

OUTER SPACE POLITICS AND LAW

by V. Vereshchetin,
E. Vasilevskaya,
E. Kamenetskaya



Progress Publishers

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Outer Space: **Politics and Law**



PROGRESS PUBLISHERS
MOSCOW

Translated from the Russian by *Murad Saifulin*, Cand. Sc. (Law)
Designed by *Akhmed Moussin*

Edited by *V. S. Vereshchetin*, D. Sc. (Law)
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В. Верещетин, Э. Василевская, Е. Каменецкая
Космос: политика, право
На английском языке

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B $\frac{1207000000-212}{014(01)-87}$ 71-87

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PREFACE

Space exploration has tremendously expanded the horizons of human knowledge and activity. In terms of its significance, man's entry into outer space may be compared with such landmarks in the development of human culture as the discovery of fire, the invention of the wheel and the great geographical discoveries.

Space exploration has yielded new data on the Earth and its atmosphere, the solar system and remote regions of the Universe and the interplanetary medium, data which are unattainable by other means. The progress of space exploration has also given rise to new trends in man's economic activity, which today are unthinkable without the use of space technology—space communications, meteorology, navigation, and the study of the Earth's natural resources. At present new technological processes are emerging which, with time, are likely to evolve into space-based branches of production.

By its nature and scale space exploration and its practical application are an ideal sphere for the pooling of efforts by many states. For this reason the internationalisation of space activity is now a major trend in modern space exploration, as can be seen in the activities of international space organisations, in space flights of international crews, and in such large-scale projects and programmes as the Vega Project to explore the planet Venus and Halley's comet. This project has united scientific and industrial teams of nine countries belonging to different social systems and in coordination with other comet missions (Giotto and Planet-A) has become a global space project.

The fact that recent years have seen the growing threat of space being turned into another sphere of military confrontation cannot but greatly alarm all humanity. The realisation of US plans to develop space weapons will not only involve the world in a new dangerous spiral of the arms race and aggravate and destabilise the world situation but also undermine the principles of broad international cooperation in the exploration and use

of outer space. That is why the Soviet Union is doing its utmost to achieve bilateral and multilateral agreements in order to prevent the militarisation of outer space and keep it free of all weapons. International space law has a major role to play in the achievement of these goals.

From the very beginning of the space era law has been called upon to secure the stable and peaceful development of national and international space activity and to meet the interests both of individual countries and of the world community as a whole. There is good reason why the United Nations has become a centre for drafting the norms and principles of international space law. It has set up a Committee on the Peaceful Uses of Outer Space which is now composed of 53 states.

Today, international space law includes numerous treaties and agreements aimed at establishing law and order in space activity. However, the on-going space exploration and its broad use for practical purposes give rise to new problems in relations between states engaged in the exploration and use of outer space, to problems that require international political and legal settlement. And the primary task is to prevent an arms race in outer space.

This book deals with the most pressing outstanding political and legal questions of the exploration and use of outer space. It also shows the legal mechanism of the international space programmes carried out by the Soviet Union together with other states or within the framework of international organisations.

The authors have for many years been engaged not only in theoretical research but also in the practical elaboration of the legal principles and norms of space activity in various UN bodies, and also in the organisation of international cooperation in this particular field. This book is therefore an account by direct participants in the process of states' cooperation in the legal, scientific and technical spheres of space activity. I believe that this fact will make the book particularly interesting for the reader.

Academician *Roald Sagdeyev*,
Director, Space Research
Institute, USSR Academy of Sciences

Chapter 1

BARRING WEAPONS FROM OUTER SPACE: THE KEY TASK OF INTERNATIONAL SPACE LAW

1. Star Wars or Star Peace?

In 1983, the US President announced the start of preparations for launching a new programme to develop a large-scale ABM system with land- and space-based elements, and weapons based on new physical principles. The US ABM system is supposed to use laser and particle beam weapons which have been in the process of development in the country for a number of years. In defiance of the Soviet-US 1972 ABM Limitation Treaty, which bans the development, testing and deployment of space-based ABM systems or components, the USA is making ready to deploy ABM weapons in near-earth orbits.¹ It is planned to use laser and particle beam weapons to strike land, sea, air and space targets. Work is under way to create "third generation weapons" (following the atomic and hydrogen bombs) based on the transformation of nuclear blast energy into an X-ray laser beam with a view to using this weapon to strike missiles in flight at a distance of several thousand miles.

