and economic resources. That means it seeks at the radical restriction of those anomalous uses or disposal of said limited resources of Humanity. For that reason, UN Charter had especially commissioned Security Council to formulate, with the assistance of the Military Staff Committee, plans for the establishment of a system for the regulation of armaments and possible disarmament.[8] Those provisions are also, *inter alia*, the origin of the pertinent international obligation and parallel responsibility of all UN member-states to favour instead of undermine and impede various international initiatives for ensuring peaceful uses of outer space and, consequently, safeguarding world's peace and security especially during the present post-Cold-War era.[9] Besides, 2 very important similar initiatives were currently trying to attain that magnificent objective: the first one is the joint proposal of Russia and China for the conclusion of an international multilateral treaty on the prevention of placement of weapons in outer space (PPWOS); and, the second one is the above mentioned common proposal of European Union for the adoption of a general Code of Conduct in Outer Space.

15 Also it is worth noting that above mentioned international legal obligation of all UN member-states regarding arms control *etc*., is of general application and operative *erga omnes*, not susceptible to exceptions for any reason or cause and, thus, applicable too in space activities. Because as professor Roger Pinto stressed: *« (...) the refusal of several states to recognise in some cases, selectively, the binding character of a number of international law rules by evoking their national vital interests or situations of necessity or, even, their political and social regime, in order not to observe various rules of international law or to be exempted from their application, did not constitute well-founded reasons and legally valid deviations, but clearly political exclusions. Against that last dangerous and legally false position stands the principle of international co-existence, which exactly commends that international law rules are binding erga omnes, in spite of the political and social regime established in each state»*.[10] Accordingly, the common legal obligation for all states to use outer space for exclusively peaceful purposes aims not only at the complete refraining from any kind of military activity in, or from it, *i.e.* either ''peaceful'' or *a fortiori* bellicose –regardless of its formal

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[8] Articles 26, 47 § 1.

[9] UN SECRETARY-GENERAL REPORT (A/48/2210).

[10] PINTO, R. LE DROIT DES RELATIONS INTERNATIONALES. Paris: Payot, 1972, p. 125.

designation either as defensive (both suppressive or preventive) or aggressive. That obligation implies too the safeguarding of free and unimpeded exercise and implementation of the common right of all international community members in participating to the usufruct of the outcome of space activities without any exception or distinction. These findings become clearer when considering the enormous public and private economic interests, linked to the commercial exploitation, on national and international levels, of various space science and technology applications covering quotidian needs of contemporary humans.

16 Thus, it remains always in time the realistic judgment of Kant affirming that: «*Just as Nature wisely separates nations, (...) would also gladly unite nations, which could not have secured themselves against violence and war by means of the cosmopolitan (planetarian) law (Weltbürgerrechts) (World citizenship law); and, that, because of their mutual interests (selfishness). It's about the spirit of commerce (exchange) (Handelsgeist), which is incompatible with war and, sooner or later, will seize every nation. Therefore, as among all powers (Mächten) (means) (Mitteln) (ways) subordinated to the power of the state, the power of the money (Geldmacht) is, no doubt, the most sure (credible), states see themselves forced –not, surely, by virtue of any moral motive– to work for the progress of peace, that noble thing, and by mediation to prevent war wherever in the World it threatens to breakout, exactly as if they were bound to do so by a perpetual alliance. (...) In this manner Nature guarantees perpetual peace by the sole mechanism of human tendencies. And, even though the certainty she provides is not sufficient for us to predict (theoretically) the future, nevertheless it is relatively adequate from a practical standpoint to making it our duty to work toward this end (hinzuarbeiten) –which is not just a purely chimerical one.*».[11]

17 That age-long noble idea of consolidating world peace through law, which apart from Kant, had also been advanced and cultivated by many other illustrious thinkers exponents of the *legal pacifism* doctrine of at least 4 last centuries, like, *inter alia*, Grotius, de Saint-Pierre, Montesquieu, Fichte, Scheler, as well as in modern times Aron and Habermas,[12] had nowadays found its *par excellence* expression throughout the provisions of space law –despite, certainly, their imperfections, *lacunae* and inadequacy. For that reason it is necessary to complete, the soonest feasible, all substantial legal *vacua* and defectiveness of remaining unfinished rules of space law, in order to upgrade and strengthen their effectiveness and broader applicability. To that end it is indispensable to update, improve, readjust and finish by rewriting, and also complete by writing new, all existing rudimentary space law rules and then integrate them into a single comprehensive international treaty. This is the most proper and efficient way to respond to the incessant challenges emerging from the constant progress of space science and technology and the continuing multiplication of their applications and uses in everyday practical life.[13] Besides, this is exactly the objective of the joint initiative of Russia and 9 other nations –space-faring and not space-faring,[14] that is pending from some years ago before the Legal Sub-Committee of UN COPUOS. This proposal had highlighted the need to get together and tidy up all existing fragmented and incomplete space law rules, which

