DISARMAMENT AND "PEACEFUL PURPOSES" PROVISIONS IN THE 1967 OUTER SPACE TREATY

*Marko G. Markoff**

I. THE TWO PROHIBITIVE RULES OF ARTICLE IV

Within the system of fundamental principles and rules governing the activities of states in the exploration and use of outer space, the provisions of Article IV of the 1967 Outer Space Treaty[1] are of special legal interest. First, they set forth one of the most important arms control developments in present international law. Second, certain rules flowing from such developments are readily affected by the pressures of the political complex and are, therefore, subject to different interpretations. Such developments and forces particularly influence the legal meaning of the expression "peaceful purposes" as used in the wording of Article IV, as well as other Treaty provisions.

In order to understand the real legal sense of the term "peaceful" in the framework of the 1967 Principles Treaty, a short analysis will be made of the substance of the arms control provisions in Article IV.[2] This article deals with military activities in outer space. It restricts them in two ways.

A complete *non-militarization* is achieved as regards the Moon and the other celestial bodies by the prohibitive norm in paragraph 2 of Article IV. It ensures a use "exclusively for peaceful purposes" and expressly forbids the establishment of military bases, installations and fortifications; the testing of any type of weapons, and the conduct of military maneuvers on other planets. The demilitarized status of the Moon and other celestial bodies, however, is not affected by the use of military personnel for scientific research or for any other peaceful purposes. Moreover, the use of "any equipment or

---

*Professor of International Law, University of Fribourg, Switzerland

[1]Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, January 27, 1967, [1967] 18 U.S.T. 2410, T.I.A.S. 6347, 610 U.N.T.S. 205 (hereinafter referred to as "Principles Treaty", "Outer Space Treaty", "Space Treaty", "Treaty on Outer Space", "1967 Treaty" or just "Treaty").

[2]Article IV reads:

> States Parties to the treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.
>
> The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any types of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.

facility" is also not prohibited, if that use is "necessary for peaceful exploration of the Moon and other celestial bodies".

The second part of the arms control program included in Article IV, paragraph 1, relates to *partial disarmament* in outer space, generally. The first paragraph of that article establishes a ban of *certain* military uses of all outer space areas including the orbital zones around the Earth, namely:

a) the placing in orbit around the Earth any objects carrying nuclear weapons or any other kind of weapons of mass destruction;

b) The stationing of such weapons in outer space in any manner; and

c) The installing of such weapons on celestial bodies.

Substantial authority supports the view that the term "celestial bodies" covers the Moon too, even though the Moon was not expressly mentioned in paragraph 1 nor in the second sentence of paragraph 2 of Article IV.[3] It has also been officially acknowledged[4] that "stationing" *in outer space* means also "deployment" *around the Moon or any other celestial body*, by means of orbital planetary objects or deep space probes.

The ballistic rockets, the ICBM's and FOBS's,[5] as well as all military space objects not carrying nuclear or other mass destruction weapons, are not included in the prohibitive system of Article IV (1). Furthermore, as to those activities prohibited, enforcement can become illusory, since the prohibitive provisions are not joined with inspection measures, as they are on the Moon and, by anticipation, on other celestial bodies.[6] Although it is doubtful that detecting the nature or the purpose of an orbiting spacecraft by means

---

[3]*Cf.* Treaty on Outer Space, Hearing on Executive D Before the Committee on Foreign Relations, U.S. Sen., 90th Cong., 1st Sess. (hereinafter cited as "Hearing") at 22 (1967); J. E.S. Fawcett, International Law and the Uses of Outer Space 35 (1968).

[4]See U.N. Docs. A/7221 (September 10, 1968) and A/BUR/SR.175 at 3 (October 21, 1968) with the explanations of the representatives of the United States, Soviet Union and Great Britain.

[5]On the "earthly situation" with regard to ICBM's, see Staff of the U.S. Sen. Committee on Aeronautical and Space Sciences, 90th Cong., 1st Sess., Report on Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies: Analysis and Background Data (hereinafter cited as "Staff Report") at 26 (Comm. Print 1967). For the FOBS's, ("Fusée à orbit partielle", missile in partial orbit) *cf.* the comment of the Swiss Federal Council in its Message of April 30, 1969, in 121 Feuille Fédérale 869-870 (v. I, No. 19 of May 16, 1969).

[6]The relevant Article XII of the Space Treaty reads:

> All stations, installations, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity. Such representatives shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited.

of anti-satellite space devices, or by reconnaissance space objects, could ever lead to appreciable results, the incomplete disarmament provision of Article IV (1) has as a consequence produced an intensification of the space military efforts of the space powers, at least in respect to the enlarged verification and detection capabilities and bombs-in-orbit developments.

The real innovations of the prohibitive system of Article IV are the non-armament provisions in paragraph 2. However, they relate to remote and uninhabited planetary areas like the Moon and other celestial bodies. Military activities were not carried out there at the time the Treaty was adopted. Moreover, one of the practical aspects of using a celestial body for military purposes, the testing of nuclear weapons, had already been prohibited by the 1963 Limited Test Ban Treaty.[7] It was relatively easy to achieve a general agreement to ban military uses of areas which were not yet utilized for such purposes and which showed a rather narrow range of possibilities for strategic use.

Although no serious difficulty arose in the Legal Sub-Committee of the U.N. Committee of the Peaceful Uses of Outer Space (COPUOS) when the final draft of Article IV was discussed,[8] the language contained in the arms control provisions of that article gives rise to a series of questions.

First, the Treaty leaves without a positive law response the problem of the legal meaning of the expression "peaceful purposes" as used not only in Article IV, but also in other provisions of the Treaty, as well as in many U.N. General Assembly Resolutions and Declarations. What does "use for peaceful purposes" mean in the context of a treaty dealing only with *partial* disarmament?

Second, the main provision on a complete non-militarization of the Moon and the other celestial bodies in Article IV (2) contains the expression "exclusively for peaceful purposes", whereas other sentences of the same paragraph relating to the allowed use of military personnel, facilities or equipment, speak merely of "peaceful purposes", or "peaceful exploration". In Paragraph 2 of the Treaty's preamble, as well as in Articles IX and XI, only the term "peaceful" has been used. Is there any difference in the legal meaning of "exclusively peaceful" and "peaceful"?

Finally, as a fundamental treaty principle the "common interests" provision of Article I, paragraph 1 provides that exploration and use of the outer space shall be carried out for the benefit and in the interests of all countries.[9] As a consequence of these

[7]Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water, August 5, 1963, [1963] 14 U.S.T. 1313, T.I.A.S. 5433, 480 U.N.T.S. 43.

