ARTICLE I OF THE OUTER SPACE TREATY REVISITED

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I. Introduction

Article I of the Outer Space Treaty of 1967[1] states that the "exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind." The language of this provision makes it clear that space exploration is not only a concern of a small number of States that actually carry out such activities, but of all States, including the developing countries.

This provision raises a number of issues in the relationship between developing and developed countries and the nature of international co-operation between States in outer space: What precisely is the nature of the obligation that is being placed on those States which conduct space activities and are parties to the Outer Space Treaty? To what degree are States obliged to co-operate and share information on their activities with other States? Should such co-operation be enforceable? Is there a need for a new international legal framework which would spell out the precise nature of such co-operation?

These questions have been addressed generally for more than three years in the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and its subsidiary body, the Legal Sub-Committee, and formally since 1988 under a new agenda item of the Legal Sub-Committee entitled "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space shall be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries."

These discussions reveal dissatisfaction among many developing countries with the status of international co-operation under Article I of the Outer Space Treaty. Therefore, it is not surprising that some developing countries are hoping to legally "cement" the requirement for

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1. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967 (hereinafter cited as "Outer Space Treaty"), 18 U.S.T. 2410, T.I.A.S. 6347, 610 U.N.T.S. 20.

international space co-operation and not to let Article I of the Outer Space Treaty stand, in their view, merely as an artifact or a moral appeal to the space-faring countries. Therefore, these countries have called for a legal regime which would define the nature of such international space co-operation and stipulate the degree to which the "benefits" derived from space activities should be shared. A judicial system of enforcement might be a final goal. Not surprisingly, such calls have not elicited the sympathy of the space-faring countries such as France and the United States.

Earlier attempts by developing countries at defining more precisely States' responsibilities regarding international co-operation had been limited to one area of space activities, remote sensing, in which the Committee on the Peaceful Uses of Outer Space, following a decade-long discussion, agreed on a set of remote sensing principles which were subsequently adopted by the General Assembly in its resolution 41/65 in 1986. The remote sensing principles reaffirm Article I of the Outer Space Treaty and provide that "[s]tates carrying out remote sensing activities shall promote international co-operation." However, the only concrete requirement arises from the provision that a sensed State shall have access to remote sensing data of its territory.

This paper will begin with a review and assessment of recent discussions in the Committee and its Legal Sub-Committee concerning the introduction of the new agenda item relating to Article I of the Outer Space Treaty. In the final part of the paper, it will be argued that States' obligations towards international space co-operation under Article I of the Outer Space Treaty are difficult to enforce and constitute more a moral and philosophical obligation than a legal requirement. Discussions of Article I under the new agenda item of the Legal Sub-Committee will primarily serve the developing countries as a vehicle to draw attention to their concerns and to appeal to the moral consciousness of those States with substantive space activities to co-operate as much as possible with them. Any attempts beyond that, such as the codification of general legal obligations of international co-operation in space, will encounter strong resistance and do not at present seem feasible if Member States continue to accept the sensitive consensus structure of the Committee and its Legal Sub-Committee. Nonetheless, as the remote sensing principles indicate, it may be possible, in the long term, to negotiate specific rights and obligations in specific areas and thereby build up a body of principles of international cooperation.

II. Introduction of a New Item on Sharing of Outer Space Benefits in the Agenda of the Legal Sub-Committee of COPUOS

The Committee on the Peaceful Uses of Outer Space and its subsidiary bodies, the Scientific and Technical Sub-Committee and the Legal Sub-Committee, have a series of agenda items which specify the questions to be discussed. Since all decisions in the Committee and its

subsidiary bodies are made by consensus agreement among the Member States, the recommendation to add a new agenda item or to drop an item is also a matter of consensus. It should be borne in mind that the addition or deletion of an agenda item, particularly on the agenda of the Committee, is quite rare, and that it is the United Nations General Assembly which is the final authority on this matter.

