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IMPLEMENTATION OF THE 1967 OUTER SPACE TREATY IN THE NEW MILLENNIUM: A BRIEF REFLECTION ON THE IMPLICATIONS OF PROPOSED MISSILE DEFENCE SYSTEMS

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ABSTRACT

In 1999, the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) was held in Vienna, Austria, from 19-30 July. The IISL Space Law Workshop on **Space Law in the 21st Century** was held in conjunction with UNISPACE III from 20-23 July 1999. The 50th International Astronautical Congress was held in Amsterdam, the Netherlands, from 4-8 October 1999. The year 1999 also witnessed the celebration of the thirtieth anniversary of the first human being, Neil Amstrong, stepping onto the surface of the Moon. These conferences, it should be pointed out, were stock-taking events at the end of the 20th Century, in which space benefits for humanity in the 21st Century of the new millennium were discussed and reviewed.

It should be remembered that the role of law, that is international law, after the launching of **Sputnik-1** in 1957, was to ensure that the new area of human activities, outer space, was to be used for peaceful purposes and to encourage international co-operation between states. This objective was declared by the UN General Assembly in its first resolution 1348 (XIII) of 13 December 1958 titled "QUESTION ON THE PEACEFUL USE OF OUTER SPACE". It is embodied in the provisions of the 1967 Outer Space Treaty (OST) and the 1979 Moon Agreement. It should, moreover, be emphasised that space law as a new branch of contemporary international law was established during the cold war period. Both the former Soviet Union and the United States co-operated with one another in order to ensure that the exploration and uses of outer space, including the moon and other celestial bodies, were only for peaceful purposes and for the benefit, and in the interests of all countries.

Following the collapse of the Soviet Union and the growing participation of non-state private institutions and persons in commercial space activities, is there any political and legal justification for establishing missile defence systems in outer space, on the moon and other celestial bodies **vis-a-vis** the **corpus juris** regulating the activities of states in the exploration and peaceful uses of outer space? What type of world do the major world policy-makers and leaders wish to create for international civil society during the 21st Century of the new millennium?
The purpose of this paper, therefore, is to examine and reflect on the existing outer space legal instruments with the view of contributing to strengthening the implementation of the spirit of the

provisions of the 1967 Outer Space Treaty.

Introduction

On the eve of the 55th Session of the General Assembly of the United Nations (UN), the **United Nations Millennium Special Summit Conference** was convened by the Secretary-General of the United Nations at the UN Headquarters in New York from 6 to 9 September 2000. Over one hundred and fifty (150) Heads of State and Governments participated in this **Millennium Special Summit Conference** to exchange ideas and view-points on how to consolidate and strengthen the role and effectiveness of the Organisation during the 21st century, as a dynamic and efficient "centre for harmonizing the actions of nations in the attainment of these common ends" (Article 1 (4), UN Charter). I have the feeling that the main aim of this Summit Conference, as envisioned by the UN Secretary-General Kofi Annan, was to re-awaken and revive in the hearts those world leaders the spirit and letter of the UN Charter, as expressed in the Preamble:

We the peoples of the United Nations determined
to save succeeding generations from the scourge of war, which twice in our lifetime has brough untold sorrow to mankind,
and
to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and nations large and small, and
to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
to promote social progress and better standards of life in the larger freedom,
and for these ends
to practice tolerance and live together in peace with one another as good neighbours, and
to united our strength to maintain international peace and security, and
to ensure, by the acceptance of the principles and the institution of methods, that armed force shall not be used, save in the common interest, and
to employ international machinery for the promotion of the economic and social advancement of all peoples,
have resolved to combine our efforts to accomplish these aims.....

The above observation was further confirmed in the speeches of many Heads of States during the Summit. For example, the Co-chairperson of the Special Summit Conference, President Tarja Halonen of Finland, in her opening remarks on 6 September and her statement on 7 September 2000, correctly emphasized that the world and its inhabitants need the United Nations (UN).[i] In her opening remarks she told the world leaders: "We meet today at the United Nations to celebrate the new Millennium and to declare our vision for the future. We have come together sent by the peoples of our common globe. We have a mandate and a responsibility. Our vision carries particular authority. It will resonate for the years to come and guide the efforts of the international community. We have a task and we need to fulfil it. Our task is threefold:

[i] See, for example, **HELSINGIN SANOMAT** (10 SEPT.2000), p. C 4.

we need to meet the demands of the outside world, we need to clarify the role of the UN in the world affairs and we need to change the UN to be a modern organisation."

