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Soviet Legal Approach to Space Law Issues at the United Nations

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The advent and increase of national activity in outer space provides the international lawyer with an opportunity for choice: he or she may develop a new branch of international law with its own unique set of legal concepts, or may rely on an extension of the classic international law precepts in the new area. The Soviet international jurist has opted for the former. Activities of States in outer space and the need to regulate those activities through the creation of a legal order have provided the Soviet Union with an ideal opportunity to pursue its international legal theory, and to have these novel views readily accepted by the international community. Among the factors exploited by the Soviets and responsible for their successful inroads are: the absence of an established legal regime in outer space; the lack of precedent in the form of custom and practice of States; the general lack of familiarity with, and knowledge of, outer space; the potential for great good and great harm that can result from space activities; and the small number of participating States directly involved in outer space activities.

Soviet methods of achieving legal regimentation of outer space activities will be explored, from the Sputnik era to the recent Soyuz launchings. Despite the brevity of this period a number of conventions have been proposed, completed, and ratified, which attest to the accelerated pace with which the world community is addressing this sphere of international law. Soviet theorists are vigorously involved in shaping this field of international law.

This particular area of the law is significantly intertwined with the technological developments and political attitudes of States. This note necessarily will digress from a purely legal analysis and will discuss the underlying motivation of Soviet space law policy. Technology will often shape the law and the political superstructure and ideology will influence the logic of the proposal. This combination of the legal implications of space activities and the absence of existing international legal theory provides a good opportunity for study of Soviet goals and attitudes toward international relations.

Study of the Soviet attitude alone would serve little function due to the general lack of knowledge and experience in the area of space law. The United States' position, therefore, will be used to provide needed perspective to the Soviet view or proposal. The Soviet positions will be gleaned not only from official declarations but also from jurists' comments. The substantive developments of space law, in fact, can be seen as a dialectic between these two space powers.

SOVIET APPROACH TO INTERNATIONAL LAW

The Soviet jurists primarily look to two sources of international law: treaties, conventions, and other international agreements; and custom. It is not likely that any Soviet writer would maintain that custom is the equal of treaty-based law. The Soviet view, succinctly stated, is that "[n]eglect of international treaty law and an exaggeration of the importance of international custom is characteristic of many bourgeois jurists."[1] Due to its comparatively late emergence on the international scene, the Soviet Union has been unable to participate in the making of a substantial volume of the customary rules of international law. This distrust of custom and its binding effect on the U.S.S.R. is pervasive in the notion that custom gave the capitalist countries a legal basis for exploitation.[2]

Now, however, the Soviets have begun a shift in that stance, particularly as applied to space law. The Soviet writers have acknowledged the role of custom in shaping space law. Problems with earlier custom-based law remain, but the theorists seek to avoid those constraints. The inapplicability of customary rules generally is divorced from space law, the rationale being that they arose in connection with earthbound activities. In the extraterrestrial area the conditions are so different from the conditions under which the customs were created that they prevent any valid application.[3] Custom can now be recognized as a source of law accepted by the Soviets, arguably because in this field it can play a major role in the formation of these customs.

The United States' position on the role of custom is markedly

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1. J. KOROVIN, S. KRYLOV, F. KOZHEVNIKOV, S. MOLODSTON, INTERNATIONAL LAW (2d ed. 1957).

2. INTERNATIONAL SPACE LAW 76 (A. Piradov ed. 1976).

3. *Id.* at 75.

dissimilar: "Custom is potentially the most important source of law with regard to space activities."[4] The U.S. in most of its proposals sought to implement the Statute of the International Court of Justice in order to use custom as a source for space law through Article 38 of that statute.[5] In light of the failure of many countries to adopt the Soviet distinction between earth and space custom, the Soviets relegated custom to the role of a secondary reserve source of future international space law.[6]

It is the treaty or convention which is considered by the Soviet Union to be the primary source of space law. Written treaties would set down logically interrelated rules, as opposed to a custom-based method of making law out of simple rules of behavior.[7] The Soviet delegate to the General Assembly of the United Nations stated that the U.S.S.R. desired international conventions to prevent the imposition of alien ways of life through the use of scientific and technical achievements.[8] Although they appear to be attempting to restrict the practices of States holding contrary political beliefs, the Soviets say that they are in favor of ordered regulation, not restriction.[9]

The Soviets catagorize the treaties into two types. The first establishes general rules and principles of mutual relations between States, and are widely recognized. An example is the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.[10] The second class consists of treaties containing concrete and special rules that are valid exclusively in relation to limited numbers of States. Treaties of the first kind have a more important and significant place in the system of international law and, consequently, among its sources.[11]

The Soviet approach to space law is centered around the crea-

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4. A. HALEY, *Legal Problems of a Manned Lunar International Laboratory*, in PROCEEDINGS OF THE SEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 71 (A. Haley, M. Schwartz eds. 1964).

5. "The Court . . . shall apply . . . international custom as evidence of a general practice accepted as law." Statute of the I.C.J. Article 38(1)b.

6. INTERNATIONAL SPACE LAW, *supra* note 2, at 77.

7. *Id.* at 77.

8. 27 U.N. GAOR, C.1 (1870th mtg.) 21, U.N. Doc. A/C.1/PV. 1870 (1970).

9. 27 U.N. GAOR, C.1 (1861st mtg.) 31, U.N. Doc. A/C.1/PV. 1861 (1972).

10. G. A. Res. 2222, 21 U.N. GAOR, Supp. (No. 16) 13-15, U.N. Doc. A/6316 (1966).

11. V.VASSILEVSKAYA, *Scientific and Technical Agreements on Space*, in PROCEEDINGS OF THE TENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 157 (M. Schwartz ed. 1967).

tion of a body of space law which can prove advantageous to Soviet ideology.[12] In attempting to achieve this goal, the Soviets have sought to conclude as many treaties as possible.[13] This course of conduct does not result in regulations like those of a municipal code; rather, the space law code is alternatively ambiguous and concrete, and is concise only as to the most recognized and accepted doctrines.

The Soviets have gained confidence in their dealing with the West at the negotiation table which has furthered their push for international agreements. A major advantage that the Soviet Union has when negotiating codes with the West is the stability of its institutional make-up and the difficulty the United States has in generating domestic support in order to present a unified stance.[14]

One of the important considerations underlying the Soviet treaty strategy is the overall Soviet view that pragmatic thinking and practiced reason always prevail over strict international legal theory:[15]

> "[T]he Soviets have adjusted their interpretation of international law to suit their own needs. For the U.S.S.R., the legality of aerospace activities has depended primarily on the nature and function of the activity as opposed to the general application of the legal concept. In conducting their campaign of peaceful coexistence the Soviets have sought to use international law to serve their own needs. . . ."[16]

It is on the framework of the Soviet policy of peaceful coexistence that their approach to space law is constructed. The Soviet Union has placed its heaviest emphasis on the ban of nuclear weapons as a justification for the Space Treaty.[17] The fear of nuclear destruction is the principal factor underlying the develop-

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12. 26 U.N. GAOR, C.1 (1820th mtg.) 4, U.N. Doc. A/C.1/PV. 1820 (1971).

13. G. ZHUKOV, *Basic Stages and Immediate Prospects of the Development of Outer Space Law*, in PROCEEDINGS OF THE SEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 315 (A. Haley, M. Schwartz eds. 1964).

14. B. RAMUNDO, Moderator Law Professor Workshop Issue Series No. 1 Detente 2-3 (1977).

15. S. KUCHEROV, *Sovereignty and Sovereign Rights in Outer Space*, in PROCEEDINGS OF THE FIFTH COLLOQUIUM ON THE LAW OF OUTER SPACE 17, (A. Haley ed. 1962).

16. J. MORENOFF, *Communications in Orbit: A Prognosis for World Peace*, in PROCEEDINGS OF THE NINTH COLLOQUIUM ON THE LAW OF OUTER SPACE 86-90 (M. Schwartz ed. 1966).

17. 21 U.N. GAOR, C.1 (1492nd mtg.) 429, U.N. Doc. A/C.1/SR. 1492 (1966).

ment of the peaceful coexistence policy.[18] This is not the only similarity lending credence to the notion that the Soviets have extended their peaceful coexistence to space law. The Soviets constantly refer to the peaceful cooperation of all States in the area of space activities. The Soviet Union, however, is satisfied with one or two state interactions.[19] As in peaceful coexistence, "[t]he struggle of the two systems by peaceful means—economic, political, social, ideological, technical, and cultural competition—continues and must continue. Nothing can stop the class struggle."[20] Clear evidence of this competition in space activities is the duplication of U.S. activities and identical parallel programs created by the U.S.S.R.[21] The amount of actual cooperation with the U.S., although highly touted, is extremely limited in scope.[22]

Peaceful coexistence is an important concept to keep in mind when reading the Soviet literature on space law, as it serves as a reminder that legal theory takes a "back seat" to Soviet political goals. The application of the doctrine belies the fact that no matter how different space is purported to be, international and earth-oriented politics are unquestionably applied to space activities.

The U.S.S.R. attempts to legalize its ideologically-based stratagem in order to placate its opponents, as well as to fortify its international pursuits. The Soviets have developed a formula of space law. General principles of international law construct contemporary international law regardless of the field of application. An example of this is the doctrine *jus cogens* as it applies to provisions of Articles 53 and 64 of the Vienna Convention on the Law of Treaties of 1969.[23] They are qualified as *lex generalis.* There are also *lex generalis* in a specific branch of law that are *lex specialis* in comparison to the general international law. Freedom of scientific exploration in outer space as contained in Article One of the Space Treaty is an example of a legal norm of space law that cannot be contravened, but references to this principle cannot justify

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18. B. RAMUNDO, PEACEFUL COEXISTENCE: INTERNATIONAL LAW IN THE BUILDING OF COMMUNISM 113 (1967).

19. 22 U.N. GAOR, C.1 (1497th mtg.) 3, U.N. Doc. A/C.1/PV. 1497 (1967).