Past practice has shown that there can be a variety of reasons for Member States to add a new item to the agenda of the Committee or its subsidiary bodies. One reason is the replacement of an agenda item by another, since the old item might have been discussed extensively, technological developments might have rendered its discussion irrelevant, or some legal guidelines or principles might have been adopted under the item. Another reason can be found in new technological developments in outer space which require the attention of the Committee and its subsidiary bodies, as was the case, for instance, with the addition of the item "Spin-off benefits of space technology: review of current status" to the agenda of the Committee in 1989[2] and the most recent proposal, to add an item on "space debris" to the agenda of the Scientific and Technical Sub-Committee.[3] Furthermore, in the view of some States, political developments might necessitate the addition of an item, as was the case with the item "Ways and means of maintaining outer space for peaceful purposes," which originally had read "Questions relating to the militarization of outer space" and had been added to the Committee's agenda by the General Assembly in 1983[4], not by consensus, however, but by vote, with the United States and most other Western States abstaining or voting against the resolution.

Recently, the question of a new agenda item for the Legal Sub-Committee arose in 1986, when work on the agenda item "Legal implications of remote sensing of the Earth from space, with the aim of finalizing the draft set of principles" was approaching its conclusion; after more than ten years of negotiation, a consensus had emerged in the Sub-Committee on a set of draft principles relating to remote sensing of the Earth from outer space, and it remained only for the text to be formally adopted by the General Assembly the same year. In that year, discussions on a possible new agenda item were taken up during the sessions of the Legal Sub-Committee and the Committee, which endorsed the idea of adding a new item to the agenda of the Legal Sub-Committee by agreeing that the Sub-Committee could take on "new tasks."[5]

With the adoption of the "Principles relating to remote sensing of the Earth from outer space" by the General Assembly in its resolution 41/65 of 3 December 1986, the number of items on the agenda of the Legal Sub-Committee had officially been reduced to two. It was now the task of

2. U.N. Doc. A/RES/43/56, para. 21.
3. U.N. Doc. A/44/20, paras. 32-34.
4. U.N. Doc. A/RES/38/80, para. 15.
5. U.N. Doc. A/41/20, para. 76.

the Committee and the Legal Sub-Committee to find a new agenda item, and all 53 Member States of the Committee were in agreement that the new item should be one which has reasonable prospects for consensus agreement.

1. *Proposals by the Group of 77 Member States*

Venezuela, at the 1986 session of the Committee on the Peaceful Uses of Outer Space, took the initiative by suggesting a new item entitled "Equitable access by States to the benefits derived from space technology."[6] Venezuela had thereby, at a very early moment, set the stage for a series of proposals by the developing countries of the Group of 77 in the Committee, proposals which in substance would be very similar to that proposed by Venezuela.

A formal proposal put forth by Yugoslavia on behalf of the members of the Group of 77 in the Committee at its 1986 session was based on the proposal by Venezuela; it read: "Access by States to benefits of the exploration and uses of outer space." In the view of the Group of 77, this proposal met the concrete needs and expectations of all countries, particularly those of the developing countries, and would respond to the expectations aroused by the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space held in Vienna in 1982 (UNISPACE 82).[7] The Committee gave official acknowledgement to this proposal by recommending that the Legal Sub-Committee at its 1987 session should "[c]onsider the choice of a new item for the agenda of the Legal Sub-Committee. . ., including the proposals made by the Group of 77 and others, . . ."[8]; this recommendation was subsequently endorsed by the General Assembly in its resolution 41/64 in 1986.

It was not until the 1987 session of the Legal Sub-Committee, however, that the Group of 77 presented an official working paper[9] describing in more detail the nature of the proposal. In the working paper, the Group of 77 pointed out that various principles, such as those to be found in international law, the United Nations Charter, the Outer Space Treaty, and the conclusions of the UNISPACE 82 Conference, emphasized international co-operation as a key element "in activities undertaken by governmental, non-governmental and transnational entities in outer space."[10] Such co-operation, the Group of 77 claimed, was linked to the development of relevant legal regulations. In particular, the Group of 77 mentioned several points which would need to be considered, such as the question of access by States to the benefits of space activities, the concepts of "benefits" and "interests" (Article I of the Outer Space Treaty), and the

6. U.N. Doc. A/AC.105/SR.282.
7. U.N. Doc. A/41/20, para. 85.
8. U.N. Doc. A/41/20, para. 75 (c).
9. U.N. Doc. A/AC.105/C.2/L.162.
10. *Id.* at para. 5.

mechanisms for the equitable distribution of the benefits of space exploration.

