

Origins and Characteristics of the Space Law Treaty Regime

Presented by
Prof. Joanne Irene Gabrynowicz
to
**United Nations/Republic of Korea
Workshop on Space Law
3 November 2003**

**National Remote Sensing and Space Law Center
University of Mississippi School of Law**

www.spacelaw.olemiss.edu

© Gabrynowicz 2003
Reproduced with
Permission

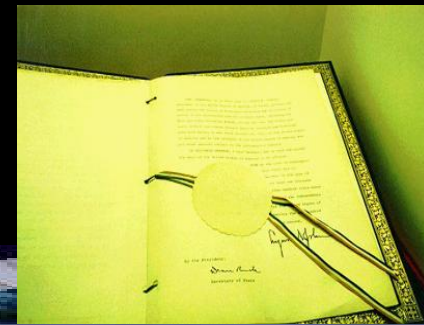


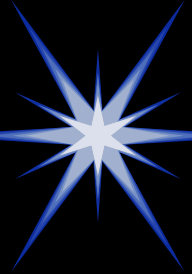
Origins and Characteristics of the Space Law Treaty Regime



Overview

- **Model of space law process**
- **Historical context**
- **The spirit and letter of the law**
- **Fundamental principles**
 - "Province of mankind"
 - Nonappropriation
 - Peaceful purposes
 - Liability system
 - International
- **Some open questions**





Origins and Characteristics the Space Law Treaty Regime

Enlightened Self-Interest

Law

Politics





Origins and Characteristics the Space Law Treaty Regime

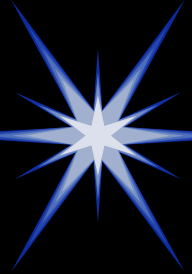


4 OCTOBER 1957



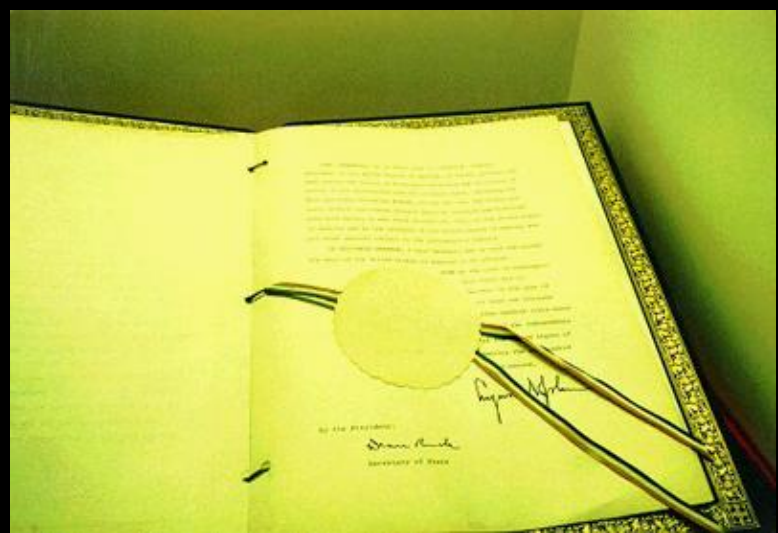
- Shocked the world
- Ability to place a satellite in orbit represented the ability to launch weapons into and through space
- Severely destabilizing





Origins and Characteristics the Space Law Treaty Regime

The Law Responds



The 1967 Outer Space Treaty
and four others





Origins and Characteristics of the Space Law Treaty Regime

DYNAMIC TENSION

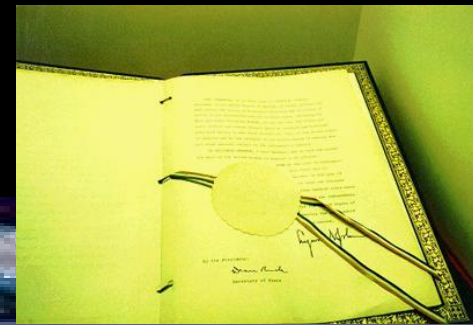
FEARS

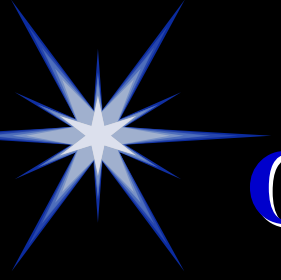


ASPIRATIONS



Or, put another way....





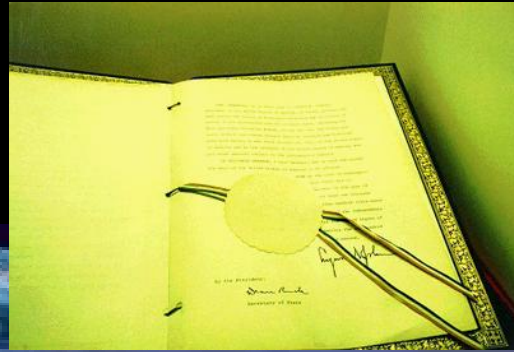
Origins and Characteristics of the Space Law Treaty Regime

Represents a Dynamic Tension

Where the international community was.