20. PEACEFUL COEXISTENCE: INTERNATIONAL LAW IN THE BUILDING OF COMMUNISM, *supra* note 18.

21. Note the similarity of function of the Intelsate and Intersputnik organizations.

22. INTERNATIONAL SPACE LAW, *supra* note 2, at 245-49.

23. Y. KOSOLOV, *Interrelation Between Rules and Principles of International Outer Space and General Rules and Principles of International Law,* in PROCEEDINGS OF THE SIXTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 45 (M. Schwartz ed. 1973).

an intrusion into territorial spheres under the control of a sovereign state.[24] The conceptualization of space law allows the Soviets great freedom in their development of space law since they have classified space law as a *lex specialis* and bar its application as a part of international *lex generalis* until its acceptance in respect to all other fields of international activities as a *lex specialis*.[25]

This theory allays the Soviet fear that space law is capable of changing the face of international law with all its protections for state sovereignty. The Soviet formula will be encountered throughout the developments of space law.[26]

The Soviets desire that legal norms "keep pace with—and sometimes keep ahead of—the preparation of technical programmes in any particular field. . . ."[27] This goal, for all practical purposes, is unachievable due to the speed with which technical achievements are produced, the inability to create legal norms governing unknown future conduct, and the Soviet methodology in its creation of space law through the laborious treaty process. That process for obtaining a treaty on space progress is a series of step maneuvers involving what appears to many as an endless repetition.[28] In addition to the content, each step is charged with differing legal impacts: "General Assembly of the U.N. adopts a resolution, then a declaration and the States conclude international agreements on this basis."[29] A clear example of this process in motion and its various legal effects is the evolution of the General Assembly Resolution 1962 (XVIII), Legal Principles Governing Activities of States in Exploration and Use of Outer Space, December 13, 1963.[30] This resolution was then followed by a declaration repeating the same principles. Upon completion of the declaration, the U.S.S.R. and the U.S. stated that they would undertake to respect the principles enunciated in the draft declaration if it were

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24. *Id.* at 46.

25. *Id.* at 47.

26. 26 U.N. GAOR, C.1, *supra* note 12, at 4.

27. *Id.*

28. M. JAFFE, *Recent Developments in the International Law of Space*, in PROCEEDINGS OF THE SEVENTH COLLOQUIUM ON THE LAW ON OUTER SPACE 193 (A. Haley, M. Schwartz eds. 1964).

29. G. ZHUKOV, *Basic Stages and Immediate Prospects of the Development of Outer Space Law*, in PROCEEDINGS OF THE SEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 319 (A. Haley, M. Schwartz eds. 1964).

30. I. CSABAFI, *The U.N. General Assembly Resolution on Outer Space as Sources of International Law*, in PROCEEDINGS OF THE EIGHTH COLLOQUIUM ON THE LAW OF OUTER SPACE 40 (A. Haley, M. Schwartz eds. 1965).

unanimously accepted.[31] According to Soviet jurists, this expression of acceptance of General Assembly Resolution (XVIII) is binding as a rule of law since the fifth provision included language that State activities "will be carried on in conformity with the principles set forth."[32] Nonetheless, the Soviets proceeded to pursue a more concrete obligation in the form of the Space Treaty.[33]

Soviet international theorists minimize the role of international organizations in international law making, undermining the legal significance of the General Assembly resolution and declaration.[34] International organizations cannot take the initiative of concluding treaties on space law and are deemed only a mechanism of cooperation and coordination of national efforts, since the treaties are in the form of General Assembly resolutions. The resolutions are necessarily sent directly to States for signature without diplomatic conferences. In other words, the United Nations does not, strictly speaking, formulate rules of international law by its own actions.[35] By use of this procedure, the Soviet Union acts outside the United Nations and negotiates settlements on its own. These settlements often serve not only as bilateral agreements, but also as multilateral ones in which smaller States are given a choice of acceptance or no participation in an agreement at all. Those States generally have no real influence on the final agreement.[36]

Furthermore, the Soviets are vehemently opposed to entrusting international organizations with the implementation or enforcement powers of the treaties if a State has reason to believe that the "activity or experiment would cause potentially harmful interference with the activities of other states."[37]

The U.S.S.R. is hostile to the concept that an international organization can have the identical rights as a sovereign State and

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31. U.N. GAOR, C.1 (1432nd mtg.) 159, 161, U.N. Doc. A/C.1/SR. 1342 (1963).

32. C. TUNKIN, QUESTIONS OF THE THEORY OF INTERNATIONAL LAW 124-37 (1962).

33. 19 U.N. GAOR, COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (37th mtg.) 3, 7, U.N. Doc. A/AC.105/PV. 37 (1965).

34. *See, e.g.*, KAMENETSKAYA, *The Role of International Organizations in the Formation of International Space Law*, in PROCEEDINGS OF THE SIXTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 42 (M. Schwartz ed. 1973).

35. *Id.* at 43.

36. 26 U.N. GAOR, C.1 (1820th mtg.) *supra* note 12, at 1. The U.S. and the U.S.S.R. have made "secret pacts" and brought them to COPUOS for acceptance on an all-or-nothing basis, in particular, the 1967 U.N. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.

37. Legal Sub-Committee of the COPUOS, 22 U.N. GAOR (68th mtg. of the Subcomm.) 4, U.N. Doc. A/AC.105/C.2/SR.68 (1966).

refuses to allow the International Court of Justice to exclusively govern the States in their space activities.[38]

A. United Nations Committee on the Peaceful Uses of Outer Space (COPUOS)

What then is the role of the COPUOS in the Soviet approach and, if it is used, why? The answers lie in the structure and methodology of the COPUOS. The U.S.S.R. and the U.S. had two proposals for creation of the COPUOS. Each differed significantly in proposed membership. The ultimate agreement ended with an increased membership of twenty-four.[39] The U.S.S.R. used sweeping language of peace and legal efficacy when it further proposed that all decisions of the COPUOS be unanimous.[40] To avoid creating a sham committee (acting without participation of one of the space powers), the U.S.S.R. proposal, and hence its participation, was accepted. The COPUOS consisted of two subcommittees: the Legal Subcommittee, where international agreements on space are drafted and submitted to the General Assembly for consideration, and the Scientific and Technical Subcommittee, whose concern centers on applying space technology to the needs of Earth and the problems encountered in space activities.

The COPUOS, however, is not a typical international organization. It was permitted under the General Assembly rules of committee procedure to adopt its own procedure. This was the justification the Soviets used for requiring unanimous consent for any decision leaving the committee.[41] The Soviets stated that the COPUOS should guide and direct all aspects of the activities of the U.N. agencies which relate to the exploration and use of space.[42]

By virtue of the unanimous consent requirement, the Soviet Union acquired a de facto veto power. It has accordingly sought to empower an international organization which could (conceivably) govern its activities. The arrangement appears to provide other

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38. E. Brooks, *International Organization Aspects Affecting Space Law*, in Proceedings of the Tenth Colloquium on the Law of Outer Space 174 (M. Schwartz ed. 1968).

39. 13 U.N. GAOR, C.1 (994th mtg.) 235, U.N. Doc. A/C.1/SR. 994 (1958).

40. 16 U.N. GAOR, C.1 (1212th mtg.) 257, U.N. Doc. A/C.1/SR. 1212 (1961).

41. "The General Assembly shall adopt its own rules of procedure." U.N. Charter Art. 21. "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." U.N. Charter Art. 22.

42. 26 U.N. GAOR, C.1, *supra* note 12, at 6.

States with a veto as well, yet, once the U.S.S.R. and U.S. agree, "there is a tendency to take the agreement of the other countries for granted."[43]

In the Soviet view, COPUOS had an interesting role as an international organization operating under the General Assembly framework. The Soviets in fact desired that the committee have a more nationalistic context, proffering power to the participating States rather than operating under the General Assembly. An example of this was the discussion of proposed amendments to a resolution in the first committee of the General Assembly. The proposal, originally made by Cameroon and the United Arab Republic, read:

> [COPUOS] in consultation with the specialized agencies and in cooperation with the Committee on Space Research, to prepare and consider during its next session suggestions for programmes of education and training of specialists in the peaceful uses of outer space to assist the developing countries, and to report to the General Assembly at its twenty-first session.[44]

The U.S.S.R. supported an amendment that requested the Secretary-General to prepare a program of education and training in peaceful uses of outer space.[45] It was the Soviet view that such a committee would reflect national views and would provide a safeguard against international organization interference in State security interests.[46] The U.S. attempted to bring an international note in the particular area by not allowing for a decision of just a few participating members of the CUPUOS.[47]

The Soviets viewed the committee as one that adopts uncontroversial texts by mutual agreement and defers issues tending toward disagreement to a later date.[48] The Soviets felt comfortable

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43. W. HYMAN, *The Communication Satellite Corporation—The Beginning of a Commercial Era in Space*, in PROCEEDINGS OF THE EIGHTH COLLOQUIUM ON THE LAW OF OUTER SPACE 183-199 (A. Haley, M. Schwartz eds. 1965).

44. 20 U.N. GAOR, 2 Annexes (Agenda Item 31) 6, U.N. Doc. A/6212 (1965). The International Committee on Space Research (COSPAR), founded in 1958, consists of a number of international scientific unions whose work centers on making recommendations to facilitate a coordinated approach to the implementation of these diverse technologies' application to the field of space activities. COSPAR has been valuable in the area of informational exchanges of scientific data and in the dissemination of prompt notification of launchings.

45. 20 U.N. GAOR, C.1 (1422nd mtg.) 429, 430, U.N. Doc. A/C.1/SR. 1422 (1965).

46. *Id.*

47. 20 U.N. GAOR, II Annexes (Agenda Item 31), *supra* note 46, at 7.

48. 20 U.N. GAOR, C.1 (1422nd mtg.), *supra* note 47, at 429.

with the COPUOS. They felt it would serve to promote the national interest without the burden of an overseeing international organization.

