EVOLUTION TOWARD A SPACE TREATY:

AN HISTORICAL ANALYSIS

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by

John Michael Kemp

Law School

George Washington University

NASA Historical Staff
Office of Policy Analysis
National Aeronautics and Space Administration
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PREFACE

This paper was written as my contribution to the National Aeronautics and Space Administration's summer seminar on "History, Social Science and Space" under the direction of Dr. Eugene M. Emme, NASA Historian, and Dr. Frank W. Anderson, Deputy NASA Historian. I am endebted to Dr. Anderson who pointed out the need for research in the area of precedent for a spatial treaty.

Originally the research was done with the idea of compiling a documented chronology on the precedent for a celestial bodies treaty which President Johnson proposed on May 7, 1966. However as research progressed the need for a narrative account and historical analysis in this area became evident.

The precedent for a space treaty is closely intertwined with efforts toward promoting the peaceful uses of outer space and disarmament. This essay however will not be a complete account of either. Rather, the substance of this essay has been determined in retrospect, looking backward from the proposed treaty and picking up pertinent historical events in relation to the proposal.

Such a method was not facilitated when in late July the United States decided that the treaty should govern

the totality of outer space rather than merely celestial bodies. However, a discussion of the early disarmament and outer space negotiations, the partial severability of these issues, the pertinent United Nations Resolutions, and the current dialogue should be helpful in the development of an historical perspective.

It is regretted that both time and space militated against detailed discussion of the legal literature on space law. For the legally-oriented reader the footnotes and bibliography serve somewhat as a guide to this literature.

J.M.K.

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INTRODUCTION

President Lyndon B. Johnson on May 7, 1966, urged United Nations action leading to a treaty to keep the moon and other celestial bodies open to all nations for peaceful purposes and scientific exploration. Subsequently the Soviet Union reiterated this plea. Both governments submitted similar draft treaties to this effect to the United Nations on June 16, asserting that time is of the essence.

Soviet and American negotiators met in Geneva in late July and early August and ironed out some of the differences in the proposed treaty, and extended its scope to include all of outer space. A draft treaty may be submitted to the United Nations General Assembly for its adoption this fall or winter. The background and analysis of these events is of basic historical interest.

The last three Presidents of the United States have all made suggestions for establishing a rule of law in space, starting with President Eisenhower's 1957 State of the Union message. These suggestions were met with varying degrees of success, yet were generally stymied. There are hopes that the new proposal will be a breakthrough toward establishing spatial peace.

The proposed agreement, prohibiting national claims of sovereignty and military activities in outer space and on celestial bodies as well as promoting international cooperation and scientific investigation, has precedents in both the Antarctic Treaty and United Nations Resolutions. The Antarctic Treaty has worked successfully and was used by both the Soviet Union and the United States in preparing their draft treaties. An historical analysis of the Antarctic Treaty and the United Nations Resolutions is helpful in understanding and appreciating the current dialogue.

CHAPTER 1

DISARMAMENT AND OUTER SPACE

Since January 1957 the United States has espoused the need for giving special international attention to the problems created by the exploration and exploitation of outer space. Generally this need was envisioned simultaneously with the rising concern over disarmament and intercontinental ballistic missiles. The United States accordingly sought reliable agreements with the Soviet Union to prohibit weapon-carrying instruments in outer space and to promote the peaceful uses of outer space through the extension of international law.[1]

The United States made a series of Presidential and United Nations' initiatives designed to focus international attention on the control of missile and satellite development. President Eisenhower addressed himself to this problem before the appearance of Sputnik I when he said in his 1957 State of the Union Message that there were inherent dangers in the development of outer space missiles and satellites. He therefore expressed the willingness of the

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[1] International law generally is conceived to be a body of rules which prescribe or regulate the activities of international persons. Irrespective of this generally accepted broad definition of international law, there are legal scholars who deny its existence through a restricted definition of law. Whether one calls it international law or customary accepted standards of procedure, when spatial activities commenced, neither was applicable to outer space. However as Andrew Haley, past President of the International Astronautics Federation, points out in Space Law and Government (New York: Appleton-Century-Crofts, 1963), p. 10., "all problems in connection with the exploration of space are international in nature, clearly an international formulation of space law must evolve."

United States to enter into "any reliable agreement which would ... mutually control the outer space missile and satellite development."[2]

The United States submitted to the General Assembly a few days later a memorandum offering a disarmament proposal and the reliable control system that President Eisenhower called for. The plan suggested "that the first step toward the objective of assuring that future developments in outer space would be directed exclusively to peaceful and scientific purposes would be to bring the testing of such objects [as satellites and missiles] under international inspection and participation." [3] This was the first recognition by any nation of the immediate need to deal with this compelling and complex problem.[4]

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[2] Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1957 (Washington: U.S. Government Printing Office, 1959), p. 17.

[3] Memorandum presented by the United States to the First Committee of the General Assembly on January 12, 1957, in Documents on Disarmament, 1945-1959 (Washington: U.S. Government Printing Office, 1960), Vol. II, p. 733.

[4] Testimony of Loftus E. Becker, Legal Adviser to the Department of State, made before the Special Senate Committee on Space and Astronautics on May 14, 1958, in Department of State Bulletin (Washington: U.S. Government Printing Office, 1958), June 9, 1958, Vol. 38, pp. 962-967.

The motives of the United States in presenting this proposal for a reliable system of control were two-fold. First, the United States recognized that the development of outer space weapons would endanger world peace and national security. Second, the United States desired to preserve and promote the free use of outer space for all nations.[5]

To secure these objectives, the United States in addition proposed a study of the various means to assure the peaceful use of outer space.[6] These objectives continued to be the United States policy as reiterated by Secretary of State Dulles on a radio-T.V. address in July when he said: "We are willing to cooperate in the working out of a system which would insure that outer-space missiles would be used exclusively for peaceful purposes and scientific purposes."[7]

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[5] U.S. Senate Document No. 26, 87 Cong., 1st session, Legal Problems of Space Exploration, A Symposium (Washington: U.S. Government Printing Office, 1961), p. 195.

[6] Department of State Bulletin, February 11, 1957, Vol. 36, p. 231.

[7] Statement by Secretary Dulles in a radio-television address made July 27, 1957, in Documents on Disarmament, 1945-1959, Vol. II, p. 825.

Development of International Awareness

The United States had clearly recognized that developments arising from outer space exploration were unpredictable. International attention became focused on the problem and our Allies soon considered it desirable that such developments be brought within the purview of a reliable armaments control system. The United States proposal to bring the testing of outer space objects "under international inspection and participation" became a part of the Allies disarmament proposal in August 1957.

This Western proposal for "Partial Measures of Disarmament" also urged that a technical committee be established "to study the design of an inspection system which could make it possible to assure that the sending of objects through outer space will be exclusively for peaceful and scientific purposes."[9]

This proposal represented a significant attempt toward preventing the use of outer space for military purposes.

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[8] Western Working Paper Submitted to the Sub-Committee of the Disarmament Commission by the delegations of Canada, France, the United Kingdom and the United States on August 29, 1957, in Documents on Disarmament, 1945-1959, Vol. II, p. 871.

[9] Ibid.

Unfortunately, however, the Western Working Paper and the establishment of a technical committee were not acceptable to the Soviet Union.[10]

On October 4, 1957, the Soviet Union became the first nation to orbit a man-made earth satellite. This feat evidenced not only Soviet scientific and technological advancement, but also its military capability. Stimulated by this breakthrough, efforts toward disarmament and spatial peace were accelerated.[11]

Less than one week after Sputnik I, United States Ambassador to the United Nations Henry Cabot Lodge repeated the Western proposals and added: "We seek agreement on ways to control ... the outer space missile. Like atomic energy, this device can serve the purposes of peace or it can be used to blow us to bits. We have only begun to learn about its possibility, but we already know that the prospect of outer space missiles armed with nuclear warheads is too dangerous to ignore." [12]

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[10] The Soviet Union considered inspection tantamount to espionage and believed that the West was attempting to ban Soviet ICBM weapons while maintaining its arsenal in other fields.

[11] P. Kecskemeti, Outer Space in World Politics, Joseph M. Goldsen. (New York: Praeger, 1963), p. 32.

[12] Statement by U.S. Ambassador to the United Nations (Lodge) to the First Committee of the General Assembly on October 10, 1957, in Documents on Disarmament, 1945-1959, Vol. II, pp. 901-902.

Ambassador Lodge then employed the atomic analogy to demonstrate the need for control,[13] and concluded with repeating his plea for a technical committee to work out an inspection and control system to assure that space would be used only for peaceful and scientific purposes.

These proposals were not completely unheeded, for in the accelerating concern for control of the development of outer space weapons the General Assembly adopted Resolution 1148 (XII) on November 14, 1957.[14] In addition to calling for the regulation, limitation, and balanced reduction of all armed forces and the conclusion of an international treaty on the prohibition of atomic, hydrogen, and other weapons of mass destruction, the resolution urged that States "give priority to reaching a disarmament agreement"

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[13] The atomic analogy was a frequently employed device used by Western spokesmen in argument for inspection and control. The argument recalls that in 1947 when the United States alone had nuclear weapons, it proposed to the United Nations a plan to ensure the peaceful uses of this new energy by putting it under international control. The argument then proceeds to assert that present anxiety could have been avoided if the plan had been adopted. Outer space is considered a similar opportunity to harness for peace man's newest discovery.

[14] General Assembly Official Records: Twelfth Session, Supplement No. 18 (A/3805), pp. 3-4. Approved by a vote of 56-9-15, the Soviet bloc opposing.

which would provide for the following: "The joint study of an inspection system designed to ensure that the sending of objects through outer space shall be exclusively for peaceful and scientific purposes."[15] This suggestion was almost identical with the Allies August disarmament proposal.[16]

Soviet-American Maneuvering and the Disarmament Impasse

The spirit of this resolution was somewhat diminished because it was adopted over Soviet objections, in keeping with their negative attitude toward inspection and control. Nevertheless, a hopeful note was sounded when Soviet Premier Bulganin wrote to President Eisenhower in December 1957 that the U.S.S.R. "insists that neither ballistic missiles nor hydrogen and atomic bombs should ever be used for the purpose of destruction."[17]

In an effort to advance American objectives of obtaining international cooperation in the furtherance of peace in outer space, President Eisenhower responded to Bulganin's letter with affirmative proposals to solve what he considered to be the most important problem facing the world. The President proposed that the two nations "agree that outer

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15 Ibid.

16 Supra, p. 6.

17 Letter from Soviet Premier Bulganin to President Eisenhower on December 10, 1957, in Documents on Disarmament, 1945-1959, Vol. II, pp. 918-920.

space should be used only for peaceful purposes." He stated that "we face a decisive moment in history in relation to this matter." He admitted that both the Soviet Union and the United States were using outer space for the testing of missiles, but urged that "the time to stop is now." After employing the atomic analogy President Eisenhower said: "The nations of the world face today another choice perhaps even more momentous than that of 1948 that relates to the use of outer space. Let us this time ... make the right choice, the peaceful choice."[18]

President Eisenhower was one of the first to initiate claims that called for the peaceful uses of outer space, and he continued this policy. His statements to Bulganin imply that he used the term "peaceful" in contradistinction to military uses of outer space.[19] This dichotomy between

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[18] Letter from President Eisenhower to Soviet Premier Bulganin on January 12, 1958, in Documents on Disarmament, 1945-1959, Vol. II, pp. 938-939.

[19] Myers S. McDougal, Law and Public Order in Space (New Haven: Yale University Press, 1963), p. 395.

peaceful and military uses of outer space assumed increasing importance as spatial technology advanced.[20]

Four days after President Eisenhower's letter to Soviet Premier Bulganin, Secretary Dulles was asked at a news conference what steps the United States planned to achieve the President's proposal to dedicate outer space to peaceful purposes. The Secretary replied that because of the primitiveness of present instruments they were readily subject to being controlled.[21] He suggested an international commission under the auspices of the United Nations which would perform a function similar to that of the International Atomic Energy Agency.[22]

In his correspondence with Premier Bulganin, President Eisenhower also implied that one of the main objectives of the United States policy was to prevent ICBMs from entering

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[20] The United States has maintained that "peaceful uses of outer space" means non-aggressive uses, while the Soviet Union has maintained that peaceful use means non-military uses. This semantic struggle has centered around observation satellites such as Midas and Samos which are peaceful under U. S. definition but unpeaceful under the Soviet definition.

[21] Secretary of State Dulles' statement at a news conference on January 16, 1958, in Department of State Bulletin, February 3, 1958, Vol. 38, pp. 166-167.

[22] The International Atomic Energy Agency has the task of assuring that the nuclear materials that it disposes of shall be used only for peaceful purposes.

the arsenals of the world. Secretary Dulles also evidenced such intent. As the United States had still to orbit its first satellite and there was an estimated missile gap of two years, the United States invited Khrushchev's statement that the U. S. proposed to ban weapons which can threaten it, but retain control of all other types of weapons.

Such an attitude was soon overcome however, for on January 31, 1958, the United States launched its first earth satellite, Explorer I. The United States thus served notice of its scientific, technological, and military capability and joined the Soviet Union in the exploration of outer space.

The next day, President Eisenhower received a letter from Soviet Premier Bulganin, who agreed to the objective of peaceful uses of outer space but asserted that this question was inextricably intertwined with the general problem of disarmament. He implied that agreement to prohibit nuclear and hydrogen weapons, the cessation of tests of the same, and the liquidation of foreign military bases were necessarily precedent to reaching an agreement on the "use of cosmic space for peaceful purposes exclusively."[23]

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[23] Letter from Soviet Premier Bulganin to President Eisenhower on February 1, 1958, in Background of Heads of Government Conference, 1960: Principal Documents 1955-1959, With Narrative Summary (Department of State publications 6972; 1960), p. 159.

In his reply to this letter two weeks later, President Eisenhower asserted that if the Soviet Union had a genuine desire to stop the development of "this new menace" then they should agree to "reduce the scope of nuclear warfare, both in terms of checking the use of fissionable material for weapons purposes and in wholly eliminating the newest types of weapons which use outer space for human destruction." [24] In effect, the President said that if the Soviet Union did not agree to the control of outer space, it would be responsible for the continuance of the arms race.

The Soviet Union however continued to tie the issues of spatial peace to those of disarmament. In a memorandum from the Soviet Union to the United States commenting upon the Eisenhower-Bulganin correspondence, the Soviets expressed readiness to discuss at the Summit conference the "prohibition of use of cosmic space for military purposes and liquidation of foreign military bases on foreign territories." [25]

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[24] Ibid., pp. 163-164.

[25] Memorandum from the Soviet Union to the United States on February 28, 1958, in Department of State Bulletin, March 24, 1958, Vol. 36, p. 460.

The Soviet Union continued this policy when it submitted to the United Nations Secretary General a proposed agenda for the 13th General Assembly, entitled "Soviet Proposal on the Question of Banning the Use of Cosmic Space for Military Purposes, Elimination of Foreign Military Bases on the Territories of Other Countries, and International Cooperation in the Study of Cosmic Space."[26] The Soviet Union proposed a broad international agreement which would include the following: (1) ban the use of cosmic space for military purposes; (2) eliminate foreign military bases; (3) establish U.N. international control over the implementation of (1) and (2); and (4) establish a U.N. agency for international cooperation in the study of cosmic space.

This program was obviously unacceptable to the United States.[27] The reason why the Soviet Union included the prohibition of the use of outer space for military purposes with the elimination of foreign military bases was because it is

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[26] Submitted by the Soviet Union to the U.N. Secretary General on March 15, 1958, in Documents on Disarmament, 1945-1959, Vol. II, pp. 976-977. This proposal was again repeated in a Soviet Memorandum to the United States, the United Kingdom and France, on May 5, 1958.

[27] See Wilfred J. Smith, History of Office of the United Nations Conference. NASA Historical Monograph No. 2, 1961, p. 5.

from such bases that the Western forces can launch IRBMs. If the Soviet Union secured this objective it would gain a considerable advantage.

The impasse was clearly revealed in a letter from Soviet Premier Khrushchev to President Eisenhower in April 1958. The Soviet Premier said: "Your proposal for the use of outer space for peaceful purposes provides in fact for the prohibition of intercontinental ballistic missiles alone, leaving aside the other important aspects of this problem. It is easy to see that you propose such a solution of the question as would correspond to the interest of the security of the United States alone ..." Khrushchev concluded by saying "of course it is impossible to agree to such an inequitable solution which would put one side in a privileged position with regard to the others."[28]

President Eisenhower promptly answered this letter and sought to avoid the impasse by proposing that technical representatives of the two countries begin to examine the practical problems involved in prohibiting the use of fissionable materials for weapon purposes, reducing existing weapons, suspending testing, implementing "open-skies" and the international

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[28] Letter from Soviet Premier Khrushchev to President Eisenhower on April 22, 1958, in Documents on Disarmament, 1945-1959, Vol. II, p. 996.

use of outer space for peaceful purposes.[29] The President asserted that technical studies must preceed political agreement.

The overriding policy considerations of the United States were stated in a clear, concise fashion by Mr. Loftus E. Becker, Legal Adviser of the United States Department of State, testifying before the Special Senate Committee on Space and Astronautics. Mr. Becker said the basic principles of the United States policy with respect to outer space are "no different from that which we have with respect to international relations here on earth."[30] He stated that "in conformity with our understanding under Article 1 of the United Nations Charter, it is our purpose to insure that - in space as on earth- international peace and security are maintained and that international disputes on situations which might lead to a breach of the peace are adjusted or settled in conformity with the principles of justice and international law."[31]

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29 Letter from President Eisenhower to Soviet Premier Khrushchev on April 28, 1958, in Documents on Disarmament, 1945-1959, Vol. II, pp. 1006-1007.

30 Testimony of Loftus E. Becker before the Special Senate Committee on Space and Astronautics on May 14, 1958, in Department of State Bulletin, June 9, 1958, Vol. 38, pp. 962-967.

31 Ibid.

This policy, of calling for an extension of international law into outer space and of providing for the peaceful uses thereof, was endorsed by U.N. Secretary-General Dag Hammarskjold a few days later when he addressed the Governor's Conference in Miami, Florida.[32] After asserting that the International Geophysical Year precedent indicated acceptance of the principle that outer space is "res communis,"[33] he expressed hope that the General Assembly would reach agreement on a basic principle that outer space and the celestial bodies therein are not considered capable of national appropriation.

Further efforts to establish a regime of law and peace in outer space were made by the United States, the

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32 Address by Secretary-General Hammarskjold on May 19, 1958, in U.S. Senate Document No. 26, Legal Problems of Space Exploration, 1961, p. 263.

33 Meaning of "res communis": Celestial bodies according to classical international law are res nullius, they belong to no one, and the first occupant should be able to establish sovereignty over others as long as he fulfills the normal conditions of occupancy. The attitude of the States is that they prefer an international agreement that celestial bodies belong to all, res communis.

United Kingdom, and France in a memorandum concerning the Agenda for the Summit Conference. After employing the atomic analogy the three governments proposed that the "Soviet Union join in the establishment of a group of experts who would make the necessary technical studies for determining what measures are required to assure that outer space is used for peaceful purposes only."[34] Again, however the Soviet Union was unwilling to participate in technical discussions.

It is significant that despite repeated failure to reach agreement with the Soviet Union, the United States committed its policy of promoting the peaceful uses of outer space to law when the Congress enacted and the President signed a bill to create the National Aeronautics and Space Administration. The enactment states the U. S. policy as follows: "The Congress hereby declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind."[35]

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[34] Western Summit agenda proposal made May 28, 1958, in Documents on Disarmament, 1945-1959, Vol. II, p. 1047.

[35] Public Law 85-568, 85th Cong., H.R. 12575 (72 Stat. 426).

Under the above legislation the leadership of the United States space program is civilian, not military. However, it remained a fundamental principle of American space policy that spatial peace must be achieved and guaranteed by international agreements duly implemented and enforced. In the absence of such international agreements, in the interest of national security, the peacefulness of space could not be treated as a reality but only as a goal to be promoted.[36]

Partial Agreement on the Outer Space Question: The Establishment of the United Nations ad hoc Committee on the Peaceful Uses of Outer Space

Despite these months of proposals and counter-proposals no agreement had been forthcoming. This failure prompted Ambassador Lodge to write to Secretary-General Hammarskjold on September 2, 1958, urging that the General Assembly should further the interests of mankind by declaring the separability of the question of the peaceful uses of outer space from that of disarmament.[37] This interest could be declared, he said, through the establishment of an ad hoc committee to study the problems of establishing a rule of law and peace in space and make recommendations for solution thereto.

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[36] Kecskementi, p. 31.

[37] Letter from Ambassador Lodge to the Secretary-General on September 2, 1958, in General Assembly Official Records: Thirteenth Session, Annexes, Agenda Item 60, p. 4.

To this end, Ambassador Lodge requested for inclusion in the agenda of the thirteenth General Assembly a "Programme for international-cooperation in the field of outer space." He also stated that the United States would submit a draft resolution to the General Assembly for its consideration to this effect.

The United States pressed hard for the adoption and implementation of this proposal. Secretary of State Dulles addressed the General Assembly and urged adoption of a resolution to establish an ad hoc committee and added that "the United States believes that the United Nations should take immediate steps to prepare a fruitful program on international cooperation in the peaceful uses of outer space."[38]

In addition, Senator Lyndon B. Johnson at the invitation of the Secretary of State and on behalf of the President addressed the General Assembly and asserted that the Congress as representative of the people was in complete agreement with the Executive on the principle of promoting the peaceful uses of outer space. Senator Johnson also

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[38] Secretary of State Dulles' address to the United Nations on September 18, 1958, in Department of State Bulletin, October 6, 1958, Vol. 39, p. 529.

urged adoption of the Lodge proposal to establish an ad hoc space committee.[39]

The General Assembly, in an effort to placate both the United States and the Soviet Union, combined the Soviet March 15 recommendations[40] and the United States September 2 suggestion[41] into a single "Question of Peaceful Use of Outer Space."[42]

The need for urgency was rapidly being recognized. On October 10, 1958, Ambassador Lodge remined the General Assembly that a year had passed since the United States had called for a beginning on the control of the disarmament aspects of outer space.[43] He said that "outer space

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39 Senator Lyndon B. Johnson's address to the United Nations on November 7, 1958, in Department of State Bulletin, Dec. 15, 1958, Vol. 39, pp. 977-979.

40 Supra, p. 14.

41 Supra, p. 19.

42 There remained however a difference of opinion as to what constituted the peaceful uses of outer space. The Soviet Union still insisted that disarmament was an integral part of any agreement on the peaceful uses of outer space, while the U.S. asserted the issues were separable. This U.N. action did not resolve this basic question.

43 Supra, p. 7.

missiles armed with nuclear warheads are now a reality" and reaffirmed the United States proposal and willingness to take part in technical discussions in this field.[44]

On November 13, 1958, the United States and nineteen other countries co-sponsored the proposed resolution calling for an ad hoc committee.[45] Although the Soviet Union now indicated that it concurred on the separability of the disarmament and outer space problems, it opposed this resolution because of its objection to the composition of the committee.

The Soviet Union a few days later submitted a drastically revised version of its draft resolution which dropped mention of a United Nations Agency and the elimination of foreign military bases and suggested instead the establishment of a United Nations Committee for cooperation in the study of cosmic space.[46] In effect this was the same proposal that the United States made over two months earlier.[47] Once this concession was made, partial agreement was readily achieved.

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[44] Statement by Ambassador Lodge to the First Committee of the General Assembly on October 10, 1958, in Documents on Disarmament, 1945-1959, Vol. II, p. 1151.

