

IISL-ECSL Symposium Celebrating the 30th Anniversary of the Outer Space Treaty
Held on occasion of the thirty-sixth session of the Legal Subcommittee of COPUOS
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OUTLOOK ON SPACE LAW OVER THE NEXT 30 YEARS

by

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Dear Mr. Deputy to the Director General of the United Nations Office at Vienna, and Director of the Office for Outer Space Affairs,
Dear Mr. Chairman,
Dear delegates,
Dear friend,

1. It is for me a signal privilege to be with you today at this symposium intended to mark the thirtieth anniversary of the entry in force of the Outer Space Treaty (OST) and to make a modest contribution to this celebration in the form of this book. To present to you the results of ECSL's research is for me a great honour and something of a challenge. You may well find us somewhat presumptuous in presenting to you this essay in which we try to imagine what the Treaty would look like if we had today to formulate the basic concepts, draft a text and negotiate it for the thirty years to come. It is not my intention to sing the Treaty's praises or highlight its weaknesses; it is easy to criticize, as we all know.

2. Space activity has come a long way since the Outer Space Treaty was adopted. If we compare the first questions that were asked in its early stage by the UN Committee on Outer Space, with those that arise today - or can reasonably expect to arise - there is certainly quite a gulf. But to my mind that is not what matters. What is important above all is to consider the purpose of the underlying legal rule that space activities should be pursued for the benefit of all, of all mankind. The ability to ask questions is a distinctive human trait. Why should we have to wait until circumstances force us to use that ability ?

Since it was adopted the Treaty has been

much analysed and criticized. Was there any need for yet another review of its content? I have to confess that our secret desire, and I say this with all due modesty, was to try to bring a little fresh thinking to the debate, from a different angle. It seemed to us preferable to work from the assumption - one I am sure you will accept - that the OST forms the basis of space law and to give thought to the recent and continuing changes in the legal area.

3. How is space law evolving in an environment itself undergoing change? First of all the players are of course no longer the same. At the time the Treaty was written the two superpowers, the USA and the USSR, were the unchallenged leaders in the space domain and the prime movers of the legal texts. And although many other States were taking a close interest in the utilization and exploration of this new frontier, they were as yet no more than passive onlookers.

The two original space powers have now been joined by many other players. Space activity is no longer the exclusive privilege of states. For a number of years now private firms have also been active in the space field. COPUOS of course continues to be active and declarations and statements of principles are still adopted. But these are now far from being the sole regulatory source in this area of activity. Account now has to be taken of many other sources of space law.

A number of states, such as the United States, the United Kingdom Sweden, South Africa, Japan, Russia and Argentina have developed or will develop national space legislation. An ever-expanding network of

multilateral and bilateral relations is taking shape. Other international organisations within the UN family such as the ICAO, UNESCO, WIPO, WMO and organisations more specifically concerned with space, examples being Intelsat, Eutelsat, Inmarsat, ESA, Eumetsat, Arabsat, Intercosmos, and finally scientific organisations like COSPAR, Astronomical Union IAF (and IISL), intervene in the codification of space law. These various types of relation all give rise to contracts, agreements and understandings. Many legal disciplines now come into play. We are no longer talking about public international law but also about private international law commercial law criminal law, civil law, patent law..... The regulatory framework for space activity has become exceedingly complex.

This proliferation of bodies and law flows from the rapid increase in the range of activities and their newly acquired accessibility. Another inevitable development is the emergence of new forms of law, such as soft law. What sort of direction should we be taking ?

4. On this book

It consists of more than thirty contributions by European authors, members of ECSL, some of them academics, some business professionals, all having some kind of involvement in space law and is devoted to a substantial number of issues (you will recognize the main chapters of the Treaty):

- the actors
- the status of Outer Space, including celestial bodies, and its use
- space objects
- man in space
- liability
- registration, jurisdiction and control, ownership
- settlement of disputes
- forms of cooperation
- environment of Earth and space
- remote sensing
- commercial activities

The last part of the book is devoted to the role of the Legal Subcommittee.

5. On that basis we built a collective effort to reflect on current and emerging activities. What today is the relationship between space activities and the Charter of space law? What is the status, the place of these rules of law when confronted with the new situations and players to which we have referred? While the authors raise many questions they suggest few answers, that was never really our intention, simply a stimulus for further reflection. Nobody thinks the recognised international space law that has been applied for many years now has become obsolete. That would be to call our entire legal basis into question. But it may well be that this international corpus of law calls for some adaptation, enlargement, additions, in the light of new realities. We have left our crystal ball at home for we know there are no limits to human imagination and inventiveness. We can be sure that new forms of space transport will be devised, that humans will go back to the Moon and will set foot on Mars, new domains will be opened (microgravity), new benefits for the conduct of terrestrial activities: worldwide communications (information highways etc.), navigation satellites, etc. Facilities for living and working in space will become commonplace; with all the attendant technical consequences, some of which will be undesirable. We will of course have to join forces in addressing such problems as space debris, intellectual property rights, patents, code of conduct and new forms of international cooperation. Coming back to the question of the purpose of space law and hence to Article I of the OST, we will have to consider the ethnics of space activities and how best to resist growing pressure to depart from accepted principles. How can we hope to ensure the continuation, for instance, of scientific work and in particular astronomy and astrophysics, if we fail to take timely actions to regulate certain space activities inconsistent with that work ? How to protect privacy of our life ? (I limit myself to civil activities).

6. We must pull together on this task and we must see COPUOS as not only the father of the Space Law but also as the focal point for coordinating, at legal level, the acts and responsibilities of the various players, organising exchanges of views in order for all to work with a common objective and full knowledge. If this

focal point, this force for coordination and progress ceased to exist, the benefits hitherto derived from the Treaty could be placed in jeopardy.

It is hoped that this book, intended to highlight new space-related issues, certainly not exhaustive, will arouse interest among interest among the "space audience" which you are representing today. It is now an honour for me, as Chairman of the European Centre for Space Law, to present the book to you, Mr. Jasentuliyana, as a token of gratitude for the work already done by the Legal Subcommittee and as an encouragement for the years to come.

I would also like to express special thanks to Mr. Mikulka, our Chairman, and yourselves, ladies and gentlemen, for your kind attention.