Where the international community wanted to be.





Origins and Characteristics of the Space Law Treaty Regime

Where the International Community Was

- New geopolitical landscape
- New human endeavor
- No rules - a legal vacuum
- Unprecedented destructive technology
- Little genuine knowledge of adversaries' capabilities
- Fear
- In short, unstable

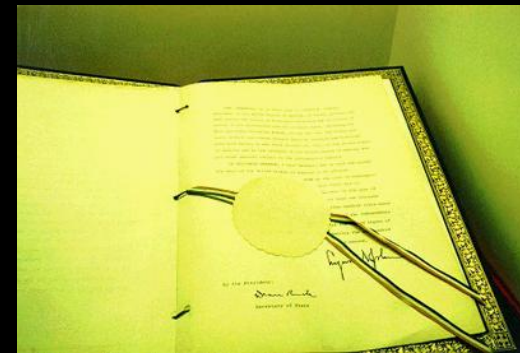




Origins and Characteristics of the Space Law Treaty Regime

Where the International Community Wanted To Be

- Influence geopolitical order
- Rules of law
- Prevent high ground in space
- Limit national rivalry in space
- In short, stable



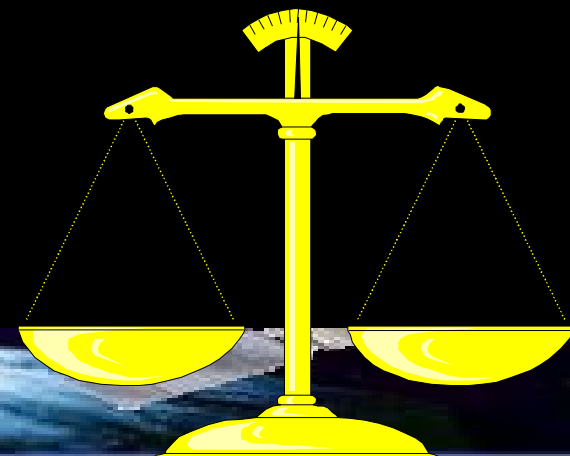


Origins and Characteristics of the Space Law Treaty Regime



The Plan

- **Employ law proactively: fill the legal void**
- **Establish guiding principles**
- **Accept general provisions**





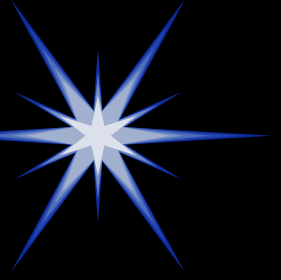
Origins and Characteristics of the Space Law Treaty Regime

The Result



- **Established legal framework**
 - 5 treaties
 - 4 widely accepted; 1 not widely accepted
- **Interrelated framework**
 - All relate back to *Outer Space Treaty*
- **Incorporates U.N. Charter and ICJ decisions**
- **Covers natural and juridical persons**





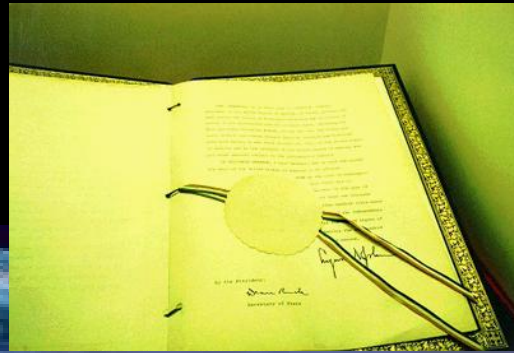
The Spirit and Letter of the Law

- “broad international cooperation in scientific [and] legal aspects”

Outer Space Treaty, Preamble

- “Parties shall be guided by the principle of cooperation and mutual assistance”

Outer Space Treaty, Art. IX





The Spirit and Letter of the Law

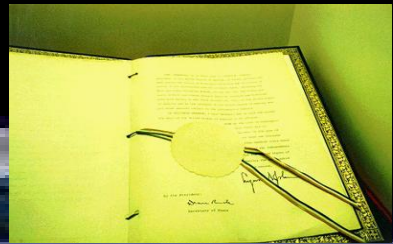


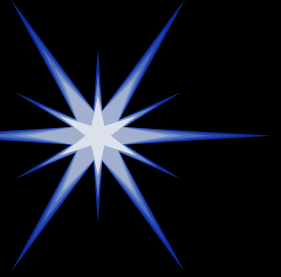
- “for the benefit and in the interests of all countries irrespective of their degree of economic or scientific development”

Outer Space Treaty, Art. I

- “maintaining international peace and security and promoting international cooperation and understanding”