[45] General Assembly Official Records: Thirteenth Session, Annexes, pp. 5-6. A/C.1/L.220, Nov. 13, 1958.

[46] United Nations Doc. A/C.1/C.219/ Rev. 1, Nov. 18, 1958.

[47] Supra, p. 19.

On December 13, 1958, General Assembly Resolution 1348 (XIII) was adopted[48] on "the Question of the Peaceful Uses of Outer Space."[49] The General Assembly recognized "the common interest of mankind in outer space" and that "outer space should be used for peaceful purposes only." The resolution expressed a desire "to avoid the extension of present national rivalries into this new field." It recognized "the great importance of international cooperation in the study and utilization of outer space for peaceful purposes" and expressed belief that "progress in this field" would help serve the peaceful uses of outer space.

In addition, the resolution asserted that an important contribution could be made by the establishment within the United Nations of an "appropriate international body for cooperation in the study of outer space for peaceful purposes." As the General Assembly desired "to obtain the fullest information" before "recommending specific programs for international cooperation" it established an ad hoc Committee on the Peaceful Uses of Outer Space.

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[48] General Assembly Official Records: Thirteenth Session, Supplement No. I8 (A/4090), pp. 5-6. Adopted by a vote of 53-9-19, the Soviet bloc opposing.

[49] Text of the Resolution in Appendix.

The functions of this ad hoc Committee were briefly enumerated as reporting to the fourteenth session of the General Assembly on the following:

1) activities and resources of the U. N. relating to the peaceful uses of outer space,
2) areas of international cooperation in the peaceful uses of outer space which could be undertaken under U. N. auspices,
3) future organizational arrangements to facilitate cooperation in this field, and
4) nature of the legal problems which may arise from exploration and exploitation of outer space.

The general form of this resolution agreed with the revised Soviet draft except that the composition of the committee differed substantially.[50] The Soviet Union objected to the alleged ideological unbalanced membership on the ad hoc Committee[51] and consequently voted against

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[50] Included in the resolution but not in the Soviet proposal were: Australia, Belgium, Brazil, Canada, Iran, Italy, Japan and Mexico. Included in the Soviet proposal but not in the resolution was Romania. The Soviet plan called for eleven nations while the resolution provided for eighteen.

[51] The following nations were named to the ad hoc Committee on the Peaceful Uses of Outer Space: Argentina, Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Iran, Italy, Japan, Mexico, Poland, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

the resolution, even though it had submitted a similar draft resolution.[52] The Soviet-bloc subsequently refused to participate in Committee activities.

The expectation that international law extended to activities in outer space was clearly indicated in this early United Nations maneuvering.[53] The resolution indicated in addition, acceptance of the severability of the question of spatial peace and disarmament. The overwhelming majority of the nations of the world supported this policy. Early discussions of Disarmament and Outer Space clearly demonstrated that the issues could be resolved better separately,[54] even though the Soviet Union

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[52] Supra, p. 22.

[53] McDougal, p. 437.

[54] There were a number of reasons why the separability of the issues was considered desirable, by the United States and other nations. The most obvious reason was the complete failure to reach agreement on disarmament, and the urge to start with a clean slate. There was an accompanying fear to allow activities in outer space develop uncontrolled. In addition, once vested interests in space were acquired, it would be too late to reach agreement (U. S. Policy on the Control and Use of Outer Space, Report of the Committee on Science and Astronautics, U. S. House of Representatives, 86th Congress, 1st Session, April 30, 1959, p. 9). No one wanted to repeat the atomic experience. And finally, from the stand point of negotiation strategy, separate treatment of the issues would avoid the problem of eliminating existing military capabilities, disarmament in space would be preventive. Kecskementi, p. 32.

was slow to reach this conclusion. Certainly disarmament continued to play a vital role in efforts to establish a regime of peace and law in outer space, and not infrequently continued to be a stumbling block, but necesssary distinctions had been drawn and the groundwork laid for more meaningful discussions toward establishing a Rule of Law in outer space.

CHAPTER II

PARTIAL SEVERABILITY OF THE OUTER SPACE QUESTION

Though the majority of the nations of the world expressed their desire for cooperation in the peaceful uses of outer space by adopting the resolution creating the Ad Hoc Committee,[1] it was soon evident that vital problems remained. When the Ad Hoc Committee on the Peaceful Uses of Outer Space convened,[2] conspiciously absent were the Soviet-bloc nations, the United Arab Republic, and India, due to their dissatisfaction over the Committee membership.[3]

Ad Hoc Committee Activities and Report

The mandate of the Ad Hoc Committee was to inquire into outer space legal problems and to promote international cooperation. Technical and Legal Sub-Committees were established to study international cooperation and legal problems respectively. The function of legal Sub-Committee was to analyze "the nature of the legal problems which may arise in ... outer space" within the context of

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[1] Supra, p. 2 .

[2] May 6, 1959.

[3] U.S. Senate Document No. 56, 89th Cong., 1st Session, International Cooperation and Organization for Outer Space (Washington: U.S. Government Printing Office, 1965), p. 187.

resolution 1348 (XIII) and the peaceful uses of outer space. However, the exact scope of the mandate given the Committee was the subject of discussion. The inter-relationship of law and politics placed an immediate constraint on the work of the Legal Sub-Committee. Consequently, a narrow scope of the mandate prevailed,[4] and unfortunately the Sub-Committee adopted the rather unambitious task of establishing a priority list of legal problems without offering substantial or significant recommendations for solutions thereto.

However, the Legal Sub-Committee made a not insignificant observation that the United Nations Charter and the Statute of the International Court of Justice extends to activities in outer space.[5] In addition, a comprehensive code was considered undesirable as "premature codification might prejudice subsequent efforts to develop the law based on a more complete understanding of the practical problems involved."[6] The Legal Sub-Commmittee also observed that the legal principles of air and sea law deserved study for possible useful analogies adaptable to

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[4] Ibid., p. 188.

[5] General Assembly Official Records: Fourteenth Session, Agenda item 25, Annexes doc. A/4141, July 14, 1959, pp. 1-27. Ad Hoc Committee Report, Part III, I.B.4.

[6] Ibid., Ad Hoc Committee Report, Part III, I.B.7.

the exploration of outer space, yet the uniqueness of outer space was recognized.[7]

The Ad Hoc Committee issued its report on July 14, 1959.[8] The Committee report surveyed the activities of international bodies in the field of outer space and suggested ways in which the United Nations could assist scientific cooperation. The report also discussed the various legal problems which might arise from outer space activities.

The Legal Sub-Committee established a list of six priority items that needed immediate study.[9] These six priority items were:

1) The IGY precedent established a generally acceptable rule that space is freely available for exploration and exploitation by all nations in accordance with international law.[10]

2) Tort liability for injury or damage caused by space vehicles.[11]

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7 Ibid., Ad Hoc Committee Report, Part III, I.B.5.

8 Ibid., Ad Hoc Committee Report.

9 Legal Sub-Committee part of the Report is reprinted in the Appendix. See also Paul G. Dembling, Aspects of the Law of Space Activities, 21 Fed. B. J. 235, pp. 241-244.

10 This reaffirmed the statement made by Secretary-General Hammarskjold on May 19, 1955, at page 15. Official Records, Ad Hoc Committee Report, Part III, II.A.9.

11 Ibid., Ad Hoc Committee Report, Part III, II.B.10.

3) Allocation of radio frequencies.[12]

4) Avoidance of interference between space vehicles and aircraft.[13]

5) Identification and registration of space vehicles.[14]

6) Reentry and landing of space vehicles.[15]

Noticeably absent from the priority list, however, were some problems of major importance. For instance, the legal questions which might arise by the exploration and use of celestial bodies were not ranked as high priority items. However, the suggestions were made that no nation should be permitted to claim sovereignty over celestial bodies and that such bodies should be used solely for mankinds benefit.[16] The Committee deemed this a non-priority item because human settlement and exploitation of resources were not likely to occur in the near future.[17]

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[12] Ibid., Ad Hoc Committee Report Part III, II.C.13.

[13] Ibid., Ad Hoc Committee Report Part III, II.D.16.

[14] Ibid., Ad Hoc Committee Report Part III, II.E.17.

[15] Ibid., Ad Hoc Committee Report Part III, II.F.21.

[16] Ibid., Ad Hoc Committee Report, Part III, II.C.30.

[17] This report was issued on July 14, 1959. President John F. Kennedy made his man -on-the-moon-in-this-decade speech on May 25, 1961.

Another significant non-priority issue was that of determining where outer space begins. While this issue has been much discussed there is no concensus on an answer. The Sub-Committee admitted however, that eventually settlement of this issue was necessary.[18] Critics of this issue being classified non-priority argued that a Rule of Law could not be established with certainty in outer space until the boundaries are described.[19]

The problem of the protection of public health and safety by safeguarding against contamination of or from outer space was also considered non-priority.[20] Further study however, was encouraged. The Sub-Committee has also been criticized for not making this a priority item.[21]

In addition, this report followed the now traditional pattern of avoidingg a definition of the term "peaceful" in relation to military activities.[22] Instead of a

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[18] Official Records, Ad Hoc Committee Report, Part III, II.A.24.

[19] J.C. Cooper, "Fundamental Question of Outer Space Law," U. S. Senate Document No. 26, Legal Problems of Space Exploration, p. 765.

[20] Official Records, Ad Hoc Committee Report, Part III, II.B.29.

[21] Haley, Space Law and Government, p. 289.

[22] McDougal, p. 396.

distinction between military uses of space and "peaceful" uses of space, an American Bar Association Report suggested that a better dichotomy would be "peaceful" and "~~agressive~~ aggressive" as most activities in space could have military applications.[23] As pointed out, the word "peaceful" has many different connotations. This same ABA report pointed out that the United Nations Charter distinguishes "peaceful" from "aggressive"[24] while the International Atomic Energy Agency uses the dichotomy of "peaceful" versus "military."[25] The former distinction appears better suited for outer space activities.

The main weakness of Committee activity and its report was not so much the lack of substantive detail as it was the lack of participation of the Soviet-bloc nations.[26]

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[23] American Bar Association: Sections of International and Comparative Law, "Report of the Committee on Law of Outer Space-Recommendations", 1961, U.S. Senate Document No. 26, Legal Problems of Space Exploration, pp. 571-594.

[24] See U. N. Charter, Art. 1, para. 1.

[25] See Statute of the International Atomic Energy Agency, 51 Am. J. Int'l. Law, (1957), p. 466.

[26] Haley, Space Law and Government, p. 289.

Settlement of the problems of outer space exploration cannot be reached unilaterally. The conclusions of the Ad Hoc Committee report were accordingly very weak.

The Committee report concluded that it would not be appropriate to establish an autonomous international organization for outer space cooperation nor to have existing international governmental organization undertake complete responsibility in this field. The Committee did think, however, that it might be appropriate for the United Nations to serve as a focal point in facilitating international cooperation and to consider appropriate means for studying and resolving legal problems.[27]

A Second Disarmament Impasse

Lack of Eastern European participation in Ad Hoc Committee activity was somewhat diminished by Premier Khrushchev's words of hope expressed upon his arrival in Washington on September 15, 1959. He disclaimed any assertion of sovereignity over the moon after Lunik II became the first man-made object to strike the moon.[28] The Soviet Premier waxed poetic in this declaration when he said: "The Soviet pennant, as an old resident on the moon will welcome your pennant and they will live there

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[27] Official Records, Ad Hoc Committee Report Part IV, III.

[28] Eugene M. Emme, Aeronautics and Astronautics, 1915-1960 (Washington: U.S. Government Printing Office, 1961), p. 112.

together in peace and friendship, as we both should live together on earth ... as should live in peace and friendship all peoples who inhabit our common mother earth; who so generously gives us her gifts."[29]

That the disarmament aspects of the outer space problem remained was evident in the proposals presented to the 14th General Assembly by the United States, United Kingdom, Soviet Union, and France. On September 17, 1959, Secretary of State Christian A. Herter addressed the General Assembly and again the United States urged that the peaceful uses of outer space be considered apart from disarmament, recognizing that "progress in disarmament might be slow" and difficult. Yet, the Secretary expressed doubt of an international approach due to the Soviet failure to participate in Ad Hoc Committee activity.[30] In addition, Herter expressed hope that the Soviet Union would change its position concerning the composition of the United Nations Committee and join in cooperative efforts toward establishing the peaceful use of outer space.

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29 Statement by Soviet Premier Khrushchev upon his arrival in Washington on September 15, 1959, in Department of State Bulletin, October 5, 1959, Vol. 41, pp. 477-478.

30 Documents on Disarmament, 1945-1959, Vol. II, pp. 1444-1447.

On this same day British Foreign Secretary (Lloyd) to the General Assembly offered his three-stage solution to the disarmament and outer space problems.[31] He suggested a study of the problems involved in the use of outer space in the first stage. At the intermediate stage, he suggested agreement on a system to ensure the use of outer space for peaceful purposes, and comprehensive disarmament by all powers under effective international control, including banning the use of outer space for military purposes, would be the ultimate third stage objective.

The Soviet proposals on "General and Complete Disarmament" made a few days later were still very much the same: disbandment of armed forces, elimination of foreign military bases, and in the last stage the destruction of all types of nuclear weapons and missiles.[32]

The French proposal was made by French Representative Moch, a little over a month later. He reminded the General Assembly that the number of devices entering the

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31 Ibid., pp. 1449-1451.

32 Ibid., pp. 1472-1473 proposal made on September 19, 1959.

stratosphere was increasing so rapidly that it would soon be too late to apply disarmament methods in the fields of rockets, missiles, and satellites. After employing the atomic analogy Representative Moch said: "In order to derive the most from the harsh lesson of 1946, we deem it necessary, in any disarmament program, that high priority be given to measures prohibiting first the development, then the manufacture and possession of all vehicles for the delivery of nuclear devices: satellites, rockets, supersonic or long-range aircraft, ocean-going submarines, aircraft carriers, launching pads, etc. ... We propose claiming anguish and distrust by starting disarmament efforts with the elimination of the most dreaded vehicles for the delivery of the material of universal destruction." [33]

A General Assembly Resolution 1378 (XIV) on General and Complete Disarmament referred these proposals to the Ten Nation Committee on Disarmament, and called "upon Governments to make every effort to achieve a constructive solution" to this problem.[34] In this Resolution the General Assembly also expressed hope that "measures leading towards the goal of general and complete disarmament under

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[33] Ibid., pp. 1498-1499.

[34] United Nations Doc. A/RES/ 1378 (XIV), November 23, 1959. Unanimously adopted.

effective international control will be worked out in detail and agreed upon in the shortest possible time."

United Nations Resolution on International Cooperation in the Peaceful Uses of Outer Space & the Creation of a Permanent Committee on Outer Space

On December 10, 1959, Ambassador Lodge submitted on behalf of the United States and several other nations a draft resolution on international cooperation and the peaceful uses of outer space.[35] He stated that it was "not too early to start thinking about the regime which ought to be applied to international relations with respect to celestial bodies."[36] He added that the United States regards space exploration as an undertaking of earth as a whole and that peaceful and scientific progress "should proceed in harmony among nations." He urged that international cooperation and the peaceful uses of outer space would not be delayed because of failure in disarmament negotiations. The Ambassador concluded by saying: "The occasion is new. The challenge is unprecedented. Let us rise to the occasion."

Ambassador Lodge's appeal was successful, for within forty-eight hours, the General Assembly unanimously

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[35] United Nations Doc. A/C.1/L.247, December 10, 1959.

[36] Ibid.

adopted such a resolution which called for international cooperation and the peaceful uses of outer space.

General Assembly Resolution 1472 (XIV), entitled "International Cooperation in the Peaceful Uses of Outer Space,"[37] recognized "the common interest of mankind ... in furthering the peaceful use of outer space," expressed belief that the "exploration and use of outer space should be only for the betterment of mankind," desired to "avoid the extension of ... national rivalries into outer space," recognized the "importance of international cooperation in the exploration and exploitation of outer space for peaceful purposes" and therefore established a Committee on the Peaceful Uses of Outer Space.

The functions of the Committee were primarily twofold. First, to study ways and means of promoting international cooperation in the peaceful uses of outer space. Second, to study the nature of the various legal problems which might arise from the exploration and exploitation of outer space. This was essentially what the Ad Hoc Committee Report had recommended. Membership on the Committee was to be for 1960 and 1961, and the Committee was requested to submit a report to

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37 U. N. Doc. A/RES/1472 (XIV), December 17, 1959. Unanimously approved. Reprinted in part in appendix.

subsequent sessions of the General Assembly. The major difference between the directives of the two committees was that the new committee was not directed to consider the activity or resources of the United Nations or new organizational arrangements.

The Soviet Union at first agreed on the composition of the new outer space committee, as the membership was extended from 18 on the Ad Hoc Committee to 24 on the new Committee due to the United States concession.[38] Unfortunately, however, the permanent Committee failed to get off the launching pad and bogged down in renewed Soviet objections over composition of the Committee and voting procedures.[39] Due to failure to reach agreement on these issues, the Committee did not meet from the time it was created in December 1959 until late in November 1961, when the stalemate was overcome.

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[38] The member nations of the new Committee were: Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Poland, Romania, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

[39] The Soviet Union insisted on prior agreement on Committee officers, organization and procedures before the Committee met. The United States on the other hand sought agreement on the use of the normal committee procedures of the General Assembly and a balanced slate of officers which would reflect the composition of the Committee. The Soviet Union demanded a disproportionate number of officers and a different than normal voting procedure.

Ten Nation Disarmament Committee Conference and its Subsequent Breakdown.

Despite seeming confusion and lack of direction, the United States policy was clear and was once again enunciated. In January 1960, Under Secretary of State Livingston T. Merchant explained to the House Committee on Science and Astronautics that the United States had two complementary approaches to the problems of outer space: (1) Consulting and cooperating in an effort to find means of assuring the use of outer space for peaceful purposes only, and (2) consulting and cooperating in the conduct of outer space activities and in the establishment internationally of an orderly basis for their accomplishment.[40]

This statement of policy was supplemented by Arnold W. Frutkin, Director of the Office of International Programs, NASA, when about a month later he said that "above all ... we know that space is inherently international in character." He stated that non-appropriation of celestial bodies or outer space was a widely accepted principle and that "there is a strong feeling everywhere" that the arms race should not be extended into outer space."

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[40] Statement by Under Secretary of State Merchant before the House Committee on Science and Astronautics, in Department of State Bulletin, February 8, 1960, Vol. 42, p. 214.

He said that the United States, for its part, hoped "to demonstrate by the openness of our program" and our willingness to cooperate that we subscribe to these principles.[41]

On March 15, 1960, the Ten Nation Committee on Disarmament conference convened. According to U. N. Resolution 1378 (XIV) it was to consider the proposals made in the fall of 1959.[42] At the opening session the Soviet Union and its Eastern European allies renewed their demands for the plan presented to the General Assembly in September 1959.[43] This was the plan which called for disbandment of armed for ces, reduction in conventional weapons, elimination of foreign military bases, and in the last stage the destruction of all types of nuclear weapons and missiles.[44]

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[41] Address by Arnold W. Frutkin before the Inter-American Defense Board on February 16, 1960, in National Aeronautics and Space Administration news release 60-124, February 16, 1961.

[42] Supra p. 11.

[43] Supra, p. 13.

[44] Declaration of the Soviet Government on General and Complete Disarmament. United Nations Doc. A/4219, September 19, 1959.

The Western Paper submitted to the Ten Nation Committee on Disarmament on March 16, 1960, in part called for joint studies to "assure compliance with an agreement that no nation shall place into orbit or station in outer space weapons of mass destruction" and upon successful completion of the study actual agreement to prohibit "placing into orbit or stationing in outer space vehicles capable of mass destruction."[45]

The overall Western proposal called for agreement on prior notification of space launchings in the first stage, establishment of adequate controls and prohibition of placing in orbit vehicles capable of mass destructions in the second stage, and further agreements on measures to insure the use of outer space for peaceful purposes only in the third stage.

In addition, the West submitted to the Ten Nation Committee the "Principles and Conditions for General and Complete Disarmament." This paper asserted that the final goal of general and complete disarmament would be the reduction of all types of arms and weapons to the level necessary to maintain international security and that the program must "also provide for the use of

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45 Western Paper submitted to the Ten-Nation Committee on Disarmament on March 16, 1960, in Conference doc. TNCD/3, Mar. 16, 1960; Department of State press release 430, Aug. 5, 1960.

outer space for peaceful purposes only and for the final elimination of weapons of mass destruction and their means of delivery."[46]

Progress toward providing for the peaceful uses of outer space was blocked by the Soviet Union's insistance that the Ten Nation Committee adopt a treaty implementing Khrushchev's program.[47] Yet, the Soviets would not explain how they intended to implement control and inspection. The Western proposal was more specific,[48] as it called for on-site inspection and prior notification of launchings.

Simultaneously the Soviet Union boycotted the United Nations negotiations on the peaceful uses of outer space. However, the general atmosphere of international affairs mitigated successful efforts at this time. Tensions were mounting in the light of the U-2 incident and the Berlin crisis.

The Soviet Union nevertheless, introduced a revision of its disarmament plan, when it submitted to the Ten Nation Committee its "Basic Provisions of a Treaty on

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[46] Western Proposal submitted on April 26, 1960, in Conference doc. TNCD/5, April 26, 1960; Department of State press release 430, August 5, 1960.

[47] Thomas J. Hamilton, New York Times, April 24, 1960, p. 5.

[48] Instead of referring to "missile weapons" the Western proposal called for prohibiting "placing into orbit or stationing in space vehicles of mass destruction."

General and Complete Disarmament."[49] An about face was made and now it was suggested that at the first stage "all means of delivering nuclear weapons" were to be eliminated. In addition, all troops were to be withdrawn from foreign territories and the placing into orbit or stationing in outer space of any special device or weapons was to be prohibited. This proposal purported to accept the earlier French proposal for priority in eliminating missiles capable of delivering nuclear weapons.[50]

This approach would have placed the West in the untenable position of having to destroy its essential means of collective self-defense without at the same time the Soviet Union implementing measures which would serve to maintain the stability of the military environment. The changes in the Soviet approach were either illusory or impossible.

Discussion of this proposal had not been completed when the Soviet bloc representative walked out of the Committee meeting on June 27. On that same day a new United States paper proposed among other things that "the

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[49] Proposal submitted to Ten Nation Committee by Soviet Union on June 7, 1960, in Conference doc. TNCD 16/ Rev. 1, June 8, 1960; Department of State press release 430, August 5, 1960.

[50] Supra, p. 10.

placing into orbit or stationing in outer space of vehicles carrying weapons capable of mass destruction shall be prohibited,"[51] in accordance with previous Western proposals. In addition, the paper called for prior notification of missile launchings and inspection of launching sites. In the second stage missile stockpiles were to be reduced and in the third stage all armaments over those necessary for maintaining internal security were to be destroyed. The result of the Soviet walkout was that the work of the Ten Nation Committee could not be completed.[52]

After the breakdown of the Ten Nation Disarmament Conference, Ambassador Lodge requested the convening of the United Nations Disarmament Commission. This was done on August 16, 1960. The Commission sought to affirm the urgency that the Space Powers renew negotiations. The United States urged study of its July 27 proposal.[53] A resolution was passed unanimously urging

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[51] United States Paper submitted to the Ten-Nation Committee on Disarmament on June 27, 1960, in Conference doc. TNCD/7, June 27, 1960; Department of State press release 430, Aug. 5, 1960.