It is encouraging, moreover, to note that the Leaders of the eight major industrialised democracies and the President of the European Commission in the **G8 COMMUNIQUÉ OKINAWA 2000** of 23 July 2000 in their support declared: "We hope that our discussions in Okinawa provide a positive contribution to the United Nations Millennium Summit,which we expect to articulate, in the spirit of the secretary General's report "We the Peoples", a vision that will guide the United nations as it rises to the challenges of the new century. To that end, we will continue to work for a strengthened, effective and efficient United Nations and remain convinced that the reforms of the United Nations, including the Security Council, are indispensable."[ii]

The purposes of the United Nations are embodied in the provisions of Article 1 of the Charter. At this juncture, it should be emphasized that the maintenace of international peace and security, both here on earth and in outer space, has been and will continue to be one of the most challenging tasks to be fulfilled by all states and peoples under the aegis of the United Nations in the 21 century, because of the tremendous advances in space science and technology, both the in civilian, commercial and military uses of outer space. In this respect, the prevention an arms race in outer space is one them because of the growing and potential military use of that domain.

The United Nations and the Peaceful Uses of Outer Space, the Moon and Other Celestial Bodies

During the past 55 years of its existence as a universal international organization, the United Nations has done a lot in the field of disarmament through the conclusion of various international treaties and agreements in this area. It was able, at the beginning of the space exploration, which coincided with the Cold War, to ensure that the new domain of activites of humankind should be used for peaceful purposes only. Through the indefatigable efforts and actions of the UN Committee on the Peaceful Uses of Outer Space (COPUOS) and its Legal Sub-Committee, five international treaties and five declarations were adopted by the UN General Assembly to govern the activities of states in the exploration and peaceful uses of outer space.[iii] Moreover, it should be borne in mind that from 1958 to 1999 the UN General Assembly has adopted a series of resolutions on international cooperation for the peaceful use of outer space and on the prevention of an arms race in outer space.

Furthermore, in order to encourage international cooperation, three United

[ii] See, **http://www.g8kyushu-okinawa.go.jp.**

[iii] See, **International Agreements and other available Legal Documents relevant to Space Related Activities**, United Nations Office of Outer Space Affairs (1999). For the texts of Space Treaties, **UNITED NATIONS TREATIES AND PRINCIPLES ON OUTER SPACE A commemorative edition published on the occasion of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), UN, Vienna** (1999).

Nations Conferences on the Exploration and Peaceful Uses of Outer Space have been organized in Vienna - UNISPACE I (1968), UNISPACE II (1982) and UNISPACE III (1999). It should be borne in mind that UNISPACE III in 1999 was the last major United Nations conference of the 20th century on outer space.

The theme of UNISPACE III was "Space benefits for humanity in the twenty-first century." Its purpose was to review and highlight the significant advances of space science and technology that had taken place since 1982 with a view to promote their greater use by developing countries, in all areas of scientific, economic, social and cultural development. At the same time, it provided a unique forum in which Member States of the United Nations, the organizations of the United Nations system, intergovernmental and non-governmental organizations with space activities and space-related industries could be involved in developing a blueprint for international cooperation in space-related activities for the beginning of the twenty-first century.[iv] For the first time, it brought together all parties and relevant actors from all parts of the world.

It is astonishing to observe that on 23 July 1999, at the same time as while UNISPACE III (19-30 July 1999) was actively deliberating its agenda in Vienna, President Bill Clinton of the US shocked the international communuty by signing into law H.R. 4, the "National Missile Defense Act of 1999". Sec. 2 of the Act stipulates: "It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate) with funding subject to the annual authorization of appropriations of funds for National Missile Defense".[v] Furthermore, it should be pointed out that the National Missile Defense (NMD) Act was signed whilst efforts were being made during the UNISPACE III by all governmental delegations, the representatives of the scientific communities and industries to formulate new international space policies and recommendations for the Space Millennium in the 21st century.

It is necessary to point out an important space policy document - **Space for the World,** which was produced for the Conference participants jointly by the International Astronautical Federation (IAF) and the American Astronautical Society (AAS). It is intended for the peoples and leaders of all nations, and is engendered by the recognition that space activities can help satisfy the multiplicity of rapidly growing demands of people throughout the world.

Space for the World is a manifesto presented by the world's leading space organizations and professional societies to promote international cooperation in space activities that will benefit all peoples of the world. Specifically, it covers recommendations for near-term and long-term space activities in support of: Economic Development; Protection of the Earth and its Environment; Human Health

[iv] See, **UN Doc. A/CONF.184/3**, Draft Report of the Third United Nations Conference on the Peaceful Uses of Outer Space (16 April 1999), p. 17.

