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## E. THE OUTER SPACE TREATY

### 1. Background\*

The principles of international law embodied in the Outer Space Treaty were elaborated in the United Nations over a period of nearly ten years. The first effort to govern the activities of states in outer space was made on January 14, 1957, when the United States proposed in a General Assembly memorandum on disarmament that all testing of objects propelled through outer space be carried out under international control. In an address to the 14th General Assembly on September 22, 1960, President Eisenhower set forth three principles which were to form the basis of future UN resolutions on space and of the Outer Space Treaty itself. He proposed that:

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\*See Chapter III, Part E, Section 3h, above, for Soviet-US relations with regard to this treaty.

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E.O. 12356, Sec. 3.4

NIJ 90-272

By SP NARA, Date 12-3-90

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1. We agree that celestial bodies are not subject to national appropriation by any claims of sovereignty.
2. We agree that the nations of the world shall not engage in warlike activities on these bodies.
3. We agree, subject to appropriate verification, that no nation will put into orbit or station in outer space weapons of mass destruction...

A turning point in the elaboration of space law occurred in December 1961 when the 16th General Assembly unanimously adopted a major resolution sponsored by the United States and the USSR, dealing with a broad area of outer space activity. This resolution [1721 (XVI)] incorporated a group of outer space proposals which were developed in the State Department during the summer of 1961 for submission at the 16th Session of the UN General Assembly.<sup>1/</sup> Two principles in this resolution were of particular importance: first, that international law, including the UN

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<sup>1/</sup> Memorandum to the Secretary from Assistant Secretary for International Organization Affairs Harlan Cleveland, No. 18325, November 20, 1961. ~~(CONFIDENTIAL)~~

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Charter, applies to outer space and celestial bodies, and second, that outer space and celestial bodies are free for exploration and use by all states in conformity with international law and are not subject to national appropriation. The principle of the applicability of the UN Charter to outer space was agreed within the US Government by the State and Defense Departments, CIA, and NASA, in 1960 as the legal basis for our SAMOS program.<sup>2/</sup>

The Legal Subcommittee of the newly-formed UN Outer Space Committee met for the first time in May 1962. At the initial session of the Subcommittee, the Soviet Union tabled a draft "Declaration of Basic Principles" governing the activities of states in outer space. At the same time, the United States introduced proposals for (1) a General Assembly resolution dealing with the problem of the rescue and return of space vehicles and personnel, and (2) the establishment of a panel of legal experts to prepare a draft international agreement on the liability of states for damage caused by

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<sup>2/</sup> State Department Working Paper, Foreign Policy Aspects of Outer Space, April 3, 1961 (~~CONFIDENTIAL~~).

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space vehicles. The legal "principles" submitted by the USSR would, among other things, have prohibited the use of space for propagating war propaganda and have characterized intelligence gathering satellites as "incompatible with the objectives of mankind in outer space." The draft was considered essentially a political document by the United States and other western countries, and was unacceptable to them. Nevertheless, it was clear that many countries favored the adoption of legal principles relating to space and that a full debate on such principles might occur at the 17th General Assembly in 1962.<sup>3/</sup>

Partly in order to prevent discussion from centering on the Soviet proposal, the Legal Adviser's Office in the State Department began in the summer of 1962 to develop a set of legal principles for the US Government.

At the same time that work was proceeding on a

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<sup>3/</sup> State Department Circular Airgram CA-5541, November 19, 1962, Subject: 17th General Assembly - Outer Space Item (~~CONFIDENTIAL~~).

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comprehensive statement of legal principles, the US Government was developing the separate principle that outer space should be reserved for peaceful purposes. This concept was elaborated in a State Department paper on "US Policy on Outer Space" dated October 25, 1962.<sup>4/</sup> It was stated here that "we should seek to bring about realization and acceptance of the proposition that the antithesis of 'peaceful' is not 'military' but rather 'aggressive.' Many military uses of space and space technology are peaceful... The United States should, therefore, attempt to divert or defeat any United Nations resolutions or other action proposed for the banning of military activities in outer space per se or for defining peaceful activities, explicitly or implicitly, in such a way that they include military activities generally." This marked the beginning of consistent official US opposition to declarations in the UN

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<sup>4/</sup> Department of State Policy Paper submitted under cover of a memorandum to M - Mr. McGhee from ISA - Mr. Rollefson, dated November 6, 1962, Number 4052 (~~SECRET~~)

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and elsewhere which purported to prohibit or restrict the use of outer space, but which did not constitute negotiated arms control measures.