B. 1967 Space Treaty

Early in the seventeenth session of the General Assembly (1962), the U.S.S.R. submitted a draft proposal outlining the key principles they believed should govern States in their exploration and use of outer space.[49] On June 16, 1966, during the twenty-first session, the Soviet Union presented a letter to the Secretary-General on the governing of activities of States in outer space.[50] A draft treaty entitled Principles Governing the Activities of States in the Exploration and Use of Outer Space, the Moon and Other Celestial Bodies was prepared which led to the formulation of the 1967 Space Treaty.[51]

The 1967 Space Treaty and the Soviet pursuit of their legal position marked the creation of major space law issues at the United Nations. In four different sections of the Space Treaty the phrase "peaceful uses" or "peaceful purposes" was highlighted. The debate centered on the interpretation of that phrase.

The U.S.S.R. stated that "peaceful" in international law always meant nonmilitary, since the International Treaty of Antarctica in 1959 and the Treaty on Non-proliferation of Nuclear Weapons, as well as United Nations Charter, define "peaceful" methods of solving international disputes as those not connected with the use of armed forces.[52] The Soviets then changed their approach from what appeared to be an interpretation of complete demilitarization. They stated:

> In our opinion the absence of a direct ban on certain kinds of military activities should not serve as a basis for an automatic transfer of those activities into the field of peaceful use of outer space. Our viewpoint is that nonbanned military activities in outer space constitute a separate category of space activities aimed at utilizing outer space for peaceful purposes.[53]

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49. 17 U.N. GAOR, I Annexes (Agenda Item 27) 71, U.N. Doc. A/5181 (1962).

50. 21 U.N. GAOR, II Annexes (Agenda Items 30, 89 & 91) 15, 16, U.N. Doc. A/6431 (1966).

51. 1967 Space Treaty, *opened for signature* January 27, 1967, 410 U.N.T.S. 206.

52. "[s]eek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement. . . ." U.N. Charter Art. 33 Para.1.

53. G. ZHUKOV, *On the Question of Interpretation of the Term "Peaceful Use of Outer*

The Soviets stated that paragraph two of Article IV had already demilitarized the moon and celestial bodies and that paragraph one was an important step toward banning the use of all outer space for military purposes.[54] The U.S.S.R. distinguished between activity where the military is employed and activity with a military character, since paragraph two of Article IV specifically allowed the use of military personnel for peaceful purposes.[55]

By comparison, United States' position was based on the interpretation of "peaceful use" as nonaggressive, rather than nonmilitary, activity. The United States had maintained this position consistently ever since the beginning of the space era.[56] According to this definition "peaceful use" as used in the Space Treaty denoted nonaggressive activity in the traditional international legal sense, where "aggressive" consisted of an attack on or undermining another State's territorial sovereignty.[57] The American delegation went on to note that this interpretation was consistent with usage in the United Nations Charter.[58] This U.S. position limited the use of outer space to nonaggressive activities and hence did not concur with the Soviet partial demilitarization of space limited only to celestial bodies and the Moon. The American posture comported with an earlier U.S. draft of Article II.[59] The United States did state that anything military was not *ipso facto* aggressive and warlike, as the treaty itself in Article IV made this distinction clear.[60]

The U.S.S.R.'s position on nonappropriation of celestial bodies or outer space was not limited to States but was to be obligatory on private persons and corporations as well.[61] "That treaties can impose duties and liabilities upon individuals as well as States has long been recognized."[62] However, the Soviet Union continued

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Space" Contained in the Space Treaty, in PROCEEDINGS OF THE ELEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 37 (M. Schwartz ed. 1969).

54. *Id.*

55. *Id.* at 38.

56. 20 U.N. GAOR, First Committee (1422nd mtg.), *supra* note 47, at 429.

57. E. BROOKS, *New Developments of Earth Satellite Law*, in PROCEEDINGS OF THE THIRTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 337, 344 (M. Schwartz ed. 1971).

58. 20 U.N. GAOR, First Committee (1422nd mtg.), *supra* note 47, at 429.

59. 21 U.N. GAOR, II Annexes (Agenda Items 30, 89 & 91) 7, U.N. Doc. A/6392 (1966).

60. E. GALLOWAY, *Interpreting the Treaty on Outer Space*, in PROCEEDINGS OF THE TENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 143, 145 (M. Schwartz ed. 1968).

61. G. ZHUKOV, *Tendencies and Prospects of the Development of Space Law*, in PROCEEDINGS OF THE ELEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 275, 277 (M. Schwartz ed. 1969).

62. W. BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS 462 (3rd ed. 1971).

stating that this principle of nonappropriation did not create or allow for the creation of an international administrative body governing outer space.

The United States emphasized that the principle of nonappropriation mandates that "[n]o State shall be permitted to say that a portion of a celestial body was subject exclusively to its national control."[63] Reading from the text of its original wording the Soviet Union argued that if a State developed the natural resources at a definite lunar section the State should be able to preserve the right to use this section exclusively. This followed, the Soviets contended, by analogy from the situation in which a maritime State has exclusive rights to its continental shelf for the purpose of exploiting natural resources.

> If the way of analogy is chosen, we would consider more appropriate in this case to compare the situation with the exploitation by a maritime state of the natural wealths on and under the surface of the continental shelf. It should be absolutely clear that if a state proceeds to the mining of natural resources on a certain section of the moon and, for that purpose, erects there all the required installations and structures, it would be necessary to recognize the right of that state to the exceptional use of that section, like (*sic*) it has done with regard to the exceptional right of a maritime state to use the natural resources of the continental shelf.[64]

While admitting this posture might infringe upon the principle of equality of States, the Soviets were willing to digress slightly from that legal principle in order to acquire a foreseeable economic advantage in the primary resource development rights in outer space.

Closely related to this issue of resource development was the definitional question of celestial bodies. The Soviets stated that celestial bodies were the planets, natural satellites, asteroids and large meteorites. Micrometeorites, smaller meteorites and comets could not be celestial bodies from the viewpoint of international regulation but should be included in the definition of "outer space."[65] The United States preferred as broad a definition of "ce-

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63. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 22 U.N. GAOR (57th mtg. of the Subcomm.) 14, U.N. Doc. A/AC.105/C.2/SR. 57 (1966).

64. G. ZHUKOV, *The Problems of Legal Status of Scientific Research Stations on the Moon*, in PROCEEDINGS OF THE TENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 60, 61 (M. Schwartz ed. 1968).

65. G. ZHUKOV, *The Problems of the Definition of Outer Space*, in PROCEEDINGS OF THE

lestial body" as possible, including even the micrometeorites.

Pursuing the original course of limiting applicable international law to general principles, the U.S.S.R. put forth its proposal that the exploration and use of outer sapce should comport with fundamental principles of international law and basic principles of the Charter. It listed prohibition of aggression, pacific settlement of disputes, prohibition of war propaganda and disarmament as the guiding principles.[66] In keeping with its position, the U.S.S.R. stated that "nonaggression" did not preclude the use of outer space for military aims in accordance with Article 51 of the United Nations Charter and permitted States to take measures in outer space such as those outlined by Chapter VII of the Charter.[67] Pointing to Article II of the same document, the Soviets stated that they would guide the States in the exclusive use of outer space for peaceful purposes, not merely in the partial demilitarization accomplished by the treaty. However, the U.S.S.R. did not attempt to draft a legal document which would articulate this goal.[68]

The Soviet Union was able to have its original Article X accepted in the Space Treaty. That article dealt with the granting of observation opportunities upon request on the basis of equality. The U.S.S.R. viewed the clause on the basis of equality as creating the legal obligation comparable to a most favored nation clause. While such a concept has been applied principally to economic relations, the Soviets deemed it to be appropriate in the observation context.[69] The United States had agreed to allow a tracking system to be built upon U.S. territory for the European Space Research Organization. The Soviets felt that since a State party to the Treaty was allowed to build a facility, another State party should be accorded rights comparable to the most favored nation approach. The Soviets overlooked the fact that the clause "on the basis of equality" does not establish a most favored nation obligation. Before arguing its applicability to this area it must first be determined to have existed. The language of this clause does not inherently create a most favored nation obligation.

The Soviets pointed with great enthusiasm to Article V which

TENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 271 (M. Schwartz ed. 1968).

66. G. ZHUKOV, *Tendencies and Prospects of the Development of Space Law*, *supra* note 62, at 279.

67. *Id.*

68. *Id.* at 280.

69. INTERNATIONAL SPACE LAW, *supra* note 2, at 107.

provided astronauts with special international status entitling them to assistance in cases of emergency or distress and a prompt return to the launching State. The Soviets attempted to clarify the clause by analogizing the duty of a seagoing ship's master under the 1960 Convention on the Protection of Human Life: "[T]he master should sail at full speed to help those in distress. . . ."[70] Always pragmatic, the Soviets realized that travel in space is limited and so only other astronauts already in space would be charged with the ship captain's duty.

C. Convention on Liability for Damage Caused by Space Activities

The U.S.S.R. had readily accepted Article VII of the Space Treaty providing for international liability for damage caused by space activities. They were able to point to Article VII as a major achievement of the Space Treaty, yet were under no real obligation since there were no means of enforcing the article's provisions.

The United States did present a proposal for a convention concerning liability for damage caused by the launching of objects into outer space.[71] Draft Article II proposed that States were absolutely liable for all damage caused by a space object. Absolute liability was a misnomer, however, in that if the State presenting the claim had suffered damage as a result of willful or reckless conduct or omission on its part, then the liability of the launching State would to that extent be extinguished.[72]

The Soviets agreed with that position. Moreover, they agreed to the application of the indemnification principle, i.e., where more than one State was liable, that State could demand contribution from the other States, and could join those States to the proceeding if it felt they were jointly liable. Article III, Paragraph Four, allowed for States conducting joint space programs to reach agreements on their proportionate share of liability for their joint activities that would not only bind all the State parties to the agreement, but the claimant State as well. The Soviets had also put this

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70. G. ZHUKOV, *International Cooperation on the Rescue of Astronauts*, in PROCEEDINGS OF THE ELEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 124 (M. Schwartz ed. 1968).