[8]For more details on the negotiations in the Legal Sub-Committee (5th N.Y. Sess.), see U.N. Docs. A/AC.105/C.2/SR.63 and *ff.*, particularly SR.66 at 6 (July 25, 1966).

[9]Article 1, paragraph 1 of the Space Treaty reads:

> 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.

provisions several questions must be asked: What is the legal status of all non-prohibited, "defensive" military activities under the 1967 Treaty? Could they be considered perfectly lawful, as they are under classical international law which does not know of such provision as the "common interests" principle?

Without taking into account the scope and the specific obligation implied by Article I (1) of the 1967 Treaty, it is hardly possible to give a satisfactory explanation of the genuine legal sense of the language used in the Article IV and of the significance of disarmament measures in the present international law of outer space.

II. THE DIFFERENT INTERPRETATIONS OF "PEACEFUL"

Early discussions in the Legal Sub-Committee and in other U.N. organs have shown that States, and especially the two major space powers, do not have identical understanding of the legal sense of "peaceful". Opposite doctrinal views have also been expressed thereon.

Without entering into detailed analysis of all aspects of the controversy,[10] it may be summed up as follows:

a) For the official authorities of several western States and for a part of the doctrine, "peaceful" is not regarded as the opposite of "military" but is meant as "non-aggressive" only,[11] and therefore condones "defensive" military activities. Since no contractual prohibition of outer space military uses other than those expressly mentioned in Article IV (1) of the Treaty exists, all military "non-aggressive" activities in outer space remain as lawful as they are in terrestrial, sea and air law. To consider "peaceful" as "non-military" would mean to exclude from Treaty provisions all defensive military uses of or through outer space. However, the lack of prohibitive provisions, except for the nuclear and mass destruction weapons, shows, according to the "non-aggressive" theory, that "peaceful" could not signify "non-military". Such an interpretation is also in accord with the actual practice of the major space powers. The interpretation of " 'peaceful

---

[10] See generally, M. Markoff, Traité de Droit international public de l'espace 357-67 (1973).

[11] See Staff Report, *supra* note 5, at 11; see also Staff of the U.S. Senate Comm. on Aeronautical and Space Sciences, 87th Cong., 2nd Sess., Report on Soviet Space Programs, 1962-65, ch. VI (written by Krivickas and Rusis), at 496-7 (Comm. Print 1966). *Cf.* Feldman, The Report of the United Nations Legal Committee on the Peaceful Uses of Outer Space, Proc. 2nd Colloquium on the Law of Outer Space 19*ff.* (Vienna, 1960); Beresford, Surveillance of Aircraft and Satellites: A Problem of International Law, 27 J. Air L. & Comm. 110 (1960); Cooper, Self Defense in Outer Space and the United Nations, in I. Vlasic (ed.) Explorations in Aerospace Law 41 (Montreal, 1968); Finch, Outer Space for Peaceful Purposes, 54 A.B.A.J. 365-67, 110 (1968); McMahon, Legal Aspects of Outer Space, 38 Brit. Y.B. Int'l. L. 339-60 (1962); Meyer, Die Auslegung Des Begriffs 'friedlich' im Lichte des Weltraumvertrags, 18 Zeitschrift für Luftrecht and Weltraumrechtsfragen (hereinafter cited as "Z.L.W.") 28-39 (1969). *Cf.* also U.N. Docs. A/AC.105/C.2/SR.20 at 4 and A/CONF. 34/1X.3 at 12 (1968). C. Christol's reference in "The International Law of Outer Space" (vol. LV., Naval War College, Navpapers 15031) at 33 et *seq.* (1966) dates prior to the introduction, as a legally binding treaty provision, of the "common interests" principle in Article I (1) of 1967 Treaty.

purposes' as being non-aggressive and beneficial", has been affirmed in the United States Senate Committee on Foreign Relations, during the debate about the Treaty's ratification.[12]

b) According to a second school of thought, supported by other States represented in COPUOS and by many authors,[13] "peaceful" is intended as "non-military". The same term has been used in Article I of the 1959 Antarctic Treaty in the context of complete demilitarization. Even without taking into account the semantic sense of "peaceful" (a military activity could never be "peaceful" since it bears always, actually or potentially, violence), the term should no longer be interpreted in space law in the same manner it has been in classical international law relating to the earth, sea or air. Pre-spatial law has never known the principle of "use in the interests of all countries" introduced as a recommendation in Resolution 1721 (XVI) and converted into a perfect legal norm with binding force in Article I (1) of the 1967 Treaty. Although military defensive uses of outer space by means of conventional weapons remain not prohibited, the general acceptance of the principle set forth in Article I (1) can only mean that without being expressly prohibited, military activities with non-nuclear weapons in outer space, even if "defensive" in nature, are not lawful. That is because no military activity, in present circumstances, could be carried out "in the interests of all countries"; even if "defensive" and "beneficial", it can be in the interests of a sole State, or a group of States, only.

The "non-aggressive" interpretation of "peaceful" has its background in the failure of the early talks on complete disarmament in outer space. That failure was however inevitable, without an undertaking to ban all nuclear and conventional "earth" weapons, such as missiles, aircrafts and submarines. Disarmament in outer space is closely connected with the whole disarmament problem. In the absence of parallel and co-ordinated measures, under strict international control, with respect to a gradual ban of the arsenal of weapons such as strategic bombers or nuclear submarines, the prohibition of intercontinental missiles, or of non-nuclear space military objects, would constitute a unilateral and therefore an unrealistic step toward disarmament.

The "non-aggressive" theory tends to justify the development of the space military potential and the deployment of non-nuclear weapons in outer space, including the use of

---

[12]Hearing, *supra* note 3, at 59.