The working paper, however, did not spell out concrete goals or objectives of the proposal. Chile, a moving force behind the Group of 77 proposal, was more explicit in the debate during the Sub-Committee's session, arguing that "the time had come" to establish far-reaching and wide-ranging accords guaranteeing access for all countries to the benefits of space activities. Chile stated that the best course would be to draft legislation explicitly acknowledging the right of access to a share in the benefits of space activities.[11]

The Legal Sub-Committee as well as the Committee and the General Assembly continued this debate in 1987, but without reaching agreement. It was only at the 1988 session of the Legal Sub-Committee that agreement was finally reached on the basis of a compromise proposal put forward by Austria over the initial objections of a number of States including Canada, France and some other Western European States, who argued that the wording of the new item, which closely followed the original proposal by the Group of 77, was not broad enough to reflect their wish to discuss in detail legal questions affecting the development of space activities.[12]

The Sub-Committee finally agreed that the new agenda item should read: "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States taking into particular account the needs of developing countries."[13]

2. *Proposals by Other Member States*

Besides the proposal put forward by the Group of 77, a number of other suggestions for the new agenda item were made by other States, including the following proposals: strengthening the application of the 1975 Convention on Registration of Objects Launched into Outer Space (Canada, France, Netherlands and Sweden); enhancement of co-operation between States in the event of accident or emergency on board a manned-space object endangering the lives or health of the crew (United Kingdom); and the legal status of a spacecraft crew, in particular with respect to the conditions governing manned-space flights (USSR). It was also proposed that some elements of the aforementioned proposals might be combined into a single agenda item entitled "Legal aspects of human presence, activities and co-operation in outer space" (Czechoslovakia).[14]

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11. U.N. Doc. A/AC.105/C.2/SR.456.
12. U.N. Doc. A/AC.105/C.2/SR.496.
13. U.N. Doc. A/AC.105/411, paras. 41 and 48.
14. U.N. Doc. A/AC.105/385, para. 33.

3. *Consideration of the New Agenda Item at the 1989 Session of the Legal Sub-Committee*

Though the Legal Sub-Committee and the General Assembly had officially endorsed the new agenda item in 1988, the consensus achieved did not result in substantive discussions under the new item at the 1989 session of the Legal Sub-Committee. In fact, the debate became embroiled in procedural questions.

The discussion[15] centered around two problems: first, the scope of subjects to be discussed under the rather vaguely worded new item; and second, the question of the establishment of a working group to consider the item in detail in the Sub-Committee, a matter which the General Assembly in its resolution 43/56 had asked the Sub-Committee to finalize, since the Assembly had not been able to arrive at a consensus decision on this matter in 1988.

Concerning the scope of subjects to be discussed under the new item, the Sub-Committee had before it the replies of twelve Member States in response to a note verbale sent out by the Secretary-General asking for Member States' views as to the priority of specific subjects to be discussed under the new item.[16] The replies received from developed and developing countries reflected a wide spectrum of views.

In the debate during the 1988 session, the United States expressed the view that the scope of subjects to be discussed under the new item should basically be confined to consideration of national legislation in respect to Article I of the Outer Space Treaty of 1967. Several members of the Group of 77 objected to this narrow scope with the argument that very few States had such national laws. They wished to discuss a new international legal framework enhancing co-operation to ensure a better distribution of scientific and technical knowledge to the developing countries. However, the Group of 77 was not at all united on the specific details of their proposal. While Brazil preferred not to discuss national legislation, Chile argued that such a discussion could serve as a valuable basis from which to proceed, Argentina felt that national legislation might perhaps be an acceptable first step. These differing views on substance and procedure among the members of the Group of 77, particularly among the Latin American Group, may have impeded the persuasiveness of the Group and made it more difficult for the Group of 77 to obtain agreement on the particular concerns it wanted to see addressed under the new item.

The Soviet Union sought to link the new item with an existing Soviet proposal, looking for support from the members of the Group of 77 and supporting the Group of 77 view that the benefits of space activities should

15. U.N. Doc. A/AC.105/C.2/SR.519-524.
16. U.N. Doc. A/AC.105/C.2/15/Adds. 1-6.

be widely shared. The proposal that the USSR had in mind was the establishment of a world space organization[17] which, in its view, should be discussed under the new item.