71. 24 U.N. GAOR, Supp. (No. 21) 37, U.N. Doc. A/7621 (1969).

72. I. CSABAFI, *Selected Chapters from Space Law in the Marketing/IV/Space Legal Liability*, in PROCEEDINGS OF THE EIGHTH COLLOQUIUM ON THE LAW OF OUTER SPACE 110 (A. Haley, M. Schwartz eds. 1965).

proposal forward, which would allow the Soviets in all of their joint projects an opportunity to bargain part of their liability away through negotiation.[73]

The United States in Article V sought to elaborate member States' joint liability and the international organization contained in Article VI of the Space Treaty. The United States went so far as to make the international organization individually liable and the sole source of payment for the claim for a period of one year. The Soviets provided that an international organization could be held liable for damage resulting from its space activities. This did not represent a reversal of the Soviet position on the status of international organizations; however, if the international organization were held liable it would be jointly liable with its member States for all financial liability.[74]

The U.S.S.R. wanted the convention on liability limited to actions involving only two States, the State suffering the damage and the State causing the damage. It wanted no outside interference with the proceedings.[75] More importantly, the Soviet theorists wanted no individual to have standing to sue a State; only on a State-to-State basis could relief be obtained.[76]

The fundamental differences of opinion lay in the measurement of damages and in the settlement of claims procedure. Preference was accorded by the U.S.S.R. to giving extraterritorial effect to the laws of damages and to governing persons injured by space experiments.[77] While they recognized that international law transcended principles applicable within domestic Soviet society, the U.S.S.R., Article 129 states: "[I]f the rules laid down by an international treaty or agreement to which the U.S.S.R. is a party are different from those of Soviet civil law, the rules of the international treaty or agreement shall apply."[78]

The Soviet Union also argued that States were sovereign equals and as such were immune from the liability laws of other States,[79] yet they proposed that the launching State's law be imposed on the victim State for damage computation purposes. If

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73. 24 U.N. GAOR, Supp. (No. 21), *supra* note 72, at 77.

74. *Id.* at 73.

75. 24 U.N. GAOR, C. 1 (1719th mtg.) 2, U.N. Doc. A/C.1/PV. 1719 (1969).

76. *Id.*

77. 24 U.N. GAOR, C.1 (1721st mtg.) 7, U.N. Doc. A/C.1/PV. 1721 (1969).

78. Civil Law of the U.S.S.R., Article 129, which was cited by the Belgian delegates to support their view that the Soviet position was inappropriate.

79. 24 U.N. GAOR, C.1, *supra* note 76, at 3.

punitive damages were contemplated, then the Soviet reluctance to submit to the victim's laws is understandable; the approach, however, was inadequate to reflect the true measure of the damages suffered by the victim State.

By comparison, the American posture on measure and computation of damages was designed to restore the injured party to the status quo.[80] It placed special emphasis on the payment of compensation appropriate to the setting where the accident occurred.[81]

On balance, the American position would prevent a launching State from claiming its own law was relevant, this perhaps resulting in a defeat of just elements of a claim put forth by the victim. The U.S.S.R. not only argued strongly against this position, but also against the creation of a claims commission as proposed in the U.N. draft Article X. That article would create a commission with competence to decide any dispute arising from the interpretation or application of the liability convention. The commission decisions would be binding on all parties. The Soviets were so strongly opposed that they were willing to conclude the liability convention without provisions ensuring payment to the victim and without any type of judicial claims commission, thereby vitiating the remaining liability provisions.[82]

The United States maintained that there should be a means of resolving disputes through the use of an impartial arbiter once a year's negotiation had failed to produce a solution. An arbitration panel should have the power to bind, not merely to recommend on the basis of a majority. It should consist of three members automatically constituted and not requiring deliberation with its resultant delays.[83]

That proposal triggered a Soviet rejoinder which would not allow a claims commission to interfere with sovereign States. Such interference was especially offensive since it was by an organization that had binding authority and over whose makeup the U.S.S.R. would have no control.

The compromise reached created a claims commission that had powers of recommendation only. The U.S.S.R. accepted the proposal relating to the applicable law, undoubtedly since the commission could no longer bind the Soviets to its decision.

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80. 25 U.N. GAOR, C.1 (1790th mtg.) 6, 7, U.N. Doc. A/C.1/1790 (1970).
81. 24 U.N. GAOR, C.1 (1718th mtg.) 14, U.N. Doc. A/C.1/1718 (1969).
82. 25 U.N. GAOR, C.1, *supra* note 81, at 11.
83. 24 U.N. GAOR, C.1, *supra* note 82, at 14.

Launching States had every reason to heatedly debate the liability provisions. While general space technology has rapidly developed over the last few years, the art of minimizing damage caused by reentering space objects has not kept pace. In 1979, for example, U.S. space analysts predicted that a large Soviet rocket would reenter somewhere around eastern Africa. It reentered over the North Pacific.[84] Launching States have yet to devise a method to control the decaying orbits of their satellites or even to control where they will reenter.

The limitations on space technology's ability to predict and control could have drastic consequences. As more and more debris is abandoned in space, the greater becomes the probability that damage will be inflicted once the orbit has decayed.

The Soviets thus had strong motivations for creating as ambiguous a convention as possible. The reality of total liability borne by one State for an event clearly beyond its control was not considered acceptable. At the final convention, the applicable law in Article XII was interpreted as the U.S. sought: international law, with the law of the claimant *lex loci* taken into account. The measure of compensation in Article XII was the restoration of the damaged State to status quo.[85] Yet the final convention created a claims commission which lacked any authority to make binding decisions.

D. Registration of Space Objects Convention

Preceding the liability convention by approximately ten years, General Assembly Resolution 1721 (XVI), December 20, 1961, called for the registering of all launchings by any State conducting space activities. Since it was a resolution, the launching States could consider all information given as being voluntary. There were no guidelines set for the standardization of the information that was requested so that no common information of all States was required.[86] As the years progressed a piecemeal system of registration developed which, when summarized, revealed some coincidence of information supplied by the two launching nations.[87]

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84. Wall Street Journal, May 16, 1979 at 1, col. 5.

85. 26 U.N. GAOR, Annex (Agenda Item 33) 5, at 7 U.N. Doc. A/8528 (1971).

86. G.A. Res. 1721, 16 U.N. GAOR Supp. (No. 17) 6, at 7, U.N. Doc. A/5100 (1962).

87. G. ZHUKOV, *Registration of the Launchings of Space Objects by the Secretary General of the United Nations*, in PROCEEDINGS OF THE TWELFTH COLLOQUIUM ON THE LAW OF OUTER SPACE 128 (M. Schwartz ed. 1969).

Like the United States, the U.S.S.R. only reported objects that were carried into earth orbit and beyond. This excluded ballistic missile test vehicles.[88] Both nations were consistent in their registration information, but it was on a voluntary basis. No launching State could be required to acknowledge ownership under the registration system.

The U.S.S.R. held that the primary purpose of national registration was the establishment of State jurisdiction, right of ownership, and liability for damages. They stressed that this was the importance of national registration and that the international registration under General Assembly Resolution 1721 was voluntary exchange of information with no real legal consequences.[89] The Soviets augmented their position with the registration clause of Article VIII of the Space Treaty, stating that it referred only to national registration and that it omitted any reference to international registration.

The United States wanted an obligatory registration system in the form of a treaty.[90] Its primary purpose would be the creation of a juridical link between the launching State and the object itself. This link would serve only to provide identification of the State responsible for use with the liability convention.[91]

The U.S.S.R. remained adamant.[92] There were three probable motivations underlying that position. The Soviets were fearful that an obligatory international registration would invade the secrecy of their military activities in space. They sought to avoid the burden of responsibility for any damage under the liability convention. They did not want to lose control of their national space activities to an international organization. The first and second motivations were obviously not publicly disclosed; however, substantial weight could be given to the second in light of the Soviet actions on the Cosmos 954 incident. Their third reason rested on the aforementioned Soviet view of the legal consequences that arise from the act of registration. The Soviets felt that with the registration act went the right of ownership. Hence the Soviets believed, as some West-

88. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 29 U.N. GAOR (225th mtg. of the Subcomm.) U.N. Doc. A/AC.105/C.2/SR 225 (1974).

89. G. ZHUKOV, *National Registration of Space Objects*, in PROCEEDINGS OF THE TWELFTH COLLOQUIUM ON THE LAW OF OUTER SPACE 731 (M. Schwartz ed. 1969).

90. 27 U.N. GAOR, C.1, *supra* note 9, at 23.

91. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 28 U.N. GAOR (193rd mtg.) U.N. Doc. A/AC.105/C.2/SR. 193 (1973).

92. 25 U.N. GAOR, C.1, *supra* note 81, at 11.

ern writers had suggested, that an international organization would be vested with all of the ownerships and responsibilities of space activities and objects once in space. This notion was soundly refuted by Article VIII of the Space Treaty, yet the Soviets persisted, declaring that "[s]pace objects should have nationality."[93]

Two compromises were necessary before the registration convention could be completed: a deemphasis (1) on registration as a *legal* act of the registration convention and (2) on the stated purpose of providing a means of identifying space objects on reentry, where that identification might give rise to a damages claim.[94] Thus, the registration of launchings under Resolution 1721 continued after the formation of a registration convention.

E. Satellite Surveillance

As stated earlier, the Soviet Union did not want their military space activities to be disclosed. They sought to declare American satellite surveillance of Soviet military activity an illegitimate use of outer space. Such surveillance, the argument continued, amounted to espionage, which is prohibited by the Preamble to the United Nations Charter.[95] The language of the Preamble, however, contains no such specific prohibitions and the argument therefore appears unsound. The Soviet Union could nevertheless attempt to construct its argument of prohibition by another route, that is, by employing the Purposes and Principles of the Charter. Article 1, Paragraph One, relates of course to the goal of maintaining international peace and security. By reading this stated purpose together with the requirement that Members refrain from threats or force against another's territorial integrity, it is conceivably arguable that the Charter does indeed prohibit the surveillance activity.[96]

In order to reach this conclusion, however, "satellite surveillance" must be construed as inconsistent with the maintenance of

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93. G. ZHUKOV, *supra* note 91.