[52] Michael Aronson, "Aspects of the Law of Space," U. S. Senate Document No. 56, International Cooperation and Organization for Outer Space, p. 168.

[53] Supra, p. 21.

the 15th General Assembly to give earnest consideration to the question of disarmament and the resumption of negotiations.[54]

One of the advantages of the generally approved separability of the spatial peace and disarmament issues was to be seen in this Soviet walkout. This policy decision was made so that lack of agreement on an effective system of inspection and control wouldn't necessarily delay progress in negotiations involving spatial exploration.[55] Such delay had been seen and the desire for separability increased.

The Eisenhower Doctrine

Despite the failure of these exhaustive efforts, a challenging appeal was made by President Eisenhower in his farewell address to the General Assembly in September 1960. The President said that the emergence of the new world of outer space posed a vital issue: "Will outer space be preserved for peaceful use and developed for the benefit of all mankind? Or will it

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[54] United Nations Doc. A/C.1/L.234, cosponsored by all 82 of the member nations on the U. N. Disarmament Commission and unanimously adopted by Committee I on November 2, 1960.

[55] Aronson, p. 169.

become another focus for the arms race ...?" He referred to the recent Antarctic Treaty and said that the principle should be extended to an even more important sphere." He said that the time was ripe for an agreement in this area as national vested interests in outer space and celestial bodies had not yet developed significantly. After employing the atomic analogy the President proposed that:

"1. We agree that celestial bodies are not subject to national appropriation by any claims of sovereignity.

"2. We agree that the nations of the world shall not engage in war-like activities on these bodies.

"3. We agree subject to appropriate verification, that no nations will put into orbit or station in outer space weapons of mass destruction.

"4. We press forward with a program of international cooperation for constructive peaceful uses of outer space under the United Nations ..."[56]

The ideas expressed in this proposal were not new. They had been conceived in the minds of some men for some time, and had indeed been parts of various proposals and

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[56] Address before the 15th General Assembly of the United Nations on September 22, 1960 in Public Papers of the Presidents of the United States: Dwight D. Eisenhower 1960, p. 707.

preambles.[57] The real significance of this proposal lies in its clear understanding of the real issues of spatial exploration. It recognized not only a problem but, foresaw a ray of hope. For this reason these solutions were offered.

The importance of this proposal also lies in the fact that this was a proposal to solve the space problem as an issue in and of itself. Though these ideas were not new, for the first time they were joined and proposed as a solution by the head of one of the

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[57] The idea that celestial bodies should not be subject to claims of national appropriation had been espoused for years by numerous lawyers, had been recommended by Secretary General Hammarskjold, and had been supported in the Ad Hoc Committee Report.

The proposal that there should be no war-like activities on celestial bodies was the theme of the earlier correspondence between the heads of state, the Space Act, and United Nations Resolution 1348.

The provision for the prohibition of orbiting or stationing of weapons of mass destruction had been a part of earlier disarmament proposals, especially the Western proposals in March, 1960.

The plea for international cooperation in the peaceful uses of outer space had also been a part of the correspondence Eisenhower and the Soviet Premiers, and had also been made by Secretary Dulles and Senator Johnson before the United Nations. In addition, U. N. Resolution 1348 called for such international cooperation.

space leaders. This was a part the Eisenhower Doctrine.[58]

It was President Eisenhower's thesis that the space age represents a new era in the history of human civilization, and that the very emergence of this new era posed vital issues. President Eisenhower in his farewell address, as he had numerous times previously, warned that the opportunity to preserve peace in outer space was fleeting, and he pleaded that we not pass the point of no return. This Eisenhower Doctrine was concurred in and stimulated by his successor to the Presidency, John F. Kennedy, and new efforts toward spatial agreements were forthcoming.

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[58] Haley, Space Law and Government, p. 12.

CHAPTER III

POLITICAL STIMULATION AND INTERNATIONAL COOPERATION

In a special Second State of the Union Message President Kennedy demonstrated his concern with the new ocean of spatial exploration. He called for a national commitment to land a man on the moon in this decade.[1] This message stimulated both American and world interest on the problems and expectations of spatial exploration.

Kennedy Stimulation

President Kennedy addressed himself more specifically to the problem of establishing a Rule of Law in outer space when he addressed the United Nations General Assembly several months later. The President said: "As we extend the rule of law on earth, so we must also extend it to man's new domain -- outer space." After congratulating the Soviet cosmonauts on their recent success,[2] the President urged that the cold war not be extended into outer space and that imperialism and sovereignity be avoided in outer space. The President then said that "to this end we shall urge proposals

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1 State of the Union Message by President Kennedy on May 25, 1961, in Public Papers of the Presidents of the United States: John F. Kennedy, 1961, p. 404.

2 On Aug. 6 the U.S.S.R. launched Vostok II which made 17½ orbits and returned both the craft and pilot (Major Gherman Titov) successfully.

extending the United Nations Charter to the limits of man's exploration in the universe, reserving outer space for peaceful use, prohibiting weapons of mass destruction in space or on celestial bodies, and opening the mysteries and benefits of space to every nation."[3]

President Kennedy's proposals for establishing a rule of law in outer space by extending international law and the United Nations Charter and for providing for the peaceful use of space by prohibiting weapons, were not novel. However, his articulate expression of hope and desire concerning these problems greatly stimulated efforts to find solutions thereto.

In addition to calling for a regime of law and order in outer space, President Kennedy urged: the promotion of scientific cooperation and the exchange of information; cooperation in international weather research and prediction; and international cooperation in the establishment of global communication satellites.[4] The resolution adopted unanimously by the 16th General Assembly later in the year reflected President Kennedy's suggestions.[5]

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[3] Address by President Kennedy to the United Nations General Assembly on September 25, 1961, in Public Papers of the Presidents of the United States: John F. Kennedy, 1961, p. 618.

[4] Ibid.

[5] United Nations Resolution 1721 (XIV) adopted unanimously on December 20, 1961.

United States Initiatives and United Nations Action

On the same day as President Kennedy's proposal, the United States submitted to the General Assembly a proposal entitled "A Program for General and Complete disarmament,"[6] a part of which urged, as President Kennedy had suggested, the promotion of the peaceful use of Outer Space by prohibiting "the placing into orbit or stationing in outer space weapons capable of producing mass destruction" and calling for advance notice of launchings.[7]

The United States subsequently presented an outline for a program of international cooperation and control in space to the United Nations Committee on the Peaceful Uses of Outer Space as another step toward ensuring that space exploration be for the benefit of mankind, not for his destruction. On November 27, 1961, the first meeting of the Committee was held since its expanded membership and permanent status two years previously, due to the Communist-bloc boycott.

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[6] United Nations Doc. A/4891, September 25, 1961.

[7] This proposal had also been a part of the United States proposal of June 27, 1960, supra, p. 21.

Ending its boycott, the Soviet Union sent its chief delegate Valerian A. Zorin to the meeting. Before presenting the United States plan, the U. S. delegate Charles W. Yost pleaded that "the time is ripe for certain initial measures to preserve peace in outer space and to extend to all nations the benefit of exploring it."[18]

The United States urged action before the Committee memberships expired at the end of the year. Accordingly, the United States submitted, as President Kennedy had requested, its proposal in early December 1961, in the form of a draft resolution.[9] In submitting the draft resolution Ambassador Stevenson said "the resolution deals exclusively with the peaceful uses of outer space." Though Ambassador Stevenson recognized the interrelationship of military questions of space and earth he proposed that it would be desirable to start with a "clean slate," in a bold, orderly, and creative fashion.[10]

The draft resolution urged that international law including the United Nations Charter apply to outer

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[8] Robert Conley, New York Times, November 28, 1961, p. 1.

[9] U.N. Doc. A/C.1/L.301, Dec. 4, 1961, pp. 16-17.

[10] Sam Pope Brewer, New York Times, December 5, 1961, p. 1.

space and celestial bodies, that outer space and celestial bodies are free for exploration and use by all states and are not subject to claims of national sovereignity. In addition, the program called for exchange of scientific information, weather research and prediction, communication satellite programs, and an expansion of membership of the United Nations Committee on the Peaceful Uses of Outer Space.

The United States and Soviet delegations to the United Nations informally discussed the question of the political make-up of the U. N. Committee on the Peaceful Uses of Outer Space and the prospects of co-sponsoring a resolution to that Committee along the lines of the U. S. proposal. The U. S. program commanded considerable support so the Soviet Union decided to co-sponsor the resolution.

On December 11, 1961, the General Assembly's Political Committee unanimously approved a resolution calling on the Committee on Peaceful Uses of Outer Space to meet no later than March 31, 1962, to begin discussions of world cooperation in this field.[11] The Soviet Union supported this action.

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11 The provision calling for the Committee on Peaceful Uses of Outer Space to meet no later than March 31, 1962, was included in Resolution 1721, unanimously adopted by the General Assembly nine days later.

With Soviet support, agreement was now possible on some basic principles on international cooperation and the peaceful uses of outer space.

General Assembly Resolution 1721 (XVI) was adopted unanimously on December 20, 1961, which made an attempt to this end.[12] Prospects for establishing a Rule of Law and minimum order in outer space looked bright indeed.

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[12] U. N. Doc. A/RES/1721 (XIV), Jan. 3, 1962.

CHAPTER IV

EARLY UNITED NATIONS OUTER SPACE RESOLUTIONS

General Assembly Resolution 1721 (XIV) on International Cooperation in the Peaceful Uses of Outer Space [1] recognized "the common interest of mankind in furthering the peaceful uses of outer space" and expressed the belief that "the exploration and use of outer space should be only for the betterment of mankind and to the benefit of the states irrespective of the stage of their economic or scientific development."[2]

Scope, Purpose, and Effect of Resolution 1721

This resolution commended to the States for their guidance in exploring and exploiting outer space the following legal principles: "(a) International law, including the United Nations Charter applies to outer space and celestial bodies; (b) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law, and are not subject to national appropriation."[3]

This resolution was based in part upon the report of the Ad Hoc Committee.[4] The resolutions, like the report,

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[1] Text of the Resolution is reprinted in the appendix.

[2] U. N. Doc. A/RES/1721 (XIV), Jan. 3, 1962.

[3] Ibid.

[4] Supra, p. 28.

invited study of the legal problems which may arise from spatial activity, and both called for the extension of international law and the United Nations Charter.

In addition, the resolution had provisions for registration of launchings and exchange of information. It recommended study of cooperative weather and communication satellites and decided to continue the memberships on the Committee on the Peaceful Uses of Outer Space as contained in resolution 1472 (XIV)[5] and to add four new nations to the Committee.[6]

The two legal principles adopted were limited. The General Assembly did not seek to settle the perennial issue of where air space ends and outer space begins. It was assumed that orbiting satellites were operating in outer space. It was again felt that this definition "should await further experience and consensus among nations."[7]

According to the legal principles adopted, mankind is free to use outer space in much the same manner that he is

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[5] Supra, p. 27.

[6] The new members on the Committee were Chad, Mongolia, Morocco and Sierra Leone.

[7] Actually the value of the principles enunciated in this resolution did not depend upon the drawing of precise boundaries. A regime of law on the high seas has been possible without complete agreement on where the high seas begin. See John A. Johnston, Proceedings of the Conference on Space Science and Law, Mortimer D. Schwartz (South Hackensack, New Jersey: Rothman and Co., 1961), p. 138.

free to use the high seas, i.e., within the constraints of exclusive use and illegal activity. This approach attempts to promote maximum exploration and exploitation of outer space and minimize competing claims of national appropriation through claims of sovereignity.

In reference to the extension of the U. N. Charter to outer space, it has been pointed out that Articles and 2 of the Charter obligate spatially capable nations to conduct their programs in a manner consistent with the principles and purposes of the Charter. Spatial exploration accordingly must not be used for aggressive purposes and nations are still obligated to promote peace, justice, and human dignity for mankind.[8]

The significance of this agreed internationalization of space lies in the Soviet support of the resolution after it had boycotted the meetings of United Nations Ad Hoc Space Committee.[9]

Most legal scholars applauded this resolution. It had been argued that national sovereignty in space would be unwise for a number of reasons. Practical control

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[8] Leon Lipson and Nicholas de B. Katzenbach, Report to the National Aeronautics and Space Administration on the Law of Outer Space (Chicago, Illinois: American Bar Foundation, 1960), p. 23.

[9] William L. Lawrence, New York Times, December 17, 1961, p. E7.

would be most difficult to exercise, geographical boundaries difficult to define, and conflict over these issues would impair international relations.[10]

An optimistic appraisal of the legal effect of this resolution was expressed by Mr. Leonard Meeker, the Deputy Legal Adviser of the Department of State, when he said: "When a General Assembly resolution proclaims principles of international law -- as resolution 1721 has done -- and was adopted unanimously, it represents the law as generally accepted in the international community."[11] In addition, the resolution has been called a "giant stride toward resolution of the problem of governing man's occupation of celestial bodies."[12]

The legal character of United Nations resolutions has long been a matter of scholary discussion. One critic says that Resolution 1721 should be considered a "foundation stone." Its positive significance lies in the fact that by extending international law and the United Nations Charter into outer space, it has filled a

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10 Cornelius Ryan, Across the Space Frontier (New York: Viking Press, 1952), p. 68.

11 Martin Menter, "Formulation of Space Law", in Schwartz, Proceedings of the Conference on Space Science and Law, p. 132.

12 Ibid.

legal vacuum that had previously existed in this area. In addition, by rejecting the res nullius concept the resolution has given outer space and celestial bodies the character of res communis.[13]

It has also been widely asserted that the manner in which a resolution is adopted can make an essential difference. Generally, the conclusions that can be drawn from a unanimously accepted resolution are (1) that while the resolution is not a rule of international law, (2) it is binding upon member nations to the extent that they have a moral obligation to refrain from any attitude or activity which might prevent said resolution from becoming a generally accepted integrated rule of international law. Obviously, the resolution is binding to the extent that a nation is unwilling to have its moral reputation disrupted.[14]

It is generally considered that United Nations resolutions are not enough to form international law and that declarations or conventions to which all the states of the world can accede and whose legally binding character

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[13] Istvan Herczeg, Proceedings of the Seventh Colloquium on the Law of Outer Space, Andrew Haley. (South Hackensack, New Jersey: Fred B. Rothman & Co., 1964), p. 273. The difference between res nullius and res communis is pointed out in note 33 on page 17.

[14] M. Seara-Vazquez, Cosmic International Law (Detroit: Wayne State University, 1965), p. 231.

is unquestionable are required to form international law.[15] Following this argument there is a need for a treaty for the peaceful uses of outer space despite this resolution.[16]

When U. N. resolutions 1472 (XIV)[17] and 1721 (XIV) are read in conjunction they clearly indicate that it is the wish of the international community to avoid the extension of national rivalries into outer space and to preserve it for peaceful uses. However, the resolution has its critics who believe that it has not gone far enough. It is worthwhile to quote Andrew G. Haley, noted space lawyer, at length.[18]

> The United Nations having taken a look at the issues presented and the solutions offered, has recommended a piecemeal and stop-gap solution. The advocates of the U. N. and U. S. wait-and-see policy will undoubtedly point to the General Assembly Resolution (1721)

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[15] Herczeg, p. 278. However, for a different view see Oscar Schachter, Law and Politics, Maxwell Cohen (Montreal: McGill University Press, 1964), p. 196, to the effect that Resolution 1721 is considered a statement of the basic legal principles governing outer space and the fact that it is a resolution and not a treaty does not deprive of its legal effect.

[16] Cohen, Law and Politics, p. 127.

[17] Supra, p. 38.

[18] Haley, Space Law and Government, p. 131.

> ... and ask what more do you want? What is needed is not the broad meaningless language the international law ... applied to outer space and celestial bodies are free for exploration and use by all states. Negatively phrased sweeping generalities are not contributing to the solutions of the immediate problem. We are now in need of agreement on what men may men may do, what effect their activities will have, where they may go, and how they may travel.

Kennedy-Khrushchev Correspondence: New Hope for Cooperation in the Peaceful Uses of Outer Space

Efforts toward international cooperation in the establishment of spatial peace were advanced by an exchange of letters between President Kennedy and Soviet Premier Khrushchev. In March 1962 President Kennedy made some concrete proposals to the Soviet Premier for common exploration of outer space. President Kennedy suggested, in response to resolution 1721 the "joint establishment ... of a weather satellite system," exchange of operational tracking systems, cooperation in mapping the earth's magnetic field, experimental communication satellites, and exchange of space medicine knowledge.[19]

The Soviet Premier answered this letter later in March. He said,"the necessity is now generally recognized for further practical steps in the noble cause of developing cooperation in space research for peaceful purposes." The Premier named several areas of space

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[19] Letter from President Kennedy to Soviet Premier Khrushchev on March 7, 1962, in White House press release, March 17, 1962.

research and peaceful uses of space where cooperation would be helpful. These areas were the same that President Kennedy had suggested except that Khrushchev added rescue of space ships and the legal problem involved in space exploration.[20]

In addition, the Soviet Premier affirmed and applauded U. N. Resolution 1721 yet said that it was

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[20] Letter from Soviet Premier Khrushchev to President Kennedy on March 20, 1962 in U. S. Senate Document No. 18, 88th. Cong., 1st. Session, Documents on International Aspects of the Exploration and Use of Outer Space, 1954-1962 (Washington, U. S. Government Printing Office, 1963), p. 248.

President Kennedy made arrangements for an early discussion of these proposals. He designated Dr. Hugh Dryden, Deputy Administrator of NASA, to take the lead for the United States in technical talks with Soviet representatives. An agreement was reached on June 8, 1962, between Dr. Dryden and A. A. Blagonravov of the Soviet Union, for cooperation in the field of meteorology, mapping the earth's magnetic field, and telecommunications.

The understanding was referred to the governments for their consideration. On December 5, 1962, the cooperative program between the Soviet Union and the United States was announced. (NASA News Release (No. 62-257) Dec. 5, 1962, contains the relevant documentation, including the texts of letters confirming the agreement exchanged between the President of the U.S.S.R. Academy of Sciences, Keldysh, and the Administrator of NASA, Webb.)

However, it has been noted that the bilateral cooperation envisaged was modest, being coordination rather than cooperation, and even then such coordination has yet to be achieved. (McDougal, p. 879.)

Note however that on August 17, 1966, the Soviet Union via Tass said that it is beginning to live up to this four-year-old agreement to use space for weather studies. Cosmos 122, the sputnik sent up June 25, was a weather satellite. Tass said Soviet scientists are now beginning to collect weather data in space and send it to other nations, as specified in the Soviet-American agreement. Since the signing of the agreement in 1962 the U. S. has launched nearly a dozen Tiros and Nimbus weather satellites and has protested lack of Soviet participation. (Washington Post, August 18, 1966, p. A1.)

necessary to go further. However, the Premier asserted that cooperation in the peaceful conquest of space was related to solution of the disarmament problem and indicated that until agreement was reached on disarmament the countries would be limited in their ability to cooperate in the peaceful uses of outer space. Nevertheless, the Kennedy-Khrushchev correspondence offered even more hope than the several Assembly resolutions.[21]

A Third Disarmament Impasse

As Premier Khrushchev indicated, disarmament was still very much a part of providing for the peaceful uses of outer space, in practice if not in theory. The United States submitted an outline treaty on disarmament in April 1962, and included therein was a provision on outer space which provided that "the parties would agree in stage one to cooperate in the peaceful use of outer space and not to place in orbit weapons of mass destruction. Production stockpiling and testing of boosters for space vehicles would be limited."[22] The proposal also provided for advance notification of launchings in such time as to permit pre-launch inspection of the space vehicle or missile.

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21 McDougal, p. 878.

22 Summary of the United States Outline Treaty on Disarmament presented April 18, 1962, in White House press release, April 18, 1962.

A Soviet plan proposed in March 1962 had also provided for prohibiting in the first stage the "orbiting or placing in outer space special devices capable of carrying mass destruction weapons."[23] Unaffected by this proposal would be bomb-carrying vehicles already orbiting at the time the treaty went into effect.[24] In addition, the Soviet Union had asserted that it possessed the capability of placing such vehicles into space.[25]

Unfortunately, but expectedly, an analysis of the two proposals clearly indicated that both nations wished to deprive their adversary of any superiority in the first stage.[26] The Soviet Union still called for the liquidation of Western military bases and the United States attempted to strip the Soviet Union of any superiority it might have on space weapons. Once again agreement was impossible, and efforts toward spatial agreement were stymied.

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23 McDougal, p. 462.

24 Ibid., p. 464.

25 Ibid.

26 Ibid, p. 465.

Committee on the Peaceful Uses of Outer Space: Activities and Enunciation of Basic Legal Principles

Resolution 1721 (XIV) in addition to asserting two basic international legal principles called upon the Committee on the Peaceful Uses of Outer Space "to study and report on the legal problems which may arise from the exploration and use of outer space."[27] Three major issues emerged in May 1962 for Committee consideration: tort liability, assistance and return of spacecraft and astronauts, and legal problems controlling the activities of states in the exploration and exploitation of outer space.[28]

The Legal Sub-Committee met in Geneva on May 28, 1962, to discuss methods of advancing space cooperation and establishing a rule of law in outer space. The discussions suffered by the Soviet interjection of politics concerning nuclear testing; however, the Sub-Committee did adopt a brief report for submission to the parent Committee.

Secretary of State Rusk outlined the United States policy three days before the Sub-Committee convened. After hypothesizing on what could happen unless further

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[27] Supra, p. 56.

[28] Richard N. Gardner, "Cooperation in Outer Space," Foreign Affairs, Vol. 41, No. 2 (January 1963), p. 344.

international agreements were made,[29] he outlined the goals of the United States. First, outer space should be free for use for all nations as long as that use is consistent with the United Nations Charter. Second, a regime of law must be extended and improved as it pertains in outer space. Third, the pacing in orbit weapons of mass destruction must be prohibited.[30]

Draft declarations concerning the control of activities in outer space were submitted by the Soviet Union, the United Arab Republic, the United Kingdom, and the United States in 1962. It is convenient for sake of comparison to include them all at this point, though chronologically they were submitted at different times.[31]

On June 6, 1962, the Soviet Union put forward its draft declaration of the "Basic Principles Governing the Activities of States Pertaining to the Exploration and Use of Outer Space."[32] The Soviet draft desired "to

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[29] The Secretary referred to such things as orbiting or stationed vehicles carrying nuclear weapons, military bases on the moon, and the military use of radio waves and weather control.

[30] Statement by Secretary of State Rusk on May 25, 1962, in Department of State press release 336, May 25, 1962, pp. 3-7.

[31] The proposals were made in the following chronological order: Soviet Union, United Arab Republic, United Kingdom, and United States.

[32] U. N. Doc. A/AC 105/L2.

promote broad international cooperation in the exploration and use of outer space for peaceful purposes," and took into consideration resolution 1721 (XIV) and "solemnly declared" the following basic principles:

1) Exploration and use of outer space is for the benefit of all mankind.

2) Outer space and celestial bodies are free from claims of sovereignty.

3) All nations have equal rights in space.

4) Spatial activities shall be carried out in accordance with the U. N. Charter and international law.

5) The use of space for propagating war, national or racial hatred shall be prohibited.

6) Any activity which might hinder the peaceful uses of outer space shall be permitted only after prior discussion and agreement among nations.

7) Spatial activities by states only.

8) Use of intelligence satellites is incompatable with the objectives of mankind in its conquest of outer space.

9) Astronauts shall be regarded as envoys of mankind and shall be rendered all possible assistance.

This Soviet draft declaration called upon "all the states of the world to accede to it."