Concerning the establishment of a working group to consider the item in detail, the question was whether and when a working group was to be convened under the new item. The establishment of a working group is a matter of importance because it is the practice of the Legal Sub-Committee to establish a working group as soon as it is ready to discuss in detail any item on its agenda, and the establishment of a working group normally leads to the consideration of texts proposed for adoption as legal principles or treaties.

The Group of 77 as well as all of the Eastern European countries called for such a working group to be established in order to facilitate the work of the Sub-Committee under the new item, some of them insisting that it be convened during the 1988 session of the Sub-Committee. While the United States in the past had resolutely been opposed to such a working group, it repeated the argument contained in its reply to the Secretary-General's note verbale in which it had softened its position by accepting the establishment of such a working group at a later stage, possibly in 1991, but upon certain pre-conditions. Some of the Western States, in particular, the Federal Republic of Germany and the United Kingdom, did not object to the establishment of a working group *per se* but wished to have its mandate defined before it was convened; France explained it would not oppose its establishment.

A compromise proposal put forward by Austria broke the impasse and tied the two problems together in a "package" solution. A consensus was reached that a note verbale would be sent in 1989 to Member States asking for their views on international agreements relevant to the subject under review, that, in 1990, the Sub-Committee would discuss national legislation, and that a working group would be established in 1991.[18]

Though the Austrian compromise proposal sets up a clear timetable for the establishment of a working group, it purposely leaves open the question of what precisely is to be discussed under the new item. This lack of clarity might pose problems at future sessions of the Sub-Committee and might delay substantive discussions.

There is no doubt that the Austrian compromise proposal was adopted by consensus because all sides in the Sub-Committee gained from it and had to make concessions. The Group of 77 and the Eastern European Group received an explicit commitment of the Sub-Committee to the establishment of a working group in 1991, though they were not able to have it convened earlier. The United States was able to have the Sub-Committee discuss national legislation under the new item prior to

17. U.N. Doc. A/AC.105/L.171.
18. U.N. Doc. A/AC.105/430, para. 53.

undertaking more specific and detailed work on the subject but had to agree to the establishment of a working group without pre-conditions.

4. *Evaluation of Proposals and Debate*

If one considers the time it took the Committee and its subsidiary bodies to conclude their discussions on finding a new agenda item for the Legal Sub-Committee, it becomes clear how difficult and arduous such a decision has become. Even in 1989 no substantive discussions had taken place on the new item in the Legal Sub-Committee but were postponed until 1990. Since the issue of a new agenda item was first raised at the 1986 session of the Legal Sub-Committee, four years will have passed in 1990 when the Legal Sub-Committee actually begins substantive debate under the new item.

One reason for this decision-making process being so slow is the consensus structure in the Committee. Since there is agreement that decisions should not be taken by vote, a considerable amount of time is spent on informal negotiations trying to iron out the differences among Member States. Another reason has to do with the fact that the Group of 77 took an unprecedented interest in proposing a new item for consideration and insisting on its acceptance, and the decision-making process within the Group of 77 is as time-consuming and difficult as the process among all Member States of the Committee.

In order to better understand the reasons why Venezuela, a member of the Group of 77, proposed the question of access to the benefits of space technology for the new agenda item, it is necessary to recall the apparent dissatisfaction of the developing countries over the final conclusion of the "Principles relating to remote sensing of the Earth from outer space," which were adopted by the General Assembly in 1986. It had become clear during the many years of discussion on the draft principles in the Committee and the Legal Sub-Committee that the space-faring States, in particular the Western countries, were unwilling to establish any legally binding regulations on States' responsibilities regarding the exchange of remote sensing data and information beyond the right of a sensed State to access.

Principle II, for example, though it provides that remote sensing activities shall be carried out for the benefit and in the interests of all countries--a formulation taken from Article I of the Outer Space Treaty--does not contain any more specific obligations, as the members of the Group of 77 would like to see, to give substance to this general principle. Furthermore, at the final adoption of the principles by the General Assembly in 1986, most of the space-faring countries confirmed the suspicions of many developing countries by stating explicitly that, in their view, the remote sensing principles, as a General Assembly resolution, were not legally binding but were to be interpreted as general guidelines on the matter.