94. G.A. Res. 3235, 29 U.N. GAOR, Supp (No. 31) 16, U.N. Doc. A/9631 (1974).

95. J. VERPLAESTE, *Comments on the Report of Aldo Armando Cocca*, in PROCEEDINGS OF THE EIGHTH COLLOQUIUM ON THE LAW OF OUTER SPACE 149-151 (A. Haley, M. Schwartz eds. 1965).

96. "The Purposes of the U.N. are: To maintain international peace and security. . . ." Chapter I, Article 1(1) of the United Nations Charter. "All members shall refrain . . . from any other manner inconsistent with the Purposes of the U.N." Chapter I. Article 2(4) of the United Nations Charter.

peace and security. It is this construction which the United States flatly rejects. The United States has of course recognized that the maintenance of peace clauses, both in the Charter and in the Space Treaty, are obligations. It does not consider military satellite surveillance, in the frame of reference of the nuclear arms race, to be inconsistent with those obligations. Its rationale continues: "[I]n nuclear arms attack States must know of what weapons the other side is possessed in order to defend themselves and in order to properly negotiate general disarmament as required by Article Six of the Nuclear Nonproliferation Treaty."[97]

The Soviet Union had also attacked the American observations from space for espionage purposes as violations of their national sovereignty. Espionage committed in outer space, they argued, was every bit as blameworthy as that committed by the more traditional means of aerial photography.[98] This was not an accurate analogy, since aerial photography involves the invasion of the territorial air space of the sovereign State, whereas under the Space Treaty outer space is free for use, with no possibility of infringement on territorial rights, since such rights do not exist in space. The United States also found support in the Space Treaty for its argument that satellite use for military observations was a nonaggressive act. Hence, under the American interpretation satellite surveillance is a peaceful use and is permissible under the Space Treaty.[99]

The U.S.S.R. also objected to satellite observation because it provided much more detailed information than observation from the high seas. The United States defended its posture on the grounds that intelligence gathering from the territory of another State by remote control was not in violation of general international law. There is no positive rule of international law banning such conduct, it concluded, whatever the municipal law of the observed State might be.[100] The United States did not say that the rule of the *Lotus* case,[101] that every Act of State not prohibited by a positive rule of law was permitted, should be inflexibly applied to all contexts. It referred rather to its earlier statement, that the danger of nuclear warfare was a condition of such gravity as to

97. E. BROOKS, *New Developments of Earth Satellite Law*, *supra* note 58, at 340.
98. U.N. GAOR, C.1 (1289th mtg.) 213, at 216, U.N. Doc. A/C.1/SR. 1289 (1962).
99. *Id.* at 213.
100. E. BROOKS, *New Developments of Earth Satellite Law*, *supra* note 58, at 338.
101. P.C.I.J. Ser. A. No. 10, 1935.

warrant the application of the *Lotus* rule.[102] The Soviet Union tacitly acknowledged the validity of this position when they called for an international agreement that would prohibit outer space espionage.[103]

The U.S.S.R. stated that espionage conducted from outer space was an aggressive act directed against their territory. They went on to point out that the principle of nonaggression did not preclude the use of outer space for striking back at an aggressor in self-defense.[104] The Soviets apparently were referring to their use of "killer" satellites. These vehicles would approach a target (spy) satellite and explode near it in order to destroy the spy satellite with flying shrapnel or explosive force.[105]

In order to prevent use of such killer satellites the United States and the Soviet Union entered a session of bilateral talks during the closing rounds of the limitation negotiations (SALT II). The United States' position was that killer satellites were illegal and should be banned.[106] In line with the U.S. interpretation of the term "peaceful uses," meaning nonaggressive uses, killer satellites are an aggressive use of space and, therefore, violate the Space Treaty. The U.S.S.R. took the opposite position, claiming that the killer satellites were only used for self-defense and therefore allowable.[107] This claim was particularly weak since the Soviets had expressly avowed not to interfere with U.S. space reconnaissance activities. The Soviets, therefore, expressly permitted this particular "aggressive" activity.

F. Moon Treaty

The earth's natural satellite, the Moon, has also been a subject of a Soviet treaty proposal.[108] The Soviets sought a treaty that would further the developmental process of codifying international

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102. E. BROOKS, *New Developments of Earth Satellite Law, supra* note 58, at 338.

103. G. ZHUKOV, *Nine Principles of Space Law, supra* note 62, at 243.

104. *Id.*

105. The U.S.S.R. has conducted seventeen different exercises with the killer satellites although all tests have been at a relatively low altitude of 120 miles, especially when compared with the present altitude of military observation satellites of 22,500 miles. The U.S. has not tested any killer satellite. Wilson, *Soviets Ceased Antisatellite Testing 11 Months Ago*, Wash. Post, Apr. 21, 1979, at 71, col. 4.

106. Oberdorfer, *U.S. and Soviets Will Discuss Ban of Killer Satellites*, Wash. Post, Apr. 10, 1979, at A4, col.1.

107. *Time*, May 21, 1979, at 23.

108. 26 U.N. GAOR, Annexes (Agenda Items 33, 92) 10 U.N. Doc. A/C.1/L.568 (1971).

space law.[109]

The U.S.S.R. stated: "[C]ertain provisions [of the U.S.S.R. draft treaty on the Moon] deliberately repeat the principles outlined in the 1967 Treaty so as to finally put an end to arbitrary interpretations encountered at times in relation to whether or not a concrete provision of the Treaty applying to outer space also applies to the Moon."[110] It is questionable whether the Soviet proposal was needed in reference to the language of the Space Treaty. The Soviets were again displaying their lack of faith in international legal reasoning and their strategy of ensuring their interpretation through the use of a treaty.

Taking into consideration the recent landings on Mars and Venus, the United States suggested that the treaty should cover celestial bodies generally,[111] not be limited to the Moon only, since no reasonable basis existed for distinguishing between them. It was the U.S.S.R.'s position, however, that celestial bodies should be omitted from the treaty until more information became known about them.[112] In the final version of the treaty, the Soviet Union was at least partially successful. Article XI (the key provision in the treaty) designated that the Moon's natural resources constituted the "common heritage of mankind."[113] The suggestion that this "common heritage" principle be applicable to celestial bodies was not incorporated in the final result.[114]

This Soviet position on the key provision reflected the fact that the main controversy surrounding the Moon Treaty centered on the utilization of natural resources.[115] The Soviets stated that the resources of the Moon should be the object of common use by all States. They supported their position by analogy to the principle of nonappropriation on the high seas. It had been interpreted there as having given "all States the opportunity of using the high

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109. 26 U.N. GAOR, C.1, (1820th mtg.), *supra* note 12, at 5.

110. V. VASSILEVSKAYA, *Legal Regulation of Activities on the Moon for the Cause of Peace and Progress*, in PROCEEDINGS OF THE FIFTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 178, 179 (M. Schwartz ed. 1973).

111. 33 U.N. GAOR Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space (288th mtg.) 4, U.N. Doc. A/AC.105/C.2/SR. 288 (1978).

112. V. VASSILEVSKAYA, *Introductory Report; Legal Problems of the Moon and Other Planets*, in PROCEEDINGS OF THE SIXTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 168 (M. Schwartz ed. 1974).

113. 34 U.N. GAOR, Supp. (No. 20) 37, U.N. Doc. A/34/20 (1979).

114. *Id.* at 7.

115. VASSILEVSKAYA, *Legal Problems of the Exploration of the Moon and other Planets*, *supra* note 113, at 170.

seas for the exploitation of marine resources."[116] In this way, the Soviets were able to accept the final Article XI ban on appropriation of resources.

The United States also was reluctant to give up the right to exploit lunar resources and those of celestial bodies. It had deferred discussion of the proposed securing of resource benefits to a future conference. Space Treaty principles of nonappropriation did not address the question of natural resources in space.[117] The United States did propose that the natural resources of the Moon and other celestial bodies be considered as part of the common heritage of mankind in order to meet the purpose of Space Treaty Article One, "benefit of all countries."[118] Article XI, Paragraph One, did place the label "common heritage of mankind" on the lunar resources.

The Soviets opposed the use of the concept of common heritage stating that there was no need for dealing with the question of resources.[119] The Soviets reasoned that the word "heritage" was derived from the concept of inheritance. Inheritance was based on the notion of previous ownership. In outer space there was no previous owner. Moreover, "heritage" was so bound up with ownership that it had no value in space law.[120] The Soviets stated that the real motivation behind the proposal of common heritage was that certain global authors aimed at a concept of erosion of State frontiers and at establishing a world supranational organization with plenary powers. According to the Soviets, this would lead to an obvious infringement on the rights and interests of many States and to the undermining of their sovereignty, since common inheritance would give each and every State a right to a certain share of the benefits gained by one State from the exploitation of these resources.[121]

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116. DEHANOZOV, *Juridical Nature of Outer Space, Including the Moon and Other Celestial Bodies*, in PROCEEDINGS OF THE SEVENTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 200, 205 (M. Schwartz ed. 1975).

117. OKOLIE, *Space Law and Energy Relationship with the Outer Space Station: A Question of International Heritage of Mankind*, in PROCEEDINGS OF THE NINETEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 135, 144 (M. Schwartz ed. 1977).

118. Working Paper 12/Rev.1 27 U.N. GAOR, First Committee (1861st mtg.), C.1 *supra* note 9, at 22.

119. 28 U.N. GAOR Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space (204th mtg.) 92, U.N. Doc. A/AC.105/C.2/SR.204 (1973).

120. DEHANOZOV, *Juridical Nature of Outer Space, Including the Moon and Other Celestial Bodies, supra* note 118, at 201.

