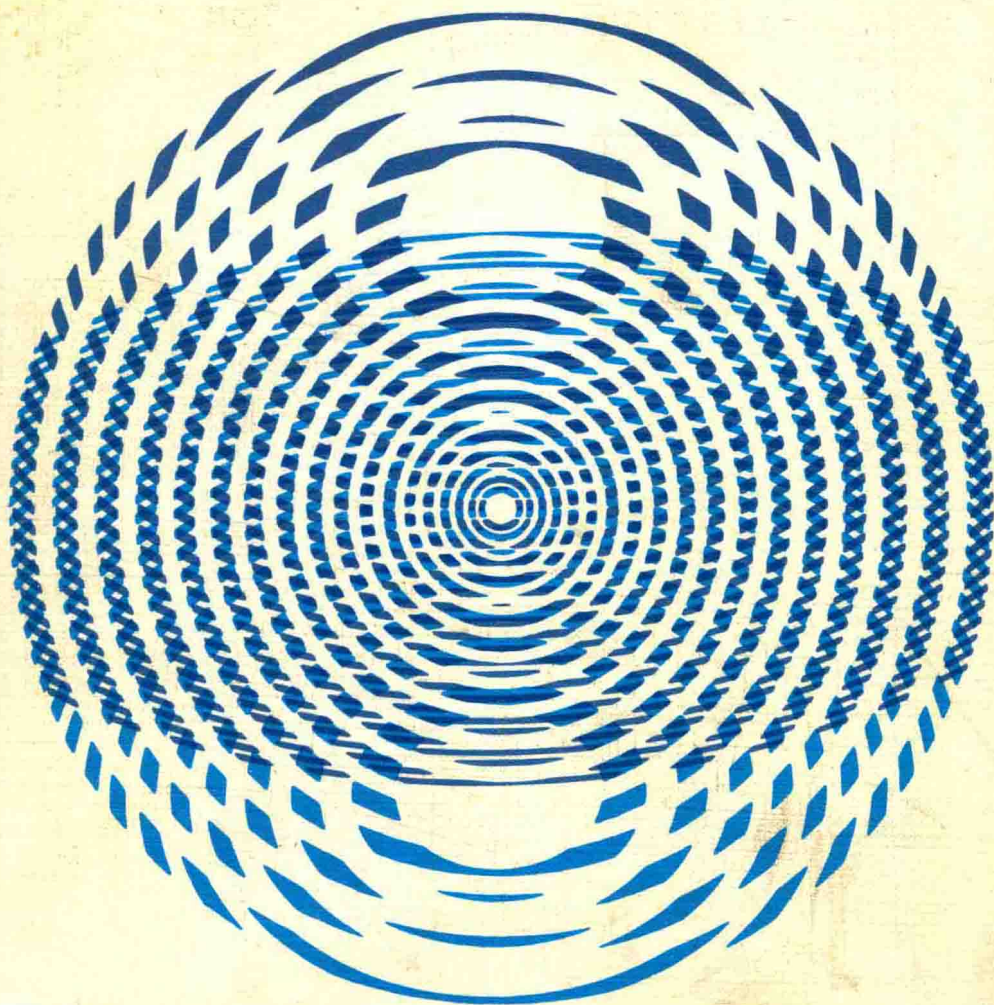

Maintaining Outer Space for Peaceful Uses

Edited by Nandasiri Jasentuliyana



THE UNITED NATIONS UNIVERSITY

MAINTAINING OUTER SPACE FOR PEACEFUL USES

Proceedings of a Symposium Held in The Hague, March 1984

Edited by Nandasiri Jasentuliyana

THE UNITED NATIONS UNIVERSITY

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PREFACE

This publication represents a contribution to current efforts to safeguard outer space for peaceful uses and a response to the concerns expressed about the increasing militarization of outer space. Its origin is a symposium on the Conditions Essential for Maintaining Outer Space for Peaceful Uses held in The Hague, 12–15 March 1984; the symposium was organized by the United Nations University and the International Institute of Space Law, in co-operation with the Peace Palace and The Hague Carnegie Foundation.

The objectives of the symposium were to identify: conditions essential for maintaining outer space for peaceful uses; problems whose solutions are inadequately provided for in international law; and legal measures that can mitigate or solve such problems. Thus, while participants contributed to the symposium in their individual capacity, it was important to involve both academic experts and those who are actually involved in national policy formation and international negotiation.

It is our hope that the analyses and options resulting from the symposium will prove useful to those who are engaged in the negotiation of international agreements and will also provide information of value to the general public.