One member of the Group of 77, Algeria, referred to this situation in a statement during the 1986 session of the General Assembly's Special Political Committee when discussing the outer space item. Algeria said that the draft principles relating to remote sensing in no way had met the needs of the developing countries or respected the rights of the sensed State. His delegation wondered how a developing country affected by a remote sensing programme might be assured of obtaining information concerning the programme if one of the principles contained the restriction that such information was to be transmitted to the "greatest extent feasible and practicable." For that reason, Algeria stated, it supported the adoption of a new agenda item similar to the one proposed by Venezuela.[19]

A reason for Venezuela to propose a broadly worded agenda item might have been its realization that only such a rather vague item could obtain the solid support of the Group of 77 and acceptance by consensus in the Committee. Also, it would leave open the chance for all sides in the Committee to discuss whatever topics they wished.

Furthermore, any item dealing with specific legal aspects of space exploration puts most developing countries at a disadvantage as they, in contrast to the developed countries, generally do not possess specialized legal expertise in the field of outer space and are not in a position to send legal experts from their countries to take part in the debates in the Legal Sub-Committee. For this reason, they were not in a position to put forward a well-articulated proposal reflecting their concerns. Though it is known that Venezuela initially did wish to make a more specific proposal in draft treaty form, it did not receive the support of even the Latin-American group, in which the matter was first discussed prior to consideration in the Group of 77 as a whole.

Ultimately, it was only this broadly worded agenda item which allowed the Group of 77 to take up the subject matter of international co-operation and the sharing of the "benefits" of space exploration; the more specific the proposal, the lesser the chance of having such a delicate subject matter discussed at all.

It is in this sense then that the vagueness of the item allowed the Group of 77 to push for their concerns without having to specify their final objectives. Recent discussions in the Committee on the Peaceful Uses of Outer Space, in June 1989, revealed that more and more developing countries in the Committee wish to go beyond the mere consideration of the status of international space co-operation under Article I of the Outer Space Treaty as spelled out in the Group's 1987 working paper.[20] Some delegations have now clearly expressed their general goal under the new agenda item by stating that technological differences among States had brought about inequalities in the benefits derived from space activities.

19. U.N. Doc. A/SPC/41/SR.35.
20. U.N. Doc. A/AC.105/C.2/L.162.

Therefore, a set of legal principles needed to be elaborated with a view to institutionalizing international co-operation.[21]

On the other hand, the vagueness of the agenda item also hurt the chances of the developing countries to have a substantive discussion under the item as soon as they wished to. The floodgates have been opened for almost any subject matter to be discussed, ranging from the pending proposal for the establishment of a new international space agency to proposals concerning streamlining the methods of work in the Sub-Committee.

One ambiguity in the text of the new item is the meaning of the last phrase, "taking into particular account the needs of developing countries," which raises some interesting questions. Article I paragraph 1 of the Outer Space Treaty states that "the exploration and utilization of outer space should be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development . . . ." The phrase "taking into particular account the needs of developing countries" does not appear anywhere in the Treaty. The insertion of this new phrase could be interpreted in several ways: first, it may represent an attempt to establish a particular, and arguably new, meaning to Article I; second, "the principle" might refer to a new principle, related to but not identical with Article I; and third, the new phrase might be taken to refer, not to Article I itself, but rather to "consideration" of Article I under the new agenda item. Discussion of the application of "the principle" may, therefore, involve a difficult discussion of precisely what principle it is that is to be applied.

III. *Article I of the Outer Space Treaty in the Context of the New Agenda Item*

In order to better understand the differing views among the Group of 77 countries in the Committee and those of the space-faring States on the matter of access to the benefits of space technology, which is ultimately a question of the nature of international co-operation among States, it is necessary to look at Article I, paragraph 1 of the Outer Space Treaty of 1967, since it serves as the basis for the claims of the Group of 77 proposal. This provision sets forth limitations and obligations to the exploration and use of outer space by stating that such activities should be carried out "for the benefit" and "in the interests" of all countries.

1. *The Objective of Article I: Space Exploration "for the benefit" and "in the interests" of All Countries*

The Outer Space Treaty established the freedom to explore and use outer space as well as a series of other rights and obligations. But such

21. U.N. Doc. A/44/20, para. 106.

rights are conditional upon the important limitation under Article I, paragraph 1 of the Treaty that provides that the benefits of such exploration and use shall accrue to all countries. Under this provision, countries shall benefit "irrespective of their degree of economic or scientific development." This implied reference to developing countries, which was originally included in the text of the Soviet draft as a preamble, was embodied in Article I, paragraph 1 on a proposal by Brazil supported by several other developing and socialist countries (Egypt, India, Czechoslovakia and Hungary among others)[22] who insisted that it be part of the binding treaty commitment.