121. *Id.* at 203.

The Soviets, continuing their arguments, opposed not only common heritage but *res omnium communis* as well. They rejected *res omnium communis* as a notion transferred from Roman private law into the field of international relations: "The attempts to galvanize old ideas to squeeze new meaning into the Procrustean bed of these terms cannot be successful . . . [the] term just set[s] the soil for different and conflicting interpretation."[122]

"Common heritage of mankind" concepts, first applied to the seabed and subsoil beyond national jurisdiction, were untenable from the Soviet legal point of view. A Soviet scholar stated:

> It uses civil law categories in an arbitrary eclectic fashion without any regard for established legal realities and brings to mind undesirable associations (one is apt to recall the galvanized notion *'res omnium communis'*). At the same time . . . it is so vague that it is extremely difficult to conclude therefrom any concise regime.[123]

Adherence to this concept would only give rise to differing interpretations and result in undesirable frictions and conflicts between nations. Instead, the U.S.S.R. suggested a new concept, an "international area for common use,"[124] subject neither to State sovereignty nor to appropriation by any other means. This doctrine derived from two fundamental principles, nonappropriation and common use. "Common use" was defined as meaning that the area concerned was open to exploration and use by all members of the international community on a basis of equality and in accordance with international law with free access to all its regions.[125] The Soviets deemed the concept to be *jus cogens* since it concerned the interests of all the international community.

The Soviet Union had embarked on a policy of attempting to answer all possible ambiguities in the Space Treaty references to the Moon with the conclusion of a treaty specifically applicable to the Moon. In that effort they partially succeeded.

The Soviets grew accustomed to the notion that "common heritage of mankind" was ambiguous. They eventually recognized that attribute as its strength. The Moon Treaty acknowledged as much by requiring further action on the resources issue, and an interna-

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122. R. V. DEKANOZOV, *Relationships Between the Status of Outer Space and the Status of Areas Withdrawn from State Sovereignty*, in PROCEEDINGS OF THE SIXTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 10 (M. Schwartz ed. 1973).

123. *Id.* at 10.

124. *Id.*

125. *Id.*

tional committee will be set up for the exploitation of natural resources on the moon.[126]

The Soviets gained another very important advantage, specifically, the removal of the economic incentive for corporations which cannot maximize profit when forced to share their gains for the benefit of mankind. It is argued by the Soviets that the right to exploit the resources nevertheless remains. If the treaty is signed and ratified by the United States, the Soviets have accomplished a long-sought objective of removing corporate participation in a major area of space activity.

G. Geostationary Orbits

The Soviets, in keeping with their aforementioned policy, proposed a draft agreement that defined the legal status of geostationary orbits.[127] The term "geostationary orbit" refers to a limited number of orbital paths about the earth which allow a satellite to remain situated above the same land mass throughout the course of the earth's rotation. Maintenance of such an orbit can thereby allow the uninterrupted use of that satellite over a particular land mass.

The U.S.S.R. and the United States took a unified stance on the prohibition of national appropriation of the geostationary orbit. The U.S.S.R. reasoned that there was no orbit without a satellite. The jurisdiction of States over their space objects was guaranteed by space law and no claim could be made that the orbit of a satellite belonged to another country. It was even more absurd to claim sovereignty over a segment of an orbit since the orbit was indivisible.[128] The Soviets feared that if a State were permitted to claim one orbit, then by logical extension, all claims over all orbits would be allowable. This could not be done since the apogee of some country's satellites extended tens of thousands of miles in altitude.[129]

Under the United States position, the geostationary orbit was indistinguishable from other orbits. Its location was a function of the total gravitational field and of the earth's rotation rate. More-

126. 34 U.N. GAOR, Supp. (No. 20) 40, U.N. Doc. A/34/20 (1979).

127. 32 U.N. GAOR, Supp. (No. 20) 29, U.N. Doc. A/32/20 (1977).

128. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 32 U.N. GAOR (Corrigendum) 7, U.N. Doc. A/AC.105/C.2/SR. 284-301/Corrigendum (1978).

129. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 32 U.N. GAOR (297th mtg. of the Subcomm.) 10, U.N. Doc. A/AC.105/C.2/SR.297 (1978).

over, the position continued, a satellite would not remain fixed in a geostationary orbit due to the sun's gravitational pull and the asymmetry of earth, Moon and planets. The conclusion was that no relation could be said to exist between any particular country and the satellite. Since, then, this special type of orbit was no different from any other orbit in terms of its functional relations to earth, the satellite in geostationary orbit was governed by Article Two of the Space Treaty. This article denies any domestic jurisdiction or claim of ownership. In view of the fact that orbits can attain altitudes of 22,000 miles, the United States added, the granting of orbits as a type of limited resource to any particular country would run counter to the uses of space based on equality, as provided by the Space Treaty.[130] The reasoning concluded by noting that use of a favorable orbit for a legitimate activity could not be classified as a national appropriation which was prohibited by the Space Treaty.[131] The Soviet proposal basically concurred in this reasoning.

H. Space Shuttle

Another interesting implementation of the Soviet international legal theory which created controversy was their adoption of a position which would, in effect, put the United States' Space Shuttle out of operation.

The Space Shuttle vehicle was to be launched from facilities located on land with a flight path over open water. Its configuration would consist of a flight orbiter boosted into earth by a solid fuel booster which was to be jettisoned over international waters and then retrieved. The shuttle would progress into the earth's orbit and remain there until its reentry into earth's atmosphere. As it began its descent, the shuttle would be capable of a slight degree of aerodynamic flight in correcting its path of descent.[132]

Before the advent of this shuttle, the U.S.S.R. recognized that there was a grey area concerning Article Eight of the Space Treaty. This article conferred jurisdiction of the launching State on the

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130. *Id.* at 3, 4.

131. GOEDHIUS, *Some Legal Aspects of the Use of Communication Satellites*, in PROCEEDINGS OF THE SEVENTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 53, 56 (M. Schwartz ed. 1974).

132. TAMM, *Advent of the Space Shuttle in Earth Resources Investigation*, in PROCEEDINGS OF THE FIFTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 45 (M. Schwartz ed. 1972).

space object at all points in flight in outer space. However, the question of who had jurisdiction over the space object when it passed through the air space of other States on reentry remained unanswered. The U.S.S.R. stated that there were two choices: apply jurisdiction of the State whose air space was invaded for the few seconds of transgression, or retain jurisdiction of the launching State with permission of the State to fly in its air space. The U.S.S.R. recommended that because of the short time interval the latter choice was the preferable means of handling the problem.[133] Although this was a jurisdictional question, the Soviet Union was impliedly taking the position that a county's air space was being invaded, though only momentarily. The question seemed of little importance at that time because no country protested the "invasion" of its air space and it appeared to be an academic concern which would ultimately be settled by customary international law.

With the advent of the shuttle the question became important to the Soviet Union, which had no comparable shuttle program. The U.S.S.R. stated that important stages of flight, descent and landing took place at comparatively low altitude in the superjacent space of the earth: "Undoubtedly these stages of the spacecraft as well as orbital or interplanetary motion represent space activities and cannot be considered separately. The activities which are carried out by spacecraft are space activities all the way through regardless of the altitude and location."[134] The Soviets then drew the conclusion that a flight in superjacent space of a foreign State was not a violation of international law because the Space Treaty confirmed, on a contractual basis, the general principle of freedom of space activities when lawfully carried out under international law. The Soviets added that this freedom of space activities was limited by the controlling State's obligation to act in such a way that the lawful rights and interests of other States were not violated.[135]

The Soviets were referring to the prohibition against violating the right of subjacent States to regulate their economic, political and military interests within their territory. These were guaranteed as stemming from the *lex generalis* of Sovereignty of States principle of international law. Freedom of outer space was a *lex*

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133. *Nine Principles of Space Law, supra* note 62, at 99.

134. EMIN, *Spaceflight and the Problem of Vertical Limit of State Sovereignty*, in PROCEEDINGS OF THE FOURTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 202 (M. Schwartz ed. 1972).

135. *Id.* at 203.

generalis of space law, but was a *lex specialis* of general international law. Freedom of outer space, therefore, could not serve as a pretext for a violation of the sovereign rights of a State.[136] The Soviets consistently held that space vehicles could not transgress the air space of a foreign State, even while in the process of conducting a space activity.

The United States was still faced with the violation of sovereign air space by use of the space and might be forced to attempt a reentry solely over the high seas or transgressing air space with or without permission of the subjacent States. The last alternative was not without legal justification, for the United States could contend that the altitude at which its shuttle flies over the foreign country was still considered outer space and hence fell under the Space Treaty freedom of space activities clause.

I. Definition of Outer Space

Ever since the beginning of space law, nations have wrestled with the question of how to delimit outer space from air space. Until 1979, the U.S.S.R. had assumed the posture that definitions of outer space which created a boundary between air space and outer space were premature; the scientific and technical criteria which would permit a definition of outer space were nonexistent.[137] The defining of outer space had a crucial role in the denuclearization aspect of peaceful coexistence, since the stationing of nuclear weapons in outer space was banned by Article Four of the Space Treaty. The resolution of the boundary was important in deciding the balance of the freedom of uses of outer space clause and the sovereign rights of the subjacent State over its air space: "The creation of the delimitation of outer space would create a specific legal regime. Such a zone would limit freedom of outer space activities and therefore contradict the provisions of the Space Treaty."[138] In keeping with their overall strategy, the Soviets stated a defined limit "can be created only through an international agreement, by a conclusion of an appropriate multilateral agreement."[139]

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136. VERESHCHETIN, *Perspectives of the Uses of Outer Space for Applied Purposes and State Sovereignty*, in PROCEEDINGS OF THE NINETEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 103, 104 (M. Schwartz ed. 1977).