It was not until late 1963 that progress began to be made towards international agreement on a set of general principles relating to outer space. In July 1963 the USSR agreed with the US position that a declaration of legal principles should be limited to the area where agreement was clearly possible, and expressed its willingness to accept a General Assembly resolution rather than a treaty as the form of the declaration. After two months of negotiation between the United States and USSR,<sup>5/</sup> the Outer Space Committee convened on November 22 to consider the text of a draft "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space." The Committee submitted the draft declaration to the General

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5/ See Position Paper of September 23, 1963, Negotiations with the Soviets on the Legal Problems of Outer Space (CONFIDENTIAL).

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Assembly, which in turn unanimously adopted it as Resolution 1962 (XVIII) on December 13, 1963. Two months earlier, agreement was reached by the United States and USSR, and then embodied in Resolution [1884 (XVIII)], banning the placing in orbit of nuclear weapons or other weapons of mass destruction.<sup>6/</sup>

2. Developments Since 1963 Leading to Completion of the Outer Space Treaty

Throughout 1964 and 1965, the major effort of the UN Outer Space Committee in the field of space law was to give concrete expression to three principles which had been set forth in the Declaration of Legal Principles. These were, first, that a state which launches an object into outer space is internationally liable for damage caused by that object; second, that states shall render all possible assistance to astronauts in distress and promptly return them; and third,

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<sup>6/</sup> See Memorandum of January 30, 1964, drafted by G/PM - Raymond L. Garthoff, entitled Considerations Against US Public Announcement of an Anti-Satellite Capability (SECRET).

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that objects launched into outer space shall be returned to the launching state. Although these principles were later incorporated into the Outer Space Treaty, progress in elaborating them into separate agreements was slow, and it was not until December 1967 that an agreement covering assistance to and return of astronauts and space objects was endorsed in the General Assembly. The main obstacle to completion of an assistance and return agreement from 1964 to 1967 was disagreement between the United States and the USSR on two points. During the early stages of the negotiations, the Soviets insisted that astronauts and space objects should only be returned if they had been launched in accordance with the Declaration of Legal Principles. The United States considered that such a treaty would be open to subjective interpretation and was therefore unacceptable.<sup>7/</sup>

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<sup>7/</sup> See, e.g., Telegram from US Mission to UN to Department of State, No. 17792, September 22, 1965 (~~SECRET~~). NASA disagreement with policy on this issue is outlined in a memorandum of December 6, 1965 from Arnold W. Frotkin, Assistant Administrator for International Affairs, NASA, to Mr. T. H.E. Nesbitt, Officer-in-Charge, Outer Space Affairs, Department of State (~~CONFIDENTIAL~~).

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Later the United States and the USSR differed on the scope of the agreement, the United States believing it should cover the return of both astronauts and space objects while the USSR considered it should be limited to assistance to and return of astronauts. In September 1967 the USSR accepted the US position on both of these points. Three months of bilateral negotiations between the space powers followed, after which the draft agreement was considered in the Legal Subcommittee and, on December 19, endorsed unanimously by the General Assembly. The subject of liability is basically more complex than assistance and return, and negotiations on this topic are still in progress.

### 3. Negotiation of the Outer Space Treaty

In seven months, between May and December 1966, the UN Outer Space Committee's Legal Subcommittee reached agreement on broad principles for a treaty governing activities in outer space and on celestial bodies. The impetus to these negotiations came from an announcement on May 7 by President Johnson outlining the essential elements

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of a treaty on celestial bodies. On May 11 the United States began consultations with the USSR and other important members of the Outer Space Committee, giving them a 12 point outline of a treaty.<sup>8/</sup> The Soviets did not respond directly to the 12 points, but instead, on May 31, Foreign Minister Gromyko sent a letter to the Secretary-General outlining Soviet proposals for a space treaty and requesting inclusion of an item in the agenda of the 21st General Assembly. Although the Gromyko letter did not refer to the prior US initiative, there was a large measure of correspondence between the two proposals. The Soviet draft was essentially a composite, almost to the exact language of the two UN resolutions referred to above which (a) stated the legal principles for outer space and (b) called on states to refrain from stationing weapons of mass destruction

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<sup>8/</sup> See "Double Scenario for Negotiating the Celestial Bodies Treaty," May 16, 1966 (~~SECRET~~); and Ambassador Goldbert's letter of May 19, 1966, to Acting Assistant Secretary David H. Popper, commenting on the scenario (~~SECRET~~).