[13]Ch. Chaumont, Le Droit de l'Espace 96 (2d ed., 1970); R.K. Woetzel, Sovereignty and National Rights in Outer Space, Proc. 5th Colloquium on the Law of Outer Space 1-44 (1962); D. Goedhuis, General Questions on The Legal Regime of Space, in Int'l. Law Ass'n. (I.L.A.), 50th Report 72 at 77*ff.* (1962); P. de La Pradelle, Espace et Relations Internationales, 25 Revue générale de l'air et de l'espace 245 (1962); *cf.* Goedhuis, The Present State of Space Law, in I.L.A., The Present State of International Law 218 (1973). Krivickas' and Rusis' attempt, followed by A. Meyer and others, to set down the whole discussion on "peaceful" within a bipolar political framework is obviously not accurate. See Krivickas and Rusis, *supra* note 11; Meyer, *supra* note 11. Neither is the problem a "semantic" one, as supposed by Krivickas and Rusis (*id.* at 497). It concerns the juridical and not the linguistic meaning of "peaceful". Moreover, the latter sense is generally understood as "non-military," not only as "non-warlike". *Cf.* the authoritative statement of the former Chairman of COPUOS, presently President of the International Court of Justice, Prof. Manfred Lachs in his "The Law of Outer Space" 106 (1972).

space objects and stations for military communications and strategic reconnaissance. In accordance with such ends, and following the classical interpretation of "peaceful," not excluding non-aggressive activity, defensive military activities in outer space have been regarded as permissible and even "beneficial".

It can be pointed out, however, that in many official statements of the United States, in 1957 and particularly during 1958, the term "peaceful", as used in the context of early satellite projects and outer space uses solely for scientific purposes, was regarded as the opposite of "military",[14] and not merely of "non-aggressive".

The "non-aggressive" and "beneficial" interpretation has also been adopted in Section 102 (a) of the National Aeronautic Space Act of 1958, which states:

> The Congress hereby declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.[15]

Under that Act, development of space weapon systems, military defensive operations and activities, including research for defense, are compatible with the terms of the Section 102 (a) policy of "peaceful purposes". However, the declaration of intent in the enactment is a general statement of a goal, without binding force in international law. Neither the municipal statute, nor the congressional declaration of intent could create international law rules.

The declaration of intent in the congressional enactment and the analogous principle formulated as a general recommendation to States in U.N. G.A. Res. 1721 (XVI), reaffirmed in the 1963 Declaration of Principles, were *converted in a dispositive international law provision* incorporated in the Space Treaty.[16] That important *metamorphosis* has not been accurately understood by a series of jurists who have, years after the acceptance of the Treaty, assumed the "non-aggressive" thesis.

---

[14]For instance, see Staff of U.S. Sen. Comm. on Aeronautical and Space Sciences, Report: Documents on International Aspects of the Exploration and Use of Outer Space, 1954-1962, 88th Cong., 1st Sess. 52,66 (Doc. No. 18; 1963); Memorandum by United States, United Kingdom, and France on the Agenda for a Summit Conference May 28, 1958, *id.* at 5. *Cf.* G.A. Res. 1148 (XII) of November 14, 1957: "... The joint study of an inspection system designed to ensure that the sending of objects through outer space shall be *exclusively for peaceful and scientific purposes.*" (Emphasis added).

[15]S. Doc. No. 18, *supra* note 14, at 66.

[16]Article I, paragraph 1. For text, see *supra* note 9. The starting point of this provision, in the system of the United Nations space law documents, is paragraph 2 of the preamble of G.A. Res. 1472A (XIV) of December 12, 1959:

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

At the beginning, this could only mean a statement of policy expressed by the General Assembly as a desire devoid of any legal effect.

III. THE EXPRESSION "PEACEFUL PURPOSES" IN THE WORDING OF THE 1967 OUTER SPACE TREATY

In order to determine the legal meaning of "peaceful", one should keep in mind that no principle of peaceful use has been included in the body of the Outer Space Treaty. As a matter of fact, the general principle of peaceful uses figures in Paragraph 2 of the Preamble only. No mention of "peaceful" exists in any of the three fundamental articles (I-III) providing basic principles and rules of space law.

An expression "exclusively for peaceful purposes"[17] is included in paragraph 2 of Article IV, where it qualifies the specific regime of complete non-militarization of the Moon and the other celestial bodies.

Two additional references to the sole word "peaceful" are further included in the text of the following sentences of Article IV (2). Finally, the term "peaceful" is also used in both Articles IX and XI, in a context where no difficulties of interpretation might arise.

During the preparatory work in the Legal Sub-Committee, an attempt was made to include the provision containing the expression "for peaceful purposes" in the text of

---

Paragraph 2 of the preamble of G.A. Res. 1721A (XVI) of December 20, 1961, again used the same wording without any modification, as did paragraph 3 of the preamble of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. G.A. Res. 1962 (XVIII) of December 24, 1963. The Declaration, however, repeated the expression in paragraph one of the body of the text, stating that:

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

In space law doctrines and practice, "The 1963 Declaration has been considered as a draft international agreement on the subject, not as a General Assembly resolution having the force only of a recommendation. See the statement of Mr. Morozov (USSR) at 57th meeting of the Legal Sub-Committee, 5th N.Y. Sess., July 12, 1966, U.N. Doc. A/AC.105/C.2/SR.57 at 9 (1966).

[17]The expression, "exclusively for peaceful purposes" appears for a first time in the relevant documents of the U.N. in G.A. Res. 1148 (XII) of November 14, 1957. Line "f' (1) states that upon its entry into force, a disarmament agreement will provide for:

> The joint study of an inspection system designed to ensure that the sending of objects through outer space shall be exclusively for peaceful and scientific purposes.

In the context of that resolution "exclusively for peaceful and scientific purposes" can mean only "non-military" and not merely "non-aggressive". This is to be seen clearly from line (b) of the same paragraph 1 of the resolution which sets "peaceful use" as an opposite to the words "military purposes" and not only to "military non-aggressive" purposes.

The same expression "exclusively for peaceful purposes" has been used again in G.A. Res. 1348 (XIII) of December 13, 1958. It is to be noted that in G.A. Res. 1472 (XIV) of December 12, 1959, emphasis has been laid on the "benefit" provisions of the second paragraph of the preamble while the "peaceful purposes" expression has been maintained in paragraphs 4 and 6 of the preamble, without the adverb "exclusively." A regret of not having done the whole work that was to be done, can clearly be felt in this acknowledgment.

Article I. The proposal, supported by the delegations of India and Argentina,[18] did not reach the unanimity requested. It was clear that States which interpreted "peaceful" as synonymous to "non-military" were not able to assume a direct contractual obligation to use the whole outer space "peacefully", without the parallel undertaking of practical steps and measures of general disarmament.[19]

For the same reason, a further proposal of India[20] was equally unacceptable. It aimed to extend the application field of the expression "exclusively for peaceful purposes" as used in paragraph 2 of Article IV, to *all* outer space areas. Since the Treaty did not prohibit *all* military activities in outer space, the acceptance of the principle of use "exclusively for peaceful purposes" would obviously be in conflict with the other treaty provisions. Moreover, the Legal Sub-Committee of COPUOS has never been authorized to take any decision in the field of general disarmament.