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[11] KANT, E. PROJET DE PAIX PERPETUELLE, APPENDICE II (§ 368) *in:* (*Édition bilingue; Texte et traduction de J. Gibelin*). Paris: Libr. Philosophique J. Vrin, 1999, pp. 81-83; (*Nouvelle traduction de l'allemend par K. Rizet; Postface par J. Vérain*). Paris: Éd. Mille et une nuits, 2001, pp. 38-39. *(Translated by the author from the previous French texts).*

[12] LEQUAN, M. LA PAIX *(Textes choisis, Introduction, Commentaires)*. Paris: GF Flammarion (Coll. *Corpus*, № 3026), 1998, pp. 143 *& seq.*

[13] LACHS, M. THE LAW OF OUTER SPACE. AN EXPERIENCE IN CONTEMPORARY LAW-MAKING. Leiden: A. W. Sijthoff, 1972, p. 149, *in fine.*

[14] Bulgaria, China, Colombia, Czech Republic, Greece, India, Iran, Kazakhstan, Ukraine.

were, today, scattered amongst the 5 UN outer space treaties. And also it had suggested proceeding to the progressive development and codification of those international legal rules in order to adapt them to the recent scientific, technological and socio-political situations. Unfortunately, that constructive multinational scheme, which fully complies with the pertinent provisions of the UN Charter,[15] as well as the UN Action Plan for the application of international law of 2000,[16] has been repeatedly rejected by USA and a small number of other like-minded countries evoking different vague and slightly convincing legal arguments, *vz* alleged reasons.

18 Hence the only ray of hope to bring to an end militarization and weaponizason of outer space and reach a real and essential change of that extremely hazardous situation for world's peace and security is the extensive and sincere international cooperation mainly by the promotion and successful development of joint multinational manned and robotic civil space programmes, the foremost of which is, today, International Civil Space Station (CISS). But the achievement of that superb goal logically presupposes the adherence of the wider possible number of states to the existing 5 UN Space Treaties and other very few similar international instruments that actually forming the *Corpus iuris cosmici*. Because the submission of presently just about 150 non-faring UN member-states to the legal regime of said treaties is the sole convenient way to strengthening and securing their vital rights resulting from the rule of equitable sharing of benefits from space activities, the most significant of which is the restitution of damage or loss that might be suffering from activities of remaining no more than 40 space-faring nations. That is the key motive for promoting the broadest achievable universalization of the 5 UN space treaties by persuading all these states to ratify or accede to those instruments.[17] And in addition that is also the urgent need to encourage the widest possible dissemination of knowledge in space law, particularly by expanding its teaching to all education levels, like *e.g.* in Japan, exactly to create a common space culture within the general public and particularly the youth of all nations, and therefore generate positive conditions for the growth and world-wide reign of the noble ideas of the legal pacifism. In other words to facilitate the realization of world peace through Law.[18]

§ 2. Guaranteeing the Rights of all Humanity

19 It had been commonly clear and established from already 50 years that outer space seen as a homogeneous cosmic ecosystem is not subject to any form of appropriation from anyone and accordingly could not be the estate of anybody even governmental agency or private entity administrating or exploiting some of its resources. Therefore, what is only permissible to do is the unimpeded use of its natural and technological resources by all humans, under specific strict legal terms and firm technical conditions. On this opportunity, it should also be stressed that the simple pronouncement that outer space constitutes an inalienable common heritage or province of all Humanity *etc*. predestined to serving the common interests of all nations, without providing at once a proper warranty for the true usufruct of its precious resources and in particular on a reasonable,

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[15] Article 13, *litt. a)*.

[16] UN ACTION PLAN, STRATEGY FOR AN ERA OF APPLICATION OF INTERNATIONAL LAW, adopted by the Senior Management Group (SMG) and approved by the Secretary-General, June 2000.