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in orbit around the earth or on celestial bodies. The US draft treaty also built upon these two resolutions, as well as upon the Antarctic Treaty and the Limited Test Ban Treaty. It added new concepts which provided for: (a) total openness, including full access to every area and facility on a celestial body; (b) a prohibition of all weapons tests and military maneuvers on celestial bodies; (c) full scientific freedom to investigate and explore and a requirement that reports be made to the UN Secretary-General; and (d) mutual assistance between astronauts of different states.

During the first negotiating session of the Legal Subcommittee, held in Geneva from July 12 through August 4, agreement was reached on the principal substantive points of the Treaty.<sup>9/</sup> The most significant of these were (a) the translation into a treaty obligation of the UN resolution banning the placing of weapons of mass destruction

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<sup>9/</sup> Negotiating instructions to our Delegation were sent by Department telegram 2080 of July 6, 1968 to Geneva ~~(CONFIDENTIAL)~~.

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in orbit, in outer space or on celestial bodies; (b) an unconditional commitment to assist and return astronauts who land in another state; and (c) the proscription against claims of sovereignty over celestial bodies. At the end of this first meeting two main issues continued to divide the United States and Soviet Union. The United States insisted on the principle of free access to all installations and vehicles on celestial bodies, whereas the USSR sought to qualify the right of access with such concepts as "reciprocity" and agreement on the timing of visits. Secondly, the United States continued to believe that reporting to the UN Secretary-General on space activities should be compulsory, while the USSR insisted that the reporting obligation should be voluntary.<sup>10/</sup> Of the two issues dividing the United States and USSR, our Embassy in Moscow considered the concept of uninhibited access to be of key importance, both from the point of view of establishing

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<sup>10/</sup> Memorandum for Walt W. Rostow, The White House, from Benjamin Read, Executive Secretary, Department of State, August 10, 1966, on "Negotiation of an Outer Space Treaty" (CONFIDENTIAL).

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a precedent and of having a meaningful treaty which would not be plagued by accusations of Soviet non-compliance.<sup>11/</sup> Ambassador Goldberg reported on July 28 that it appeared that the Soviets had decided not to complete the Outer Space Treaty during the Geneva talks, but preferred to reserve it for discussion at the 21st General Assembly.<sup>12/</sup> The Department responded that while early conclusion of the Treaty would be politically useful, it did not wish to make concessions on the remaining important points unless there were assurances that this would be likely to lead to agreement on the total Treaty.<sup>13/</sup>

The second and final negotiating session of the Legal Subcommittee took place in September and October in New York and progress was rapid towards conclusion of the Treaty.

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- <sup>11/</sup> From Moscow, Telegram 650, August 7, 1966, to Department of State (~~CONFIDENTIAL~~).
- <sup>12/</sup> From Geneva, Telegram 496, July 28, 1966, to Department of State (~~CONFIDENTIAL/EXDIS~~).
- <sup>13/</sup> Department of State Telegram 18479 to US Mission Geneva, July 29, 1966, ~~CONFIDENTIAL/EXDIS~~.

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The United States put forward a compromise proposal on access to installations on celestial bodies which provided for "reasonable advance notice of a projected visit." On October 4, the Soviets accepted this proposal and, at the same time, made only minor changes in a US proposal for reporting activities on celestial bodies. The USSR also significantly qualified its request for third countries to grant tracking facilities to all parties on an equal basis, by recognizing that tracking station agreements must evolve from bilateral arrangements between the countries concerned.<sup>14/</sup> On October 21, the last major differences were resolved, and Ambassador Goldberg reported that he and Ambassador Morozov of the USSR had reached agreement in principle on the Outer Space Treaty.<sup>15/</sup> The Treaty was

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<sup>14/</sup> Memorandum from Acting Assistant Secretary David H. Popper to Acting Secretary dated October 5, 1966, entitled "Latest Developments on Outer Space Treaty" (CONFIDENTIAL).

<sup>15/</sup> USUN Telegram 1754, October 21, 1966, to Department of State (SECRET/LIMITS).

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endorsed by the General Assembly on December 19, 1966,  
opened for signature by the three depositary governments  
(UK, USSR and United States) on January 27, 1967, and  
entered into force on October 10, 1967.

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