After attempt to include in the text of the leading Article I, the expression "use for peaceful purposes" had failed, its inclusion in the title of the Treaty also failed.[21] So it remained in the preamble only. The care taken to avoid ambiguous interpretation was certainly the first cause for that refusal, too.

Being included in the preamble, where it appears at present, it may theoretically mean either "non-military" or "non-aggressive". In the first sense, its meaning covers the scope of the "common interests" principle of Article I (1) and involves the duty to refrain from any military use of outer space. In its second interpretation, "peaceful" encompasses military "defensive" activities and brings in harmony treaty provisions and present social reality. It forbids aggressive use of outer space only.

If the last interpretation were to receive support, it is necessary to ask whether it was necessary to inaugurate the Treaty with such a solemn declaration as that of Article I (1). It is more logical to suppose that even for the supporters of the "non-aggressive" interpretation, the sentence of paragraph 2 of the preamble signified non-military uses. As noticed in an authoritative comment, "if it were intended to forbid aggressive use only, mere reference to international law and the Charter of the United Nations would have sufficed."[22]

On the other hand, it may be submitted that the withdrawal of any mention of

---

[18]See U.N. Doc. A/AC.105/C.2/SR.65, at 11 (1966); *cf.* also SR.66, at 3 (Mr. Ruda—Argentina; Mr. Rao—India).

[19]*Cf.* the explanation given by the Soviet representative Mr. Morozov, in U.N. Doc. A/AC.105/C.2/SR.66, at 6-7 (July 25, 1966).

[20]Proposal of Mr. Rao (India), *Id.* at 6.

[21]The title of the Draft Treaty has been taken from the title of the 1963 Declaration of Principles. See U.N. Doc. A/AC.105/C.2/SR.63, at 6 (July 20, 1966). In its Article I, the Soviet Draft contained no mention of "peaceful uses."

[22]See M. Lachs, *supra* note 13 in *fine*, at 106.

"peaceful" in the wording of Article I enabled the authors of the Treaty to formulate the principle of non-military use of outer space under the disguised form of the "common interests" provision.[23]

As far as the "peaceful uses" principle is concerned, it is clear that it remained as a declaration of intent, since a preamble cannot lay contractual obligations with binding force. For some delegations, and particularly for the United States representative,[24] the sentence of paragraph 2 of the preamble, as well as the provision in Article I (1), implied an expectation which, he said, "everybody shares and believes in." For other delegations, the inclusion of the "peaceful purposes" principle in the preamble constituted a "practical solution"[25] which does not preclude but, on the contrary, supposes further elaboration of agreements ensuring that outer space should be fully demilitarized and used exclusively for "peaceful", *i.e.* for "non-military" purposes.

IV. THE FUNCTION OF THE KEY PROVISION OF ARTICLE I (1) IN INTERPRETING THE TERM "PEACEFUL"

In order to avoid misunderstandings and ambiguity inherent to "peaceful", a new principle implying a fixed obligation to use outer space exclusively for peaceful purposes, without specific reference to the language of "peaceful purposes," has been introduced into the text of the Treaty. This has been accomplished through the provision in the Principles Treaty that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries. The principle of peaceful purposes has been achieved through a form of circumlocution in which several words are employed rather than the single word "peaceful." This has produced a prescription which is a logical derivation and which undoubtedly excludes all military uses of outer space.

[23]For a further analysis, see *infra,* subtitle 4 of this study.

[24]See statement of Mr. Arthur J. Goldberg, Ambassador of the United States to the United Nations, in Hearing, *supra* note 3, at 6.

[25]Statement of Mr. Morozov, of the USSR, U.N. Doc.A/AC.105/C.2/SR.66 at 6 and, particularly, at 7 (1966):

> A number of questions would of course remain to be dealt with, after the elaboration of the treaty, particularly the use of outer space for exclusively peaceful purposes. The problem has been in part solved (c.a.) by the ban on placing in orbit around the Earth any object carrying nuclear weapons or any other kinds of weapons of mass destruction. The Soviet Union like many other peaceful countries, was naturally in favour of a total ban of the use of outer space for military purposes.

A regret for not having done the whole work that was to be done, may clearly be felt in this official acknowledgment.

One can also ask if it would perhaps not be preferable to postpone the conclusion of the Treaty until positive results in the U.N. Disarmament Committee were reached. The very small progress toward general disarmament achieved up to now shows, however, that such a policy would have been a wrong one. A lot of important practical problems relating to activities carried out in outer space would have been left without any positive legal regulation on the international level. The chaotic situation which would have resulted would undoubtedly be detrimental to world peace and security.

It is of greatest importance for realizing the true legal sense of the Article I (1) provision to know that a proposal to withdraw the sentence referring to "the benefit and interests of all countries", from the draft paragraph 1 of Article I and to put it in the preamble[26] was rejected by the Legal Sub-Committee. It seems, therefore, correct to submit that the intent of the authors could only have been to create a treaty obligation with binding force under international law, and not merely a statement of goals and good will.[27]

Although it is unlikely that this was the opinion of the United States ambassador to the United Nations, it is well established that no comment and no objection was made by him with respect to the final wording of paragraph 1 of Article I.[28]

Such comments were, however, made by him in his analysis of Article I, as well as in the statement he made before the Senate Committee on Foreign Relations in order to obtain consent and approval of the signed Treaty.

According to these comments, which may be considered as an official expression of the governmental views on the subject matter, Article I (1) is merely "a guide for space powers in developing their programs and conducting their activities in space".[29] It is "quite general in character", since it was "intended to be a statement of goals and objectives" only.

These explanations did not satisfy the majority of the Committee. In a series of interventions and statements, several Committee members expressed their concern about the concept of using outer space for the benefit and in the interests of all countries, which appeared to them as "indefinite" and "vague".[30]

The Reporter tried then to defend the supposed non-obligatory character of the "common interests" provision. His arguments were not convincing. It appeared that the principle set forth in Article I (1) was in point of fact a contractual obligation with binding force for all States parties to the Treaty:

---

[26]See the proposal of Mr. Krishna Rao of India, Summary Report of 63d meeting, 5th Session of Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, U.N. Doc. A/AC. 105/C.2/SR.63, at 7 (1966).