Outer Space Treaty, Art. III

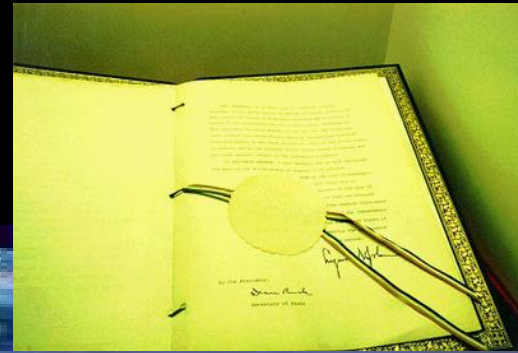




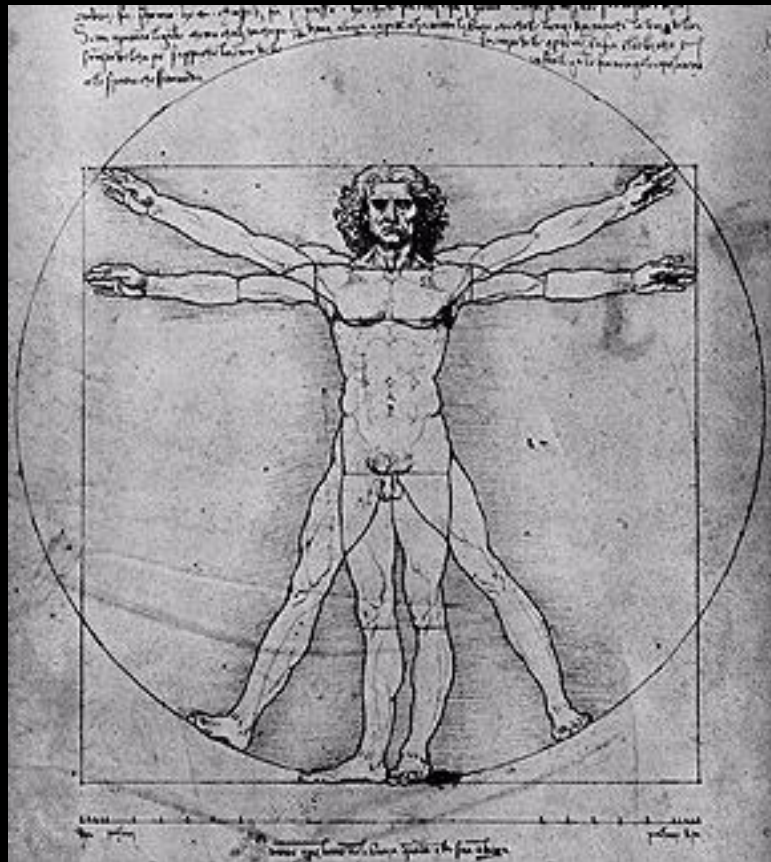
Fundamental Principles



- **Quasi-Constitutional**
 - Outer Space Treaty
- **“Province of all mankind”**
 - Not the same as **Common Heritage of Mankind**
- **Nonappropriation**
- **Peaceful purposes**
- **Liability system**
- **International**



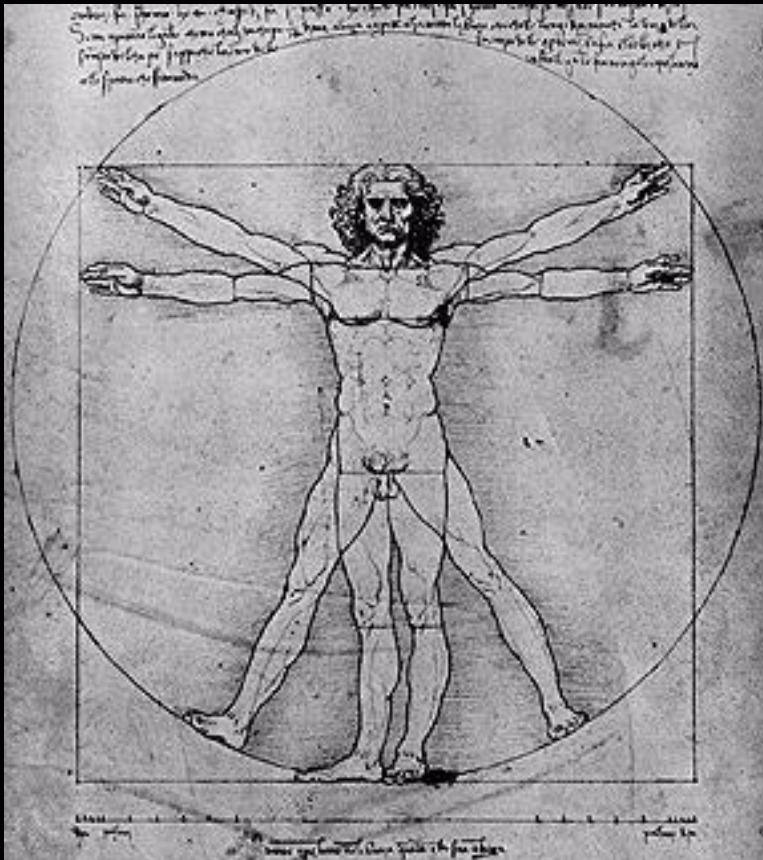
"Province of All Mankind"