The United Arab Republic submitted a "Draft Code for International Cooperation in the Peaceful Uses of Outer Space."[33] This draft recognized that "it is imperative ... that activities in outer space should be exclusively devoted to the peaceful uses of outer space" and urged that the Committee on the Peaceful Uses of Outer Space "be guided in its work by the following principles."

1) Spatial activities are confined solely to peaceful uses.

2) Promotion of international and peaceful cooperation.

3) Secure the safety of space for astronauts.

4) Aid and assistance to astronauts.

5) Return of astronauts and vehicles to the launching states.

6) Promote world-wide interest in outer space.

7) Make full use of the facilities and experience of international organizations.

8) Member States provide to Secretary General "all information for the promoting of international cooperation in the peaceful uses of outer space."

9) Member States assist the U. N. to undertake joint programs.

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33 U. N. Doc. A/AC105/L.6.

The United Kingdom draft declaration of December 4, 1962,[34] was a brief statement of principles concerning the rights of all states freely to explore and use outer space and celestial bodies in accordance with international law, the U. N. Charter, and other relevant international agreements. The wording of this draft with regard to the inability of states to claim sovereignty is much more specific than U. N. Resolution 1721 (XIV). The basic principles urged by this draft were:

1) "Outer space and celestial bodies are free for exploration and use by all States in conformity with international law ... ."

2) "Outer space and celestial bodies are not capable of appropriation or exclusive use by any state. Accordingly, no State may claim sovereignity over outer space or over any celestial body, nor can such sovereignty be acquired by means of use or occupation or in any other way."

3) "In the exploration and use of outer space and celestial bodies, States are bound by international law and by the provisions of the U. N. Charter ... ."

4) "All States shall for themselves and for their nations have equal rights in the exploration and use of outer space."

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[34] U. N. Doc. A/C. 1/879, Dec. 4, 1962.

On December 8, 1962, the United States submitted to the First Committee of the General Assembly its draft declaration of principles relating to the exploration and use of outer space.[35] The draft was in the form of a resolution. It recalled resolution 1721 (XIV), recognized "the common interest of all mankind in furthering the peaceful exploration and use of outer space," and recommended to the States the following principles for their guidance in the exploration and use of outer space.

1) "Outer space and celestial bodies are free for exploration and use by all States, on the basis of equal rights, in conformity with international law."

2) " ... States are bound by the relevant rules of international law and the relevant provisions of international treaties and agreements including the Charter of the United Nations."

3) "Outer space and celestial bodies are not subject to national appropriation."

4) "Assistance to astronauts and space vehicles in distress and return to the launching state."

5) "Launching state responsibility for miscarriages of spatial activities."

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[35] U. N. Doc. A/C.1/881, Dec. 8, 1962.

6) "Jurisdiction and ownership over a space vehicle shall remain unaffected in outer space or upon return to earth."

The Soviet draft declaration cast aspersions upon the U. S. space program rather than seeking to extend law and order into outer space.[36] While the Soviet draft was unacceptable to the United States,[37] it did not oppose the establishment of principles per se.

United States Representative Meeker severely indicted the Soviet proposals when he addressed the Legal Sub-Committee

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[36] Gardner, "Cooperation in Outer Space," p. 346.

[37] The Soviet proposal prohibited the use of outer space for propaganda purposes. While this is admirable enough, the United States was skeptical about its meaning and usefulness because the Soviet Union, after initiating a similar discussion on war propaganda in the 18 nation disarmament conference in Geneva, refused to sign the declaration in the end.

In addition, the Soviet draft urged prior agreement on potentially harmful space projects. This in effect calls for a Soviet veto over U. S. space projects such as West Ford, an experiment which placed copper filaments in an orbital belt around the earth to determine the feasibility of using it for passive reflection communication purposes.

The most repugnant provision of the Soviet draft was the provision asserting that states could be the sole participants in outer space. This was nothing less than an attempt to socialize space, an attack on Telstar and Comsat Corp. type projects.

Also repugnant to the U. S. was the Soviet principle declaring collection of intelligence data from outer space to be incompable with the objectives of mankind in space. It is the U. S. position that such satellites promote peace rather than agitate war.

on June 7, 1962.[38] He asserted that the proposal itself violated the understanding to strive for agreement without the need for voting as the proposals clearly would not be acceptable to the United States. In addition, he said the draft declaration was an "omnibus document into which a wide assortment of ingredients has been poured; and that it was a "broadside of political grapeshot." He said that the Soviet draft merely covered that which was adopted unanimously in resolution 1721 (XIV),[39] caused confusion and misunderstanding,[40] idealogically and practically unacceptable,[41] or should be covered in a separate declaration.[42]

Secretary of State Rusk echoed this rejection of Soviet proposals and expressed his concern when he said about a week later: "There is an increasing danger that outer space will become man's newest battlefield. Steps must be taken at this early stage to keep outer space from being seeded with vehicles carrying weapons of mass destruction, further reducing the security of all the inhabitants

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[38] Statement by Deputy Legal Adviser Meeker to the Legal Sub-Committee on June 7, 1962, in U. S. Senate Doc. No. 18, Documents on the Exploration and Use of Outer Space, 1954-1962, p. 269.

[39] Proposals 1-4.

[40] Proposal 5.

[41] Proposals 6, 7, 8.

[42] Proposal 9.

of our planet. This is preventive disarmament, for such nuclear weapons are not now deployed in space."[43]

Nevertheless, the Soviet Union the next day asserted that the United States was endangering international cooperation by its reluctance to accept the Soviet proposed principles.[44] The United States at this time had taken the position that it was premature for a detailed legal space code before space research clearly defined the complexity of the problems.[45]

The Report of the Legal Sub-Committee was issued on June 20, 1962.[46] However, no agreement was reached on any of the proposals submitted to the Sub-Committee. All that was accomplished was a "useful exchange of views."

Prospects for an agreement were diminished even more when the Soviet Representative to the U. N. said that the international cooperation in spatial activities would be

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[43] Statement by Secretary of State Rusk on June 16, 1962, in Department of State press release 396, June 16, 1962, pp. 6-7.

[44] New York Times, June 18, 1962, p. 6.

[45] The United States overcame its reluctance to draft basic legal principles later in the year in order to have its position recommended for study on Resolution 1802 (XVII).

[46] U. N. Doc. A/AC. 105/C.2/3, June 20, 1962, pp. 1-3, 7-9.

impossible without agreement on the basic legal principles governing spatial exploration and exploitation.[47] The Soviet Union used this argument in demanding that the United Nations Committee on the Peaceful Uses of Outer Space consider first the report of the Legal Sub-Committee which as mentioned failed to reach agreement in Geneva. The Soviet Union also repeated its believe that disarmament was essential to space cooperation.

United States Delegate Senator Gore to the First Committee of the General Assembly in part expressed an understanding of the Soviet concern with both spatial peace and disarmament when he said: " ... [outer] Space is not a new subject, it is just a new place in which the old subjects come up. The things that go on in space are intimately related to the things that go on here on earth. It would be naive to suppose that we can insulate outer space from the other aspects of human existence."[48]

In addition, Senator Gore reiterated the United States policy in these areas. He stated that the United States

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[47] Thomas Hamilton, New York Times, September 11, 1962, p. 3.

[48] Address by United States delegate (Senator Gore) to the First Committee of the General Assembly on December 3, 1962, in United States Delegation to the General Assembly press release 4111, Dec. 3, 1962.

desired that nations "be guided by the general principles ... laid down by the United Nations for the establishment of a regime of law in outer space." He also said an extension of those principles by international agreement would be desirable as would a treaty prohibiting the testing of nuclear weapons in outer space and the orbiting of weapons of mass destruction.[49]

It should be noted that at this point chronologically the United Kingdom submitted its Basic Principles,[50] the Dryden-Blagonravov Agreement was announced[51] and the United States submitted its "Principles Relating to the Exploration and Use of Outer Space."[52]

Resolution 1802: International Cooperation in the Peaceful Uses of Outer Space

After considering the report submitted by the Committee on the Peaceful Uses of Outer Space[53] in response to resolution 1721 (XVI), the United Nations General Assembly adopted Resolution 1802 (XVII) on "International Cooperation

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[49] Ibid.

[50] Supra, p. 70.

[51] Supra, p. 63.

[52] Supra, p. 71.

[53] Supra, p. 74.

in the Peaceful Uses of Outer Space" on December 14, 1962.[54] This resolution, recalled resolution 1721 (XIV) on international cooperation in the peaceful uses of outer space, believed "that the activities of States in the exploration and use of outer space should be carried out in conformity with international law including the Charter of the United Nations," stressed "the necessity of the progressive development of international law pertaining to the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space," it bore "in mind that advances in meteorology and communications" could bring advantages to mankind, noted "with regret"that the Committee on Outer Space failed to make recommendations on legal issues, called upon "Member States to cooperate in the further development of law for outer space," requested the Committee to continue its work on the "further elaboration of basic legal principles," and referred to the Committee all proposals this far made. The United States overcame its reluctance to draft basic principles on December 8, 1962, in order to have its proposals recommended for study in this resolution.

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[54] U. N. Doc. A/RES/ 1802 (XVII), Dec. 19, 1962. Reprinted in part in the Appendix.

The Resolution went on to endorse exchange of information and meteorological and communication cooperation. It also endorsed the Committee on Outer Space recommendation for world-wide scientific cooperation during the International Year of the Quiet Sun.

This concluded 1962 on a hopeful note. Minimum agreement had been reached on two basic international legal principles and a program was accepted for broader international cooperation. Nevertheless it was recognized that the void that existed in respect to the potential militarization of outer space and the absence of agreement on basic legal principles was undesirable, and must be dealt with in the future.

CHAPTER V

U. N. RESOLUTION 1884 (XVIII) "NO BOMBS IN ORBIT"

The bilateral agreement between the United States and the Soviet Union calling for spatial cooperation and the added momentum of U. N. Resolution 1802 (XVII), led to U. S. and Soviet scientists signing another accord on March 20, 1963, for a joint weather satellite program.[1] They also agreed on the launching of the U. S. Echo II satellite for joint communications tests. Both agreements were reached under a space cooperation accord signed in June 1962.[2]

However, on April 16, 1963, the Soviet Union broke off a new series of private U. N. negotiations with the United States on space exploration saying that it would submit its own declaration to the United Nations.[3] Only a few months before, partly as a concession to the Soviet Union, the United States developed its own general principles as a basis for negotiations,[4] even though still preferring to concentrate on practical measures of liability and rescue.

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1 Astronautics and Aeronautics, 1963, NASA Historical Staff (Washington: U. S. Government Printing Office, 1964), p. 100.

2 Supra, p. 63.

3 Kathleen Teltsch, New York Times, April 17, 1963, p. 1.

4 Supra, p. 71.

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The Legal Sub-Committee of the U. N. Space Committee met in New York for the first time in the spring of 1963, since it failed to agree on basic principles for the peaceful exploration and use of outer space at Geneva in March 1962. The task of the Legal Sub-Committee was to draft some code or enumeration of general principles to govern spatial exploration.

Soviet representative Fedorenko indicated that the United States and the Soviet Union were in agreement on some aspects of the problem. He listed such items as: **outer space should be open for exploration and use by** all nations, yet subject to sovereignty by none; application of the U. N. Charter and international law to outer space; provision for the rescue and return of astronauts and space vehicles; and **nations launching a space vehicle should be liable for its miscarriage.**[5]

The new Soviet draft declaration presented to the Legal Sub-Committee incorporated some of the language found in the United Kingdom, United Arab Republic, and

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[5] Teltsch, New York Times, April 17, 1963, p. 1. For a complete account of the work of the Legal Sub-Committee during its first four sessions see Paul G. Dembling and Daniel M. Arons, Space Law and the United Nations: The Work of the Legal Sub-Committee of the United Nations Committee on the Peaceful Purposes of Outer Space, Vol. 32, Journal of Air Law and Commerce, Summer, 1966.

U. S. proposals for the peaceful exploration of outer space.[6] The 11-point draft declaration was essentially the same as the 9-point one submitted to the Legal Sub-Committee in Geneva in June 1962 with the additional provisions making a state responsible for any damage or injury done by its space activity and guaranteeing a nation sovereignty over its own objects in space. The declaration made no major concessions and retained the same objectionable provisions.[7]

It was not surprising that the second meeting of the Legal Sub-Committee ended in failure.[8] The Sub-Committee failed to recommend even non-controversial principles. It adopted a short summary of results describing the several sessions as "a very useful and constructive exchange of views" with an indication that some delegations favored an international treaty-type agreement and others a U. N. General Assembly Resolution.[9] The report recommended that negotiations continue in attempt to reach agreement before the next meeting of the U. S. Space Committee in September.

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[6] Ward Wright, Aviation Week and Space Technology, April 22, 1963, p. 29.

[7] The objectionable provisions were the ones calling for veto power, banning private activities in space, not using space for propaganda purposes, and prohibiting reconnaissance satellite.

[8] Wright, Aviation Week and Space Technology, May 20, 1963, p. 36.

[9] Ibid.

Non-controversial principles included freedom for exploration and use of outer space by all states under international law, immunity of celestial bodies from national appropriation, applicability of international law and the U. N. Charter to outer space, retention of jurisdiction by the launching state over space vehicles and personnel, and liability for miscarriages of space missions.[10]

Failure to adopt these non-controversial principles stemmed largely from the position of the Soviet Union on two points: insistence on its 11-point proposal, and a demand that these principles be drawn up into a treaty to be ratified by individual states. The Soviet Union contended that an international treaty was necessary to make space law binding, whereas the Western countries maintained that General Assembly resolutions are binding and have the additional advantage of not being subject to the delays and difficulties that accompany ratification of an international treaty.

On September 6, the Soviet Union decided to reopen space negotiations with the United States delegation.[11]

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[10] Statement by U. S. Representative to the Legal Sub-Committee (Mr. Leonard C. Meeker) on May 3, 1963, in Department of State Bulletin, June 10, 1963, Vol. 48, p. 923.

[11] Kathleen Teltsch, New York Times, September 7, 1963, p. 1.

Nikolai T. Fedorenko, the chief Soviet delegate at the U. N., said that he hoped that representatives of the U. S. and the Soviet Union could get together. The Outer Space Committee was scheduled to convene in a few days. Committee members were anxious to end the spatial impasse and asked the Soviet and American delegates to meet privately before the meeting convened, as there was still objection to four provisions of the Soviet principles.

In his address to the U. N. General Assembly on September 20, 1963, President Kennedy affirmed the limited understanding when he said "Space offers no problem of sovereignty by resolution of this Assembly, the members of the United Nations have foresworn any claims to territorial rights in outer space or on celestial bodies, and declared that international law and the U. N. Charter will apply."[12] In a spirit of cooperation, the President then called for a joint U. S.-Soviet expedition to the moon.

On October 2, 1963, talked at the United Nations between East and West on agreement not to orbit large nuclear weapons were termed promising by Secretary of State Rusk

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[12] Address by President Kennedy before the United Nations General Assembly on September 20, 1963, in Public Papers of the Presidents of the United States: John F. Kennedy, 1963, p. 693.

and Soviet Foreign Minister Andrei A. Gromyko.[13] While agreement to keep nuclear weapons off outer space vehicles was not considered a major step, it was not considered insignificant. Western military experts have stated that at the present state of scientific development other systems of delivering nuclear weapons are more efficient and effective.

President Kennedy, when asked at a news conference whether the question of verification had arisen in the U. S.-Soviet discussions on an agreement to ban the orbiting of nuclear weapons, indicated to what extent agreement was possible when he said: "There is not an agreement [on verification]. The United States has stated it would not put weapons in outer space. We have no military use for doing so, and we would not do so. The Soviet Union has stated that it does not intend to. We are glad of that. There is no way we can verify that, but we are glad to hear the intention."[14]

Agreement was soon forthcoming. On October 15, 1963, seventeen nations of the 18-member U. N. Disarmament

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[13] Washington Post, October 3, 1963, p. 1.

[14] Statement by President John F. Kennedy at a news conference on October 9, 1963, in Washington Post, October 10, 1963, p. 14.

Committee presented a resolution to the U. N. Political Committee of the General Assembly banning the orbiting of nuclear weapons and other weapons of mass destruction.[15] This was the follow-up to the negotiations between the U. S. and Soviet Union earlier in the month.

The next day the Political Committee of the United Nations General Assembly unanimously approved the 17-nation resolution to prohibit the orbiting of nuclear weapons and other weapons of mass destruction in outer space.[16] Previously, only the U. S. and the Soviet Union had agreed to such a matter in principle. U. N. Ambassador Stevenson commented that governments simply "undertake to refrain from developing a new potential in the armaments field." He added that "certainly it would seem easier not to arm an environment that has never been armed than to disarm areas which have been armed." Ambassador Stevenson called the resolution "another decisive advance in the disarmament process" and a "positive step toward the goal of disarmament."[17] Nikolai T. Fedorenko of the Soviet Union told the Committee that through the signing of the treaty

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15 United Nations Doc. A/C.1/ L.324, October 15, 1963. France did not join in presenting this resolution.

16 Brewer, New York Times, October 17, 1963, p. 1.

17 Ibid.

for a partial test-ban, "a favorable atmosphere has been created for further steps toward disarmament and toward the solving of other problems awaiting solution."[18]

On October 17, 1963, by acclamation, the United Nations adopted resolution 1884 (XVIII) barring weapons on mass destruction from outer space.[19] This Resolution recalled Resolution 1721 (XVI) which expressed the belief that the exploration and use of outer space should be only for the betterment of mankind."[20] It further determined "to take steps to prevent the spread of the arms race to outer space," by (1) welcoming "the expressions of the [U.S.S.R.] and the [U. S.] of their intentions not to station in outer space any objects carrying ... weapons ... of mass destruction, and (2) solemnly calling "upon all States: (a) to refrain from placing in orbit ... any objects carrying ... weapons ... of mass destruction, installing such weapons in outer space in any other manner; (b) to refrain from causing, encouraging or in any other way participating in the conduct of the foregoing activities."

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[18] Ibid. Nuclear Test Ban Treat is reprinted in Appendix.

[19] U. N. Doc. A/RES. 1884 (XVIII) A/557/. Reprinted in Appendix.

[20] Supra, p. 56.

CHAPTER VI

U. N. RESOLUTION 1962: DECLARATION OF LEGAL PRINCIPLES GOVERNING ACTIVITIES OF STATES IN EXPLORATION AND USE OF OUTER SPACE

There are several points of view as to the means whereby the law of outer space might best develop. One view is that the United Nations should prepare a prospective statement of legal principles for outer space activities in addition to those already agreed upon. Another view is that a prolix legal code or convention is necessary. A third viewpoint advocates agreement on an effective number of basic legal principles subject to amendment when necessary, governing practical needs of the current space age.[1] This third view has been the position of the United States while the second view was the early Soviet position.

The Path Toward Agreement on Basic Principles

In early November 1963, the United States and the Soviet Union began to reach agreement on a general

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[1] Carl Q. Christol, "An Analysis of Certain Policy Approaches in the United States to the Emerging Law of Outer Space," Haley, Proceedings of the Seventh Colloquim on the Law of Outer Space, pp. 4, 5.

declaration of the legal principles that should govern activities in space.[2]

The road toward agreement was not easy. The Soviet Union had refused in the past to agree on a document containing principles that all sides could accept, but instead had insisted on a detailed legal code along the lines of the earlier Soviet "Declaration of Basic Principles"[3] that contained a number of objectionable provisions.[4]

This movement toward agreement was possible because the Soviet Union dropped its all-or-nothing approach. Principles asserted in the "Declaration of Basic Principles," but excluded from the new proposal, included provisions that (1) the implementation of any measures that might hinder the exploration or use of space for peace shall be permitted only after agreement between the countries involved; (2) all spatial activities shall be carried out solely and exclusively by States, (3) the use of intelligence satellites is prohibited, and (4) outer

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[2] Thomas J. Hamilton, New York Times, November 8, 1963, p. 1.

[3] Supra, p. 67.

[4] Supra, p. 72.

space cannot be used for propogating war, national or racial hatred.

Later in November a draft declaration of the Legal Principles governing the exploration and use of outer space was submitted by the United States and the Soviet Union to the United Nations Committee on the Peaceful Uses of Outer Space. The U. N. General Assembly's Political Committee approved this draft declaration and a draft resolution endorsing recommendations by the United Nations Committee on the Peaceful Uses of Outer Space which called for international cooperation in the Peaceful Uses of Outer Space on December 5, 1963.[5] On December 13, 1963, the U. N. General Assembly unanimously adopted the draft declaration and the draft resolution.

Provisions of the Declaration of Legal Principles

United Nations Resolution 1962 (XVIII)[6] entitled "Declaration of Legal Principles Governing Activities of States in the Exploration and Use of Outer Space" set the

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[5] Arnold H. Lubasch, New York Times, December 6, 1963, pp. 1, 7.

[6] U. N. Doc. A/RES/1962 (XVIII), December 13, 1963.

groundwork for legal guidelines covering space exploration.[7]

The Resolution recognized "the common interests of all mankind in the progress of the exploration and use of outer space for peaceful purposes," believed "that the exploration and uses of outer space should be for the betterment of mankind and for the benefit of States irrespective of their degree of economic or scientific development," recalled "General Assembly Resolution 110 (II) of 3 November, 1947 which condemned propaganda designed or likely to provoke or encourage any threat to the peace ... or acts of aggression and, considering that the aforementioned resolution is applicable to outer space," took into consideration "General Assembly resolution 1721 (XVI) ... and 1802 (XVII) ... " and solemnly declared that States should be guided by the following principles in the exploration and use of outer space.

1) "The exploration and use of outer space shall be carried on for the benefit ... of all mankind."

2) "Outer Space and celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law."

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7 Reprinted in Appendix.

3) "Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty ... occupation, or by any other means."

4) "The activities of States in the exploration and use of outer space shall be carried on in accordance with international law including the Charter of United Nations ... ."

5) "States bear international responsibility for national activities in outer space, whether carried on by governmental ... or by non-governmental entities ... ."

6) "In the exploration and use of outer space, States shall be guided by the principles of cooperation and mutual assistance and shall conduct all their activities in outer space with due regard for the corresponding interests of other states ... ."

7) "The State on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such objects, and any personnel thereon while in outer space. Ownership of objects launched into outer space ... is not affected by their passage through outer space or by their return to the earth ... ."

8) "Each State which launches ... an object ... [or] from whose territory ... an object is launched, is internationally liable for damage ... ."

9) "States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance ..."

The Declaration of Legal Principles described the mutual restraints and reciprocal obligations that members of the United Nations were prepared to accept. It represented a significant step in the development of outer space law and far transcended the principles enunciated in Resolution 1721 (XVI).[8] It should be noted, however, that the Declaration of Legal Principles did not ban military activities from outer space.[9]

Nature of U. N. Resolutions: Need for a Treaty

This Resolution once again raised questions as to the legal character and binding nature of U. N. Resolutions as well as to the substantive content of the enumerated principles.[10] It is generally recognized that formal U. N. Resolutions are a more finalized source of international custom than the cumbersome unilateral process of claims and concessions yet they are not as forceful as treaties. One authority says that because the General Assembly is not a legislative body, its resolutions are not original sources of international law, but they may indicate existence

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[8] Supra, p. 56.

[9] See page 9 for a discussion of the distinction between peaceful and aggressive uses of outer space.