[27]The intent of the Sub-Committee has been that a "solemn treaty obligation should be created, confirming with legal force that outer space, including the Moon and the other celestial bodies, should be free for exploration and use for the benefit and in the interests of all countries . . ." See the statement of Mr. Darwin of the United Kingdom, Summary Report of 70th meeting, 5th Session of Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, U.N. Doc. A/AC.105/C.2/SR. 70 at 4 (1966).

[28]But see the statements of Mr. Goldberg in Summary Report of the 63d Meeting, 5th Session of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, U.N. Doc. A/AC.105/C.2/SR. 63 at 2,3,5 (1966).

[29] Hearing, *supra* note 3 at 52.

[30]*Cf. Id.* at 30-31.

> If Article I were a preamble that would be one thing. But it isn't; it is an article, and a treaty obligation, and I think it brings us into an obligation to make the use of outer space available to all countries, to treat our use of that for the benefit and in the interests of all countries. Indeed that is exactly what it says.[31]

Seeking to uphold the view that no direct obligation could arise from Article I (1) and urging that the function of Article I (1) was only to provide a "broad perspective" the Reporter, who was the U.S. representative in the Legal Sub-Committee of the COPUOS, insisted that the "common interests" provision was not self-executing. He asserted that as a statement of general purpose, this rule would have to be developed by means of further negotiations and arrangements on the international level.[32]

The accent put on the non-self-executing nature of the Article I (1) provision tended to minimize the validity of the "common interests" principle and to reduce its importance as an international law norm with binding force. Such an approach was certainly in harmony with the classical theory of self-executing and non-self-executing treaties, as known in American doctrine and practice in the municipal application of treaties since 1796.[33] It failed, however, to take into consideration new developments in municipal jurisprudence [34] and international law. Even when further legislative or executive implementing acts are needed in order to permit national courts or administrative authorities to apply a non-self-executing provision, it remains subject to compulsory execution or application in the municipal legal order. By virtue of the contractual nature of the treaty provision, which is legally binding on all contracting parties, a non-self-executing treaty rule is as operable as the self-executing ones; only its application is subject to different executory procedure, involving the legislative and the executive, rather than the judicial department. The efficacy, not the validity of the norm or its binding force, is affected by its non-self-executory nature. The Reporter's explanation received the following comment in the Senate Committee:

> Any article is operable. If this were a preamble it might be interpreted in one way, but this is not a preamble. Article I is just as operable as Article IV or Article V or Article VII and this business of the treaty being non-operable in part and operable in other parts, self-executing in part and non-self-executing in part, is ambiguous.[35]

---

[31] *Id.* at 59 (statement of Senator Albert Gore, Tennessee).

[32] *Id.* at 12, 35 (statement of Mr. Goldberg).

[33] See generally S. Crandall, Treaties, Their Making and Enforcement 162 (2d ed., 1916). A leading case in this matter is Foster v. Neilson, 27 U.S. (2 Peters) 253, 314-315 (1829) with the statement of Chief Justice Marshall interpreting Article 8 of the Treaty of February 22, 1819, between Spain and Florida. *Cf.* L. Erades & W. Gould, The Relation Between International Law and Municipal Law in the Netherlands and in the United States 329 (1961).

[34] See *e.g.*, Sei Fujii v. State, 217 P.2d 481 (Cal. App. 1950); modified by Sei Fujii v. State, 242 P.2d 617 (Cal. 1952); Q. Wright, National Courts and Human Rights—The Fujii Case, 45 Am. J. Int'l. L. 68-82 (1951).

[35] The objection was formulated by Senator Gore, see Hearing, *supra* note 3, at 33.

As a result of the debate, a proposal was advanced to adopt an *interpretative reservation* to Article I, in order to preserve national interests and to prevent communication, reconnaissance or other "non-aggressive" military space objects from falling within the "common interests" rule's field of application.[36]

Only after an energetic intervention of the then Secretary of State warning that the problem of a formal reservation could be "very substantial" since "nations have already signed,"[37] and after the statement of the then Chairman of the Joint Chiefs of Staff assuring that "no military objection" would arise to United States becoming party to the Treaty,[38] was the proposed official reservation rejected by the Senate Committee.

Nevertheless, it remains clear that the Article I (1) provision was ratified by the United States under the *tacit* interpretative reservation in respect to the non-compulsory character of the "common interests" principle. This is perhaps the principal reason for the "wait and see" approach put forth by commentators who have dealt with the legal content of Article I. Particularly significant is the astonishing silence of some recent space law books and studies with regard to the legal questions concerning the scope and the applicability of Article I (1).[39]

That those who have been concerned with the political implications of the "common interests" principle should view its implementation somewhat hazily, is to be expected. The provision needs further concretization on an international level, and legislative or executive implementing acts in municipal law in order to become directly applicable. Nonetheless, its obligatory character and binding force remain quite unaffected by the specific dynamics of its application. Moreover, international law does not recognize the validity of "trcait" reservations which have not been formulated under the conditions set force in Article 23 of the 1969 Vienna Convention on the Law of Treaties.

It is also irrelevant to argue that supposed "tacit consent" and practice of States since 1967 have given rise to a customary rule of permissible use of military non-

---

[36]In order to prevent such consequences, the Committee's Chairman, Sen. J.W. Fulbright (Arkansas) said he "really would prefer article I to have been in the preamble." *Id.* at 37. *Cf.* proposal in the Legal Sub-Committee by the representative of India, *supra* note 20.

[37]See the statement of Mr. Dean Rusk, Secretary of State, in Hearing, *supra* note 3, at 37.

[38]On verification capability of *unilateral* weapons in space procedures, see the explanations of Gen. Earle G. Wheeler. *Id.* 84-85, 89,92.