[17] UN GA RESOLUTION 48/39; UN-COPUOS, LEGAL SUB-COMMITTEE, A/AC.105/826/16.4.2004, ANNEX I, pp. 24-31 *(Model letter from the Secretary-General to the Ministers for Foreign Affairs of States that have not yet become parties to the United Nations treaties on outer space).*

[18] UNISPACE III, RESOLUTION *«The Space Millennium»* and UN GA RESOLUTION 54/68/6.12.1999.

economic and equal basis, then this is equivalent to a complete deny of justice.[19] Because it is not sufficient to make a general and almost theoretical reference and broad appeal only to the relevant rights, but to make certain that their real exercise and implementation in practice has been absolutely guaranteed. This is *a fortiori* valid principally regarding the needs of economically and technologically immature countries, the development and progress of which constitute an imperative categorical command binding upon all scientifically and industrially advanced nations.

20 Consequently, space law rules should necessarily provide for, and impose to all states as well as their global and regional associations, the common legal obligation taking care that outer space will eternally remains peaceful, open and always accessible to all nations of the world, and source of sustainable happiness for all human beings without distinction. And additionally will not be transformed into an arena for competitive development of combat arms capable to exterminate the human race and alter the natural environment in just one moment. For that reason it is absolutely necessary and indispensable to safeguard and strengthen the multilateral, intergovernmental and universal character of all legal rules regulating space activities as a whole and not as separated partial actions. And also to reinforce the role of the UN and its Specialised Agencies responsible for supervising space-related activities, by giving to their noble universal mission a new orientation and an innovative objective.[20] That was, exactly, the origin of the excellent idea of Wilfred Jenks who in 1968 had recommended that the UN General Assembly should adopt a non legally binding Declaration consecrating science and technology in the service of man, and later transform it into an international treaty, exactly as it had been done in the preceding case of the UN Declaration of 1963 on the legal principles governing the activities of states in the exploration and use of outer space.[21] This proposal had been launched within the general efforts for the organisation of a modern international legal system ensuring not only international public order, but also the transition from the welfare state to the welfare world.[22]

§ 3. Creating a World Space Organisation

21 All previously cited ideas did not mean that current international institutional organisation of space activities related particularly to the uses of outer space for peaceful purposes and the prohibition of developing weapons up there, is satisfactory, appropriate and effective. And thus there were neither any reason nor need for its radical reorganisation, improvement and reinforcement. On the contrary, as it had been a lot years ago suggested by several distinguished international lawyers and numerous states, including big space-faring powers, it is necessary to adopt a radical restructuring of existing weak and ineffective institutional framework of space activities. To reach that end it should be indispensable to create a new unified and centralised intergovernmental organizational system responsible for the international administration and control of space activities, and operating on the basis of generally recognised principles and rules of international law and justice. For that reason it is today than never before, absolutely critical to reiterate and restart considering some proposals that are pending from many

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[19] SCELLE, G. MANUEL DE DROIT INTERNATIONAL PUBLIC. Paris: Domat-Montchrestien, 1948, pp. 376 *& seq.* SINGH, N. *Le Droit des Espaces Internationaux. in:* BEDJAOUI, M. (Éd.). DROIT INTERNATIONAL: BILAN ET PERSPECTIVES. Paris: Pedone, 1991, §§ 10, 13.

[20] UNISPACE III, REPORT (UN DOC. A/CONF.184/6/1999), §§ 409-410.

[21] JENKS, C.-W. *The New Science and the Law of Nations, in:* ICLQ, v. 17 (1968-2), pp. 327 *& seq. passim* and esp. pp. 337-343.

[22] JENKS, C.-W. *Law for a Welfare World, in:* INSTITUT DU DROIT INTERNATIONAL. ÉVOLUTION ET PERSPECTIVES DU DROIT INTERNATIONAL *(Livre du Centenaire 1873-1973)*. Bâle: S. Karger, 1973, pp. 124-127.

years, seeking at the establishment, within the UN institutional family, of a World Space Organisation, empowered of ensuring the conduct, in general, of space activities for exclusively peaceful purposes, also excluding all forms of military uses, regardless their objectives.