The "strategic defence initiative" proclaimed by the US President is justifiably regarded by world public opinion as a programme of preparing Star Wars, as a threat of a qualitatively new spiral in the arms race and its spread to outer space.

In essence, the so-called defence initiative is patently aggressive, since it aims to deprive the other side of the possibility to retaliate in the event of a nuclear attack against it. The US Administration is banking on being able to deal a first strike against the Soviet Union with impunity. Moreover, it ignores the authoritative opinion of scientists, experts and political figures in many countries, including the USA, who say that an objective scientific analysis shows that it is impossible to create an absolutely impenetrable anti-missile "shield" and that the unpredictable arms race which the Star Wars programme will open is dangerous for peace and the security of all nations, including the USA.

Militarisation of outer space is not a new phenomenon in US

¹ A. Natalyin, "The US Strategic Defence Initiative Runs Counter to International Law". *Sovetskoye gosudarstvo i pravo*, No. 11, 1985, pp. 113-119.

space policy. The use of space technology for military purposes has played a major role in US astronautics since its inception. Parallel to the civilian programme carried out by the National Aeronautics and Space Administration (NASA), the USA has always had a military space programme that is implemented by the Defence Department and other military agencies of the country. They have for many years been putting to active use numerous space systems of reconnaissance, communication and navigation. Satellites and other space vehicles launched to fulfill scientific and applied missions are used intensively by the USA to carry out military assignments.

Data received from US space systems have been repeatedly used in military operations in various "hot spots" around the globe. For instance, during the US aggression in Vietnam American military aircraft made use of satellite-supplied meteorological information. US reconnaissance data obtained by satellites were given to the Israeli aggressors during Arab-Israeli conflicts in the Middle East. US satellite-supplied information was widely used by the British in the zone of military operations during the Anglo-Argentinian conflict over the Falkland Islands (Malvinas).¹

The course towards developing and deploying space strike systems and stationing weapons in and directly spreading the arms race to outer space has become a qualitatively new phenomenon in the US policy of militarising outer space. Along with this the USA has been making more sophisticated the existing auxiliary space systems (those of communication, meteorology, navigation, photographic reconnaissance, detection of missile launchings, etc.) and ever more widely employing civilian space projects for military purposes. For this purpose, the USA has established the Space Command (SPACECOM), an agency having broad powers.

The development of space weapons has become an important part of US military preparations, and the use of space technology for military purposes has been playing an ever greater role in US strategic plans. The facts show that the US military already regard outer space as a future theatre of military operations, and space strike systems as a major element of a nuclear first strike capability.

In the past, the share of military projects in allocations for US space programmes did not exceed 30 per cent, but since 1982 US expenditures on military space activity far exceed the funds appropriated for civilian space programmes.² Many of the NASA "civilian" projects are also military-oriented. The Space Shuttle developed by NASA is to be used on a wide scale to test new types of space weapons, make regular deliveries to and from space of various military

¹ A. Cocca, "Satellite: Warring Weapon", *Proceedings of the 25th Colloquium on the Law of Outer Space*, New York, 1983, pp. 29-71.

² *Outer Space—A New Dimension of the Arms Race*, Ed. by Bhupendra Jasani, SIPRI, London, 1982, p. 41.

objects and cargoes, service future space stations designed to control global military operations from space, inspect space vehicles launched by other countries, etc. Also under discussion are plans to create a fleet of two-seater military spaceships which could take off and land on airfields and would be equipped with weapons to destroy satellites and spaceships of other countries.¹

The development and testing of anti-satellite systems holds an important place in the US plans to create space weapons. Today the USA is stepping up the development of new types of anti-satellite systems launched from aircraft and from the Earth. It is also planning to adopt homing anti-satellites launched by a two-stage missile from combat fighters.

The development of space weapons, including anti-missile and anti-satellite weapons, will upset strategic stability and international security and create the real threat of outer space becoming a theatre of military operations, a source of grave peril for all people on earth.

Soviet initiatives aimed at concluding international agreements to close the door to the militarisation of outer space and at strengthening the existing agreements in this field are prompted by the desire to prevent disastrous developments and avoid an uncontrolled arms race on earth and its spread to outer space, and by the desire to keep outer space open for peaceful activity by all states. The Soviet Union has counterposed its concept of Star Peace and broad cooperation of all states in the peaceful exploration and use of outer space to the US Star Wars programme.