Article I, paragraph 1 of the Outer Space Treaty has its roots in an earlier agreement, the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, which was adopted by the General Assembly in its resolution 1962 (XVIII) of 13 December 1963. In that resolution, the General Assembly expressed its belief that the exploration and use of outer space should be carried out for the betterment of mankind and for the benefit of States irrespective of their degree of economic or scientific development. Furthermore, States should be guided by the principle of co-operation and mutual assistance and should conduct all their activities in outer space with due regard for the corresponding interests of other States.

The objective of Article I and of the Declaration, which first set forth the principle that became legally enshrined in the Outer Space Treaty seems quite clear: by calling attention to the essential needs of mankind and emphasizing the importance of co-operation, the objective was to require States to co-operate internationally in their space ventures. What is not clear, however, is the extent of obligation involved.

During the hearings held by the United States Senate Foreign Relations Committee prior to Senate approval of the Treaty, Ambassador Arthur Goldberg, the chief United States negotiator of the Treaty, responding to a question as to whether, under Article I, the United States would be required to make its communication satellites, including those for defense communications, available for the benefit of all countries, stated that Article I is a statement of general goals, and that separate international agreements would be required to cover the use of particular satellites.[23] The legal opinion submitted by the United States Department of State to the same hearings stated that "Art. I para. 1 does not undertake to set any terms or conditions on which international co-operation would take place."[24] The Committee nevertheless attached an understanding in its report to the effect that "[i]t is the understanding of the Committee on Foreign Relations that nothing in Article I paragraph 1 of the Treaty

22. U.N. Doc. A/AC.105/C.2/SR.62; SR.63, at 7, 9; SR.64, at 4, 7, 9; SR.71, at 22.
23. Treaty on Outer Space: Hearings Before the Senate Committee on Foreign Relations, 90th Cong., lst Sess. 1, 33 (1967).
24. *Id.* at 53.

diminishes or alters the right of the United States to determine how it shares the benefits and results of its space activities."[25]

The United States view is shared by the Soviet Union, as indicated by the Soviet delegate to COPUOS, Yuri Kolosov, when he stated that "the principle of international cooperation in exploring and using outer space for peaceful purposes is given body through the conclusion of specialized treaties by States and international organizations. This is understandable, since the character and degree of participation of States in international space projects depend, ultimately, on their will."[26]

While major space powers had thus delimited their obligations to co-operate under the Treaty, as a practical matter no State has asserted claims under the Treaty to results obtained by another country through its space activities, no doubt due in part to the fact that benefits of space activities have often been shared by countries either voluntarily or under other existing agreements.

Exploration and use of outer space and the celestial bodies, being the "province of all mankind," were not meant to serve only the interests of those States which have the technological capability to explore and utilize outer space but all States. The rights of States without space capabilities are secured through the stipulation in the Outer Space Treaty that space exploration and use are to be conducted "for the benefit" and "in the interests" of all countries. Such a limitation on the activities of the space-faring States is meant to promote international co-operation among all States. A spirit of international co-operation prevails where the "benefits" derived from space exploration are available to all those States incapable of conducting their own activities in outer space. The term "benefits" would appear to be all-inclusive and relate to any kind of information or results obtained which have some usefulness for Earth-oriented applications.

In summary, the underlying essence of Article I is reflected in its appeal to all States of the world to co-operate internationally in their space ventures. While there is no question of the need to conduct space activities in such a spirit, the very general wording of Article I leaves a lot of room for interpretation. What is the obligatory nature of this provision? To what extent and by what means are States to co-operate "for the benefit" and "in the interests" of all States?

2. *The Obligatory Nature of Article I, Paragraph 1*

Article I, paragraph 1 is formulated rather vaguely and could give the impression that it was meant to lay down only a general principle with no legally binding force. In fact, some Western scholars have felt that the

25. *Id.* at 74.

26. G. ZHUKOV & Y. KOLOSOV, INTERNATIONAL SPACE LAW 77 (1984).

Treaty stopped short of a legal obligation.[27] It is commonly accepted, however, among the community of States which conduct space activities that they have a general obligation to co-operate in one way or another when carrying out their space activities.