C. THE MORAL

«Nothing immoderate men shall do in their life, without facing with the disaster.»
SOPHOCLES (495-406 B.C.) (ANTIGONE, *versus* 611-614)

§ 1. Satisfying the Human Needs

22 As all of us very well know, outer space had already provided and will continue to offer long series of fruitful applications that undoubtedly facilitated and improved life conditions and contributed to the welfare of all human inhabitants of our planet, especially peoples suffering from famine, illness and analphabetism.[23] On the other hand, outer space has unfortunately been used for abusive and harmful purposes provoking catastrophic damages in the natural and socio-cultural environment of the Earth and beyond it.[24] For that reason the major concern of all peoples still stay with the avoidance of extending into the cosmic space the various terrestrial geopolitical antagonisms and primarily the foolish race to armaments that constitute a high hazard of war. As it was already said, cosmic space, that inimitable *magnum opus* of Creator,[25] exactly like Earth its integral part, is not the estate of anybody. Hence, all residents of the Globe as simple ephemeral hosts of this unrivalled Garden of Eden and transient administrators of its precious resources, have: *«to work it and take care of it»;*[26] that is to say cultivate it and maintain it, *i.e.* mind to remain imperishable.

23 Consequently, a common obligation and parallel responsibility rest upon nations and primarily their governments in securing that all those scientific knowledge and technological applications emanating from space activities will be perpetually used for satisfying everyday needs of Humanity only, and not, on the contrary, employed for its extermination. It is therefore imperative for the survival of Humanity to work all together to preserve and consolidate the divine gift of world peace and refrain from any immoderate use of natural and technological resources of outer space. The achievement of that objective must *a fortiori* constitute the permanent guiding rule and highest duty for all planners, developers and implementers of space programmes and missions. Because our magnificent *«world, the small and the big»*,[27] where we are residing today and will live too all future generations of not only human beings, but also every other animal and vegetable species on Earth, until the Last Day, it is not admissible to be transformed into an unliveable gloomy inferno as a result of the illegal and really cruel activities of some paranoiac, voracious and, why not, criminal governments.

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[23] UN DOC. A/CONF.184/BP/13 (Space Benefits for Humanity in the 21st Century).

[24] JASENTULIYANA, N. & KARNIK, K. (Eds). SPACE FUTURES AND HUMAN SECURITY. Vienna, UN-OOSA, 1997. *passim*, esp. pp. 47-73, 123-190.

[25] *«The heavens declare the glory of God; the skies proclaim the work of His hands.», in:* PSALM 19:1.

[26] GENESIS 2: 8, 15.

[27] ELYTIS, ODYSSEAS (1911-1996) (Greek Poet; 1979 Nobel Price in Literature). «AXION ESTI», *in fine*.

§ 2. Sustaining the Human Dimension in Space Activities

24 Therefore, the leading requirement in all next phases of evolution of space law should be the strengthening of the common commitment of all governments and individual citizens of the world to sustain the pre-eminence of the human dimension in space activities. In other terms, to secure that man *(Anthrōpos)* (=human being), who after the great Greek tragic poet Sophocles (495-406 B.C.) is: «*the more formidable thing in this world (...), endowed by the Gods with reason, the most precious of all possessions*»,[28] still remain «*the measure of all things*» (=values), as had taught the famous pre-Socratic philosopher Protagoras (*ca*. 490-420 B.C.).[29] That means, man as a distinctive and unique biological genus on the Earth and not as a simple total of temporally finite individual persons. This is Humanity as a whole, to which are included all present and future human generations, and which also constitutes integral part of the Universe.[30] From this incontestable natural fact arises the perpetual universal moral and political –and not only legal– common obligation of all members of international community to care for the preservation, protection and sustainability of the cosmic ecosystem to which are directly belonging. That broad obligation naturally comprises the special common duty of all to use outer space exclusively for peaceful purposes. Definitely, Universe, that splendid work of the divine wisdom, the great and marvellous miracles of which space activities brought more and more closer to the eternally limited and imperfect human knowledge, must stay untouchable and remain unaffected from any catastrophic human activity, the most horrible of which is the war. And so because as perfectly Kant affirmed: «*for the simple morally practical reason that it is not possible to meet your rights by the war.*».[31]