[39]See *e.g.*, S.H. Lay and H.J. Taubenfeld, The Law Relating to Activities of Man in Space (1970) at 98 and 101 where the authors—three years after the entry into force of the Space Treaty—expound the thesis that "the test is not and cannot be based on a definition of 'peaceful' or 'military'" and that "peaceful in the sense of the United Nations Charter and in normal use in international law means the opposite of 'aggressive' and no more," but fully ignore the existence and legal consequences of the principle set out in Article I (1). For a judicious criticism of thie negative attitude, see H. Francke, 21 Z.L.W. 145-149 at 148 (1972).

aggressive objects such as reconnaissance satellites.[40] No consensus could be presumed on the basis of a practice limited to a few States, since official protestations have in fact been made, since 1967, against the use of space objects which were harmful to the interests, recognized and protected by positive international law, of other States.[41]

In spite of the present practice of some States, the "common interests" provision of Article I (1) continues to keep its validity as a perfect treaty obligation, and not merely as a declaration of intent showing "prevailing consensus at a time".[42] As already pointed out, by including that provision in the body of the Treaty, and not putting it in the preamble, the authors of the Treaty clearly manifested an intention to consider Article I paragraph 1 as a fixed contractual obligation and not solely as a statement of goals without legal binding force. With its entry into force, the "common interests" rule achieved an independent significance and legal meaning, and any "*reservatio mentalis*", or further unilateral interpretation of it, are irrelevant under general international law.[43]

Lawyers should not be unduly impressed with the novelty of the Article I (1) principle. Whereas the word "peaceful" has been differently understood, there seems to be little doubt that "use in the interests of all countries" means "use for non-military purposes".[44] The interdependence between "peaceful" in the sense of "non-military" and "use in the interests of all countries" is evident, although it had not been revealed expressly during the preparatory work of the Treaty.

It is Article I (1) and not Article IV, that fixes and determines the fundamental criterion of reference relating to the legal use of outer space. This criterion mandates the

[40] See *e.g.*, M. Dauses & D. Wolf, L'espionnage par satellites et l'ordre international, 3 Revue générale de l'air et de l'espace (R.G.A.E.) at 295 (1973). No mention of the decisive importance of the "common interests" principle is made in this article to clarify the legal nature of strategic reconnaisance by space objects.

[41] For a formal protest against the use of reconnaissance satellites, see Al Ahram, August 21, 1970, p. 1; Tribune de Lausanne, August 21, 1970, p. 32, and as a positive result, the unlawful aerospace survey of the Suez Canal area has been stopped. The public subjective right arose from the principle of Article I (1) of the Outer Space Treaty and has also been claimed by the Government of Cambodia in order to prevent the alleged unlawful use of a mirror-satellite to turn night into day throughout a vast area of Viet-Nam and neighboring countries, including Cambodia, for strategic purposes. The protestation has been addressed to the President of the United Nations Security Council. As a result, the project of the U.S. Department of Defense has not been carried out. See the letter dated May 3, 1968, from the Cambodian representative, to the United Nations, U.N. Doc. S/8574 (1968). For a Soviet official protestation against the use of military reconnaissance (spy) satellites, see the statement of the Chief Marshall of the Soviet Air Force, K. Vershinin in the New York Herald Tribune (Paris ed.), April 13, 1966, p. 2, col. 5. Retaliatory practice in this field of space activities cannot provide the basis for a new customary international law. For a further discussion on the subject, see *supra* note 10 at 373-380.

[42] *Cf.* the brief account of the 68th annual meeting of the American Society of International Law (Space Stations: Present and Future) by W. Heymer, 23 Z.L.W. 177, 180 (1974).

[43] On the "objective existence" of the text of a treaty, as having its own value, independent of the will of the parties, see A. Favre, Principes du Droit des gens 251-260, at 252 (1974); *cf.* Articles 31, 32 of the Vienna Convention on the Law of Treaties.

[44] *Cf.* M. Lachs, *supra* note 13, at 105-106.

exploration and use of outer space in the interests of all states. The principle set forth in Article I (1) is intimately connected with the preamble's prescription of use for peaceful purposes, as well as with the disarmament provisions of Article IV, paragraph 1 and 2. The "soft law" of Article I (1) has been reinforced by the prohibitive rules of Article IV, which constitute a "hard law" of duly specified and self-executing treaty obligations. Yet Article IV constitutes but a limited, or partial application of the general principle contained in Article I (1). The objectives of the obligations established in Article IV are to prohibit a variety of, but not all, possible military activities in outer space. The objective of the fixed treaty obligation in Article I (1) is to obtain from all States Parties and especially from the major space powers, the required domestic legislative and executive implementing acts, to ensure that use of outer space should eally be "for the benefit and in the interests of all countries".

The range of action of the rule set forth in Article I (1) is larger than the scope of the principle of "use for exclusively peaceful purposes". For instance, the unilateral use of the geostationary orbit can be really "exclusively peaceful", that is without any strategic implication, but such a use may nevertheless appear unlawful under present space law, since it is opposite to the "common interests" rule. The geostationary orbit constitutes a limited natural resource, and no lawful use of it could be duly recognized, if it is not coordinated with the legally protected interests of the other countries.

V. "EXCLUSIVELY" AS ADDITIONAL EMPHASIS ON "PEACEFUL"

A further question relates to the proper sense of the adverbial expression "exclusively peaceful" as used in the first sentence of paragraph 2 of Article IV.

In the system of specific arms control measures set forth in both paragraphs of Article IV, the qualification "exclusively peaceful" characterizes the particular use of the Moon and other celestial bodies. This use, as pointed out above, excludes all kinds of military, and not only "warlike", activities on planets other than the Earth. The mandate to use "exclusively for peaceful purposes" does not apply to all of the space environment. In the orbital space around the Earth, or in the deep space, no prohibition presently exists with respect to "non-aggressive" military use, excepting the nuclear and mass destriction weapons' ban in Article IV (1). However, the mandate to use "in the interests of all countries" replaces, in the system of the Treaty, the more restricted order to use "exclusively for peaceful purposes".

The difference between the two rules consists in the fact that the "common interests" provision is a programmatic clause of a non-self-executing nature, whereas the "exclusively peaceful" principle, so far as the use of the Moon and the other planets is concerned, requires *no additional agreements* and measures to be directly applicable. The scope and meaning of the "exclusively peaceful purposes" principle is clearly explained by the further provisions of a prohibitive character contained in paragraph 2 of Article IV. Without directly violating international law, the enforcement of the "common

interests" rule can be blocked by the lack of additional legislative, or executive, provisions promulgated by national authorities. Without affirmative national action the "common interests" rule could become a dead letter yet, the breach of a prohibitive norm is an international crime, for which a series of sanctions are available.

As far as the legal system set forth in Article IV (2) is concerned, a curious situation may be noticed. On the one hand, there is the expression "exclusively peaceful" applied to the use of the Moon and other celestial bodies. On the other hand, the sole term "peaceful" has been included with respect to the purpose of using military personnel, equipment or facility. One could suppose that "peaceful", in latter cases, would mean something different from "exclusively peaceful".

The opinion has been expressed in space law doctrine[45] that "peaceful", in the above mentioned provisions of Article IV (2), might really cover "defensive", non-aggressive, military activities too. This assumption has partially been founded in the language contained in paragraph 2, when compared with the analogous provision of Article I of the Antarctic Treaty. In the latter, all measures of military nature are expressly prohibited, whereas in Article IV (2) of the Space Treaty only examples are given, without indicating a general prohibition of "all" activities of a military character.