The USSR has strongly opposed the spread of the arms race to outer space, but not out of fear of the US "Star Wars" programme. Relying on the conclusions arrived at by Soviet scientists and specialists, Mikhail Gorbachev, General Secretary of the CPSU Central Committee, said at a press conference in Geneva after the Soviet-US summit meeting that the Soviet Union would find a fitting response to the US Star Wars programme and "it would be effective, less costly and could come within shorter time-limits".²

On January 15, 1986, Mikhail Gorbachev advanced the Soviet programme of complete and universal liquidation of nuclear arms before the year 2000, to be accompanied by the prohibition of space strike weapons.³

2. Current Principles and Norms Limiting the Use of Outer Space for Military Purposes and Proposals to Develop and Supplement Them

We know from experience that in many instances when common sense has taken the upper hand people have managed to strike a

¹ *Aviation Week and Space Technology*, August 27, 1984, p. 14.

² Supplement to *Moscow News*, No. 48, 1985, p. 6.

³ *Pravda*, January 16, 1986.

compromise and move forward by taking measures to limit the use of outer space for military purposes. We also know from history that it has been much easier to reach agreements with regard to those space-based weapons and systems which were in their early stage of development. Today there is a whole series of international agreements regulating these questions.

The universally recognised principle banning the threat or use of force in defiance of the UN Charter (Art. 2.4) is operative in outer space as in any other sphere of international relations. The application of this principle to outer space has been confirmed in the very first resolutions of the UN General Assembly on space activity and later in the 1967 Space Treaty, Article III of which says: "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding." It follows from the general principle prohibiting the threat or use of force that it is impermissible to attack or threaten to attack the space objects of another state or to interfere forcibly in their functioning; it is equally impermissible to use space objects to threaten or actually to attack targets on earth or in the air.

However, the very principle of non-use of force has so far not precluded the military use of outer space because it does not ban the development, testing and deployment of space weapons. The possibility remains open of using force in and from outer space as a way of exercising the right of individual or collective self-defence against an armed attack (Art. 51 of the UN Charter), or by decision of the Security Council in order to prevent or remove the threat to peace or to suppress acts of aggression and other breaches of the peace (Art. 39, 41 and 42 of the UN Charter).

It is therefore by no means enough merely to adopt the general principle of non-use of force in order to prevent the militarisation of outer space and to preclude the spread of the arms race to outer space.

The general principles of international law may be made more effective through their development and concretisation, more precise definition of their normative content, and the conversion of these principles, where and when possible, into clearly expressed contractual obligations of states, which lend themselves to unambiguous interpretation. This general proposition is also fully applicable to the principle of non-use of force.

International law has seen some examples of progress in this direction. For example, the normative content of the principle of non-use of force has been set out in concrete terms in such documents as the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance

with the UN Charter, the 1975 Final Act of the Conference on Security and Cooperation in Europe, and some bilateral treaties.

Both a universal treaty on non-use of force in international relations and similar treaties relating to particular regions or spaces could become the next logical stage in developing this principle and making it more effective.

The need urgently to draft and conclude such treaties becomes particularly evident in periods of aggravation of international relations and increased danger of the use of force, all of which can lead to disaster. In such a situation even a partial agreement on non-use of force in a particular sphere of international relations could be an important deterrent factor. In this respect, outer space is now a priority.

A major direction of efforts to prevent the militarisation of outer space is the adoption of measures (also given international legal forms) aimed at banning space armaments, that is, at providing material guarantees against the use of force in and from outer space.

A number of earlier draft treaties on the non-use of force, both universal and regional ones, proposed, among other things, prohibition of the use of force in outer space. For instance, Art. 1 of the Soviet draft of the World Treaty on the Non-Use of Force in International Relations, which has been under UN consideration since 1976, proposes that states shall refrain "from the use of armed forces involving any type of weapons, including nuclear or other types of weapons of mass destruction, on land, on the sea, in the air or in *outer space* (italics ours—V.V.), and shall not threaten such use."¹

The 1983 Political Declaration of the Warsaw Treaty member states says that the Treaty could be based on the "mutual commitment of the member states of both alliances not to be the first to use either nuclear or conventional weapons against each other and therefore not to be the first to use against each other any military force at all."² The proposal noted that this obligation should be extended to spacecraft as well. The Treaty could also include the pledge not to endanger international sea and air routes, and *space communications* (italics ours—V.V.) passing through spaces to which no national jurisdiction extends. This proposal was confirmed and developed in the Address of the WTO member-countries of May 7, 1984³ and in the Declaration of CMEA Member-Countries on maintenance of peace and international economic cooperation of June 14, 1984.⁴

In 1983, the Soviet Union submitted for the consideration

¹ *Pravda*, 30 September, 1976. See also UN General Assembly, Official Records: 33rd Session, UN Doc. Suppl. No. 42, A/33/41.