The question of international co-operation has become further complicated by the fact it is no longer only States which carry out space activities but also private corporations with commercial purposes, over which States often do not exercise strict regulatory control. Such commercialization, in the view of some, would threaten the interests of developing countries in partaking of the benefits of space exploration since commercial interests may not always square with public interests for international space co-operation. Though there exists a certain degree of obligation on the part of States to set regulatory standards for private enterprises on promoting international co-operation by private enterprises, the difficulty remains as to how far a State's responsibility should be exercised and whether it will be in a position or even willing to actually enforce the requirement for such co-operation.

Another difficulty arises from the fact that there is no judicial or other authority or standard by which to judge whether the general principle for carrying out space activities in a co-operative spirit is actually being followed by States or not. If one State, in the opinion of another, violates its responsibilities under the Treaty by not sharing all the information and data available to it, what remedy does the other State have?

These are the kind of questions that the developing countries wish to address in their desire to establish a legal regime specifying the precise nature of such international co-operation under the new agenda item for the Legal Sub-Committee. It touches ultimately at a core-problem in the relationship between developed and developing countries which is also debated in many other fora in the United Nations: how to narrow the technological know-how gap between the developed and developing countries? In fact, such discussions have very much influenced and perhaps even been the source of the discussions concerning the new item in the Legal Sub-Committee.

IV. *Future Perspectives*

In the view of the developing countries, the new item on the agenda of the Legal Sub-Committee not only gives them the opportunity to publicly put to a test the commitment of the space-faring States to co-operate in outer space. More importantly, it provides the opportunity for them to

27. Cheng, *Nineteen Hundred and Sixty Seven Space Treaty*, 95 J. DROIT INT'L 532 (1968); Goedhuis, *Some Legal Problems Arising from the Utilization of Outer Space*, in INTERNATIONAL LAW ASSOCIATION REPORT OF THE 54TH CONFERNCE, The Hague, Aug. 23-29, 1970, at 434 (1971).

seek further progress on the matter, i.e., towards the establishment of a legal framework on international space co-operation.

Though many reasons have been advanced by developing countries during the discussions in the United Nations bodies dealing with space activities to explain their discontent with the present commitment of space-faring States to international co-operation under the provisions of the Outer Space Treaty, in essence, they are saying that they believe that the technological gap between the developed and the developing countries is widening and that they wish to reverse the trend at least to some degree by sharing the benefits of space activities.

While there is no doubt that all States who conduct space activities are willing to co-operate and share information, it seems as if the developing countries have arrived at the conclusion that these States have not gone far enough in their co-operation. It also seems as if more and more of the developing countries have lost their confidence in moral appeals as embodied in the spirit of Article I of the Outer Space Treaty. They increasingly seem to believe that the remedy to the situation lies with the establishment of an international legal framework regulating space co-operation and requiring the developed countries to co-operate within specified limits.

The call for the establishment of a legal order that would regulate international space co-operation may become increasingly stronger and should, therefore, not be brushed aside as a temporary development. Therefore, it seems logical to discuss the prospects for such a legal order by addressing several problem areas. There is, first, the question as to what such a legal regime should specifically entail. Second, there is the problem of whether it should provide a system of enforcement in case the provisions of the legal framework are not met. And third, there is the question of whether such a proposal by some of the developing countries, possibly the entire Group of 77, would stand a chance of ever being adopted (by consensus) in the Legal Sub-Committee and eventually by the General Assembly.

Ideally, any legal system, framework, or body which would establish guidelines or legal principles on how international space co-operation is to be carried out would need to be quite specific. It would need to regulate, among other matters, what kind of information, services, products and activities are to be shared between States, when such elements are supposed to be made available, the frequency of such co-operation and the format of sharing. It would also need to address the question of the status of private enterprises that carry out space activities and the question as to who is to co-ordinate all these activities including the exchange of information.

The question of whether such a legal system should provide some means of enforcing international co-operation in space is an issue of some importance. If it does not, then the question arises as to whether a system of voluntary co-operation as it exists under the Outer Space Treaty would

be respected by the space-faring countries to the full satisfaction of the developing countries. Most likely, this would not be the case from the point of view of the developing countries, as can be seen from their view of the present situation of co-operation under the Outer Space Treaty. If, on the other hand, some measures of enforcement are to be introduced, it would certainly be difficult to find the mechanism to "police" the agreement.