[10] See page , for an earlier discussion of the legal character of U. N. Resolutions.

of accepted principles.[11] A similar view holds that although the resolutions may not be regarded according to international law as binding upon the states, they do express the respective and adjusted view of the nations. Accordingly, when a resolution is adopted unanimously and recommends previously acceptable principles, and thus corraborates them, the conclusion is that inasmuch as States would conclude international treaties regulating spatial activities with complete binding force they would not deviate from the already declared principles.[12] It should be added however that no serious commentator contends that the resolutions are law.[13]

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[11] John Cobb Cooper, "Current Developments in Space Law," from a paper presented at the 1963 Southeastern Regional Meeting of the American Society of International Law, University of North Carolina Law School, February 1 and 2, 1963.

[12] Dr. I. Csabafi, "Selected Chapters from Space Law in Making the Status of Celestial Bodies," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 178. A combination of these views seem to have emerged as the general attitude of the States. The resolutions adopted have indicated acceptance of certain principles and these principles have not been deviated from greatly in the proposed draft treaties.

[13] Haley, Space Law and Government, p. 73.

In addition to questioning concerning the legal character and binding nature of U. N. resolutions, the substance of the resolutions has not been beyond reproach. It has been asserted that Resolution 1962 (XVIII) in particular and the other resolutions in general have not solved the serious problem of outlining principles that should govern the peaceful exploration and use of outer space. One critic said, "Either exclusively negative precepts have been included (such as forbidding the use of space for belligerant purposes, and prohibiting national appropriation of the cosmos), or the principles expressed are in terms too generic to permit their transformation into law."[14]

A more detailed critical analysis of Resolution 1962 (XVIII) was made by Mr. William A. Hyman.[15] He asserted that the declaration failed to furnish guidelines for future international conduct in space and thus failed to prevent in space "the recurrence of the problems which have plagued earthman for centuries." He believed the declaration was inadequate for present and future use for several reasons. "Outer space" was not defined and

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[14] Enrico Scifoni, "The Principle of Res Communis Omnius and the Peaceful Uses of Outer Space and of Celestial Bodies," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 51.

[15] William A. Hyman has been President of the Committee on Interplanetary Space; First Chairman of Subcommittee on Space Law of the Standing Committee of Aeronautical Law.

therefore the issue of where sovereign air space ends and where outer space begins was avoided. The declaration speaks of the applicability of international law to outer space, yet there is no international law applicable to outer space with the exception of the Test Ban Treaty and other conventions. Endorsement of the principle of res communis was avoided by the negative assertion that outer space and celestial bodies are not subject to national appropriation. Mr. Hyman concluded his analysis by stating: "Six years and six million words later since the submission of the first resolution on the Ad Hoc Committee on Space ... we are still on a treadmill to nowhere. The declaration of principles with its high sounding euphemeral phrases does indicate progress--in general, good fellowship amongst the delegates -- but not in the establishment of the barriers against wrongdoing -- invasion of human rights and the destruction of mankind."[16]

More favorable commentary asserts that in view of Resolution 1721 (XVI) and 1962 (XVIII) the international

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[16] William Hyman, "Wanted-Law and a Policeman in Space! Will Earthly Corruption, Cowardice and Contentment be Barred From the Interplanetary Heavens by the Magna Carta of Space?," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 235.

community has now accepted the fundamental doctrine that outer space and celestial bodies are free for exploration and use by all states in conformity with international law and that outer space and celestial bodies are not capable of appropriation or exclusive use by any state.[17]

There is considerable legal opinion to the effect that while United Nations resolutions are not void of legal effect, nevertheless a treaty would be desirable in the area of outer space. In respect to Resolution 1962 (XVIII) the U. S. and Soviet delegates made clear commitments to the declared principles, and once those commitments were made there should be no legal reason why they should not be so bound and the declaration should accordingly be considered binding. Nonetheless, a treaty is considered desirable.[18]

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[17] H. Berger, "Legal Aspects of Celestial Bodies and Space Stations," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 1.

[18] Remarks delivered by M. Lachs at the Hague Academy of International Law, 1964 session. "The International Law of Outer Space," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 250. It is important to note that the Soviet Union considers a treaty necessary. G. P. Zhukov, Commissioner on Legal Problems of Outer Space, Academy of Sciences for the U.S.S.R. pointed to U. N. Resolution 1963 (XVIII) as expressing the desire of all nations to work out an appropriate international agreement. He asserted that it is necessary to consolidate basic principles of outer space law in a document of treaty type open for signature by all nations. (G. P. Zhukov, "Basic Stages and Immediate Prospects of the Development of Outer Space Law," Haley, Proceedings of the Seventh Colloquium on the Law of Outer Space, p. 320.

Resolution 1963 (XVIII)[19] which was adopted on the same day as Resolution 1962 (XVIII) was a resolution setting forth the U. N. space program for 1964 entitled "International Cooperation in the Peaceful Uses of Outer Space." This Resolution also recalled Resolutions 1721 (XVI) and 1802 (XVII) and recommended "that consideration should be given to incorporation in international agreement form, in the future as appropriate, legal principles governing the activities of the States in the exploration and use of outer space" and requested "the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which may arise in the exploration and use of outer space."

Regardless of the degree of legal effect of the U. N. Resolution, it is agreed that these steps were only preliminary. Referring to Resolution 1962 U. S. Ambassador Adlai Stevenson said we stand at the beginning of our work "on the development of a law for outer space. This declaration is not the last word, it is one of the first."[20]

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[19] U. N. Doc. A/RES/1963 (XVIII), December 13, 1963. Reprinted in part in the Appendix.

[20] Statement by Ambassador Stevenson before Committee I (Political and Security), on December 2, 1963, as reprinted in the Department of State Bulletin, December 30, 1963, Vol. 49, p. 1007.

CHAPTER VII

THE AGREEMENT HIATUS

The Legal Sub-Committee of the U. N. Committee on the Peaceful Uses of Outer Space met again from October 5 to October 23, 1964. The Sub-Committee hoped to complete work at this session on a treaty providing for assistance to astronauts and return of personnel and vehicle in case of emergency landings.

Unfortunately, however, such a treaty was not forthcoming. The full committee realized the need for urgency was lacking and decided to establish a working group to examine "the desirability, organization, and objective of an international conference or meeting to be held in 1967 on the exploration and peaceful uses of outer space."[1]

Proposed Agreement on Assistance to and Return of Astronauts

The Report of the Committee on the Peaceful Uses of Outer Space on "International Cooperation in the Peaceful Uses of Outer Space" was issued on November 13, 1964.[2] A section of this report was devoted to a report of the

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[1] U. N. Doc. A/57-79, November 6, 1964.

[2] Report of the Committee on the Peaceful Uses of Outer Space. United Nations General Assembly A/5785, November 13, 1964.

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activities of the Legal Sub-Committee on the work of its third session.[3] The Sub-Committee, terms of reference were set out in General Assembly Resolution 1963 (XVIII).[4]

The United States made two proposals for international agreements. One of these was for an "International Agreement on Assistance to and Return of Astronauts and Objects Launched into Outer Space."[5] This proposal provided generally for notification to the launching state when a miscarriage is discovered,[6] all possible steps by the state concerned to

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[3] Ibid., Section III, p. 10.

[4] Section I of the General Assembly Resolution 1963 (XVIII) provides: "the General Assembly, "1. Recommends that consideration should be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space; "2. Requests the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which may arise in the exploration and use of outer space, and ... draft international agreements on liability for damage caused by objects launched into outer space and on assistance to and return of astronauts and space vehicles."

[5] United States Doc. A/AC. 105/21/Add. 1, October 27, 1964. Draft proposal by the United States.

[6] Ibid., Article 1.

assist or rescue the personnel,[7] and return of the personnel and space vehicles promptly and safely to the launching state.[8]

The Soviet Union also proposed an "Agreement on the Rescue of Astronauts and Spaceships in the Event of Accident or Emergency Landing."[9] This proposal provided for notification to the launching state of the mishap,[10] a general obligation to render all possible assistance to the astronauts,[11] separate provisions for assistance in the territory of a contracting state[12] or assistance outside the territory of a contracting state,[13] and a general obligation to return the crew to the launching state.[14]

The Soviet Union and the United States generally agreed on the humanitarian aspects of these proposals,

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7 Ibid., Article 2.

8 Ibid., Article 3.

9 United Nations Doc. A/AC.105/21, October 23, 1964, Annex I, pp. 2-6.

10 Ibid., Article 2.

11 Ibid., Article 1.

12 Ibid., Article 3.

13 Ibid., Article 4.

14 Ibid., Article 5.

but the mechanics of assistance and agreement were subject to dispute.

As far as the mechanics of assistance were concerned, both nations proposed joint search by nations in a position to conduct search and rescue operations in the event an emergency landing is made on the high seas or Antarctica.[15] However, the search and rescue operations within a sovereign country differed. The U. S. proposal allowed the launching state to aid in such operations if necessary,[16] while the Soviet proposal provided that such joint search could only occur at the request of the nation in which such operations were necessary.[17]

Significant differences on the mechanics of agreement included those concerning signature. The Soviet Union proposal provided that the agreement would be open to all states, including Communist China and East Germany,[18] while the United States proposed it be open for signature by members of the United Nations or states invited by the U. N. to sign.[19] In addition, the U. S. draft proposal made disputes arising from interpretation of the agreement referrable to the International Court of Justice, while the Soviet proposal did not.[20]

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[15] U. S. Article 2.1 Soviet Article 4.

[16] U. S. Article 2.2.

[17] Soviet proposal Article 3.3.

[18] Soviet proposal Article 7.

[19] U. S. proposal Article 7.

[20] U. S. proposal. Article 7.

Proposed Agreement on Tort Liability

The United States made a second proposal at this session of the Legal Sub-Committee when it submitted a "Convention Concerning Liability for Damage Caused by the Launching of Objects Into Outer Space."[21] This draft convention sought to establish a uniform rule of liability on a simple and expeditious procedure governing financial compensation for damage. This proposal provided for absolute liability on the part of the launching state for damages caused by the launching or attempted launching of an object into outer space.[22]

The Soviet Union did not submit a proposed agreement for that liability, but a proposal introduced by Hungary was considered by the Committee. This proposed "Agreement Concerning Liability for Damage Caused by the Launching of Objects Into Outer Space"[23] provided for full liability if the launching state is engaged in unlawful activity[24] and full liability if the damaged state produces

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[21] United Nations Doc. A/AC/105/C.2/L.8/Rev. 2, October 20, 1964. This document is an amalgamation of the United States Proposal of October 5, 1964, and all of the United States Amendments submitted during Part II of the third session of the Legal Sub-Committee.

[22] Ibid., Article II.1.

[23] United Nations Doc. A/AC.105/C.2/L.10, Hungary. Proposed draft agreement, October 23, 1964.

[24] Ibid., Article IV.

evidence that damage has been caused because of the fault of the launching state.

In addition, to the substantive difference of absolute liability versus liability based upon fault, there were the same procedural differences that blocked agreement on a treaty for aid and assistance to astronauts. Thus the Committee Report could only say: "The Committee notes with satisfaction that substantial progress was made in the course of the Sub-Committee's third session, although there was insufficient time to draft the international agreements, and decides that work on the two conventions should be resumed as soon as possible."[25]

ARTICULATION OF A GREATER NEED

The failure to reach agreement on these two proposed conventions appeared to have also stimulated articulation of an increasing need to reach more substantial and meaningful agreements concerning the peaceful uses of outer space and celestial bodies. The Second World Peace through Law Conference in September 1965 urged the establishment of spatial law on the moon before spacemen land there.[26]

The Law Conference expressed the belief that as long as space activities do not include landing manned spacecraft

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[25] Report of the Committee, Part III, p. 38.

[26] The Washington Evening Star, September 14, 1965, p. 1.

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on celestial bodies, general principles adopted by the United Nations should be adequate. However, there was less certainty that these general principles could prevent controversies once a moon landing occurs and permanent stations established. The scientific, technological, and military competition between the space leaders, in addition to the idealogical differences, constitute a ready made scene for conflict unless clear principles are agreed upon prior to celestial body exploration.[27]

About a week later in a speech during the 20th Session of General Assembly debate, United States U. N. Ambassador Goldberg suggested that the U. N. begin work immediately on a comprehensive treaty on the exploration of celestial bodies.[28] Subsequently, Ambassador Goldberg informed the Political Committee that the U. S. Government planned to present a proposal for a treaty.[29]

Ambassador Goldberg told the General Assembly that progress had been made on a start toward basic international spatial law and for the assistance and return of astronauts forced down on foreign soil. He added that, in addition to the two draft agreements already under

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[27] Ibid.

[28] New York Times, September 24, 1965, p. 7.

[29] Washington Post, December 20, 1965, p. A 15.

discussion, a third topic, that of the peaceful uses of outer space, should be brought under study. Ambassador Goldberg concluded by predicting that: "Within a few years, the need for a treaty governing activities on the moon and other celestial bodies will be real.[30] My government plans to present a definite proposal as to the contents of such a treaty."[31] The hiatus having been seen, that proposal was made by the President five months later.

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[30] Ambassador Goldberg's suggestion that the United Nations study the topic of the peaceful uses of outer space in greater detail was incorporated in United Nations Resolution 2130 (XX) adopted unanimously on December 21, 1965. (U. N. Doc. A/RES/2130 (XX) December 21, 1965). This Resolution urged the U. N. Committee on the Peaceful Uses of Outer Space "to continue with determination the preparation of draft international agreements on assistance to and return of astronauts and space vehicles and on liability for damage caused by objects launched into outer space, and to give consideration to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space."

[31] Washington Post, December 20, 1965, p. A 15.

CHAPTER VIII

SPATIAL TREATY BREAKTHROUGH

United States Initiative: Johnson's May 7 Speech

On May 7, 1966, President Johnson announced that the United States would seek a treaty through the United Nations to lay down "rules and procedures for the exploration of celestial bodies."[1] The President listed the "essential elements" of such a treaty: (1) the moon and other celestial bodies should be free for exploration and use by all nations; (2) no nation should be permitted to claim sovereignty; (3) there should be scientific investigation; (4) efforts should be made to avoid harmful contaminations of outer space[2]; (5) astronaut assistance should

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[1] Statement by President Johnson on May 7, 1966, in Department of State Bulletin, June 6, 1966, Vol. 34, p. 900.

[2] The Committee on Contamination by Extraterrestrial Exploration (CETEX) was established as an Ad Hoc Committee of the International Council of Scientific Unions in March 1958, and became a permanent committee in October 1958. Before it relinquished its jurisdiction to the Council on Space Research (COSPAR) in March 1959, CETEX held two meetings.

In May 1958 a report was issued which warned of the hazards of contamination and urged that a Code of conduct be drafted as soon as possible to prevent such dangers. (International Council of Scientific Unions Review, 1959; pp. 100-103.) The report pointed out the difficulty of preparing a specific code because of the conflicting desires of planetary exploration as soon as possible and the need to safeguard future research.

At the second meeting in March 1959 the general principle was adopted that "... in view of the great uncertainities which face space research, all operations which are not capable of conveying meaningful scientific data are to be discouraged even if they do not appear to carry with them a known source of contamination. Risks with the unexpected must be taken, as otherwise no space exploration is possible, but such risks must be justified by the scientific content of the experiment" (ICSV Review, 1959, p. 101).

be offered foreign astronauts; (6) stationing weapons of mass destruction on a celestial body should be prohibited[3]; and (7) weapon tests and military maneuvers should be forbidden.

President Johnson urged that "we should do what we can ... to see to it that serious political conflicts do not arise as a result of space activities." He added that the "time is ripe for action" and that we should lose no time.

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[2] Despite almost unanimous agreement on the value of sterilisation and decontamination of space vehicles, little has been achieved toward international regulation in this area, especially at the official level in the U. N. Committee and at the scientific level in COSPAR. The difficulties involved in reaching agreement are not only political and legal, but also economic, as sterilization and decontamination would be very expensive. (Haley, Space Law and Government, p. 291; Gardner, p. 210; Cohen, p. 39.)

[3] The military use of the moon or other celestial bodies has been subject to much discussion. The "high ground" theory asserts that a nation might gain safety from enemy attack by placing weapons on the moon. However, the consensus is that the ability to strike the enemy would not improve by stationing weapons on the moon. Those who are concerned with national security and space generally confine their thinking to near space. (Vernon Van Dyke, Pride and Power, Urbana, Illinois: University of Illinois Press, 1964, p. 59.) However, see McDougal,(Law and Public Order in Space) who admits that opinions differ widely as to the military usefulness of lunar bases (p. 378), yet asserts that before the end of this decade the theater of potential violence embraces at least one celestial body, the moon. McDougal asserts that despite occasional official opinions to the contrary, the main driving force behind lunar landing projects is broad military considerations (p. 364). See also Cohen, p. 67.

The significance of this Presidential statement was not its novelty, for such principles were not new.[4] The significance lies in the amalgamation of these specific principles as "essential elements" in an international treaty.[5]

Two days after the President's speech United States U. N. Ambassador Arthur J. Goldberg requested the Secretary-General to circulate the President's proposal as a U. N.

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[4] These principles were drawn from previous United Nations Resolutions 1721 (XVI), 1884 (XVIII), 1962 (XVIII), and 1963 (XVIII). In addition, the Antarctic Treaty was relied on for precedent and legal scholars had discussed and recommended these principles for years.

[5] The consensus of the commentary was that the Presidential initiative was significant. The New York Times on May 9, 1966, p. 36, generally applauded the President's move saying that "the need is urgent for formal adoption" of such a treaty before man lands on the moon. The Times also considered the Antarctic Treaty analagous, and pointed out that omission of rules for the exploitation of resources from the proposed treaty was unfortunate, but perhaps necessary in order to reach rapid agreement.

Clark, of the New York Times, the next day said that both the U. S. and the Soviet Union have denounced the concept of sovereign claims to celestial bodies, but a "treaty would solemnize and codify" such sentiment. (New York Times May 10, 1966, p. 18.)

A Washington Evening Star editorial on May 10, 1966, p. A 6, stated that the President's statement revived Eisenhower's proposal in his 1957 State-of-the-Union message. The heart of the idea is simply that there should be peaceful cooperation in space with no claims of sovereignty the Star said. In addition, the Star said the prospects of a 1969 or 1970 landing on the moon "lends special force to the President's call for a renewed effort."

However, Hines, in the Washington Evening Star of May 12, 1966, p. A 20, asked the question: "Who needs it?" He proceeded to argue that such a treaty is unnecessary because (1) militarization of the moon was impractical and remote; (2) neither the Soviet Union nor the United States will claim the moon if it gets there first; (3) the nuclear test ban treaty forbids weapon testing in outer space; and (4) the U. N. resolutions cover the other principles.

document and requested an early meeting of the U. N. Outer Space Legal Sub-Committee to prepare a draft treaty for submission to the General Assembly next session.[6] Within a few days the United States, Soviet Union, and other members of the Space Committee began informal consultations on a 12-point outline treaty submitted by Ambassador Goldberg.[7]

Soviet Response

On May 31, 1966, the day after the United States successfully launched Surveyor I, the Soviet Union, in a letter from Foreign Minister Gromyko to the U. N. Secretary-General, made a similar proposal.[8] The letter proposed conclusion of an international agreement on legal principles governing activities of states in the exploration of celestial bodies and requested an inclusion of the item in the agenda of the twenty-first session.

Four basic principles were listed for inclusion in an international agreement: (1) the moon and other celestial bodies should be free for exploration and use by all

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[6] Letter from United States U. N. Ambassador Arthur J. Goldberg to the U. N. Secretary-General on May 9, 1966, in Department of State Bulletin, June 6, 1966, Vol. 64, pp. 900-901.

[7] Department of State Celestial Bodies Chronology. May 11, 1966. These 12 points were referred to by Ambassador Goldberg in his letter transmitting the U. S. draft treaty in United States Mission to the United Nations Press Release 4877, June 16, 1966.

[8] United Nations Doc. A/6341, May 31, 1966.

states and all states should enjoy freedom of scientific exploration in accordance with the principles of international law; (2) the moon and other celestial bodies should be used for peaceful purposes only, to the exclusion of military bases and the installation of weapons of mass destruction; (3) the exploration and use of celestial bodies should be carried out in the interests of all mankind and should not be subject to claims of sovereignty (4) in exploration of celestial bodies States should proceed from the principles of cooperation and mutual assistance and carry out their activities in the interest of other states for the purpose of maintaining international peace and security.[9]

A comparison of this Soviet proposal with President Johnson's May 7 proposal clearly shows more similarities than differences. Generally, the United States proposal governed human activities on celestial bodies whereas the Soviets favored elevating the 1963 Declarations of Legal Principles to the level of treaty obligations. The Soviet Union maintained that it was not motivated by President Johnson's speech as it sought to claim credit for the initiative.[10]

Though the Soviet proposal did not include specific reference to astronauts aiding each other and efforts to

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[9] Ibid.

[10] Even if the date in the Soviet argument that it initiated steps toward the conclusion of an international agreement providing for cooperation in the exploration and peaceful use of outer space in 1958 is true (which it isn't), this ignores President Eisenhower's January 1957 State-of-the-Union Message and the subsequent U. S. 1957 initiatives.

avoid contamination, the fourth Soviet principle appeared broad enough to include these items.

In the tradition of international politics Ambassador Goldberg welcomed "what appears ... to be an affirmative interest in President Johnson's recent proposal." He expressed the hope, however, that discussion of a celestial bodies treaty would not be delayed until the meeting of the next General Assembly. Ambassador Goldberg wanted "maximum progress" to be made before the 21st General Assembly.[11] The Soviet Union had reiterated President Johnson's plea that time is of the essence.

Draft Treaties

Both governments acted with amazing rapidity. On June 16, 1966, the United States gave a copy of its draft treaty to the Chairman of the U. N. Committee on the Peaceful Uses of Outer Space and requested a meeting of the Legal Sub-Committee on July 12.

In his covering letter Ambassador Goldberg said that the United States was encouraged "by the substantial area of apparent agreement" with the Soviet Union. He added that "the speed with which men's actual progress in outer space is being recorded requires that we allow no delay in

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[11] Statement by Ambassador Arthur J. Goldberg on May 31, 1966, in a Note to Correspondents.

assuring the prompt extension of international law and the United Nations Charter."[12]

The United States draft "Treaty Governing the Exploration of the Moon and Other Celestial Bodies"[13] recalled General Assembly Resolution 1962 (XVIII) entitled "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space"[14] and further recalled General Assembly resolution 1884 (XVIII),[15] concerning weapons of mass destruction. It recognized "that it is in the interest of all mankind that celestial bodies should be used for peaceful purposes only" and proposed the following: (1) Celestial bodies are free for exploration and use by all states, yet subject to sovereignty by none. (2) There shall be freedom of scientific investigation. (3) States shall encourage international scientific cooperation concerning celestial bodies. (4) States shall provide the United Nations with a descriptive report of their space

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[12] Statement by United States U. N. Ambassador Goldberg on June 16, 1966, in United States/United Nations press release 4877.

[13] United Nations Doc. A/AC.105/32, June 16, 1966. Reprinted in Appendix.

[14] Supra, p. 89.

[15] Supra, p. 86.

activities. (5) States shall render assistance to foreign nationals engaged in activities or celestial bodies where requested or required by circumstances. (6) All areas of celestial bodies shall be open at all times to other nations. (7) A state may exercise authority over its facilities and personnel. (8) In accordance with Resolution 1884 (XVIII) no state shall station weapons of mass destruction on or near a celestial body. (9) Celestial bodies shall be used for peaceful purposes only -- no military fortifications, maneuvers, or weapon tests. (10) Efforts to avoid harmful contamination should be made. In addition, the U. S. proposal referred disputes arising from the Agrement to the International Court of Justice,[16] and provided for signature by U. N. members or by states invited by the General Assembly of the U. N. to become a party.[17]

The Soviet Union gave a draft treaty to the Secretary-General on the same day and requested its consideration at the twenty-first session of the General Assembly. The Soviet draft treaty "On Principles Governing the Activities of States in the Exploration and Use of Outer Space, the

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[16] U. S. Draft Treaty, Article 11.