[v] See, **http://rs9.loc.gov/cgi-...:4:./temp/~c106EUJvoS::**

and Safety; Human Knowledge and Understanding and Education.[vi]

Browsing through the **Washington File** in the internet, one can read many reasons and explanations by officials of the US Government justifying the development of a limited National Missile Defense (NMD) system. It should be borne in mind that the response was very lukewarm during President Bill Clinton's European and Russian tours this summer, to brief the US European allies about the NMD system. President Vladimir Putin of Russia, for example, expressed his strong opposition to the planned national missile defence (NMD) system,[vii] because it would contradict the provisions of the 1972 Treaty on the Limitation of ABM Systems and Interim Agreement and Protocol on the Limitation of Strategic Offensive Arms.[viii]

However, both Presidents agreed to continue their discussions on the system during their next meeting, which actually took place in New York during the UN Millennium Summit Conference mentioned above. During their meeting on 6 September before the Conference, President Clinton expressed the hope that his decision to delay the deployment of the system would enable his successor and President Putin to "resolve this issue and continue working together on all arms control issues."[ix] Furthermore, during President Putin's first official visit in Peking (Beijing), he and President Jiang Zemin urged the international community to oppose the US planed NMD system.[x]

I would like to emphasize here that my main concern in this presentation is to contribute to the efforts of COPUOS and the IISL to consolidate and strengthen the legal regime established in outer space under the provisions of the United Nations Treaties and Principles on Outer Space, including other multilateral and bilateral international instruments on disarmament, in the twenty-first century.[xi]

Furthermore, it should be pointed out that, during the 40th IISL Colloquium, I had presented paper on "Implementation of Article IV of the Outer Space Treaty of 1967 during the 21st Century". Thus, in this paper I will once more reflect on some of the provisions of that Treaty and other relevant legal instruments in the light of the planned US National Missile Defence System programme. Taking into consideration the foregoing, let us now have a brief look at some of the relevant provisions of the 1967 Outer Space Treaty (OST).

[vi] For more details, see, **Space for the World**, American Astronautical Society (July 1999).

[vii] See, for example, **HELSINGIN SANOMAT**, Monday, 5 June 2000, p. C. 1.

[viii] For details on the provisions of the Treaty, see, **ILM, Vol. XI Number 4** (July 1972), pp. 784--803.

[ix] The decision to delay the deployment of the NMD system was announced in Washington by President Clinton on 1 September 2000. See, **HELSINGIN SANOMAT** (2 September 2000), p. C 1. There had been two test failures of the system before the announcement.

[x] See, **LAPIN KANSA**, 19. 7. 2000, **2.**

[xi] The IISL organized with the United Nations Office for Outer Space Affairs a Workshop on Space Law in the Twenty-first Century during UNISPACE III. For more details, see, **Proceedings of Workshop on Space Law in the Twenty-first Century**, United Nations, New York (1999).

1967 Outer Space Treaty (OST)

The 1967 OST was adopted when the world was divided into two blocs, namely, the Eastern bloc, led by the former Soviet Union, and the Western bloc, led by the US. It is one of the greatest achievements of the UN General Assembly, pursuant to Article 13 of the Charter. Through the enshrined principles, it laid the foundation for the progressive development of the comtemporary international law of outer space, or international space law. In his paper "Existing United Nations Treaties: Strengths and Needs" presented in Session 1 of the Workshop on Space Law in the Twenty-first Century during UNISPACE III (1999), Professor Vladimir Kopal correctly pointed out that the OST includes some very important elements which impressed their characteristic features on the whole international space law of our time.[xii]

Moreover, in his Report to UNISPACE III, the Chairman of the Legal Sub-Committee of COPUOS pointed out that "The Treaty provides the framework for the peaceful exploration of space and is universally recognized as the cornerstone of international space law." In fact, it is the **Magna Carta** of the international law of outer space.

The following basic principles are embodied in the provisions of OST: freedom of exploration and use of outer space, including the moon and other celestial bodies (Article I); non-appropriation of outer space, the moon and other celestial bodies (Article II); the exploration and use of outer space, the moon and other celestial bodies in accordance with international law, including the UN Charter (Article III); partial demilitarization of outer space and total demilitarization of the moon and other celestial bodies (Article IV); Assistance to the personnel of spacecraft (space vehicles) in the event of all accident, distress and emergency landing (Article V); international responsibility for national activities in outer space, the moon and other celestial bodies, including liability for damage caused by space objects (Articles VI & VII); retention of state sovereignty and control over objects (personnel) launched into outer space (Article VII); prevention of potential harmful consequences of experiments in outer space, on the moon and other celestial bodies (Article IX) and international cooperation in the exploration and peaceful uses of outer sapce (Articles XI-XII). These principles have further been elaborated in the provisions of the other four outer space treaties - 1968 Rescue Agreement, 1972 Liability Convention, 1975 Registration Convention and 1979 Moon Agreement.

As already mentioned above, it is beyond the scope of this paper to give detailed analyses of all the principles. A lot has already been written on them.[xiii] Thus, I

[xii] See, **Proceedingsof the Workshop on Space Law in the Twenty-first Century, op. cit.,** p. 13.