In the statement summarizing their work on which the participants agreed and which is reproduced at the beginning of this volume, it is stated that “in both scientific and legal terms outer space represents with land, sea, and air the fourth realm of Earth’s environment.” In fact, the very expression “outer space” implies a global and planetary perspective. Our traditionally defined terrestrial environment has been extended to encompass the solar system. This larger environment also points to the fundamental unity of all human beings — and with us, all life on Earth — as inhabitants of a small planet in a large universe. Against this perspective, there would seem to be no excuse for not putting our terrestrial house in order. Seen from outer space, the key problems are clear-cut and, in principle, so are the solutions: to safeguard outer space for peaceful uses and to ensure that

all of humanity benefits from an ecologically sound and socially equitable stewardship not only of Earth but also of our immediate space environment.

Admittedly, the terrestrial context for efforts to safeguard outer space for peaceful uses is complex. The ambiguities of human activities in outer space are obvious. The new opportunities offered by outer space activities represent one underlying theme of the contributions to this volume: new means to increase our knowledge of the universe we inhabit, to monitor our environment, to assist in the navigation of ships and aircraft, to rescue life, and to send and receive words, images, and data in the first truly world-wide networks of communication. At the same time, the move into outer space has increased competition and disparities on Earth, and the increasing militarization of outer space is, in the words of UNISPACE 82, "detrimental to humanity as a whole."

The search for solutions to problems in outer space has to take place on Earth. In this search, the symposium in The Hague specifically focused on the responses required in international law to mitigate or solve such problems and to achieve the stated objective of maintaining outer space for peaceful uses. In this, as in many other areas, the required development of international law can be seen in terms of responses to advances in science and technology, which have created not only new opportunities but also new risks and vulnerabilities. Thus, the required development of international law is linked to the global management of new resource realms such as outer space that have been opened up by scientific and technological advances, that go beyond the traditional physical resource concept, that do not lend themselves to physical appropriation, and that require a long-term perspective. In addition, these are resource realms where unregulated or even unilateral action tends to create uncertainties, may render use difficult or impossible for other users, or cause harmful effects. They have a global character that has led to the development of a global resource concept expressed in terms of the common heritage or patrimony of mankind. The corollary is the idea of mankind as custodian of such resource realms, an idea that was already included in the outer space treaty of 1967.

In this perspective, we need, for the development of international law in such areas as outer space and disarmament, new forms of co-operation between scientists, jurists, and policy-makers, new fusions of skills and insights from different professions, different cultures and legal traditions, and greater awareness of the problems involved and their possible solutions among the citizens of the world.

In the context of the symposium, the development of space law was a crucial issue, not only in relation to disarmament negotiations but also in terms of generally safeguarding the outer space environment against actions that could cause harmful interference with peaceful uses. One important task of the symposium, therefore, was to review existing international law applicable to outer

space activities in the light of the objectives of the symposium, to analyse proposals for new legal instruments submitted to the United Nations, and to add its own proposals.

It should be noted that important developments have taken place since the symposium was held: the Moon agreement entered into force on 11 July 1984 and a further proposal for a new legal instrument was submitted by the Minister for Foreign Affairs of the USSR, Mr. Andrei Gromyko, to the General Assembly on 27 September 1984, under the title: "Use of Outer Space Exclusively for Peaceful Purposes, for the Benefit of Mankind."

The papers presented at the symposium are being published by the United Nations University in edited and partly expanded versions. The volume was edited by Mr. Nandasiri Jasentuliyana, with the assistance of Mr. Ralph Chipman, both of the Outer Space Affairs Division, United Nations, New York, on behalf of the United Nations University; to both our sincere thanks. We also thank the participants who freely gave of their time and whose contributions make up this volume.

No location could have been better suited for the purposes of the symposium than the Peace Palace in The Hague, as the seat of the International Court of Justice; our thanks go to the Peace Palace and The Hague Carnegie Foundation for providing the meeting facilities and to Judge Manfred Lachs for his unstinting support and active participation in the preparation and conduct of the symposium.

Tokyo
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SYMPOSIUM STATEMENT

The following statement represents a summary of the work of participants adopted at the conclusion of the symposium.

General Conclusions

The basic common view shared by participants was a sense of risk and danger: the danger of an extension of the arms race into outer space and the risk of armed conflict in outer space; the direction of armament development might jeopardize existing international agreements designed to limit and control the military uses of outer space.

The symposium recalled the expressions of concern over current developments in international fora such as UNISPACE 82 and the United Nations General Assembly as well as by groups of concerned citizens in different parts of the world.

The meeting recognized the importance of renewed efforts at all relevant levels in developing the appropriate political climate and, at the same time, underlined the important role of international law in these efforts to safeguard outer space for peaceful uses.

In respect of legal measures designed to safeguard outer space for peaceful uses, the participants recalled the applicability of general international law, in particular the Charter of the United Nations and the body of law specifically dealing with outer space, and emphasized the need to strengthen and supplement existing rules in response to new situations brought about by technological developments and changing circumstances. The meeting analysed the proposals for new legal instruments submitted to the United Nations General Assembly and noted that these proposals were presented as drafts in the sense that they were negotiable.