² *New Times*, No. 3, 1983, pp. 10–11.

³ *Pravda*, May 8, 1984.

⁴ *Pravda*, June 15, 1984.

of the 38th session of the UN General Assembly its draft of a Treaty on the Prohibition of the Use of Force in Outer Space and from Space Against the Earth, which included detailed, broad and radical proposals relating to outer space.¹ This draft developed the principle of non-use of force in and from outer space both in terms of states' political and legal obligations and in terms of back-up measures banning the development, testing and deployment of a whole class of space armaments.

As regards the political and legal obligations, they are expressed in Art. I of the draft, which prohibits to resort to the threat or use of force in outer space and the atmosphere and on the Earth through the utilisation for that purpose of space objects in orbit around the Earth, on celestial bodies or stationed in space in any other manner. It also prohibits to resort to the threat or use of force against space objects put into orbit around the Earth or placed on celestial bodies or stationed in outer space in any other manner.

The proposal to ban for ever the use of force in outer space and from space against the Earth and also from the Earth against objects in space was also included in the Soviet draft of the General Assembly resolution on the "Use of Outer Space Exclusively for Peaceful Purposes for the Benefit of Mankind". This draft was submitted by the Soviet Union to the 39th Session of the UN General Assembly in September 1984.²

This draft contained other political and legal provisions of fundamental importance for the non-militarisation of outer space and prevention of the spread of the arms race there. It proposed that the UN General Assembly should proclaim the exploration and use of outer space exclusively for peaceful purposes, for the benefit of humanity, as an historical responsibility of all states, and declare in this connection that the exclusion of outer space from the sphere of the arms race should become a mandatory norm of state policy and a generally recognised international obligation. The USSR suggested, as did its draft treaty of 1983, that the political and legal principles concerning the non-militarisation of outer space should be supplemented and strengthened by specific bans guaranteeing the observance of these principles by all states.

Following the discussion of this question, the UN General Assembly adopted a resolution on 12 December 1984 by 150 votes. It says that all states are duty-bound to refrain from the threat or use of force in their space activity. This was reiterated by the UN General Assembly in 1985.

Let us now turn to the current special international legal prohibitions and restrictions that concern the military use of outer space. They exclude definite areas of outer space from the sphere of military

¹ UN Doc. A/38/194, 23 August, 1983.

² UN Doc. A/39/243, 27 September, 1984.

activity and also ban and limit certain types of weapons and other means of using outer space for military purposes.

The more far-reaching prohibitions extend to the Moon and other celestial bodies which, under the 1967 Space Treaty (the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies), should be used "exclusively for peaceful purposes", and where any military activity should therefore be banned. Art. IV of the Treaty contains an approximate list of the types of activity which are prohibited on the Moon and other celestial bodies. This list covers the deployment of nuclear weapons or any other types of mass destruction weapons, the construction of military bases, structures and fortifications, the testing of any types of weapons, and the conduct of military exercises. The Treaty allows for the use of military personnel for scientific research or for any other peaceful purposes and also for the use of any equipment or facility necessary for the peaceful exploration of the Moon and other celestial bodies.

The list was supplemented and extended in Art. 3 of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, which, in addition to the aforementioned prohibited types of use of the Moon and other celestial bodies, mentions the placement of objects with mass destruction weapons in orbit round the Moon or in other trajectories toward the Moon or round it, and the use of such weapons on or below the surface of the Moon.

Some jurists at times describe the complete prohibition of military activity on the Moon and other celestial bodies as the demilitarisation of the Moon. In fact, the etymological meaning of this term testifies to the inadequacy of its use in this case. With respect to the Moon and other celestial bodies it would be ~~more~~ correct to speak not in terms of demilitarisation, that is, ~~prohibition~~ of earlier military activity, but in terms of preventing the military use of the Moon and other celestial bodies, or in terms of the prohibition of their militarisation.

As for outer space as a whole, including "near space", not far from the Earth, military activity has not yet been completely prohibited there. Among the partial measures that restrict the military use of outer space, major importance attaches to the obligation assumed by the states parties to the 1967 Space Treaty "not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction,... or station such weapons in outer space in any other manner" (Art. IV).

The most widespread interpretation of the term "mass destruction weapons" covers such types as nuclear, chemical and biological weapons and other weapons comparable with them in their destructive power, including those that may be developed in the