[xiii] See, for example, Cheng, Bin, **STUDIES IN INTERNATIONAL SPACE LAW,** Clarendon Press, Oxford (1997), pp.215--264; Christol, Carl Q., **MODERN INTERNATIONAL LAW OF OUTER SPACE,** Pergamon Press, New York (1984), pp. 12-58; Lachs, Manfred, **THE LAW OF OUTER SPACE,** SIJTHOFF, Leiden (1972), pp. 42-54; Diederiks-Verschoor, I. H. Ph., **AN INTRODUCTION TO SPACE LAW,** Kluwer Law and Taxation Publishers, Deventer (1993), pp. 21-28; Andem, Maurice N., **INTERNATIONAL LEGAL PROBLEMS IN THE PEACEFUL**

would like to start first with the principle of freedom of exploration and the use of outer space and the freedom of scientific investigations in outer space, on the moon and other celestial bodies. This principle is one of the core principles and through its implementation on the basis of international cooperation, humanity has made significant progress in the development and use of space science and technology in managing natural resources and the earth environment for the common benefits of all humanity. The Report of UNISPACE III contains many proofs illustrating the importance of this principle. In fact, the entire world is now like a global village where states and peoples are more closer to each other as the result of space applications activities. This was clearly illustrated by the UN Secretary-General in his address to the UNISPACE III, Vienna, on 19 July 1999: "The exploration of outer space has already revolutionized life on our planet in many ways. It has ushered in the satellite age, making possible the phenomenon we have come to know as globalization.

"*Every time live television images are transmitted across continents;

* Every time capital is moved by pressing a few keys on a computer terminal;

* And every time the internet puts new stores of information at our fingertips: we can thank the pioneering efforts of space technology, which have allowed us to conquer the barrier of distance."

At this juncture, it should, however, be remembered that the freedom of scientific investigations in the new domain must be carried out only for peaceful purposes. This concept is clearly stated in the Preamble of the 1959 Antarctic Treaty. In the first paragraph, for example, the contracting States expressed their recognition "that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord."

Before I can proceed further, it would be useful to have a brief reflection on the meaning of the term "peace".

BLACK'S LAW DICTIONARY states "The tranquility enjoyed by a political society internally, by the good order which reigns among its members, and externally by the good understanding it has with other nations. Applied to internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security as opposed to one of violence or warfare, but likewise a state of public order and decorum." In the Wordsworth **Dictionary of Beliefs & Religions** (Wordsworth Editions Ltd. (1995)) it is defined as: "Absence or cessation of war; tranquility of mind or conscience. ..... Peace is a major feature of Christ's redemptive work. He blesses the peacemakers (Mt. 5.9) and urges human beings to be at peace with each other (Mt. 9.50). ... In Islam, peace is underestood as one of the attributes of God (Quran 59.23) and, since the time of Muhammed, has been employed as a Muslim greeting."

Furthermore, **Webster's Encyclopedic Unabridged Dictionary of the English Language** defines the term **peace** as: "the normal, nonwarring condition of a nation, group of nations, or the world. **Peaceful 1.** characterized by peace, free from war,

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EXPLORATION AND USE OF OUTER SPACE, University of Lapland publications in Law, Series **B20**, Rovaniemi (1992), pp. 81-122.

strife, commotion, violence. **2.** of pertaining to, or characteristic of a state or time of peace: peaceful uses of atomic energy." In the Indian religions the term **sahaj is** synonymous to the term **peace.** It means bliss, peace and spiritual harmony.

From the foregoing definitions of the terms **peace** and **peaceful**, it follows that all activities, including all types of scientific investigations, in outer space, on the moon and other celestial bodies (as the province of all mankind) must be carried out for the promotion and consolidation of international peace, and the security, progress and well-being of all nations and peoples of the world. It signifies a condition in which people can live together as good neighbours without fear of violence or the threat of violence. There will always be progress in all aspects of life, safety of life and property in any society when peace becomes the principal objective of public policy, be it that of a state or group of states. This does not mean that there would be no disputes or misunderstandings. But the use of force in their mutual relationships will very much be minimized.

Article II of the Convention of the European Space Agency (ESA) stipulates that: "The purpose of the Agency shall be to provde for and to promote for exclusively peaceful purposes cooperation among European States in space research and technology and in their space applications with a view to their being used for scientific purposes and for operational space applications systems: a. by elaborating and implementing a long term European space policy. by recommending space objectives to Member States. and by concerting the policies of the Member States with respect to national and international organisations and institutions; b. by elaborating and implementing activities and programmes in the space field; c. by coordinating the European space programme and national programmes. and by integrating and latter progressively and as completely as possible into the European space programme. in particular as regards the development of applications satellites; d. by elaborating and implementing the industrial policy appropriate to its programme and by recommending a coherent industrial policy to the Member States." It is encouraging to emphasize that the ESA has not deviated from its peaceful policy in all its space programmes, including its participation in the International Space Station project. Since its establishment, it has contributed much to the development of space science and technology in Europe.

Therefore, any scientific investigation, testing, experimentation, etc., carried on in the new domain (outer space) for military purposes, it is submitted, is in conflict with the provisions of Articles I, II, III and IV of OST.