However, the list of the prohibited uses in Article IV (2) is an explanatory, not an exhaustive one. The presence of the two "peaceful" provisions relating to the use of military personnel and "any equipment," is therefore not to be understood as being a concession in favour to the "non-aggressive" interpretation of "peaceful", but as a necessary illustration of the legal concept of "military". That meaning is to be determined by the purpose and real application of a given space activity, and not by the presence of "military" components in the use such as the status (civil or military) of the crew, or the nature of the space equipment. Therefore, the expression "any equipment" should not be interpreted to include arms or weapons, but rather mean equipment to support lawful space activity, such as exploration instruments, uniforms, cosmic suits, etc. Any breach in this understanding would endanger future exploration on other celestial bodies and would jeopardize the whole disarmament system of Article IV (2). No "exclusively peaceful" exploration can be conceived under the cover of military "defensive" arms.[46]

---

[45] *Cf.* J.E.S. Fawcett, *supra* note 3, at 34-36. *Cf.* also a more recent statement of the U.S. delegate, Mr. A. Frutkin in COPUOS, U.N. Doc.A/AC.105/PV.113 at 8 (September 7, 1972). The need for a special approach for analyzing the Space Treaty is stressed by Brooks in his Legal Aspects of the Lunar Landings, 4 Int'l. Lawyer 415-432 at 427 (1970).

[46] The intent of the United Nations General Assembly has obviously not been to cover military preparations, or military defensive activities, while speaking of use of outer space "exclusively for peaceful and scientific purposes." See C.W. Jenks, Preliminary Report to the Bruxelles Session of the Institut de Droit International, 50 Annuaire de l'Institut, pt. 1, 128-383, at 171 (1963).

If presence of life were to be found on another planet (such eventuality does seem unrealistic nowadays and for a long time in the future)—and the need to protect astronauts from biological danger becomes actual, particular provisions concerning the use of specific defensive instruments (not necessarily arms) may be elaborated.

The specific emphasis on "exclusively" can be perceived also by comparison to a series of provisions in the newly proposed law for the sea-bed and the ocean floor. Paragraph 3 of the U.N. General Assembly Resolution 2660 (XXV) of 1970 contains the expression "exclusively for peaceful purposes" with respect to the acknowledgment that certain ocean areas may be reserved for the common interests of mankind. This provision was not included in the 1970 Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof. Moreover, the language "for peaceful purposes" and not the adverbial sentence containing the expression "exclusively for. . .", has been incorporated in the preamble only, just as in the case of the preamble of the Outer Space Treaty.

The different degrees of intensity in which the term "peaceful" figures in both treaties, seem to correspond with the different legal realities to which it should apply. Where a complete demilitarization has been established, the restrictive expression "exclusively peaceful" has been utilized in the wording of the Treaty (Article IV, 2). The same expression does figure in Resolution 2660 also, but there it cannot mean a contractual obligation with binding force, inasmuch as that resolution has not been unanimously agreed by the United Nations General Assembly. Since no complete disarmament of the sea-bed and the ocean floor has been achieved by the 1970 Treaty, the term "peaceful" only has been used in its preamble, in the same manner as in the preamble of the Space Treaty. In both places the term constitutes an acknowledgment, a recommendation and an expectation only, even for contracting parties for which "peaceful" did, and does really, mean "non-military".[47] Similarly, "exclusively peaceful", as contained in Resolution 2660 applies to a general intent only, not to a fixed legal regulation under general international law.

The views of the Swiss government as to the meaning of Article IV (2) may be quoted in order to show that "peaceful", as used in that paragraph of the Space Treaty, could not mean something very different from "exclusively peaceful", that is "non-military". The Swiss Federal Council preferred to use the expression "for non-military purposes" instead of "for any other peaceful purposes" as contained in the third sentence of paragraph 2. "Peaceful" has therefore been understood as synonymous to "non-military" in the context of Article IV, and even in the text of the whole Treaty:

> Military personnel and installations can nevertheless be used in the whole outer space for non-military purposes.[48]

That "peaceful" signifies, according to the genuine semantic sense of the word, "non-military", and not merely "non-aggressive" in the language of all newly created international agreements, is to be seen in Article II of the Statute of the Atomic Energy

---

[47] *Cf.* Summary Report of 66th meeting, 5th Session of Legal Sub-Committee of Committee on Peaceful Uses of Outer Space, U.N. Doc. A/AC.105/C.2/SR.66 at 7 (1966).

[48] See, Message, *supra* note 5 at 870.

Agency[49] and particularly in Article I of the 1959 Antarctic Treaty, where the provision "Antarctica should be used for peaceful purposes only" covers a regime of complete disarmament and non-militarization of that area. "Any measure of a military nature" (second sentence of Article I) is expressly prohibited. The analogy between this text and paragraph 2 of the 1967 Treaty is obvious.[50]

VI. THE CONCEPT OF "LAWFUL" IN SPACE

Legality means conformity with an existing, *i.e.*, valid, legal rule or principle. There are two kinds of law norms in the international legal order, dispositive and prohibitive. Therefore, the criteria for lawfulness in general international law are more complicated than in municipal law.

A conduct is lawful until inhibited by established principles or rules of law; a conduct of a state is unlawful when contrary to a clearly established principle or rule of international law.

All forms of military, and not only "warlike", uses of outer space, including defensive activities, are in conflict with the clearly established principle set forth in Article I (1) of the Space Treaty. Non-aggressive, or defensive, uses of outer space cannot be lawful since almost all existing states have agreed on that principle. Such uses are still legally permissible under the international law relating to earthly, sea or air activities but they are prohibited by the law of outer space.

The principle of Article I (1) is not a "*de lege ferenda*" provision; it expresses a fixed treaty obligation addressed to all contracting parties and in particular to all space powers. That obligation is to take all necessary measures including implementing acts to ensure its practical application. That obligation does exist *de lege lata,* since the Outer Space Treaty is a valid international law document.[51]

It has recently been submitted in space law doctrine[52] that the provision of Article I (1) of the 1967 Treaty lacks legal force, since the Treaty allowed—if only by implication—military uses of outer space. Prevailing protection of national interests in the

---

[49]In the text, "the contribution of atomic energy to peace, health and prosperity throughout the world" is linked with the goal that it be "not used in usch a way to further *any military purposes.*" (Emphasis added). For details, see B. Cheng, International Co-operation and Control: From Atom to Space, 15 Current Legal Problems 266 (1962); G. Zhukov, Atomic Demilitarization of the Cosmos, 34 Sovietskoe Gosudarstvo i Pravo 79-89 (1964).