137. INTERNATIONAL SPACE LAW, *supra* note 2, at 28.

138. U.N. Press Release, OS/852 April 5, 1978.

139. *Basic Stages and Immediate Prospects of the Development of OVTA Space Law,*

The United States did not want a specific definition of an air space limit until it was more scientifically and legally advanced.[140] That position would allow the United States to conduct its Space Shuttle flights over a foreign country without its permission on the basis that its travel was entirely in outer space since no limit was prescribed.

That precise advantage of the U.S., combined with the Soviet desire to perpetuate the conflict with the West, was the key motivation behind the 1979 Soviet proposal. The Soviets, having no Space Shuttle program themselves and having a sufficiently large land mass to enable them to conduct their space activities without traversing any foreign air space, proposed a delimitation of 100-110 kilometers above sea level for an air space zone.[141] This also had the corollary effect of placing the Soviets as the initiator of a solution to a problem that was increasingly in controversy while the United States procrastinated on the issue. According to the Soviets, their proposal was temporary and would lead to a more permanent agreement.

J. Satellite Communications

The chief Soviet concern in the area of satellite communications was the possibility of direct television broadcasting via satellite.[142] The U.S.S.R. wanted a speedy solution to legal problems involving direct broadcasts. The motivation was apparently a belief that a television picture would be far more understandable by the public and would have a much greater effect than any other medium.[143]

The U.S.S.R. posited that direct broadcasts via satellite constituted a space activity.[144] Hence direct television broadcasts fell under Article Nine of the Space Treaty requiring that States "conduct their activities with due regard to the corresponding interests

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supra note 29, at 323.

140. U.N. Press Release, USUN-27 (79) March 15, 1979.

141. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 34 U.N. GAOR (303rd mtg.) 4, U.N. Doc. A/AC.105/C.2/SR. 303 (1979).

142. Television broadcasting by satellite at present requires a ground receiving station to transmit to televisions at home. The Soviets are not fearful of this type of transmission since censorship is possible at the receiving station. They are concerned with future broadcasting directly to the television set via satellite.

143. INTERNATIONAL SPACE LAW, *supra* note 2, at 186.

144. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 29 U.N. GAOR (218th mtg.) 61, U.N. Doc. A/AC.105/C.2/SR. 218 (1974).

of all other States parties to the Treaty."[145] The Soviets argued that Article Nine implied that a prior agreement between the States concerned should be reached before satellite communication with a State's territory occurred, since respect for State sovereignty was the cornerstone of international law.[146] The U.S.S.R. added that States had the right to protect their interests. The Soviets stated that all direct broadcasting without prior consent of the country to whose territory the broadcasts were made was a violation of international law.[147]

The United States agreed that direct broadcasting via satellites was a space activity but argued that Article Nine of the Space Treaty applied only to harmful contamination of the space or earth environment.[148]

The Soviets refined their argument, stating that Article Nine of the Space Treaty contained two principles: first, the obligation of States to conduct activities with due regard to the corresponding interest of all other parties; second, the obligation of State parties to pursue studies and conduct exploration of outer space so as to avoid its harmful contamination. The first was part of the *lex generalis* of space law, whereas the second was *lex specialis*. The provision of Article Nine regarding the international consultations applied to the two aforementioned principles.[149]

The U.S.S.R. also attempted to relate direct broadcasts to other articles of the Space Treaty. It cited the noble aims of Articles One and Three which could be fulfilled only on the basis of a strict international legal order.[150] This reading of the Space Treaty rested heavily on the Soviet theory of international law and lightly on any legal construction of those articles.

Yet another avenue the U.S.S.R. had sought for regulation of direct broadcasts was the Space Treaty's Preamble. References were made therein to General Assembly Resolution 110 (II). This resolution condemned propaganda which aimed at or was capable

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145. *Id.*

146. 24 U.N. GAOR, C.1 (1719th mtg.) 3, U.N. Doc. A/C.1/PV.1719 (1969).

147. *Id.*

148. 22 U.N. GAOR, Committee on the Peaceful Uses of Outer Space (66th mtg.) 12, U.N. Doc. A/AC.105/PV. 66 (1969).

149. KOLOSSOV, *Legal Consequence of "Spill-over" Resulting from Satellite Direct Broadcasting*, in PROCEEDINGS OF THE FIFTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 73 (M. Schwartz ed. 1972).

150. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 32 U.N. GAOR (283rd mtg.) 9, U.N. Doc. A/AC.105/C.2/SR. 283 (1977).

of creating or increasing threats to peace, violations of the peace or acts of aggression. The Soviets seized upon this resolution and argued that all such "propaganda plus" programs undermining the basis of local civilization, culture, home life, traditions and language should be banned.[151] The wide scope of the ban did not necessarily dictate the full implementation of it. Yet the Soviets' proposed use of the ban became apparent with one of their statements on potential broadcasts: "[C]ommercial television programs or advertisement intended for a population of another country and transmitted via direct broadcast satellites may cause economic damage in this country."[152]

Another preeminent issue for the Soviet Union regarding direct broadcasting by satellite was the stated American position on freedom of information. The U.S. based its legal justification for free flow of information on Article Nineteen of the Universal Declaration of Human Rights, which guaranteed all the right to "seek, receive and impart information and ideas through any media regardless of frontiers."[153] The United States contended that an open market place of ideas and information was essential to the well-being of the international community and that a free flow of information would injure no nation.[154] Freedom of information meant there was a right to communicate one's thoughts freely, not an absolute right, but one balanced between controls justified by reason and experience and those controls not justified.[155] The United States further stated that international comity would prevent international direct broadcasts via satellite into a country not wanting it and that strict provisions set up by the International Telecommunications Union would regulate direct broadcasts as well.[156] The United States cited a logistical reason for denying the concept of prior consent. The broadcast beam usually covered

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151. ZHUKOV, *International Law Problems of Direct Television Broadcasts System*, in PROCEEDINGS OF THE FOURTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 115, 117 (M. Schwartz ed. 1976).

152. DUAKOV, *Some International Legal Issues on the Direct Television Broadcasts System*, in PROCEEDINGS OF THE FOURTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 164 (M. Schwartz ed. 1971).

153. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 34 U.N. GAOR (304th mtg.) 8, U.N. Doc. A/AC.105/C.2/SR. 304 (1979).

154. RUDDY, *The Freedom of Information and Direct Broadcasts System*, in PROCEEDINGS OF THE SIXTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 82 (M. Schwartz ed. 1973).

155. *Id.* at 83.

156. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, *supra* note 155.

more than one State. If one State said "no," then a substantial number of States would be prohibited from receiving the broadcast. Such a result would defeat the goal of increased exchanges of contacts and interaction between States.[157]

Concluding that the necessity of obtaining prior consent would impose blanket controls on all ideas at the source, the Americans noted that absolute adherence to national sovereignty must sometimes be modified by principles of international cooperation and mutual understanding.[158]

In marked contrast, the U.S.S.R. maintained that dissemination of information to each State could not be placed on the same footing as the fundamental principle of State sovereignty, "something no honorable, international jurists would venture to defend."[159] The Soviets pointed out that "recognition of the principles of freedom of information in international relations would mean a sacrifice of State sovereignty and attempts to prove the existence of that principle could not be viewed as anything other than an attempt to interfere in the domestic affairs of sovereign States.[160]

In addition, the Soviets were concerned with what they viewed as a United States attempt to use direct broadcasts as a lever to impose an alien and unacceptable way of life upon less developed countries. "The U.S.S.R. wanted freedom of information too but it wanted true information and was not in favor of the so-called free information such as the Voice of America."[161] The Soviets stated that the U.S. sought a monopoly in direct television broadcasting so as to:

> spread over the whole world everything that private American broadcasting companies hold dear, no matter what the national characteristic of each country is, no matter what the foundation of their civilizations, their culture, their history of moral values. Who is going to be at the source of their flow of information, responsible government officials or irresponsible private firms and companies which are ready to stoop to anything for profit? Any filthy flow of information would be disseminated by them.

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157. 29 U.N. GAOR, C.1 (1990th mtg.) 7, U.N. Doc. A/C.1/PV. 1990 (1974).

158. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 29 U.N. GAOR (219th mtg.) 75, U.N. Doc. A/AC.105/C.2/SR. 219 (1974).

159. 27 U.N. GAOR, C.1 (1861st mtg.) 22, U.N. Doc. A/C.1/1871 (1972).

160. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, 30 U.N. GAOR (239th mtg.) 115, U.N. Doc. A/AC.105/C.2/SR. 239 (1975).

161. 27 U.N. GAOR, C.1, *supra* note 9, at 31.

> We do not call that kind of flow freedom of information. Freedom of information for what.[162]

The Soviet government had proposed a draft convention on principles governing the use of artificial earth satellites for direct television broadcasting.[163] The Soviets showed considerable lack of faith in the solidarity of their legal arguments and tried to resolve the issues at the negotiation table.

The United States made a proposal as well.[164] The U.S.S.R. said that since all the delegates to the COPUOS took part in the debate of the U.S.S.R.'s proposal, it was a timely one and a treaty would be the way to achieve control over this area of international activity.[165] The Soviets misread the U.S. stance, which was not that it was premature to discuss but that it was premature to write a formal treaty on a subject which was still in the experimental stage.

The Soviets refused to permit the insertion of the freedom of information clause because they could link the interpretation of that clause to a freedom of information convention proposal that had been worked on for twenty years without success. The Soviets, adding to their resounding disapproval of the clause, stated: "[w]e not only understand but we also see the horrible, tragic consequences and abuses bordering on anarchy.[166]

The main Soviet legal foundation was built upon the principle of sovereignty and designed by their legal theory of codifying international space law through the use of treaties. The Soviet treaty was attempting censorship at the source. For U.S.-based broadcasts this would be in conflict with the First Amendment which provides in part, "Congress shall make no law abridging the freedom of speech or of the press. . . ." This has consistently been interpreted as applying to all branches of the national government.[167] Although no treaty has been declared unconstitutional, treaties are subject to constitutional limitations.[168] The President, therefore, could not reach an executive agreement with the Soviets

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162. 27 U.N. GAOR, C.1, *supra* note 8, at 46.