For example, Article III provides that: "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding." This means that all international treaties, multilateral or bilateral, concluded in areas such as disarmament, environment, human rights, the peaceful settlement of international disputes, etc., are applicable

in toto in outer space, on the moon and other celestial bodies. It should, moreover, be borne in mind that the primary vision of the United Nations in the law-making process of contemporary international of outer space (international space law), was to ensure that the new domain shall be used exclusively for peaceful purposes only.

At this juncture, it important to emphasize that, in interpreting the provisions of Article III, including the provisions of the other Articles in OST, with a view to strengthen their mandatory and binding character, it will be necessary to take into account those ethical and moral rules and principles that have been the basic sources for the development of civil law and common law legal systems, including **jus gentium** (law of nations). These ethical and moral rules and principles, it should be pointed out, were formulated 2000 years ago by the MAN of the Millennium, the Greatest Law-Giver and Teacher - Jesus Christ. They guided the policies and actions of great leaders and statesmen such as Marcus Aurelius[xiv] and those Heroes and Inspirational Persons of the Century mentioned in **TIME 100.** For example, one can trace the source of the wording in the Preamble of the UN Charter which reads: ".. to practise tolerance and live together in peace with one another as good neighbours.." to the text of the Holy Scriptures (Holy Bible).

Considering the relevance of what has been said here with regards to the provisions of OST in general, it be useful to quote some examples: Mark 12.29-30: "..The first of all the commandments is, Hear , O Israel; The Lord our God is one Lord: And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength: this is the first commandment. The second is like, namely this, Thou shalt love thy neighbour as thyself. There is none other commandment greater than these." Saint Paul in Romans 13.10 points out that: "Love worketh no ill to his neighbour: therefore love is the fulfilling of the law."

These passages and others dealing with same theme are very important particularly, with regards to the legal status and regime of outer space, the moon and other celestial bodies in the 21st century. In this respect, I am very convinced that peoples of the world will be more better off if the teachings contained in the **Holy Bible** are taken into account when dealing with one another, be it as individuals or states. Oswald Chambers in this regard writes: "The Bible is not a fairy tale to beguile us for a few moments from the sordid realities of life in the natural world. It is the divine complement of the laws of nature, conscience, and humanity."[xv]

Furthermore, with regards to what has been said above, it is interesting to note that Judge Christopher Weeeranmantry in his book on the LORD'S PRAYER also pointed out that "Throughout these centuries, while lip service was regularly paid to Christianity's core teachings of peace and good will, these were viewed as irrelevant to the hash realities of a

[xiv] See, **Meditations**, Marcus Aurelius (Translated by George Long), Book-of-the-Month Club, New York (1996).

[xv] See, **Devotions for a Deeper Life**, Zondervan Publishing House, Grand Rapids, Michigan (1986), p. 177.

competitive world. Attitude of supposed intellectual objectivity played then the part in regulating these teachings to the realm of unattainable Utopianism. Practical statesmanship required a matter-of-fact treatment of the stuff of politics, shorn of emotional, religious, and moral overtones. The entire significance of an act or concept was contained within its practical consequences."[xvi]

Prevention of an arms race in outer space: Arms Control

According to the provisions of Article IV of OST, outer space is partially demilitarized, while the moon and other celestial bodies are totally demilitarized. In my previous paper on this Article, I submitted, after a detailed analysis, that all weapons of mass destruction, including missiles, irrespective of their characteristics, are prohibited in outer space. It should be borne in mind that, since the beginning of the space era, a series of international treaties and agreements on disarmament have been concluded under the aegis of the United Nations (UN). These have direct impact on the legal status and regime of outer space, the moon and other celestial bodies. They are, for example, The 1959 Antarctic Treaty, 1963 Treaty Banning Nuclear Weapon Test in the Atmosphere, in Outer Space, and under the Water (PTBT), 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environment Modification Techniques (ENMOD) and the latest 1996 Comprehensive Nuclear-Test-Ban Treaty. Besides these international instruments on disarmament, the UN has adopted a series of resolutions on the prevention of an arms race in outer space.[xvii] Let's have a brief look at the provisions of some of these instruments.

It should be remembered that the 1959 Antarctic Treaty was used as the model for OST in defining the legal status and regime of outer space, the moon and other celestial bodies. This can be seen in the provisions of Article I, which stipulate: "Antarctica shall be used for peaceful purposes only. There shall be prohibited, **inter alia**, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons." The use of military personnel or equipment for scientific research or for any other peaceful purpose is not prohibited. (Article I (2)). This provision is also contained in paragraph 2 of Article IV of OST.

The provisions of the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (PTBT) and those of the latest 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) play an important role in strengthening the legal status and regime of outer space **vis á vis** determining the legality of the planned NDM system.

[xvi] Weeranmantry, C. G., **THE LORD'S PRAYER BRIDGE TO A BETTER WORLD** A VISION FOR PERSONAL AND GLOBAL TRANSFORMATION, LIGUORI/TRIUMPH, Liguori, Missouri (1998), p. 184.