Since an increasing number of developing countries are joining the chorus calling for the establishment of a legal framework to regulate international space co-operation, the space-faring States will certainly make some effort to deal constructively with such desires. The developing countries will also realize in due course that their call for a new international legal order in its present vague form might not be the most productive approach. Thus, a compromise solution will have to be found as to how to deal with the legitimate concerns in a realistic and productive manner.

The developed countries have shown a willingness to discuss the matter, though somewhat reluctantly. The United States, for instance, at an early stage in the process of formulating the new agenda item on the basis of the Group of 77 proposal, brought forth the idea that the item should be tied to Article I of the Outer Space Treaty. However, any move in the direction of the establishment of an effective international legal order is unlikely to receive the support of the developed countries, in particular the United States, and most likely France and the United Kingdom as well. The developed countries naturally do not wish to be put in a position where they cannot choose which programme to open to co-operation and what information they are to share with the developing countries. This is understandable given the fact that private agencies, commercial enterprises and universities carry out various tasks in the field and are not always under the control of the government of their respective countries and also because developing countries cannot be expected to completely open their military space programmes. It seems likely that the Soviet Union for somewhat similar reasons would not go along with such a system either, though they might not oppose it as openly as other States.

Therefore, it does not seem to be productive for the developing countries to insist on a solution to their stated concerns that would run counter to the interests of so many of the developed countries and even some developing countries with substantial space programmes. Indeed, as negotiations proceed, it might often be difficult to get agreement even among the Group of 77 States on matters of detail, making the process extremely time-consuming and complex. The question, therefore, arises as to whether the Group of 77 States of the Committee would be able to achieve their wish for the establishment of a legal regime by consensus without resorting to voting by majority, a process which most, if not all, of the members of the Group of 77 in the Committee would not currently wish to exercise in order to press their demands.

The Committee and its subsidiary machinery provide an appropriate vehicle by which the Group of 77 could seek to develop an agreed regime that would be acceptable to all members of the Committee, including the space-faring States, and that would further the spirit of Article I of the Outer Space Treaty. The advantage of a consensus agreement towards such a regime is clear from the number of treaties that have already been adopted and widely subscribed to by States and is the only way that meaningful and effective steps towards international co-operation in the sharing of benefits could be undertaken.

The question remains open as to whether it will be possible at all to legally specify a principle which is perhaps inherently more a general moral issue. Will States co-operate better if a legal system obliges them to do so? They are likely to co-operate if they can be convinced that it is indeed economically or socially beneficial to them to do so and also perhaps if they are constantly pressed by the developing countries in a constructive manner. In this sense, the new item on the agenda of the Legal Sub-Committee might serve the developing countries well in focusing the attention of the international community on the need for the space-faring States to live up to the spirit of Article I of the Outer Space Treaty, and if that opportunity is used constructively to demonstrate how such co-operation will be mutually beneficial, it may then lead in the long run to negotiations on acceptable legal principles.

As the United States and the USSR indicated when the Outer Space Treaty was adopted, they consider that any specific obligations for international co-operation would have to be based on further specific agreements, not on an interpretation of Article I. Furthermore, it is clear that they are going to be very hesitant to accept any legally binding conditions on their space activities or on the sharing of the results of those activities. The Group of 77, on the other hand, is committed to making more specific and more clearly obligatory the general requirements of Article I.

A possible approach that might satisfy both of these positions would be to undertake broad-ranging discussions of international co-operation in space on the basis of Article I with a view to identifying specific forms of co-operation that could be the subject of specific agreements. The principles on remote sensing, while not legally binding, nonetheless indicate that the space-faring nations are willing to make commitments to certain co-operative measures. By gradually elaborating a series of fairly narrow agreements and by gradually converting those into binding form, a legal framework for international co-operation could progressively be developed. While this would be a slow and difficult process, at least under the present conditions of international relations, it would seem to be the only procedure that allows any prospects of success. The first step then might be for developing countries, perhaps in consultation with some of the more sympathetic developed countries, to suggest a number of specific co-operative activities for discussion and see how other countries respond.