§ 3. Maintaining Outer Space Perpetually Peaceful

25 The universal reign of perpetual and constant common peace on Earth by maintaining extraterrestrial cosmic space out of all forms of military uses, must be the noble and pious end inspiring and directing the mind and action of space law legislators and international lawyers, in view of the indisputable fact that: «*Peace is beneficial and power for the state; war ends at the demolition of the state.*», as Athenian orator Andocides (440-ca 391 B.C.) perfectly emphasized in his oration: «*On the peace pact with Laconians [Spartans].*». And furthermore because, following to Kant's aphorism: «*Peace is not a part, but the whole of the supreme end [telos] of the Law*».[32] On this specific matter too, professor Manfred Lachs had stressed that: «*law's paramount task is to prevent man to become prisoner of the forces he himself has let loose, and eventually their victim, to arrest this process of decay and to canalize the uses of science in the interests and for the good of Mankind.*».[33] And also Wilfred Jenks talking on the same issue had concluded that: «*the substance of the law will increasingly consist of rules to guarantee the common peace and to promote and secure economic stability and growth, human rights and fundamental freedoms, social justice, and the dedication of science and technology to the common good. The emphasis will have shifted from the formal structure of the relations among states and the precarious discipline of their endemic hostility to*

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[28] SOPHOCLES. ANTIGONE, *versus* 332-333, 683-684.

[29] «*Man is the measure of all things: of things which are, that they are, and of things which are not, that they are not*», *in:* DUMONT, J.-P. & al. LES PRESOCRATIQUES. Paris: Gallimard (Coll. Bibliothèque de la Pléiade), 1988, pp. 983-1007, 1524-1536. Also, in: DIELS-KRANZ. FRAGMENTA (80B1), PLATO. THEAETETUS (151e). SEXTUS EMPIRICUS. VERSUS MATHEMATICIANS (VII, 60).

[30] DINH, N.-Q. (DAILLIER, P. & PELLET, A.). DROIT INTERNATIONAL PUBLIC. Paris, LGDJ, 1999 (6e éd.), pp. 1221-1286, esp. §§ 755, 756, 760.

[31] KANT, E. PRINCIPES METAPHYSIQUES DU DROIT, SUIVIS DU PROJET DE PAIX PERPETUELLE *(2e édition en français etc., par Joseph Tissot).* Paris: Libr. Philosophique de Lagrange, 1855, p. 243.

[32] KANT, OP. CIT., *in: supra notam* 18, p. 244.

[33] LACHS, OP. CIT., *supra notam* 12, p. 149.

the fundamentals of the freedom and dignity of man. The law will have become the law of a true community, nourished by, and giving nourishment to each successive stage in the development of the community. In the law so conceived the general welfare will be a legal interest enforceable by, and for all. In giving reality to this great vision we will be fulfilling the richness of our moral, our cultural, our political and our legal heritage.».[34] That is exactly what the great Greek philosopher Aristotle (384-322 B.C.) had first said arguing that: *«The supreme political good is Law (=justice), which is the common (=public) interests.».*[35]

26 Consequently, regarding those roughly new category of ultra-hazardous human activities,[36] it still remain opportune and equally valid what professor Georges Scelle emphasized *à propos* of radio communication, in saying that: *«l'extrême du bien et du mal est au fond de cette activité» (the extreme of good and evil is at bottom of this activity).*[37] For that sole reason, space activities must be conducted with great prudence and wisdom, without arrogance and immoderation. In ancient Greece both arrogance and immoderation *(hypervolis)* (=lack of measure) were considered as a great fatal sin *(amartēma),* a blasphemy *(hyvris)* against the Gods, provoking their wrath *(minis)* and resulting in the inexorable divine sanction of entire catastrophe (*hati*) of its perpetrators. Speaking on that critical ethical issue the major ancient Greek tragic poet Æschylus (525-456 B.C.) in his greatest work «*Perses*» [The Persians] emphasised: *«Rigorous righteous judge watches on from the very high [god] Zeus [Jupiter] and the excessive arrogance of humans ruins without mercy.».*[38] Similarly, his prominent homologue Sophocles in his supreme work «*Antigone*» highlighted: *«When man confuses the evil with the good, it is because the God is driving his mind towards the most disastrous sin; and, then, the remaining time for him is very short until he is faced with the disaster.»,*[39] and concluded as follows: *«Tomorrow and in the future, as in the past, shall govern this law: nothing immoderate men shall do in their life, without facing with the disaster.».*[40] Also, the illustrious Persian national poet Ferdowsi (or Firdusi) (*ca.* 932-1020 A.D.), in his legendary epic «*Chahnamē*» stressed: «*Wisdom is a gift from Heaven/ send down to Man./ Look if the gift is well-deserved,/ the monster who is bereft of wisdom/ has no takers in the whole World.*».