[xvii] See, e.g., **The United Nations General Assembly and Disarmament 1986**, UN, New York (1986), pp. 170-177.

Pursuant to the provisions of Article I of the 1963 PTBT, the States Parties to the Treaty have undertaken to "prohibit, to prevent, and not carry out any nuclear weapon test explosion, on any other nuclear explosion, at any place under their jurisdiction or control": in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high sea, or in any other environment. They have further undertaken "to refrain from causing, encouraging, or in any way participating in, the carrying out of any nuclear weapon test explosion, or any other nuclear explosion, anywhere which would take place in any of the environment described, or have the effect referred to, in paragraph 1 of the Article."

It should be noted that the provisions of the 1963 PTBT have further been elaborated in the provisions of the 1996 CTBT. As of 13 September 2000, the Treaty has been signed by 160 countries and ratified by 63.[xviii] It is encouraging to note that China, France, the Russian Federation and the United Kingdom have ratified the Treaty. The CTBT is a very great achievement for the 20th century after 40 years of efforts to ban nuclear test explosions and thereby halt the development of new weapons of mass destruction.

The CTBT consists of a Preamble, eighteen articles (18), two (2) annexes and a protocol. In paragraph 3 of the Preamble, the States Parties stress the need for continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control. The Preamble also makes reference to the 1963 PTBT.

The scope of the Treaty is stipulated in the provisions of Article I. It stipulates: "1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control. 2. Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way paricipating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion." It is important to note that the 1996 CTBT establishes a global monitoring system to monitor and verify compliance with the Treaty by all States.

Bearing in mind the provisions of the 1967 OST, 1963 PTBT and 1996 CTBT, it would be useful in the context of this paper to have brief look at the Statement by U.S. Reprersentative, Ambassador Robert T. Grey, Jr., to the Conference on Disarmament in Geneva on 31 August 2000, justifying the NSD system.[xix] According to him, "The weapons of the ballistic national missile defense systems that the U.S. is considering are terrestrial, not space-based." The NMD system, as proposed, would use land-based interceptors, launchers, and radars, he said and satellites "only to provide early warning and data on the threat missiles." A close examination of the photograph of the tests already carried out will show that the NMD systems have contravened the provisions of the three international treaties mentioned here and other bilateral

[xviii] For detail, see, **http.//www.ctbto.org/..**

[xix] For more details, see, **http.//usinfo.state.gov/topical/pol/arms/...**

treaties concluded between the former Soviet Union (the Russian Federation) and the U.S.

Moreover, it should be pointed out that the on-going NMD testing programme will contribute to an increase in the number of space debris in outer space. This aspect was confirmed in the statement by Lieutenant General Ronald T. kadish, USAF Director, Ballistice Missile Defense Organization before the House Subcommittee on National Security, Veterans Affairs, and International Relations Committee on government Reform, on 8 September 2000.[xx] It should be emphasized that this will also be contrary to the provisions of Article IX of OST. In this respect, it was pointed out, in paragraph 70 of the **Draft report of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space**, that: "Human activities and natural phenomena can now be observed and their effects on the global environment detected from outer space with the use of satellites. The preservation of the near Earth space environment has also become important to protect those useful tools to diagnose the state of the Earth and is critical to the future exploration and use of outer space. A growing number of space activities are increasingly at risk because of the production of man-made space debris. Currently, more than 8,000 catalogued objects more than 10 centimetres in diameter, and an even larger number of smaller objects, are orbiting the Earth, yet only about 500 can be considered operational spacecraft. One such collision of a catalogued object with a satellite was recently documented."[xxi]

[xx] For detail, see, **http.//www.acq.osd.mil/.....**

[xxi] See, **A/CONF.184/3**, p. 19.

Furthermore, as mentioned earlier, the former Soviet Union (now succeeded by the Russian Federation) and the U.S. have concluded several treaties on arms limitation, namely, the U.S.-U.S.S.R. Treaty on the Limitation of the ABM Systems and Interim Agreemnt and Protoclo on the Limitation of Strategic Offensive Arms (SALT-I or ABM Treaty) of 26 May 1972; Treaty between the U.S. and the U.S.S.R. on the Limitation of Strategic Offensive Arms (SALT-II) of 18 June 1979; Treaty between the U.S. and the U.S.S.R. on the elimination of their Intermadiate- Range Missiles of 8 December 1987, Treaty between the U.S. and the U.S.S.R. on the Reduction and Limitation of Strategic Offensive Arms (START-I) of 31 July 1991, and Treaty between the U.S. and the Russian Federation on Further Reduction and Limitation of Offensive Arms of 3 January 1993 (START-II).