[17] U. S. Draft Treaty, Article 12.

Moon and Other Celestial Bodies"[18] recognized "the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes," expressed belief "that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development," took into account "General Assembly resolution 110 (II) of 3 November, 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace ... and considering that the aforementioned resolution is applicable to outer space," recommended the following principles. (1) Outer space shall be free for exploration and use by all states and there shall be free access to all regions of celestial bodies. (2) Outer space and celestial bodies shall not be subject to national appropriation. (3) The exploration and use of outer space and celestial bodies shall be in accordance with international law and the United Nations Charter, in the interest of promoting international peace and security. (4) The orbiting or stationing of weapons of

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[18] United Nations Doc. A/6352, June 16, 1966. Reprinted in Appendix.

mass destruction shall be prohibited. Celestial bodies shall be used for peaceful purposes only to the exclusion of military bases, weapon testing, and military maneuvers. (5) States shall retain jurisdiction and control over their facilities and perssomel in outer space. (6) States bear international responsibility for national activities in outer space whether such activities are private or public. (7) States are liable for damages arising from launching objects into outer space. (8) In the exploration of outer space states shall be guided by the principles of cooperation and mutual assistance. Efforts should be made to avoid harmful contamination. Pre-launch consultations with other states shall be allowed if the launching is potentially hazardous or harmful. (9) Astronauts shall be regarded as envoys of mankind and shall be rendered all possible assistance, and shall aid each other when necessary and possible. The Soviet draft provided for consultation between the states concerned in the event of disputes arising from interpretation of the agreement,[19] and made the Treaty open to all states for signature.[20]

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[19] Ibid., Article 10.

[20] Ibid., Article 11.

Comparison of the Draft Treaties

There are remarkable similarities between the United States and Soviet Union draft treaties and a few significant differences.[21] The main difference as far as substance is concerned is the scope of the agreement as evinced by the respective titles. The U. S. draft treaty is to govern activities on the moon and other celestial bodies; the Soviet draft concerns the use of outer space, the moon and other celestial bodies.

In a large part, the similarities of the two drafts result from a combination of four factors. First, both nations relied upon earlier United Nations resolutions.[22] Second, both nations used some points

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[21] For a good analysis of the differences and similarities of the two draft treaties see the 89th Congress, 2d. Session Committee Print prepared for the use of the Committee on Aeronautical and Space Sciences of the United States Senate, entitled "Space Treaty Proposals by the United States and U.S.S.R." (Washington: U. S. Government Printing Office, 1966) July, 1966.

[22] Articles 1, 2, and 3 of both drafts are similar to U. N. Resolution 1962 (XVIII). Soviet Articles IV, V, VI, VII, and IX are similar to Resolution 1962 and U. S. Articles 8 and 9 and Soviet Article IV are based on U. N. Resolution 1884 (XVIII).

contained in two other international agreements on the Legal Sub-Committee agenda.[23] Third, both nations had the precedents of the Antarctic Treaty and the Nuclear Test Ban Treaty for guidance. Fourth, the United States furnished guidance to the Soviet Union in President Johnson's May 7 speech and the United States in turn could examine the Soviet response of May 31.[24]

In the opening declaration of purposes both nations agreed concerning mankind's interest in the peaceful development of spatial activities and both nations desired to promote international cooperation. Of even more significance, both nations favored the United Nations as a "channel for working out a space treaty."[25]

Article 4 of the U. S. draft provided that a state conducting activities on a celestial body shall provide the U. N. a descriptive report. There was no comparable provision in the Soviet draft. In the past reports to the U. N. had been voluntary and the U. S. now sought to make them mandatory.

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[23] Proposed Agreement on Assistance to and Return of Astronauts, and Proposed Agreement on Tort Liability, supra, Chapter VII.

[24] Supra, p. 109

[25] Committee Print, "Space Treaty Proposals by the United States and U.S.S.R.," p. 17.

The Soviet draft treaty in Article IX included a provision for the assistance to and return of astronauts and space vehicles that have strayed. The U. S. provision in Article 5 referred to astronaut assistance to astronauts on celestial bodies. The U. S. has supported a provision similar to that the Soviet Union suggested.[26] The difference in scope was only one of focus.

Another difference in the two proposed treaties is that the Soviet Union in Article IV specifically prohibits placing weapons of mass destruction in orbit around earth or to station such weapons on celestial bodies or in space. The U. S. proposal in Article 8 provided that no state shall station on or near a celestial body weapons of mass destruction. The difference was merely one of focus, as the U. S. was drafting a treaty for celestial bodies while the Soviet Union was concerned with outer space and celestial bodies. The U. S. has supported the Soviet principle which is based upon U. N. Resolution 1884 (XVIII) which passed by acclamation on October 17, 1963.

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[26] Supra, p. 99.

Article VI of the Soviet draft provides that parties shall bear international responsibility for national activities in outer space or on celestial bodies whether such activity be public or private. This would make such organization as the Communications Satellite Corp. an "international responsibility" of the U. S. Government.

In addition, Soviet Article VII, which provides for State liability for damages arising from the launching of objects into outer space, has no counterpart in the U. S. draft. The U. S. has pending before the Legal Sub-Committee a draft "Convention Concerning Liability for Damage Caused by the Launching of Objects into Outer Space."[27]

Under U. S. Article II disputes are referable to the International Court of Justice, leaving open any other alternative method of settlement while Soviet Article X provides that states shall settle disputes through negotiations and consultations, with no mention of the International Court.

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[27] Supra, p. 102.

A significant procedural difference concerned the signature clauses. Article 12 of the U. S. draft provides that the agreement was open for signature to members of the United Nations and others invited by the General Assembly to sign. Article XI of the Soviet draft provides for signature being open to all States. The problem is one of international politics and the recognition or non-recognition of non-United Nations nations.

Basic agreement prevailed, however, and on June 17, 1966, the Soviet Union suddenly agreed to prompt space negotiations rather than wait until the General Assembly convened on September 20.[28] The U. S. had proposed that the U. N. Outer Space Legal Sub-Committee should begin work on July 12 on the space treaty. U. S. officials were delighted with this sign of Soviet readiness for early action.[29]

Optimism prevailed when Secretary-General U Thant said on June 21, 1966, that there were signs that "a

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[28] Murrey Marder, Washington Post, June 18, 1966, p. A 1.

[29] Ibid., p. A 2.

very substantial degree of agreement" would be reached "very soon" between the U. S. and the Soviet Union.[30] A day later the two nations agreed to a meeting of the Legal Sub-Committee in Geneva on July 12 to arrange a compromise between the drafts.[31]

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[30] New York Times, June 21, 1966, p. 4.

[31] Daniel, New York Times, June 23, 1966, p. 1.

CHAPTER IX

PROGRESS AND PERSPECTIVES

Geneva Meeting of the Legal Sub-Committee

The Legal Sub-Committee of the United Nations Committee on the Peaceful Uses of Outer Space convenied as scheduled on July 12, 1966, in Geneva, to iron out differences in the draft treaties. At the conclusion of the first week of meetings a spokesman for the U. S. said that there was "a larger area of agreement" with the Soviet Union than had appeared earlier in draft treaties.[1] Both Ambassador Goldberg and his Soviet counterpart Platon D. Marozov said that they were willing to consider additions each had proposed to the other's draft and proposals made by other members of the 28-nation Legal Sub-Committee.[2]

On July 20, 1966, the United States formally accepted the Soviet proposal to widen the scope of the negotiations to establish rules to govern the exploration and use of outer space, rather than merely the moon and other celestial bodies as the U. S. had proposed.[3] The Sub-Committee

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[1] Washington Post, July 20, 1966, p. 4. Ambassador Goldberg's account of the Geneva phase of negotiations is in press release 4911 of U. S. Mission to the U. N., September 16, 1966.

[2] Ibid. Note that because the U. S. and Soviet spokesmen said that they were willing to consider additional proposals, this paper will necessarily be incomplete to the extent that new additions are made this fall when negotiations resume.

[3] New York Times, July 22, 1966, p. 10.

then began a detailed article-by-article examination of the draft treaties for a proposed treaty to be submitted to the General Assembly for final approval.

The Soviet Union countered the U. S. agreement to broaden the scope of the negotiations by accepting the U. S. provisions on scientific investigation.[4] This provided freedom of scientific investigation in outer space and on celestial bodies and the facilitation and encouragement of international cooperation in scientific investigation.[5]

On July 21, 1966, the United States and the Soviet Union agreed to a treaty article barring any state from claiming sovereignty in space, including the moon and other celestial bodies. The Sub-Committee also accepted an article binding states to carry on space exploration in accordance with international law and in the interest of international peace and security.[6] Both articles were taken from the Soviet draft[7] which was taken from United Nations Resolution 1962 (XVIII).

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[4] Washington Post, July 21, 1966, p. 1.

[5] U. S. Draft Treaty Articles 2 and 3, supra, p. 112.

[6] New York Times, July 22, 1966, p. 8.

[7] Soviet Union Draft Treaty Articles 2 and 3, supra., p. 114.

However, there existed some problem areas where agreement was not readily attainable. On July 22, the Soviet Union objected to a U. S. proposal which would allow the use of military equipment on celestial bodies. This was a part of Article 9 of the U. S. draft treaty which asserted that "the use of military personnel, facilities or equipment for scientific research or for any other peaceful purposes shall not be prohibited." The Soviets stated that such a provision would be a loophole for violations. The Soviet Union did not object however, to the peaceful use of servicemen. Ambassador Goldberg maintained that military men and equipment played an integral role in outer space exploration.[8]

The Soviet Union was willing to accept other provisions of the U. S. draft treaty concerning the prohibition of orbiting or stationing weapons of mass destruction in outer space and that celestial bodies should be used for peaceful purposes only to the exclusion of military bases, maneuvers or weapon testing thereon.[9] These sections of the U. S. draft articles

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[8] Reuters, Washington Post, July 23, 1966, p. A 3.

[9] Ibid.

actually resembled very closely an article in the Soviet draft.[10]

On July 25, 1966, the United States and the Soviet Union agreed to the principle that nations conducting activities in space are internationally liable for damage caused to other states arising therefrom.[11] The U. S. accepted with minor changes an article on liability in the Soviet draft treaty.[12]

On August 1, 1966, the Legal Sub-Committee reached agreement that astronauts should be regarded as "envoys of mankind in outer space." The text regarding astronauts provided that all states should render astronauts "all possible assistance in the event of accident, distress, or emergency landing." In addition, the article provided that astronauts should be safely and promptly returned" to the launching state. Astronauts similarily would be pledged to render all possible assistance to space explorers of other nations when engaging in space activities.[13] This article

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[10] U. S. Draft Treaty Articles 8 and 9 and Soviet Draft Treaty Article IV.

[11] Washington Post, July 26, 1966, p. A 12.

[12] Soviet Draft Treaty Article VII. The U. S. had no comparable provision in its draft treaty.

[13] New York Times, August 2, 1966, pp. 1, 17.

generally followed that in the Soviet draft treaty.[14]

By August 4, 1966, when negotiators on the spatial treaty adjourned to report back to their governments, broad agreements had been reached on several substantive principles. A number of substantive differences remained, however. These differences concerned the issues of access to space stations, whether reports to the U. N. on space activities should be mandatory or voluntary, and the use of military equipment on planets.[15] In addition, there was a procedural difference on whether all nations or only U. N. members should be free to sign the treaty.[16]

The U. S. proposals for open and free access to space stations on celestial bodies at all times and for mandatory reporting to the United Nations were rejected by the Soviet Union, which maintained that reporting should be voluntary and access reciprocal at an agreed time. The Legal Sub-Committee would re-convene in New York to try to complete drafting of the treaty either before or during the session of the General Assembly.[17]

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[14] Soviet Draft Treaty, Article IX.

[15] Washington Post, August 5, 1966, p. A 6.

[16] Washington Post, July 28, 1966, p. A 29.

[17] Ibid.

Perspectives

There was naturally speculation concerning why there was such rapid movement toward agreement and why the United States and Soviet Union were not unwilling to compromise in order to reach minimum agreement. However, it is the thesis of this paper that the agreement process was not rapid, but agonizingly slow. For the last decade the process of negotiations and compromise has occurred. There has indeed been an evolution toward a spatial treaty. The stimulation by President Johnson and favorable response by the Soviet Union was not the beginning but the end of tireless efforts to secure the peaceful uses of outer space.

Nevertheless, it is true that the rapid culmination of these efforts was somewhat atypical. The United States is alleged to believe that the sudden Soviet interest in concluding a spatial treaty stems from the fact that the Soviet Union has not had a man in space in the last 17 months and the Soviets are allegedly having trouble with their large booster rocket.[18] The Soviet Union, U. S. sources speculated, believe the reason the U. S. wants a spatial treaty now is that once a man has landed on the moon the Johnson Administration doesn't want to have to tell the public that great

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[18] Business Week (28), July 28, 1966, p. 12F.

space investments are necessary. A treaty would supposedly allow effort to be spaced better at lower annual cost.[19]

In the end, the academic question is asked, "Why bother with a treaty that asserts no new principles, provides for no additional practical cooperation, and concerns 'no vital interests'?"[20] Aside from the obvious answer that some nations consider a treaty to be binding international law while U. N. resolutions are not, the best answer perhaps is, "Why not?"

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[19] Ibid.

[20] It has been said by some commentators that the reason agreement is possible on such areas as the Antarctic and outer space is that there are no vital interests involved. Considering the rapidly expanding scope of the proposed space treaty the validity of such an argument diminishes proportionately. In addition, we cannot be presumptuous enough to say that no vital interests are involved, for with our limited knowledge we really don't know what is "vital" in outer space. Our ignorance of what confronts us in space makes a space treaty significant, not our knowledge that there are no vital interests. (Interview with Paul G. Dembling, Deputy General Counsel, June 24, 1966. Mr. Dembling pointed out our comparative ignorance of what is "vital" in outer space.

Beneath the espousal of prospective legal principles lies the hope that negotiations and consultations on easier issues will build up a feeling of mutual trust and experience for agreement on more difficult questions. By acceptance of minimum principles in treaty form the Rule of Law will continue to develop and prosper.

An atmosphere of genuine cooperation which prevailed should prove valuable both in the immediate and distant future. The Current negotiations appeared to have a dual importance; rapid conclusion of a space treaty is necessary to assure that the first manned landing on the moon will not ignite a struggle for lunar domination, and success in these negotiations is necessarily precedent to future international cooperation in space.[21]

The Soviet decision to commence negotiations concerning a spatial treaty was an important indication that the Soviet Union does not consider Vietnam [22] and other areas of idealogical and economic competition

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21 New York Times, June 24, 1966, p. 32M.

22 The Soviet Union was apparently willing to bear the burden of any charges from Red China of a "Soviet-American conspiracy." Red China may view a treaty to internationalize space a denial of Red China's rightful future share in the universe, a spatial analogue of the 1963 nuclear test ban treaty.

an obstacle to meaningful agreement with the United States.[23] Hopefully, a rapid conclusion of the spatial treaty will prevent a costly and potentially dangerous arms race in outer space and prevent territorial claims in space and consequent conflicts on earth. Perhaps through an agreement on a space treaty the way can be opened for cooperation instead of competition in outer space.

Several philosophical themes underlie the emphasis on and the necessity for limiting space to "peaceful uses" aside from the aforementioned practical reasons.[24] These underlying motivations are:

1) The separateness of space. The view prevails that space has a distinct identity. Poets and lovers have long contemplated its unworldly nature and apparent serenity. Such a view gives rise to the conclusion that non-armament in space is not only separable from disarmament on earth, but also easier to achieve.

2) The Universality of science and space. Generally basic science is a unifying factor rather than a divergent one. It was this belief

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[23] New York Times, July 24, 1966, p. 26C.

[24] Goldsen, p. 18.

that led President Eisenhower to urge that scientists and technicians, rather than politicians negotiate a space agreement[25], and it was this attitude that facilitated the Dryden-Blagonravov Agreement.[26] In addition, no nation has had a monopoly on scientific contemplation of space, its wonders and mysteries. Space historically has been open to the inquiry and imagination of all mankind, and there is no reason why this universality of space should change because our inquiries can now be carried on in space itself.

3) Internationalism and international law. To some extent today there is an attempt to depreciate national rivalries. The United Nations resolutions attempted to do this by seeking to avoid the extension of national rivalries into outer space and attempting to propagate peace through the extension of the rule of law. And while idealogical differences may place an upper limit on international cooperation, self-interest places a lower limit as

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[25] Supra, p. 16.

[26] Supra, p. 63.

well.[27] A space treaty is possible because of a mutual self-interest.[28]

The paradox of our age is applicable to the prospects of a spatial treaty. Just as man today has the power to completely destroy himself, so also it is possible for him to establish minimum public order on a world scale.[29] Minimum public order on earth it appears, can indeed be enhanced by agreement on the peaceful exploration and use of outer space.

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[27] Gardner, p. 357.

[28] In an address at the University of Maine on October 19, 1963, President Kennedy indicated to significance of self-interest. "It is in our national self-interest to ban nuclear testing in the atmosphere so that all our citizens can breathe easier. It is in our national self-interest to keep weapons of mass destruction out of outer space -- to maintain an emergency communications link with Moscow -- and to substitute joint and peaceful exploration for cold war exploitation in the Antarctic and in outer space...(Washington Post, October 20, 1963, A 7.)

[29] McDougal, p. 512.

CHAPTER X

THE ANTARCTIC ANALOGY

After President Johnson's May 7 speech[1] and the Soviet response[2] it was asserted by most commentators that a space treaty would be analogous to the Antarctic Treaty of 1959, which "marked a departure in East-West relations by reserving that polar region for peaceful experiments."[3] It was asserted that "a precedent already exists in the Antarctic Treaty [governing an area] which also is unpopulated and presents almost as great a physical challenge to explorers as does the moon."[4]

Provisions of the Antarctic Treaty

On May 3, 1958, President Eisenhower announced that the United States had invited the Soviet Union and ten other nations[5] to a conference to negotiate a treaty that would insure that Antarctica would be used only for peaceful

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[1] Supra, p. 106.

[2] Supra, p. 109.

[3] Washington Post, June 1, 1966, p. A 1.

[4] Houston Post, June 5, 1966, p. 1.

[5] The ten other nations were: Australia, Argentina, Belgium, Britain, Chile, France, Japan, New Zealand, Norway, and South Africa.

purposes.[6] Seven nations had asserted claims of sovereignty and others had a direct interest based on past discovery and exploration.[7] The Soviet Union agreed to the U. S. proposal.

On December 1, 1959, a treaty setting aside the entire area of Antarctica as a scientific preserve free from military activity was signed by the U. S., Soviet Union and the other nations at the conference. The treaty was considered a major step toward fulfilling President Eisenhower's proposal.

The Antarctic Treaty[8] preamble recognized "that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes." The Governments agreed to the following principles:

1) "Antarctica shall be used for peaceful purposes only" and military bases, maneuvers and weapon testing shall be

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[6] Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1959, p. 367.

[7] The history of the multiple claims to various segments of Antarctica as well as the assertions of national interests is well documented in a book which is based on the Antarctic analogy to outer space. Philip C. Jessup, Controls for Outer Space (New York: Columbia University press, 1959).

[8] The text of the Antarctic Treaty is reprinted in the Appendix. It can also be found in 41 Department of State Bulletin, pp. 911-917. (1959).

prohibited. Military personnel and equipment are allowed to carry on scientific investigation.

2) There shall be "freedom of scientific investigation in Antarctica."

3) To promote international cooperation and scientific investigation, information and personnel shall be exchanged.

4) There shall be no renunciation of territorial claims in Antarctica, yet no new claims or enlargement of existing claims shall be asserted.

5) No nuclear explosions shall be made in Antarctica.

6) Provisions of the treaty apply to the area south of 60° South Latitude.

7) Freedom of access shall be provided for named observers and inspectors at any time to any place and area of Antarctica.

11) Disputes arising from interpretation of the treaty shall be settled by consultations among the Contracting Parties and any dispute failing to be settled in this manner shall be referred to the International Court of Justice for settlement.

13) The treaty shall be open for accession by any United Nations member or any country invited by the contracting parties to sign.

Antarctic Treaty Compared with Draft Space Treaties

The U. S. draft space treaty preamble is very similar to the Antarctic Treaty preamble. Both recognized the interest of mankind in peaceful development, anticipating a substantial contribution to scientific knowledge and believing that a treaty would further the purposes and principles of the U. N. Charter.

The first article of the Antarctic Treaty that it should be used for peaceful purposes only and military bases, maneuvers and weapon testing should be prohibited, yet allowing the use of military personnel and equipment, is almost identical to article 9 of the U. S. draft space treaty, and to a lesser extent to article IV of the Soviet draft. The Soviet Union agreed to the use of military equipment for scientific purposes in Antarctica, yet asserted it would be a loophole for Western violation in a space treaty. With this exception the Antarctic article and the draft space treaty articles are analogous.

The second article of the Antarctic Treaty which provided for freedom of scientific investigation is identical to the U. S. draft article 2. At Geneva the Soviet Union accepted this principle though it had no similar provision in its draft treaty.

The Antarctic Treaty in its third article provided for the promotion of international cooperation and scientific investigation through the exchange of information,

observations and personnel. The preambles to both the U. S. and Soviet draft space treaties referred to the promotion of international cooperation and investigation as did article 3 of both drafts. However, no exchange of information or personnel was suggested in either.

The fourth article of the Antarctic Treaty provided that there would be no renunciation of territorial claims. Such a provision had no counterpart in the draft space treaties as no nation has asserted sovereignty in outer space. Both draft treaties asserted that outer space and celestial bodies are not subject to national appropriation. In this respect the draft space treaties provide for a far more desirable principle than the mere preservation of the status quo in the Antarctic Treaty.

The fifth provision of the Antarctic Treaty prohibited nuclear explosions there. This provision is somewhat analogous to the U. S. draft articles 8 and 9 and Soviet draft article IV which prohibited the orbiting or stationing of nuclear weapons or any other weapons of mass destruction. The draft space treaties were more inclusive than the Antarctic Treaty in prohibiting "other weapons of mass destruction" and hence more desirable.

The sixth article of the Antarctic Treaty provided that the provisions of the treaty would be applicable south of 60° South Latitude. The U. S. draft treaty, as mentioned, was applicable only to celestial bodies, but fortunately at Geneva the U. S. agreed to the Soviet position to make the space treaty cover all of outer space. If the U. S. position had been adopted the space treaty would be more analogous to the Antarctic Treaty, as its boundaries would have been defined. However, as the space treaty will apply to all of outer space an analogy on this article is impossible.

The seventh article of the Antarctic Treaty provided for complete freedom of access for named observers for inspection purpose at any time to all stations, installations and areas of the continent. Article 6 of the U. S. draft space treaty provided for this same type of unlimited access. While article I of the Soviet draft provided for free access to all regions of celestial bodies, difficulties as mentioned developed at Geneva regarding the nature of access, and it was evident that the Soviet Union wanted it limited. So far, the Antarctic provision on access exceeds that of a potential space treaty. The inclusive access of Antarctica was the result of recognition by the participants of their common interests

in keeping it free from power conflicts and promoting scientific exploration.[9]

The eleventh article of the Antarctic Treaty provided that disputes arising from the treaty should be settled first through negotiations and consultations with the International Court of Justice being a last resort. The U. S. draft space treaty provided in article 11 for dispute settlement by the International Court while the Soviet draft in article X provided for settlement through consultations among the nations concerned. The provision of the Antarctic Treaty appears to be both more extensive and reasonable than either of the draft provisions.