- Not the same as Common Heritage of Mankind
- *res communis* principle
- Inclusive
- May be used in single parts
- Cannot be acquired as a whole
- Astronauts are “envoys of mankind”

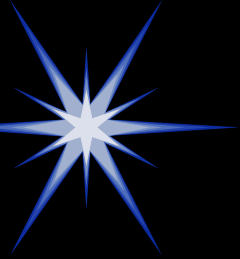


"Province of All Mankind"



- **Nonexclusive right to “explore” and “use” space**
- **Free access to all areas of celestial bodies**
- **Basis of equality**





Nonappropriation



No national appropriation by

- Sovereign claim**
 - Use**
 - Occupation**
- or**
- Any other means**



Outer Space Treaty, Art. II

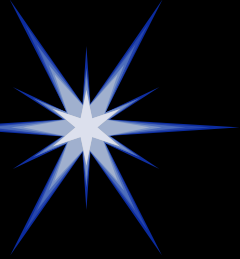


"Peaceful Purposes"



- **Legal term of art**
 - Early U.N. Resolutions
 - *Test Ban Treaty*
- **“Nonaggressive,” not “nonmilitary”**
- **Prohibits weapons of mass destruction in open space**
 - Atomic
 - Biological
 - Chemical
- **“Exclusively” peaceful on celestial bodies**



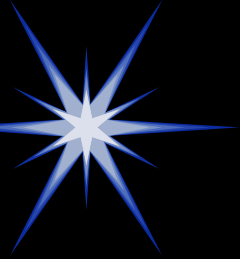


"Peaceful Purposes" on Celestial Bodies



- **Legal military activities**
 - Scientific research
 - Peaceful purposes
 - Necessary equipment and facilities
- **Prohibited military activities**
 - Bases, installations, fortifications, weapons testing, maneuvers

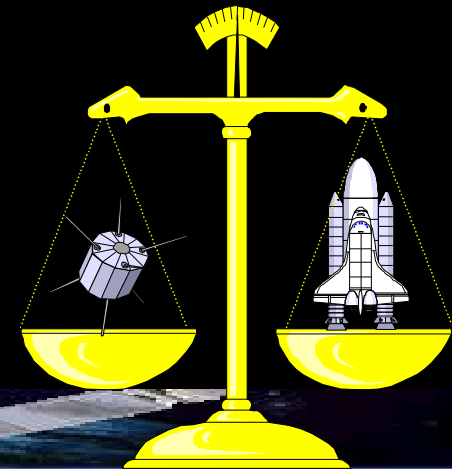


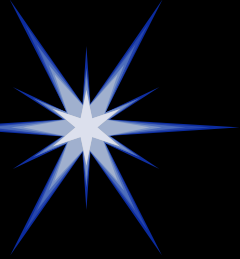


Liability System



- **Liability regimes**
 - Absolute liability for damages that occur on Earth and to aircraft in flight
 - Negligence applies to damages that occur in space
- **Tort/Delict mechanisms**
 - Joint and several liability; indemnification; apportionment
- **Claims process**
 - Claims Commission
 - Compensation rules





International



- **International law applies**
 - Space treaties
 - U.N. Charter
 - ICJ decisions
- **International responsibility by nations for all public and private space activities**
- **Recognizes IGOs**
- **Role for Secretary General**

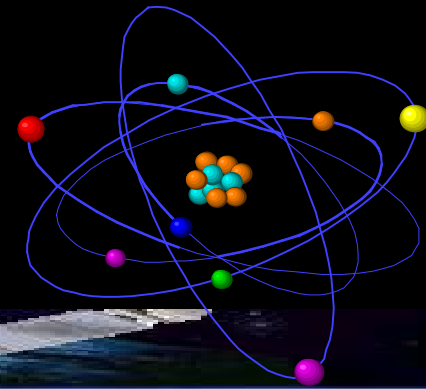




Open Questions: Space Resources



- *Outer Space Treaty* neither prohibits nor authorizes exclusive acquisition of resources
- Although no sovereignty over territory, unclear if no sovereignty over resources: does prohibition of *territorial* appropriation include resources?
- Is resource taking a “use” of space?
- Is sovereignty necessary to establish property rights?
- Does prohibition of *national* appropriation include property rights of an individual? IGO? Corporation?



Questions, Comments?