It should strongly be emphasized that the above-mentioned bilateral treaties have contributed much in preventing the escalation of the military use of outer space by the U.S. and the former U.S.S.R. and thus it has led to the normalization of relations between them. For example, in 1973, a series of agreements on international cooperation in various fields was concluded between the U.S. and the U.S.S.R.[xxii] It has also contributed to the strengthening of the legal regime in outer space. Pursuant to the provisions of Article I of the 1972 SALT-I (ABM) Treaty, the U.S. and Russian Federation had undertaken: 1. to limit anti-ballistic

[xxii] For more details, see, for example, **DOCUMENTS OF THE USSR-USA SUMMIT TALKS** (June 1973), Novosti Press Agency Publishing House, Moscow (1973).

missile (ABM) systems and to adopt other measures in accordance with the provisions of the Treaty; 2. not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of the Treaty.

Furthermore, under the provisions of Article V, both States had undertaken not to develop, test or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based. They also undertook not to develop, test, or deploy ABM launchers for launching more that one ABM interceptor missile at a time from each launcher, nor to modify deployed launchers to provide them with such capability, nor to develop, test, or deploy automatic or semi-automatic or other similar systems for the rapid reload of ABM launchers. In order to facilitate further progress in their negotiations on arms limitation, the General Secretary of the Central Committee of the CPSU, L. I. Brezhnev and the President of the U.S.A., Richard Nixon, on 21 June in Washington, D.C., signed an agreement on **BASIC PRINCIPLES of Negotiations on the Further Limitation of Strategic Offensive Arms**. In the preambular part of the agreement, both sides reaffirmed their conviction that the earliest adoption of further limitations of strategic arms would be a major contribution to reducing the danger of an outbreak of nuclear war and in strengthening international peace and security.

It should be pointed out that similar provisions are contained in the 1979 SALT-II Treaty. Under the provisions of Article IX (1)(c), for example, both States had undertaken not to develop, test, or deploy "systems for placing into Earth orbit nuclear weapons or any other kind of weapons of mass destruction, including fractional orbital missiles." It is interesting to point out that under the provisions of Article XIV, both the Parties undertook to begin, promptly after the entry into force of the Treaty, active negotiations with the objective of achieving, as soon as possible, agreement on further measures for the limitation and reduction of strategic arms. It is also the objective of the Parties to conclude well in advance an agreement limiting strategic offensive arms to replace the Treaty upon its expiration. The outcome of this undertaking led to the conclusion of **START-I** and **START-II**. It should be borne in mind that these bilateral instruments are very relevant to the outer space legal regime.

The importance of the above-mentioned instruments was stated clearly by the G8 Leaders in their **OKINAWA COMMUNIQUE** of 23 July 2000, as follows: "We look forward to the early entry into force and full implementation of the Strategic arms Reduction Treaty (START) II and to the conclusion of START III as soon as possible, while preserving and strengthening the Anti-Ballistic Missile (ABM) Treaty as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions. We welcome the ratification of the CTBT and START II by Russia."

From the foregoing brief analysis of the provisions of the SALT-I and II Treaties, it could clearly been seen that the testing of the planned National Missile Defense (NMD) system was a gross violation of the provisions of all the treaties concluded

between the U.S. and the U.S.S.R./Russian Federation from 1972-1997. It should be recalled that the former Soviet Leader, President Mikhail Gorbachev, announced that SDI contradicted the ABM Treaty on the Soviet Television.[xxiii] At this juncture it will be useful to remember the words of Apostle Paul: "For if I build again the things which I destroyed, I make myself a transgressor" (Gal. 2.18). Therefore, efforts must be made for full implementation of the spirit and letter of provisions these agreements before embarking on the conclusion of new ones.

It should strongly be emphasized that fulfilment in good faith all of international agreements concerning disarmament is the way to ensure the maintenance of international peace and security here on earth and in outer space. It does no good to conclude any agreement if parties are not prepared to fulfil them. Thus, non-fulfilment of those treaties which have already been entered into by either of the parties, it should be pointed out, will contradict the provisions of Article 2 (2) of the UN Charter and Article 26 of the 1969 Vienna Convention of the Law of Treaties.

Concluding Remarks and Observations

In the foregoing paragraphs, I have reflected on the provisions of OST and other international instruments revelant to the new domain. I would now like to make some observations on the role of the UN General Assembly resolutions on international cooperation on the peaceful uses of outer space, including the moon and other celestial bodies.

It will be recalled that starting from the adoption of UNGA Resolution 1348 (XIII) of 13 December 1958, on the Question of the Peaceful Uses of Outer Space, these resolutions have played and will continue to play a major role in the progressive development of international space law throughout the 21st century. Their legal status has been disputed by many leading experts in international law. Although they are considered as recommendatory in character, however, taking into account the importance of the subject-matter, I would like to submit that they should be recognized as binding on the Member States of the UN. Why? Because, taking into account the democratic principles of modern governance, the delegations of the UN Member States to the General Assembly, it should be pointed out, represent the peoples and nations of the world. Therefore, the voices of the peoples as expressed in those resolutions should be binding on all Members States.