Consequently, the meeting emphasized the urgent need to move towards actual negotiation in good faith, involving all concerned parties and, in particular, the two major space powers.

The objective of developing international agreement and international law for the purpose of maintaining outer space for peaceful uses should be seen in the larger context of working towards the creation of an appropriate legal environment for the future.

Within the framework of general international law, two special bodies of law are relevant: international law specifically related to disarmament and international law specifically governing outer space activities. Efforts in each of these areas should be mutually reinforcing.

In both scientific and legal terms outer space represents, with land, sea, and air, the fourth realm of Earth's environment. Within this general framework, the special body of law which has developed in response to the specific characteristics of outer space activities needs to be strengthened and developed. The meeting stressed the desirability of all countries becoming parties to existing treaties in this area. Further efforts should build on existing agreements and the preferred approach would be to supplement, as required, existing treaties by new legal instruments in appropriate form.

The urgency of new agreements had been expressed by the United Nations General Assembly in resolution 38/70 of 1983 concerning the prevention of an arms race in outer space: the General Assembly had also requested the Conference on Disarmament to deal with this matter on a priority basis. In keeping with the primary role thus entrusted to the Conference on Disarmament, the meeting emphasized the urgent need for action by the Conference: in addition, the meeting pointed to the important role of other fora such as the Committee on the Peaceful Uses of Outer Space.

Specific Issues and Proposals

The symposium also discussed a number of specific issues and proposals which could assist in the task of elaborating new agreements designed to safeguard outer space for peaceful uses. In particular, the symposium wishes to draw attention to the following.

1. In terms of the method of approach, consideration should be given to the advantages of focusing on activities in outer space by strengthening and extending the system of permitted, prohibited, and desirable activities. In fact, desirable activities in the form of international co-operation in outer space would be an important aspect of confidence building in this area.
2. While recognizing the obvious requirement of agreement by the two major space powers, participants stressed the importance of involving the international community of states so as to gain wide acceptance for new agreements. Also,

while recognizing the value of unilateral declarations of intent, the meeting pointed to the importance of unilateral constraint by those countries possessing technological capability for outer space activities.

3. Participants felt that in the work on new legal texts designed to maintain outer space for peaceful uses, the control provisions in the Moon agreement would be a viable alternative for early inclusion in a separate agreement.

4. In relation to verification, the meeting discussed monitoring by satellites as an instrument for confidence building. Participants recognized the problems associated with the proposals for the establishment of an International Satellite Monitoring Agency but felt that this matter should be kept under review and that consideration might be given to the possibility of establishing regional monitoring agencies.

5. A special point was made to the effect that new agreements should be formulated so as to ensure the prohibition of anti-satellite activities (ASATs).

6. The participants also discussed certain issues connected with the interpretation of existing treaties and the divergences of interpretation. In this connection, attention was drawn to the desirability of considering the terminology used in relevant instruments and, as far as possible, providing for a coherent use of definitions and terms.

7. In discussing applicable agreements, participants identified areas where a strengthening of existing rules would be required. Among these were the desirability of strengthening and updating rules concerning information to be provided in connection with registration of space objects and the need for better communication in relation to settlement of disputes. Attention was also drawn to the need for including appropriate procedures for adjustment of rules in keeping with technological developments, scientific research, and international co-operation in this field.

OPENING ADDRESS

Manfred Lachs

Judge, International Court of Justice

Preserving the Space Environment

Faithful to its object and purposes, the United Nations University has organized this symposium for the purpose of reflecting on an issue that is perhaps physically far away yet concerns everyone very closely. Our task is, I suggest, to confront two phenomena: one physical and one human. The physical phenomenon is a part of our environment that only recently has been made accessible to man. I said a part of our environment; in fact it is the major part. While we are aware of its inner frontier, we have not defined it in law; its outer range is infinite. It has no confines, stretching as it does over the vast universe of which our small planet Earth is but a minute element.

Man's relation to the environment has a long and multicoloured history. When our forefathers faced the environment to build their lives, they found it hostile, strange; they struggled a long time to establish the necessary *modus vivendi* with nature, for without harmonious co-operation with his environment, man could not possibly survive. With the passage of time, man became the only living creature consciously to control the environment so that it served his interests; thus did we master land, water, and air and share these resources with our fellow beings.

This process of accommodation was not an easy one, for along the way many of nature's treasures and creatures were destroyed, while nature in turn claimed many victims of the human family. Finally, we grasped the key problems; man acquired much knowledge in respect to the laws required to live with nature and with other men. But great as our achievements were, we still had much to learn. Then, suddenly, owing to the great explosion of modern science and technology, we opened the gates to outer space, of which we had known only what could be observed with our eyes and what astronomy could offer us.

At great speed we began to populate space with man-made objects, and man himself embarked on long journeys around the globe. We reached beyond our