[50]On similarities to the Antarctic Treaty, *cf.* C. Christol, *supra* note 11, at 257-259.

[51]*Cf.* V. S. Vereschchetin, Kosmos, Sortrudnichestvo, Pravo (Space, Collaboration, Law) 21 (1974), emphasizing the obligatory character and the binding force under international law of the Treaty.

[52]*Cf.* D. Goedhuis, The Present State of Space Law in International Law Association 1873-1973, The Present State of International Law 201-24, at 210 (1973).

Treaty, above any other interests, as well as implicit "authorization" of military "non-aggressive" uses (excepting those expressly mentioned in Article IV, 2), provide evidence, according to that opinion, for the negligible, if any, value of the rule of Article I (1).

However, lack of prohibition does not mean, under present international law, permission, or authorization. Claiming that a given military, non-aggressive activity which has not been expressly prohibited in the Space Treaty, is "permissible" and therefore a "lawful" one, sets international law back half a century, to the voluntaristic sentence of the Permanent Court of The Hague in the *Lotus* case (September 7, 1927).[53]

If several military "defensive" uses of outer space remain yet not prohibited, this does not necessarily mean that they are legal and lawful under space law. As noticed in American space law doctrine, "international law does not consist of a detailed and all-encompassing set of prohibitions".[54] Before engaging in space activities, a State should verify not only if the activity may fall within prohibited principles and rules such as those included in both paragraphs of Article IV, but also if they are in harmony with fundamental *dispositive* rules prescribing specific lines of conduct. Such a rule is the "common interests" principle of Article I (1) of the Space Treaty. It is the key provision that determines the legal parameters of every activity in space.

It is quite superfluous to argue in order to "prove" the inaccuracy of the "common interests" rule, that nothing was said in the Treaty about who is going to determine whether or not a particular use is "in the interest of all countries".[55] Article II (7) of the United Nations Charter provides clearly that jurisdiction and control over national territory belong only to the nation-state. This means that in the case of remote sensing by satellite over a foreign territory, it is the State concerned that will be competent to decide whether or not the given activity is consistent with its legally protected interests.

Introducing a separate legal regime of activities performed on Earth as a consequence of the uses of outer space[56] seems to be an inadequate method of eliminating difficulties which arise from the application of the "common interests" rule of activities such as remote sensing or monitoring by space objects. Without using outer space, no activity such as space photography or data collection and interpretation would be possible. If the function of a tool placed in outer space is "entirely earth-oriented", its activity could no longer be treated as a genuine space activity. Though it flies in a space environment which has been declared as "free for exploration and use by all States" (Article I, paragraph 2 of the Treaty), the right of "free" flight becomes extinct when the

---

[53] P. C. J. I. Series A, No. 10 at 18; On the problematic value of the principle according to which all that is not expressly prohibited is implicitly permissible, see C. Rousseau, Droit international public 233 (7th ed., 1973).

[54] C. Christol, *supra* note 11, at 267.

[55] See D. Goedhuis, *supra* n.52, at 210.

[56] *Cf.* E. Galloway, The Role of the United Nations in Earth Resources Satellites, Proc. 15th Colloquium on the Law of Outer Space 21 (1973).

activity of the flying object does not satisfy the requirements of the "common interests" rule.[57]

The overriding military aspects and strategic implications of a great number of activities in space do not attach a "hypocritical flavour" to the demand to use space in the interest of all countries.[58] Neither is it an "idealistic approach" to claim the necessity of international control in this field. The verification capabilities of national space reconnaissance objects are too limited and constitute a half-measure. Specific characteristics of the activities in space demand a general solution to the inspection problem as a part of complete disarmament.

CONCLUSION

As result of this inquiry, it appears that:

a) The expression "exclusively for peaceful purposes" is used in Article IV (2) of the Space Treaty in order to ensure that the Moon and other celestial bodies will be treated as completely demilitarized areas by reason of the prohibitive legal system established in that Treaty.

b) In order to avoid ambiguity, and bearing in mind that no full disarmament has been achieved in all of the space environment, the Treaty was drawn so as to avoid the expression "use for peaceful purposes" in the leading Article I. Instead, the drafters accepted "use in the interests of all countries". So the term "peaceful" remains either in provisions where no danger of controversy could arise (Articles IX and XI), or in the preamble where "peaceful" cannot be linked with a fixed treaty obligation. On the other hand, however, the "common interests" principle in Article I (1) implies a fixed contractual obligation to refrain from any activity that would not be in the interests of all states. In our divided world, any military activity including defensive or "non-aggressive activity", cannot be beneficial for all countries and thus cannot satisfy the fundamental requirement of the key provision of Space law.

It is possible to eliminate the discrepancy between the obligation resulting from Article I (1) and the lack of complete prohibitive rules in the arms control system of Article IV (1). Instead of looking for a new customary law that would change the provision of Article I (1), or waiting for it to die away by a slow process of atrophy, real steps should be undertaken by States, and particularly by the major space powers, to implement the "common interests" principle by a series of new international arrange-

[57] The freedom of outer space is not an original privilege arising from the nature of the space environment, but a legal consequence of the tacit refusal by states to claim national sovereign rights to that area. The renunciation has, however, been made on condition that exploration and use of outer space, including the orbital zones around our planet, should be exclusively for peaceful and scientific purposes, or, in other words, for the benefit and in the interests of all countries.

[58] *Cf.* F. Schick, International Law in Outer Space, 18 Bull. Atomic Scientists 3 (No. 9, November 1962).

ments ensuring its efficacy. A true fulfilment of the obligation set forth in Article I (1) can only be achieved if all military uses of outer space are expressly prohibited. Measures intended for the purpose of general disarmament would at the same time constitute real steps toward the carrying into effect of the basic principle of Article I (1).

The disarmament of outer space appears, in the light of the analysis of that treaty provision, a binding legal obligation resulting from a generally accepted multilateral agreement under international law. It is not merely a political issue, as the disarmament on the Earth still is. To recall the obligatory character of the legal norm set forth in the leading article of the Space Treaty—and to demand further practical measures of arms control and demilitarization—seems to be an essential task of the United Nations Committee on the Peaceful Uses of Outer Space.