163. 27 U.N. GAOR, 2 Annexes (Agenda Item 28) 3, 4, U.N. Doc. A/8771 (1972).

164. GALLOWAY, DIRECT BROADCAST SATELLITES, in PROCEEDINGS OF THE SEVENTEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 35 (M. Schwartz ed. 1974).

165. 27 U.N. GAOR, C.1 (1869th mtg.) 57, U.N. Cod. A/C.1/PV. 1869 (1972).

166. *Id.*

167. *New York Times Co. v. United States*, 403 U.S. 713, at 716 (1970).

168. *United States v. Belmont*, 301 U.S. 324, at 328 (1937).

for censorship in the U.S. Of course, the First Amendment has no extraterritorial effect for prohibiting foreign States from censoring broadcasts in their countries.[169]

It appeared that consultations between States would provide the means for conducting direct broadcasts. Even the consultations are a critical area of controversy. The U.S.S.R. and the U.S. have both agreed to notify the reception area in advance of the intention to broadcast.[170] The consultations requirement and its effect have not been worked out. The U.S.S.R. clearly wants no direct broadcasts until prior consent of the receiving country is granted.

The U.S. agreed to enter into consultations concerning any matter of the broadcast system each time another State requested such consultation. This was thought by the United States to be a considerable obligation. The United States also stated that there would be a good faith requirement to enter into the consultations promptly and consider carefully the possibilities for resolving any difficulties that might arise.[171] There was not any requirement that the broadcasts should not go on if an agreement were not reached. So the argument of free flow of information versus State sovereignty and noninterference is still being conducted.

The motivation for the Soviet position is at the very root of the functioning of the governmental apparatus. Free flow of information would fatally disrupt a society whose institutions were designed to achieve all-encompassing control over the human and material resources which must be readily allocated in the production process outlined by the State.[172] The understanding of Soviet international law comes with the recognition that it is closely aligned to the political purposes and goals espoused by the State.

> In some circumstances national government have [*sic*] decided that absolute control on all new media, mass communication facilities, and even the ingress of persons are [sic] essential. In certain countries today the strictest regimes of censorship and control of news and traffic flow are maintained. It would not be politically convenient for such nations to participate in an [sic] unified global system of Satellite Communications, unless distribution of all communication could be controlled through earth

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169. *Id.*

170. 30 U.N. GAOR, C.1 (2049th mtg.) 24, U.N. Doc. A/C.1/PV. 2049 (1975).

171. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, *supra* note 112, at 5, 6.

172. RAMUNDO, THE SOVIET LEGAL SYSTEM "A PRIMER" (1971).

> stations, through which various forms of communication would be required to pass. In this manner censorship and national sovereignty could be perpetuated. The potentials of direct radio and television broadcasting, however, may instill in the minds of some governmental leaders fear of lack of censorship control. Potential propaganda and ideological or idealive [sic] broadcasts challenging certain forms of government or regimes or social order and arguing in favor of competing systems and social orders may well prove too distasteful and undesirable to some nations to be allowable.[173]

K. Remote Sensing

Another satellite use that had prompted Soviet concern was the remote sensing of earth resources. Satellites take high resolution pictures of the earth from a perspective not available to earth-bound technicians. These photographs prove useful in the fields of meteorology, geology, energy, agroeconomics, and ecology or environmental studies, as well as the military.[174] The U.S.S.R. wanted to control the dissemination of the data received by the U.S. from its remote sensing satellite system.[175] The Soviets did not seek a ban of all data such as global scale sensing. They proposed rather a ban on photographs with a resolution of fifty meters or less, which, the U.S.S.R. contended, provided valuable information about a State's natural resources.[176] The State sovereignty principle included the right of the State to exercise exclusive and unconditional control over its natural resources and the information pertaining thereto. Hence there could be no dissemination of that information without prior consent of that State on the basis of equality.[177] The Soviets charged that the economic interests of the State were at stake, since other States and multinational corporations, through superior technology in interpreting the data, would learn more than the "sensed" State itself. This would result in unequal bargaining positions in subsequent negotiations for the ex-

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173. HALEY, *Communications in Space*, in PROCEEDINGS OF THE EIGHTH COLLOQUIUM ON THE LAW OF OUTER SPACE 156 (A. Haley, M. Schwartz eds. 1965).

174. STANLEY FOUNDATION, COOPERATION OR CONFRONTATION IN OUTER SPACE, 13th Conference on the U.N. of the Next Decade 11 (1978).

175. Hereinafter cited as LANDSAT.

176. ZHUKOV, *International Law Problems Related to the Exploration of Earth Resources from Outer Space*, in PROCEEDINGS OF THE NINETEENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 108, 110 (M. Schwartz ed. 1965).

177. 32 U.N. GAOR, C.1 (43rd mtg.) 67, U.N. Doc. A/C.1/32/PV. 43 (1977).

ploitation of that State's natural resources.[178]

Such data could also reveal a Soviet crop failure or loss of production which, of course, if publicized could prove a potential blow to Soviet world prestige. This provided no legal justification and it was not thought that the Soviets could be exploited. The Soviets later revealed what was probably their key motivation aside from the loss of prestige. The U.S.S.R. stated that the use of high resolution photographs would be used to disclose the defense potential of the "sensed" State.[179] The possibility of the People's Republic of China's acquisition of such information about the Soviet Union was the key factor in the Soviet protests.[180]

Paralleling their course of action in the direct broadcasting controversy, the Soviet Union created their own remote sensing data dissemination program for the international community, called Inter Cosmos. This would serve as a working model of the Soviet proposal by releasing data only to those countries that had entered into an agreement with the Soviet Union and releasing only those data which could be used for a practical purpose.[181]

Paralleling its stance on direct television broadcasting, the United States adamantly refused to alter its policy on free dissemination of the data. The United States based its approach on Article Eleven of the Space Treaty, which provides that States inform the public to the greatest extent feasible and practicable of the nature, conduct, locations and results of such activities.[182] This position refuted any requirement of advance consent. Because it was technologically and economically infeasible to separate the images along lines of political borders, the United States noted that failure to acquire *all* of the required consensual agreements could result in denial of the data to entire regions. This would defeat the whole purpose of using satellites to study the earth on a global scale.[183]

The United States stated that there had been no instance of economic exploitation after over one hundred countries had re-

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178. VERESHOHETIN, *Perspectives of the Uses of Outer Space*, *supra* note 138, at 105.

179. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, *supra* note 143, at 4.

180. A U.S. delegate to Committee on the Peaceful Uses of Outer Space had so noted.

181. Mongolia, Morocco and Angola have signed such agreements. U.N. Press Release, OS/221 March 31, 1978.

182. Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, *supra* note 152, at 8.

183. U.N. GAOR, C.1, *supra* note 159, at 12.

ceived the data.[184] It also pointed out that the Space Treaty's goal of maintaining a system of space use and exploration for benefit of all on the basis of equality would be defeated if States were unable to share data freely, and that irregular and hence discriminatory dissemination would prove inevitable.[185]

Continued hostility to the American program and position on the part of the Soviet Union seems probable. The U.S. plans to develop remote sensing satellites that provide even greater resolution approaching the ten to twenty meter range.[186] Of potentially greater Soviet concern was the statement of National Aeronautics Space Agency head Robert Frosch to the U.S. Congress regarding the future of the LANDSAT program: "A Comsat-type picture-satellite company is a very strong possible contender."[187]

Conclusion

It is evident that the Soviet international space law approach is inseparably bound to the political policies of the Soviet Union. An understanding of the Soviet domestic political scene would perhaps serve as a useful guide to their international legal theories. Nevertheless there are consistent legal positions that the U.S.S.R. has strictly adhered to in their approaches to questions of international space law.

The central feature and probable explanation for the consistency is the placement of the Soviet national interest above all other considerations. The Soviet legal arguments that were not repeated were withdrawn because they could no longer serve the Soviet interest, not because they were no longer legally relevant.

Above all other goals in that area, the Soviet Union seeks to codify space law. The negotiations and compromises allow the Soviets the desired flexibility necessary to mold general international principles and theory to meet their view of international order. The use of these negotiations bolsters the Soviet legal reasoning which is politically based rather than resting on classic international legal theory. The international conventions permit the

184. U.N. Press Release, OS/215 March 16, 1978.

185. A/C.1/PV. 1990 29 U.N. GAOR, C.1, *supra* note 159, at 12.

186. A proposed Landsat D scheduled for a 1981 launching will obtain pictures of objects 30 meters across compared with present 80 meter resolution. In the mid-1980's a Stereosat will take three-dimensional images and have a sharper resolution, between 10-20 meters. Wall Street Journal, April 5, 1979, at 46, col. 1.

187. *Id.*

achievement of results that are politically founded, thereby removing obstacles and challenges to the Soviet approach that could not be successfully hurdled through a strictly legal argument. The treaties sought by the Soviets to solve a problem at the present time serve future Soviet interests as well.

The Soviet concentration on the inviolability of the principle of State sovereignty and its commensurate rights will, of course, continue despite the plethora of Soviet pleas for international cooperation. In light of its steadfast loyalty to the State Sovereignty principle, the U.S.S.R. is not likely to accord international organizations a significant degree of responsibility. Opportunities for extensive cooperation in space activities are shunned by the Soviets and separate but duplicate programs are used to avoid extensive alignment with the West.

The Soviet view of private corporations as the reckless capitalistic bourgeoisie is deeply rooted in their ideological tenets and is unlikely to be muted. The criticism of those corporations also serves as an ideological rallying cry for the Soviet propaganda effort connected with peaceful coexistence policy.

The U.S.S.R. expansion of space law will also continue in selected areas, especially those where regulation will either thwart another country's space technological advantage or protect a Soviet space activity.

International space law is developing at an extremely fast pace. In the context of the Soviet interest in managing that development, a vital requisite to the understanding of the direction space law is taking is the recognition and comprehension of the Soviet attitude toward the evolution of this branch of international law.

Mark Robson