27 Finally, instead of any concluding remarks and ideas for the prospective role of space law in relation to the future human activities in the extraterrestrial cosmic space and particularly concerning its proper and beneficial uses for all Humanity, it seemed more suitable to simply repeat 3 statements of excellent political, moral and also special legal significance. They were made exactly 40 years ago at the moment of the first historic descent of human beings –the American astronauts Neil A. Armstrong and Edward E. (Buzz) Aldrin, Jr– at the Sea of Tranquillity in the Earth's silent natural satellite during the successful execution of the really extraordinary first manned lunar mission *Apollo-11* (20.7.1969). And they still being valid for all nations and their governments, as they had solemnly confirmed the existence and power of fundamental principles of international space law originally expressed by the UN Declaration on Legal Principles of 1963,[41] and

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[34] JENKS, OP. CIT., *supra notam* 5, p. 343 *in fine*.

[35] POLITICS, III, 6, 1.282B, 16 and 7.

[36] JENKS, C.-W. *Liability for Ultra-Hazardous Activities in International Law, in:* RCADI, v. 117 (1966-I), *passim*, esp. pp. 105-110, 147-157, 160-175.

[37] JENKS, *Ibid.*, and SCELLE, OP. CIT., *supra notam* 4, p. 498 *& seq*.

[38] ÆSCHYLUS. PERSES, *versus* 821-822.

[39] SOPHOCLES. ANTIGONE, *versus* 620-625.

[40] *Ibid.*, *versus* 604-605, 611-614.

[41] UN GA RESOLUTION 1962 (XVIII)/13.12.1963.

afterwards consecrated by the UN Outer Space Treaty of 1967.[42] The first one of them was the pronouncement made by Armstrong when he had just set foot upon the dusty soil of the Moon, modestly stated that his achievement was: *« ... one small step for a man, ... one giant leap for Mankind.»*.[43] The second one was the message of the US then-President Richard M. Nixon (1913-1994) formulated during his direct telephone conversation with the 2 astronauts on the Moon: «*Neil and Buzz (...) this certainly has to be the most historic telephone call ever made. (...) Because of what you have done, the heavens have become a part of man's world. As you talk to us from the Sea of Tranquility, it inspires us to redouble our efforts to bring peace and tranquility to Earth.*».[44] And, the third one was the reply of Armstrong to Nixon's exciting words: «*It's a great honor and privilege for us to be here, representing not only the United states but men of peace of all nations, and with interest, and a curiosity and a vision for the future.*».[45] To those 3 statements had also been harmoniously added the following laconic declaratory epigram engraved in a small plaque affixed on the landing-stage of the lunar module *Eagle*, which is still on the Moon: «*Here men from the planet Earth first set foot upon the Moon July 1969 A.D. We came in peace for all Mankind.*».[46]

Let's hope and wish that the respect of the divine gift of peace and the welfare of all Humanity through intimate and sincere amicable cooperation among nations will remain for ever the only inspiring end for all human activities in the extraterrestrial cosmic space. Besides, that was the spirit of the verses of another famous Persian poet Hâfez (or Hafiz) (1325-1390 A.D.), who urged: «*Plant a tree of friendship and it will bear you fruit to your heart's content. Pull out the sapling of enmity, for it will cause you untold harm.*». And if it is so, «*Then, Earth is like the celestial empire and the mortals are equals to gods.*».[47]

Tehran, 8th November 2009 A.D.

V. G. C.

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[42] UN GA RESOLUTION 2222 (XXI)/19.12.1966.

[43] NASA. APOLLO EXPEDITIONS TO THE MOON. Washington D.C.: NASA, 1975 (SP-350), p. 215.

[44] *Ibid.*, p. 216.

[45] *Ibid., in fine.*

[46] *Ibid.*, p. 202.

[47] *«Dann ist die Erd ein Himmereich,/Und Sterbliche den Göttern gleich.», in:* MOZART, W. A. DIE ZAUBERFLÖTE *(The Enchanted Flute),* ACT I, *in fine* (Chorus).