The prevention of an arms race in outer space has been one of the tasks to be performed the most by the United Nations during the 21st century of the new millennium. The 1967 Outer Space Treaty (OST) and the international legal instruments on disarmament examined above, including all the UNGA on the prevention of an arms race in outer space, have a major role to play in strengthening international peace and security here on earth and in outer space, including the moon and other celestial bodies. This will require the strict observance by all states of the provisions in these instruments. It further requires that all the leaders and policy-makers of states which are actively involved in space applications activities and research must formulate policies which are not contrary to the principles of

[xxiii] For more details, see, **REYKJAVIK Documents and Materials**, Novosti Press Agency Publishing House, Moscow (1987), pp. 14-15.

international law as embodied in the UN Charter, including those legal principles in 1967 OST. It this respect, it is submitted that the Report of UNISPACE III, including other documents produced by non-governmental professional space institutions, should be taken into consideration.

It is interesting to note that on the eve of the New Millennium peoples all over the globe, irrespective of their religious beliefs and traditions, were praying for the peace, progress and happiness for all mankind. But the announcement of the NMD systems will have a negative impact on the good neighbourliness of the peoples in the world. Outer space, the moon and other celestial are the province of mankind. Thus, in order to strengthen this legal status there is dire need to take into consideration those ethical and moral rules and principles **vis a vis** those mentioned in this paper in the legal regulation of human relations here on earth as well as in outer space.

Peoples of the world want to live in peace and harmony with one another throughout this millennium. This was message in the leaflets which given to the participants of UNISPACE III at the entrance of the Austrian Exhibition Centre by children and their mother. This could also be seen in the International Essay Contest organized by the Office for Outer Space Affairs as part of the participation of the UN International Space Year. The topic of the Essay was **My vision of Outer Space and the Promise it Holds for my Country and Mankind.** One of the contestants from Singapore wrote in his conclusion: "As a youth of today, I have aspirations, dreams and hopes of a rosy future in a comfortable world where peace and harmony are rules of life, and people of the world are one. I believe, in view of the world around me, that for this to be realized, Man must venture forth to outer space in search of solace, hope and a future for Mankind; and out of curiousity, I would like to ask"is anybody out there?" Another contestant from Brazil wrote in her conclusion: "But it is necessary to take risks, to forge a path, to go along it and to reach the stars. It is necessary to look after the world and to look after mankind. Even if we do find a refuge on other planets, Earth is our responsibility. Answers will be found, whether on our planet or in outer space. Just the parts of a great mechanism complement one another and therby make machines function, so men complement one another and make the world go round."

We have been talking about the peaceful exploration and uses of outer space, including the moon and other celestial bodies. The peoples of the world and their youths as could be seen from their essays, want action and not words. Peace, security, progress, freedom from fear, and well-being is what the peoples of the world are demanding from their leaders and policy-makers. This was clearly stated in the statement by President Tarja Halonen of Finland to the UN Millennium Summit Conference on 7 September 2000: "As much as we must protect people from fear we must protect them from want. We need to make them feel secure and respected. Human centred sustainable development is the best means of long-term crisis prevention. It addresses the structural causes of the conflict and thus builds a solid foundation for lasting peace. Elimination of poverty, respect for human rights and gender equality are crutial elements in this respect. I am convinced that there is no peace without sustainable

development and no development with lasting peace. They go hand in hand."

The above quotationfrom President Tarja Halonen of Finland is very true. If all the money which is now being wasted on the development of weapons of mass destruction here on earth and in outer space was used for humankind, I am convinced that poverty and disease would be eliminated in most countries in the world. We have been celebrating the birth of the MAN of the MILLENNIUM annually on 25 December for 2 millennia. We are told that the angel comforted the sheperds saying: "Fear not: for, behold, I bring you good tidings of great joy, which shall be to all people.... Glory to God in the highest, and on earth peace, good will towards men:" (Luke. 2.10-14). We are going to listen to these words again this first Christmas of the third millennium. Let this message also guide the policies for outer space throughout this millennium.

I would like to conclude this paper with this passage from the Good News Book:

> " Who is a wise man and endued with knowledge among you? let him shew out of a good conversation his works with meekness of wisdom. But if ye have bitter envying and strife in your hearts, glory not, and lie not agaainst the truth. This wisdom descended not form above, but is earthly, sensual and devilish. For where envying and strife is, there is confusionand every evil work. But the wisdom that is from about is first pure, then peaceable, gentle, and easy to be intreated, full of mercy and good and good fruits, without partiality, and without hypocrisy. And the fruit of righteousness is sown in peace of them that make peace." (James 3. 13-18).

Finally, I conclude with this slogan: "Peaceful Exploration and Uses of Outer Space -A Must in the 21st century." Thank you all so much for your kind attention and patience.

ENDNOTES

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