The thirteenth article of the Antarctic Treaty provided for accession to the treaty by members of the United Nations or nations invited by the contracting parties. As mentioned, the U. S. draft space treaty in article 12 provided for signature by U. N. members or nations invited by the U. N. to sign while the Soviet Union in article XI made signature open to all states. Certainly, it is more desirable to have the U. N. invite other nations to sign than to let the contracting parties do so. The Soviet Union for international political

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9 McDougal, p. 800.

reasons is now unwilling to have the same signature clause it agreed to in the Antarctic Treaty.[10]

There are in addition certain provisions of the proposed space treaty which are unique because of the subject matter involved, and thus have no counterpart in the Antarctic Treaty. These provisions include the principle that outer space and celestial bodies are not subject to national appropriation, assistance to and return of astronauts, astronaut assistance to each other, efforts to avoid harmful contamination, and liability arising from launchings.

Extent of the Analogy

A great deal of the legal literature concerning the Antarctic analogy is concerned with the concept of sovereignty, with which we are not here concerned as it is well understood that there shall be no sovereign claims in outer space. It may be pointed out that practically all of this literature was written before the recent dialogue and from an argumentative point of view. While

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[10] However, it should be pointed out that in the 1963 Nuclear Test Ban Treaty (reprinted in the Appendix) the U. S. agreed to all-States signature clause. For a partial analogy to outer space see Dr. I. Csabafi, "Selected Chapters from Space Law in Making the Status of Celestial Bodies," in Proceedings of the Seventh Colloquium of the Law of Outer Space, pp. 180-182.

no one advocated sovereign claims in outer space, there was a division of opinion on whether a treaty in space analogous to the Antarctic Treaty would be desirable or if a space treaty should be more imaginative and improve on the Antarctic Treaty.

The legal scholars which followed this latter view argued that though some principles developed from air and sea may be helpful in the development of principles for outer space, special and unique factual conditions in outer space may make many outer space legal problems unique.[11] It was argued that the best attitude to have is that analogies drawn from existing laws and agreements will be useful in space only to the extent that they further the primary objectives sought for the development of space law,[12] rather than to become "preoccupied" with the search for precedent.[13]

Whatever validity the analogy may have from a legal standpoint, there are significant differences between outer space and Antarctica which are impressive.

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[11] See Haley, Proceedings of the 7th Colloquium, p. 67. Also United Nations, Report of the Ad Hoc Committee on the Peaceful Uses of Outer Space, A/4141 (July 14, 1959, supra. p. , and, Loftus E. Becker, "The Control of Space," 39 Department of State Bulletin, pp. 416-420, September 15, 1958.

[12] See Haley, Space Law and Government, p. 65 and Oscar Schachter, Remarks on International Air Law, in Proceedings of the American Society of International Law, 15th Annual Meeting, Washington, D. C., April 25-28, 1956, pp. 105-106.

[13] Andrew Haley in Proceedings of the Seventh Colloquium on the Law of Outer Space asserts that too many commentators with a geocentric theory of the universe have become preoccupied with the search for precedents, p. 67.

1) **Antarctica** is a clearly defined continent while **outer space** is a vague conception.[14]

2) Occupation and control in an assertion of sovereignty would be much more difficult and expensive in outer space than in Antarctica.[15]

3) Over a dozen nations have conducted activities in Antarctica while only the U. S. and Soviet Union have carried on extensive activities in outer space. Yet, the whole world has an interest in outer space while not all nations are concerned about Antarctica.[16]

4) The scientific differences are best pointed out by Hugh Odishaw, President of the National Science Board. "Space ... is vast and desolate, and its environmental vigors make Antarctica an Eden by contrast. Its population of electromagnetic fields, particles and radiations has no palpable appeal to nationalism or power politics. Its contents are largely beyond the reach of space vehicles, and even the nearer bodies, lying within our solar system, have less appeal than Antarctica as spheres of human activity. Thus the essential bareness and recalcitrance of space ... provide no substantial arena for power politics.

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[14] Philip Quigg, "Open Skies and Open Space," Foreign Affairs, Vol. 37, pp. 95-106, October 1958.

[15] Ibid.

[16] E. Korovin, "International Status of Cosmic Space," in U. S. Senate Doc. No. 26, 87th Cong., 1st Session, Legal Problems of Space Exploration, p. 1062.

Yet, space affords a vast challenge in the pursuit of knowledge about the universe ... ."[17]

Certainly, in the legal sense the Antarctic Treaty is analogous. The question becomes to what extent is the analogy meaningful. It has been pointed out that in both Antarctica and outer space a choice of alternatives was presented to the governments of the world.[18] One alternative was to subject the two environments to the same power struggles common in history. This was rejected in both the Antarctic and outer space in favor of the second alternative of subjecting both environments to international solution. In this respect, the Antarctic Treaty and the proposed space treaty are analogous.

In addition, there are certain procedural and substantive principles in both the Antarctic Treaty and the proposed space treaty which are analogous, if not identical. However, as pointed out, in some respects the Antarctic Treaty surpasses the draft space treaties and vice versa. The concept and international approach of the Antarctic Treaty and the draft space treaties are certainly

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[17] Hugh Odishaw, "International Cooperation in Space Science," in Lincoln P. Bloomfield (ed.), Outer Space: Prospects for Man and Society (The American Assembly; Englewood Cliffs, New Jersey: Prentice-Hall, 1962), pp. 106-107.

[18] Jessup, p. 274.

analogous, the substance and procedure less so. Certainly, the draft space treaties bear more resemblance to previous U. N. Resolutions than to the Antarctic Treaty and certainly the U. N. Resolutions gave more impetus to the conclusion of a space treaty than the Antarctic Treaty.

APPENDICES

APPENDIX A

UNITED NATIONS RESOLUTIONS AND REPORTS

1. GENERAL ASSEMBLY RESOLUTION 1348 (XIII): QUESTION OF THE PEACEFUL USE OF OUTER SPACE, DECEMBER 13, 1958

The General Assembly,

Recognizing the common interest of mankind in outer space and recognizing that it is the common aim that outer space should be used for peaceful purposes only,

Bearing in mind the provision of Article 2, paragraph 1, of the Charter of the United Nations, which states that the Organization is based on the principle of the soverign equality of all its Members,

Wishing to avoid the extension of present national rivalries into this new field,

Desiring to promote energetically the fullest exploration and exploitation of outer space for the benefit of mankind,

Conscious that recent developments in respect of outer space have added a new dimension to man's existence and opened new possibilities for the increase of his knowledge and the improvement of his life,

Noting the success of the scientific co-operative programme of the International Geophysical Year in the exploration of outer space and the decision to continue and expand this type of co-operation,

Recognizing the great importance of international cooperation in the study and utilization of outer space for peaceful purposes.

Considering that such co-operation will promote mutual understanding and the strengthening of friendly relations among peoples ,

Believing that the development of programmes of international and scientific co-operation in the peaceful uses of outer space should be vigorously pursued,

Believing that progress in this field will materially help to achieve the aim that outer space should be used for peaceful purposes only,

Considering that an important contribution can be made by the establishment within the framework of the United Nations of an appropriate international body for co-operation in the study of outer space for peaceful purposes,

Desiring to obtain the fullest information on the many problems relating to the peaceful uses of outer space before recommending specific programmes of international co-operation in this field,

1. Establishes an ad hoc Committee on the Peaceful Uses of Outer Space composed of the representatives of Argentina, Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Iran, Italy, Japan, Mexico, Poland, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United

States of America, and requests it to report to the General Assembly at its fourteenth session on the following:

(a) The activities and resources of the United Nations, of its specialized agencies and of other international bodies relating to the peaceful uses of outer space:

(b) The area of international co-operation and programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices to the benefit of States irrespective of the state of their economic or scientific development, taking into account the following proposals, inter alia:

(i) Continuation on a permanent basis of the outer space research now being carried on within the framework of the International Geophysical Year;

(ii) Organization of the mutual exchange and dissemination of information on outer space research;

(iii) Co-ordination of national research programmes for the study of outer space, and the rendering of all possible assistance and help towards their realization;

(c) The future organizational arrangements to facilitate international co-operation in this field within the framework of the United Nations;

(d) The nature of legal problems which may arise in the carrying out of programmes to explore outer space;

2. Requests the Secretary-General to render appropriate assistance to the above-named Committee and to recommend any other steps that might be taken within the existing United Nations framework to encourage the fullest international co-operation for the peaceful uses of outer space.

2. REPORT OF THE AD HOC COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE, JULY 14, 1959*

PART III

PARAGRAPH 1 (d) OF GENERAL ASSEMBLY RESOLUTION 1348 (XIII)

I. Introduction

A. Mandate of the Committee

1. The task of the Ad Hoc Committee on the Peaceful Uses of Outer Space under paragraph 1(d) of General Assembly resolution 1348 (XIII) is to report on:

"The nature of legal problems which may arise in the carrying out of programmes to explore outer space."

2. The scope of the mandate thus given the Committee was the subject of discussion. It was recognized that the terms of reference of the Committee referred exclusively to the peaceful uses of outer space. One view expressed was that the task of the Committee related only to the identification and listing of legal problems which might arise in the carrying out of programmes to explore outer space and that the Committee was not called upon to formulate either general or particular solutions of those problems. Another view was that the Committee, in identifying and listing the problems, should give some indication of the significance and implications of each problem and the priority which might be given to its solution. Others stressed

* Reprinted in part.

the importance of giving a ttention to certain relevant general principles, such as those contained in the preamble and operative paragraph 1(b) of resolution 1348 (XIII). It was also pointed out that, while paragraph 1(d) of resolution 1348 (XIII) referred only to problems which might arise in the exploration of outer space, it was not always possible in relation to certain activities to differentiate between exploration and exploitation of outer space and that both the exploration and the exploitation of outer space were expressly mentioned in the preamble to the resolution.

3. The Committee recognized that it would be impossible at this stage to identify and define, exhaustively, all the juridical problems, which might arise in the exploration of outer space. Recognizing the multiplicity of these juridical problems, the Committee considered that it could most usefully fulfil its mandate from the General Assembly, in view of the complex character of these problems, by: (1) selecting and defining problems that have arisen, or are likely to arise in the near future, in the carrying out of space programmes; (2) dividing the problems into two groups, those which may be amendable to early treatment and those which do not yet appear to be ripe for solution; and (3) indicating, without definite recommendation, various means by which answers to such problems might

be pursued. The identification of legal problems entails, of necessity, some consideration of possible approaches to their solution, particularly with a view to presenting the best informed comment that can be made on the matter of priorities.

B. General Observations

4. The Committee considered the relevance to space activities of the provisions of the United Nations Charter and of the Statute of the International Court of Justice, which synthesized the idea of co-operation between men and the joint achievement of great projects for the benefit of all mankind; it observed that as a matter of principle those instruments were not limited in their operation to the confines of the earth. It considered as a worthy standard for international co-operation and programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices, to the benefit of States irrespective of the state of their economic or scientific development, the principles set forth in the operative paragraph 1(b) and the preamble of resolution 1348 (XIII), in which the General Assembly called attention to Article 2, paragraph 1, of the Charter, which states that the Organization is based on the principle of the soverign equality of all its Members, recognized the common interest of mankind in outer space and the common aim that it should be used for

peaceful purposes only, and expressed the desire of promoting energetically the fullest exploration and exploitation of outer space for the benefit of mankind.

5. It was unanimously recognized that the principles and procedures developed in the past to govern the use of such areas as the air space and the sea deserved attentive study for possibly fruitful analogies that might be adaptable to the treatment of legal problems arising out of the exploration and use of outer space. On the other hand, it was acknowledged that outer space activities were distinguished by many specific factual conditions, not all of which were now known, that would render many of its legal problems unique.

6. The Committee agreed that some of the legal problems of outer space activities were more urgent and more nearly ripe for positive international agreement than others. It was felt that the progress of activities in outer space and of advances in science and technology would continually pose new problems relevant to the international legal order and modify both the character and the relative importance of existing problems. For example, future arrangements among Governments or private groups of scientists for co-operation in space research or the dissemination of space data may entail legal problems ranging from administrative or procedural arrangements to regulation or control. The Committee noted the indispensable usefulness of close and continuous

cooperation between jurists and scientists to take these and other developments into account.

7. The Committee considered that a comprehensive code was not practicable or desirable at the present stage of knowledge and development. Despite the progress already made, it was emphasized that relatively little is so far known about the actual and prospective uses of outer space in all their possible varieties of technical significance, political context, and economic utility. It was pointed out that the rule of law is neither dependent upon, nor assured by, comprehensive codification and that premature codification might prejudice subsequent efforts to develop the law based on a more complete understanding of the practical problems involved. Although an attempt at comprehensive codification of space law was thought to be premature, the Committee also recognized the need both to take timely, constructive action and to make the law of space responsive to the facts of space.

8. For these reasons it was agreed that the rough grouping of laval problems according to the priority hereafter suggested should itself be kept under regular review by whatever means the General Assembly should deem fitting.

II. Legal Problems Susceptible of Priority Treatment

A. Question of Freedom of Outer Space for Exploration and Use

9. During the IGY 1957-1958 and subsequently, countries

throughout the world proceeded on the premise of the permissibility of the launching and flight of the space vehicles which were launched, regardless of what territory they passed "over" during the course of their flight through outer space. The Committee, bearing in mind that its terms of reference refer exclusively to the peaceful uses of outer space, believes that, with this practice, there may have been initiated the recognition or establishment of a generally accepted rule to the effect that, in principle, outer space is, on conditions of equality, freely available for exploration and use by all in accordance with existing or future international law or agreements.

B. Liability for Injury or Damage Caused by Space Vehicles

10. Since injury or damage might result from the launching, flight and return to earth of various kinds of space vehicles or parts thereof, a number of problems exist with respect to defining and delimiting liability of the launching State and other States associated with it in the space activity causing injury or damage. First of all there is the question of the type of interest protected: that is, the kind of injury for which recovery may be had. Second, there is the question of the type of conduct giving rise to liability: should liability be without regard for some or all activities, or should it be based upon fault? Third, should a different

principle govern, depending on whether the place of injury is on the surface of the earth, in the airspace or in outer space? Fourth, should liability of the launching State be unlimited in amount? Finally, where more than one State participates in particular activity, is the liability joint or several?

11. What machinery should be utilized for determining liability and ensuring the payment of compensation if due? The Committee considered that early consideration should be given to agreement on submission to the compulsory jurisdiction of the International Court of Justice in disputes between States as to the liability of States for injury or damage caused by space vehicles.

12. When it considered the foregoing questions, the Committee noted that, in so far as concerns liability for surface damage caused by aircraft, there was formulated at Rome in 1952, under the aegis of ICAO, the Convention on damage caused by foreign aircraft to third parties on the surface. In the opinion of the Committee, that Convention and ICAO experience in relation thereto could be taken into account, inter alia, in any study that might be carried out in the future concerning liability for injury or damage caused by space vehicles. It was pointed out, however, that no international standards regarding safety and precautionary measures governing the launching and control of space vehicles had yet been formulated, and this fact also could be taken into account in studying analogies based on existing conventions.

C. Allocation of Radio Frequencies

13. It was recognized that there are stringent technical limits on the availability of radio frequencies for communications. The development of space vehicles will pose new and increasing demands on the radio spectrum. It was emphasized that rational allocation of frequencies for communications with and among space vehicles would be imperative. In this way, what might otherwise come to constitute paralyzing interference among radio transmissions could be avoided.

14. Attention was drawn to the fact that there is already in existence and operation an international organization suited to the consideration of problems of radio frequency allocation for outer space uses, namely, the ITU. A technical committee of this organization has already issued a recommendation and a report which bear the following titles: "Selection of Frequencies Used in Telecommunication with and between Artificial Earth Satellites and other Space Vehicles" and "Factors Affecting the Selection of Frequencies for Telecommunication with and between Space Vehicles". The findings contained in these two documents will be presented to the Administrative Radio Conference of the ITU which will open in Geneva on 17 August 1959.

15. Attention should also be given the desirability of terminating transmissions from space vehicles once these transmissions have outlived their usefulness. Such a measure

would help conserve and make optimum use of the frequencies which are assigned for outer space communications. In considering this problem, it would be necessary to balance this factor against the interest in conserving a means for continuous identification of space vehicles.

D. Avoidance of Interference Between Space Vehicles and Aircraft

16. As the launchings of space vehicles became more numerous and wide-spread throughout the world, practical problems will clearly arise in regard to the prevention of physical interference between space vehicles, particularly rockets, and conventional aircraft. The latter are already employed in great numbers across the earth and in many areas air traffic is already congested. It was considered that Governments could give early attention to the problem of interference between aircraft and space vehicles and that technical studies could usefully be undertaken, if necessary with the assistance of competent specialized agencies.

E. Identification and Registration of Space Vehicles and Coordination of Launchings

17. It is expected that the number of space vehicles will progressively increase. In the course of time, their numbers may become very large. This indicates the necessity

of providing suitable means for identifying individual space vehicles. Such identification of space vehicles could be obtained by agreement on an allocation of individual call-signs to these vehicles; the call-sign could be emitted at stipulated regular intervals, at least until identification by other means had been established. Another means of identification is by orbital or transit characteristics of space vehicles.

18. As part of the problem of identification, there arises the question of placing suitable markings on space vehicles so that, particularly in the event of their return to earth, they may be readily identified.

19. Identification would be facilitated by a system of registration of the launchings of space vehicles, their call-signs, markings and current orbital and transit characteristics. Registration would also serve a number of other useful purposes. For one example, one serious problem is the potential overloading of tracking facilities. Registration of launchings would help to avoid this. Registration might also afford a convenient means for the notification of launchings to other States, thus enabling them to make appropriate distinctions between the space vehicles so notified and other objects, and to take appropriate measures to protect their interests if necessary.

20. A further measure, beyond registration, would be agreement on the co-ordination of launchings.

F. Re-Entry and Landing of Space Vehicles

21. Problems of re-entry and landing of space vehicles will exist both with respect to unmanned space vehicles and later with respect to manned vehicles of exploration. Where space vehicles are designed for re-entry and return, it will be appropriate for the launching State to enter into suitable arrangements with the State on whose territory the space vehicle is intended to land and other States whose air space may be entered during descent. Recognizing moreover, that such landings may occur through accident, mistake, or distress, members of the Committee called attention to the desirability of the conclusion of multilateral agreements concerning re-entry and landing, such agreements to contain suitable undertakings on co-operation and appropriate provisions on procedures. Among the subjects that might be covered by such agreements would be the return to the launching State of the vehicle itself and -- in the case of a manned vehicle -- provision for the speedy return of personnel.

22. It was also considered that certain substantive rules of international law already exist concerning rights and duties with respect to aircraft and airmen landing on foreign territory through accident, mistake or distress. The opinion

was expressed that such rules might be applied in the event of similar landings of space vehicles.

III. Other Problems

A. Question of Determining Where Outer Space Begins

23. Under the terms of existing international conventions and customary international law, States have complete and exclusive sovereignty in the air space above their territories and territorial waters. The concurrent existence of a region in space which is not subjec to the same regime raises such questions as where air space ends and where outer space begins. It was noted that these limits do not necessarily coincide. While they have been much discussed in scholarly writing, there is no conclusion among publicists concerning the location of these limits.

24. A view was expressed that it might eventually prove essential to determine these limits. The Committee reviewed a number of possibilities in this connexion, including those based upon the physical characteristics of air and of aircraft. The difficulties involved were agreed to be great. An authoritative answer to the problem at this time would require an international agreement, and the opinion was expressed that such an agreement now, based on current knowledge and experience would be premature. It

was considered that, in the absence of an express agreement, further experience might lead to the acceptance of precise limits through a rule of customary law.

25. In the absence of a precise demarcation, another possible approach would be to set tentatively, on the basis of present experience and knowledge, a range within which the limites of air space and outer space would be assumed to lie. It was suggested that an approach of this kind should avoid a boundary so low or so high as unreasonably to fetter activities connected with the use and exploration of outer space.

26. Ther was also discussion as to whether or not further experience might suggest a different approach, namely, the desirability of basing the legal regime governing outer space activities primarily on the nature and type of particular space activities.

27. One development might be the conclusion of intergovernmental agreements, as necessary, to govern activities sufficiently close to the earth's surface and bearing such a special relationship to particular States as to call for their consent. Each such agreement could contain appropriate provisions as to the permissibility of a given activity by reference not only to altitude and "verticle" position but also to trajectory, flight mission, known or

referred instrumentation, and other functional characteristics of the vehicle or object in question.

28. It was generally believed that the determination of precise limits for air space and outer space did not present a legal problem c alling for priority consideration at this moment. The Committee noted that the solution of the problems which it had identified as susceptible of priority treatment was not dependent upon the establishment of such limits.

B. Protection of Public Health and Safety: Safeguards Against a Contamination of or From Outer Space

29. The Committee took note of the apprehensions that have been expressed that activities in outer space might bright to those regions, by inadvertence, living or other matter from the earth capable of interfering with orderly scientific research. It was agreed that further study should be encouraged under appropriate auspices to specify the types of risks, the gravity of dangers, and the technical possibility, as well as the cost, of preventive measures. Such a study should also cover safeguards against similar contamination of the earth as a result of space activities as well as protection against other hazards to health and safety that might be created by the carrying out of programmes to explore outer space. These studies could be undertaken with a view to the possible formulation of appropriate international standards.

C. Questions Relating to Exploration of Celestial Bodies

30. The Committee was of the view that serious problems could arise if States claimed, on one ground or another, exclusive rights over all or part of a celestial body. One suggestion was that celestial bodies are incapable of appropriation to national sovereignty. Another suggestion was that the exploration and exploitation of celestial bodies should be carried out exclusively for the benefit of all mankind. It was also suggested that some form of international administration over celestial bodies might be adopted.

31. The Committee noted that, while scientific programmes envisaged relatively early exploration of celestial bodies, human settlement and extensive exploitation of resources were not likely in the near future. For this reason the Committee believed that problems relating to the settlement and exploitation of celestial bodies did not require priority treatment.

C. Avoidance of Interference Among Space Vehicles

32. It was agreed that, apart from problems of communications and overloading of tracking facilities, there was for the present little danger of interference of space vehicles with each other. It was pointed out that this situation might change in time, particularly if vehicles in space are used extensively for either global or interplanetary travel. There was discussion about the possible relevance

to space travel of rules and experience developed in relation to air traffic. It was decided that more scientific information would be needed before rules could be drafted.

E. Additional Questions Raising Legal Problems

33. The Committee recognized that various other technical developments would probably call for legal arrangements and regulation. Particular reference was made in this connexion to meteorological activities in outer space which may require international measures to insure maximum effectiveness.

3. GENERAL ASSEMBLY RESOLUTION 1472 (XIV): INTERNATIONAL COOPERATION IN THE PEACEFUL USES OF OUTER SPACE, DECEMBER 12, 1959 *

A

The General Assembly,

Recognizing the common interest of mankind as a whole in furthering the peaceful uses of outer space,

Believing that the exploration and use of outer space should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic or scientific development,

Desiring to avoid the extension of present national rivalries into this new field,

Recognizing the great importance of international co-operation in the exploration and exploitation of outer space for peaceful purposes,

Noting the continuing programmes of scientific co-operation in the exploration of outer space being undertaken by the international scientific community,

Believing also that the United Nations should promote international co-operation in the peaceful uses of outer space,

1. Establishes a Committee on the Peaceful Uses of Outer Space, consisting of Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon,

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Mexico, Poland, Romania, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, whose members will serve for the years 1960 and 1961, and requests the Committee:

(a) To review, as appropriate, the area of international co-operation, and to study practical and feasible means for giving effect to programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices, including, inter alia:

(i) Assistance for the continuation on a permanent basis of the research on outer space carried on within the framework of the International Geophysical Year;

(ii) Organization of the mutual exchange and dissemination of information on outer space research;

(iii) Encouragement of national research programmes for the study of outer space, and the rendering of all possible assistance and help towards their realization;

(b) To study the nature of legal problems which may arise from the exploration of outer space;

2. Requests the Committee to submit reports on its activities to the subsequent sessions of the General Assembly.

4. GENERAL ASSEMBLY RESOLUTION 1721 (XVI): INTERNATIONAL COOPERATION IN THE PEACEFUL USES OF OUTER SPACE, DECEMBER 20, 1961

A

The General Assembly,

Recognizing the common interest of mankind in furthering the peaceful uses of outer space and the urgent need to strengthen international co-operation in this important field,

Believing that the exploration and use of outer space should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic or scientific development,

1. Commends to States for their guidance in the exploration and use of outer space the following principles:

(a) International law, including the United Nations Charter, applies to outer space and celestial bodies;

(b) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law, and are not subject to national appropriation;

2. Invites the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which may arise from the exploration and use of outer space.

B

The General Assembly,

Believing that the United Nations should provide a focal point for international co-operation in the peaceful exploration and use of outer space,

1. Calls upon States launching objects into orbit or beyond to furnish information promptly to the Committee on the Peaceful Uses of Outer Space through the Secretary-General for purposes of registration of launchings;

2. Requests the Secretary-General to maintain a public registry of the information furnished in accordance with paragraph 1 above;

3. Requests the Committee on the Peaceful Uses of Outer Space, in co-operation with the Secretary-General, and making full use of the functions and resources of the Secretariat:

(a) To maintain close contact with governmental and non-governmental organizations concerned with outer space matters;

(b) To provide for the exchange of such information relating to outer space activities as governments may supply on a voluntary basis, supplementing but not duplicating existing technical and scientific exchanges;

(c) To assist in the study of measures for the promotion of international co-operation in outer space activities;

4. Further requests the Committee on the Peaceful Uses of Outer Space to report to the General Assembly on the arrangements undertaken for the performance of these functions and on such developments relating to the peaceful uses of outer space as it considers significant.

C

The General Assembly,

Noting with gratification the marked progress opened up for meteorological science and technology by the advances in outer space,

Convinced of the world-wide benefits to be derived from international co-operation in weather research and analysis,

1. Recommends to all Member States and to the World Meteorological Organization and other appropriate specialized agencies the early and comprehensive study, in the light od developments in outer space, of measures:

(a) To advance the state of atmospheric science and technology so as to provide greater knowledge of basic physical forces affecting climate and the possibility of large-scale weather modification;

(b) To develop existing weather forecasting capabilities and help Member States make effective use of such capabilities through regional meteorological centres;

2. Requests the World Meteorological Organization, consulting as appropriate with the United Nations Educational, Scientific and Cultural Organization and other specialized agencies and governmental and non-governmental organizations, such as the International Council of Scientific Unions, to submit a report to its member Governments and to the Economic and Social Council at its thirty-fourth session regarding appropriate organizational and financial arrangements to achieve these ends, with a view to their further consideration by the General Assembly at its seventeenth session;

3. Requests the Committee on the Peaceful Use of Outer Space, as it deems appropriate, to review this report and submit its comments and recommendations to the Economic and Social Council and to the General Assembly.

D

The General Assembly,

Believing that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Convinced of the need to prepare the way for the establishment of effective operational satellite communication,

1. Notes with satisfaction that the International Telecommunication Union plans to call a special conference

in 1963 to make allocations of radio frequency bands for outer space activities;

2. Recommends that the International Telecommunication Union consider at this conference those aspects of space communication in which international co-operation will be required;

3. Notes the potential importance of communication satellites for use by the United Nations and its principal organs and specialized agencies for both operational and informational requirements;

4. Invites the Expanded Programme of Technical Assistance and the United Nations Special Fund, in consultation with the International Telecommunication Union, to give sympathetic consideration to requests from Member States for technical and other assistance for the survey of their communication needs and for the development of their domestic communication facilities so that they may make effective use of space communication;

5. Requests the International Telecommunication Union, consulting as appropriate with Member States, the United Nations Educational, Scientific and Cultural Organization and other specialized agencies and governmental and non-governmental organisations, such as the Committee on Space Research of the International Council of Scientific

Unions, to submit a report on the implementation of these proposals to the Economic and Social Council at its thirty-fourth session and to the General Assembly at its seventeenth session;

6. Requests the Committee on the Peaceful Uses of Outer Space, as it deems appropriate, to review this report and submit its comments and recommendations to the Economic and Social Council and the General Assembly.

E

The General Assembly,

Recalling its resolution 1472 (XIV) of 12 December 1959,

Noting that the membership of the Committee on the Peaceful Uses of Outer Space expires at the end of 1961,

Noting the report of the Committee on the Peaceful Uses of Outer Space (A/4987),

1. Decides to continue the membership of the Committee on the Peaceful Uses of Outer Space as contained in resolution 1472 (XIV) and to add Chad, Mongolia, Morocco and Sierra Leone to its membership in recognition of the increased membership of the United Nations since the Committee was established;

2. Requests the Committee to meet not later than 31 March 1962 to carry out its mandate as contained in resolution 1472 (XIV) and to review the activities provided for in

this resolution and to make such reports as it may consider appropriate.

5. GENERAL ASSEMBLY RESOLUTION 1802 (XVII): INTERNATIONAL COOPERATION IN THE PEACEFUL USES OF OUTER SPACE, DECEMBER 14, 1962 *

The General Assembly,

Recalling its resolution 1721 (XVI) of 20 December 1962 on international co-operation in the peaceful uses of outer space,

Believing that the activities of States in the exploration and use of outer space should be carried out in conformity with international law including the Charter of the United Nations, in the interest of friendly relations among nations,

Stressing the necessity of the progressive development of international law pertaining to the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space, to liability of space vehicle accidents and to assistance to, and return of, astronauts and space vehicles, as well as to other legal problems,

Bearing in mind that the application of scientific and technological advances in outer space, particularly in the fields of meteorology and communications, can bring great advantages to mankind and contribute to the economic and social progress of the developing countries as envisaged in the United Nations Development Decade programme,

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Having considered the report submitted by the Committee on the Peaceful Uses of Outer Space in response to resolution 1721 (XVI),

I

1. Notes with regret that the Committee on the Peaceful Uses of Outer Space has not yet made recommendations on legal questions connected with the peaceful uses of outer space;

2. Calls upon all Member States to co-operate in the further development of law for outer space;

3. Requests the Committee on the Peaceful Uses of Outer Space to continue urgently its work on the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space, on liability for space vehicle accidents and on assistance to, and return of, astronauts and space vehicles, as well as on other legal problems;

4. Refers to the Committee on the Peaceful Uses of Outer Space to a basis for this work, all proposals which have been made thus far including the draft declaration of the basic principles governing the activities of States pertaining to the exploration and use of outer space submitted by the Union of Soviet Socialist Republics, the draft international agreement on the rescue of astronauts and space-ships making emergency landings submitted by the Union of Soviet Socialist Republics, the draft proposal on

assistance to, and return of, space vehicles and personnel submitted by the United States of America, the draft proposal on liability for space vehicle accidents submitted by the United States of America, the draft code for international co-operation in the peaceful uses of outer space submitted by the United Arab Republic, the draft declaration of basic principles governing the activities of States pertaining to the exploration and use of outer space submitted by the United Kingdom of Great Britain and Northern Ireland, the draft declaration of principles relating to the exploration and use of outer space submitted by the United States of America, and all other proposals and documents presented to the General Assembly during its debates on this item and the records of those debates.

6. GENERAL ASSEMBLY RESOLUTION 1884 (XVIII): QUESTION OF GENERAL AND COMPLETE DISARMAMENT, OCTOBER 17, 1963

The General Assembly,

Recalling its resolution 1721 (XVI) of 20 December 1961, in which it expressed the belief that the exploration and use of outer space should be only for the betterment of mankind,

Determined to take steps to prevent the spread of the arms race to outer space,

1. Welcomes the expressions by the Union of Soviet Socialist Republics and the United States of American of their intention not to station in outer space any objects carrying nuclear weapons or other kinds of weapons of mass destruction;

2. Solemnly calls upon all States:

(a) To refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner;

(b) To refrain from causing, encouraging or in any way participating in the conduct of the foregoing activities.

7. UNITED NATIONS RESOLUTION 1962 (XVIII), DECEMBER 13, 1963 - DECLARATION OF LEGAL PRINCIPLES GOVERNING ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE

The General Assembly,

Inspired by the great prospects opening up before mankind as a result of man's entry into outer space,

Recognizing the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,

Believing that the exploration and use of outer space should be for the betterment of mankind and for the benefit of States irrespective of their degree of economic or scientific development,

Desiring to contribute to broad international cooperation in the scientific as well as in the legal aspects of exploration and use of outer space for peaceful purposes,

Believing that such co-operation will contribute to the development of mutual understanding and to the strengthening of friendly relations between nations and peoples,

Recalling General Assembly resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression, and considering that the aforementioned resolution is applicable to outer space,

Taking into consideration General Assembly resolutions 1721 (XVI) of 20 December 1961 and 1802 (XVII) of 14 December 1962, approved unanimously by the State Members of the United Nations,

Solemnly declares that in the exploration and use of outer space States should be guided by the following principles:

1. The exploration and use of outer space shall be carried on for the benefit and in the interests of all mankind,

2. Outer space and celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law,

3. Outer space and celestial bodies are not subject to national appropriation by claim of sovereignity by means of use or occupation, or by any other means,

4. The activities of States in the exploration and use of outer space shall be carried on in accordance with international law including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

5. States bear international responsibility for national activites in outer space, whether carried on by

governmental agencies or by non-governmental entities, and for assuring that national activities are carried on in conformity with the principles set forth in this Declaration. The activities of non-governmental entities in outer space shall require authorization and continuing supervision by the State concerned. When activities are carried on in outer space by an international organization, responsibility for compliance with the principles set forth in this Declaration shall be borne by the international organization and by the States participating in it.

6. In the exploration and use of outer space, States shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space with due regard for the corresponding interests of other States. If a State has reason to believe that an outer space activity or experiment planned by it or its nationals would cause potentially harmful interference with activities of other States in the peaceful exploration and use of outer space, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State which has reason to believe that an outer space activity or experiment planned by another State would cause potentially harmful interference with activities in the peaceful

exploration and use of outer space may request consultation concerning the activity or experiment.

7. The State on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and any personnel thereon, while in outer space. Ownership of objects launched into outer space, and of their component parts, is not affected by their passage through outer space or by their return to the earth. Such objects or component parts found beyond the limits of the State of registry shall be returned to that State, which shall furnish identifying data upon request prior to return.

8. Each state which launches or procures the launching on an object into outer space, and each State from whose territory or facility an object is launched, is internationally liable for damage to a foreign State or to its natural or juridical persons by such object or its component parts on the earth, in air space, or in outer space.

9. States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of a foreign State or on the high sea s. Astronauts who make such a landing shall be safely and promptly returned to the State of registry of their space vehicle.

8. UNITED NATIONS RESOLUTION 1963 (XVIII), DECEMBER 13, 1963 - INTERNATIONAL COOPERATION IN THE PEACEFUL USES OF OUTER SPACE *

The General Assembly,

Recalling its resolution 1721 (XVI) of 20 December 1961 and 1802 (XVII) of 14 December 1962, on international co-operation in the peaceful uses of outer space,

I

1. Recommends that consideration should be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of the States in the exploration and use of outer space;

2. Requests the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which may arise in the exploration and use of outer space, and in particular to arrange for the prompt preparation of draft international agreements on liability for damage caused by objects launched into outer space and on assistance to and return of astronauts and space vehicles;

3. Further requests the Committee on the Peaceful Uses of Outer Space to report to the General Assembly at its nineteenth session on the results achieved in preparing these two agreements;

* Reprinted in Part

APPENDIX B

INTERNATIONAL TREATIES

1. THE ANTARCTIC TREATY
December 1, 1959

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognizing 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;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctic a for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

Article I

1. 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.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

Article II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present treaty.

Article III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

(a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

(b) scientific personnel shall be exchanged in Antarctica between expeditions and stations;

(c) scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

Article IV

1. Nothing contained in the present Treaty shall be interpreted as:

(a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignity in Antarctica;

(b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial soverignity in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica or otherwise;

(c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignity in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignity in Antarctica or create any rights of sovereignity in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignity in Antarctica shall be asserted while the present Treaty is in force.

Article V

1. Any nuclear explosions in Antarctica and the disposal thereof radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

Article VI

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

Article VII

1. In order to promote the objectives ane ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access any any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of --

(a) all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceedings from its territory;

(b) all stations in Antarctica occupied by its nationals; and

(c) any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

Article VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1(b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are

nationals in respect of all acts or omissions occurring while they are in Antarctica for the purposes of exercising their functions.

2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

Article IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

(a) use of Antarctica for peaceful purposes only;

(b) facilitation of scientific research in Antarctica;

(c) facilitation of international scientific cooperation in Antarctica;

(d) facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;

(e) questions relating to the exercise of jurisdiction in Antarctica;

(f) preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitt to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

Article X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

Article XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall be absolve parties

to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

Article XII

1. (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

(b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1(a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2. (a) If after the expiration of thirty years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under

Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

(b) Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

(c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1(a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period date give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depositary Government.

Article XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by

any State which is a Member of the United Nations, or by any State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary Government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have which have depositied instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

Article XIV

The present Treaty, done in the English, French, Russian and Spanish language, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized, have signed the present Treaty.

DONE at Washington this first day of December, one thousand nine hundred and fifty-nine.

2. TREATY BANNING NUCLEAR WEAPON TEST IN THE ATMOSPHERE, IN OUTER SPACE, AND UNDER WATER, AUGUST 5, 1963

The Governments of the United States of America, the United Kingdom of Great Britain, and Northern Ireland, and the Union of Soviet Socialist Republic, hereinafter referred to as the "original Parties,"

Proclaiming as their principal aim the speediest possible achievement of an agreement on general and complete disarmament under strict international control in accordance with the objectives of the United Nations which would put an end to the armaments race and eliminate the incentive to the production and testing of all kinds of weapons, including nuclear weapons,

Seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time, determined to continue negotiations to this end, and desiring to put an end to the contamination of man's environment by radioactive substance,

Have agreed as follows:

Article I

1. Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:

(a) in the atmosphere; beyond its limits, including outer space; or underwater, including territorial waters or high seas; or

(b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted. It is understood in this connection that the provisions of this subparagraph are without prejudice to the conclusion of a treaty resulting in the permanent banning of all nuclear test explosions, including all such explosions underground, the conclusion of which, as the Parties have stated in the Preamble to this Treaty, they seek to achieve.

2. Each of the Parties of this Treaty undertakes furthermore 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 environments described, or have the effect referred to, in paragraph 1 of this Article.

Article II

1. Any Party may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties of this Treaty. Thereafter, if requested to do

so by one-third or more of the Parties, the Depositary Governments shall convene a conference, to which they shall invite all the Parties, to consider such amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to this Treaty, including the votes of all of the Original Parties. The amendment shall enter into force for all Parties upon the deposit of instruments of ratification by a majority of all the Parties, including the instruments of ratification of all of the Original Parties.

Article III

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Original Parties -- the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics -- which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by all the Original Parties and the deposit of their instruments of ratification.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Treaty, the date of its entry into force, and the date of receipt of any requests for conferences or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article IV

This Treaty shall be of unlimited duration.

Each party shall in exercising its national sovereignity have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty three months in advance.

Article V

This Treaty, of which the English and Russian texts are equally authentic, shall be deposited in the archives of the

Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Treaty.

DONE in triplicate at the city of Moscow the fifty day of August, one thousand nine hundred and sixty-three.

For the Government of the United States of America

For the Government of the United Kingdom of Great Britain and Northern Ireland

For the Government of the Union of Soviet Socialist Republics

APPENDIX C

DRAFT SPACE TREATIES

1. U. S. DRAFT SPACE TREATY, JUNE 16, 1966 - TREATY GOVERNING THE EXPLORATION OF THE MOON AND OTHER CELESTIAL BODIES

The Contracting Parties,

Recalling General Assembly resolution 1962 (XVIII) entitled "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space," adopted unanimously by the General Assembly on 13 December 1963,

Recalling further General Assembly resolution 1884 (XVIII), concerning weapons of mass destruction, adopted by acclamation on 17 October 1963,

Recognizing that it is in the interest of all mankind that celestial bodies should be used for peaceful purposes only,

Anticipating the substantial contributions to scientific knowledge which will flow from international cooperation in the scientific investigation of celestial bodies,

Convinced that a treaty on the use of celestial bodies will further the Purposes and Principles of the Charter of the United Nations,

Agreed that:

Article I

Celestial bodies are free for exploration and use by all States on the basis of equality and in accordance with international law. They are not subject to

national appropriation by claim of sovereignity by means of use or occupation or by other means.

Article 2

There shall be freedom of scientific investigation on celestial bodies.

Article 3

States shall facilitate and encourage international cooperation in scientific investigation concerning celestial bodies.

Article 4

A State conducting activities on a celestial body shall (a) promptly provide the Secretary-General of the United Nations with a descriptive report of the nature, conduct, and locations of such activities and (b) make the findings of such activities freely available to the public and the international scientific community.

Article 5

States in a position to do so shall, where requested or required by the circumstances, render assistance to nationals of other States engaged in activities on celestial bodies.

Article 6

All areas of celestial bodies, including all stations, installations, equipment , and space vehicles on celestial bodies, shall be open at all times to representatives of other States conducting activities on celestial bodies.

Article 7

A State may exercise authority over its facilities and persons participating in its activities on a celestial body. Ownership of objects shall not be affected by their being landed, constructed or used on a celestial body.

Article 8

In accordance with the sense of General Assembly Resolution 1884 (XVIII), adopted by acclamation on October 17, 1963, no State shall station on or near a celestial body any nuclear weapons or other weapons of mass destruction.

Article 9

Celestial bodies shall be used for peaceful purposes only. All States undertake to refrain from conducting on celestial bodies any activities such as the establishment of military fortifications, the carrying out of military maneuvers, or the testing of any type of weapons. The use of military personnel, facilities or equipment for scientific research or for any other peaceful purpose shall not be prohibited.

Article 10

States shall pursue studies of and , as appropriate, take steps to avoid harmful contamination of celestial bodies and adverse changes in the environment of the Earth resulting from the return of extraterrestrial matter.

Article 11

Any disputes arising from the interpretation or application of this Agreement may be referred by any Contracting Party thereto to the International Court of Justice for decision.

Article 12

This Agreement shall be open for signature by States Members of the United Nations or by any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party. Any such State which does not sign this Agreement may accede to it at any time.

Article 13

This Agreement shall be subject to ratification or approval and instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 14

This Agreement shall enter into force upon the deposit of the second instrument of ratification, approval, or accession. It shall enter into force as to a State ratifying, approving, or acceding thereafter upon the deposit of its instruments of ratification, approval, or accession.

Article 15

A Contracting Party may pr opose amdnements to this Agreement. Amend ments shall come into force for each Contracting Party accepting the amendments on acceptance by a majority of the Contracting Parties and thereafter for each remaining Contracting Party on acceptance by it.

Article 16

A Contracting Party may give notice of its withdrawal from this Agreement one year after its entry into force by written notification to the Secretary-General of the United Nations. Such withdrawal shall take effort one year from the date of receipt by the Secretary-General of the notification.

Article 17

The Secretary-General of the United Nations shall informall States referred to in Article 12 of signatures, deposits of instruments of ratification, approval, or accession, the date of entry into force of this Agreement, proposals for amendment, notification of acceptances of amendments, and notices of withdrawal.

Article 18

This Agreement shall be registered in accordance with Article 102 of the Charter of the United Nations.

Article 19

The original of this Agreeme nt, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to the States referred to in Article 12.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

2. U.S.S.R. DRAFT TREATY JUNE 16, 1966 - ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES

The Governments . . . hereinafter referred to as the Parties to the Treaty,

Inspired by the great prospects opening up before mankind as a result of man's entry into outer space,

Recognizing the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,

Believing that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development,

Desiring to contribute to broad international co-operation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes,

Believing that such co-operation will contribute to the development of mutual understanding and to the strengthening of friendly relations between States and peoples,

Taking account of General Assembly Resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, and considering

that the aforementioned resolution is applicable to outer space,

Have agreed on the following:

Article I

The exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind. The parties of the Treaty undertake to accord equal conditions to States engaged in the exploration of outer space.

Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all regions of celestial bodies.

Article II

Outer space and celestial bodies shall not be subject to national appropriation by claim of sovereignity, by means of use or occupation, or by any other means.

Article III

The Parties of 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.

Article IV

The Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or other weapons of mass destruction and not to station such weapons on celestial bodies or otherwise to station them in outer space. The moon and other celestial bodies shall be used exclusively for peaceful purposes by all Parties to the Treaty. The establishment of military bases and installations, the testing of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden.

Article V

A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereon, while it is in outer space or on a celestial body. Ownership of objects launched into outer space, including objects delivered to or constructed on a celestial body, and of their component parts, shall not be affected by their presence in outer space or on a celestial body or by their return to earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be

returned to that State, which shall, upon request, furnish identifying data prior to their return.

Article VI

The Parties to the Treaty shall bear international responsibility for national activities in outer space or on celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental bodies corporate. The activities of non-governmental bodies corporate in outer space shall require authorization and continuing supervision by the State concerned. When activities are carried on in outer space by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization.

Article VII

Each State Party to the Treaty which launches or organizes the launching of an object into outer space and on to celestial bodies, and each State from whose territory or facility an object is launched is internationally liable for damage to another State Part of the Treaty or to its natural or juridical persons by such object or its component parts on earth, in air space, in outer space or on the celestial body.

Article VIII

In the exploration and use of outer space, States Parties to the Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including activities on celestial bodies, with due regard for the corresponding interests of other States. States Parties to the Treaty shall conduct research on celestial bodies in such a manner as to avoid harmful contamination. If a State Party to the Treaty has reason to believe that an outer space activity or experiment planned by it or its nationals would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including activities on celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an outer space activity or experiment planned by another State Party would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including activities on celestial bodies, may request consultation concerning the activity or experiment.

Article IX

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space, and shall render to

them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Part or on the high seas. Where astronauts make such a landing, their safety shall be assured and they shall be enabled promptly to return to the territory of the State Party of registry of their space vehicle.

In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties.

Article X

In the event of disputes arising in connection with the application or interpretation of the Treaty, the States Parties concerned shall immediately consult together with a view to their settlement.

Article XI

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it any any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of ..., which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification ...

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceeding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Treaty, the date of its entry into force, and other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XII

This Treaty, of which the Chinese, French, Russian, and Spanish Texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.

DONE in ..., at the city of ..., the .... day of .... one thousand nine hundred and ...

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