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# IN HONOR OF DR. PÉPIN\*

G. P. Zhukov<sup>+</sup>

The international space community is pleased to honor Professor *Eugène Pépin* on his birthday celebration and takes this occasion to recognize his outstanding achievements, particularly in the development of international and space law.

*Professor Eugène Pépin* served as President of the International Institute of Space Law from 1963-1973, and since that time he has served as its Honorary President. He is an outstanding lawyer with extensive experience and vast knowledge in space and air law. From the very beginning of the development of space law, his wisdom and experience has benefited all who have followed his footsteps.

Since 1957, *Professor Eugène Pépin* has taken part in the space law colloquia of the International Astronautical Federation and was the founder of the International Institute of Space Law. As President of the Institute, he expended much of his time and energy in order to make it the leading international center for the study of space law. *Professor Pépin* reflected on the results of these activities in his book, "History of the International Institute of Space Law of the International Astronautical Federation" published in 1982.

Within the framework of the Institute, *Professor Pépin* has done a lot to review the practice of space law teaching around the world and to publish an annual bibliography of space law. In connection with the annual colloquia on space law, organized under his leadership as President of IISL, *Professor Pépin's* above mentioned activities have been a valuable contribution toward increasing the knowledge of space law in the world for the common and peaceful benefit of all mankind.

As President of the IISL, its Honorary President, author, lecturer, editor, commentator and through other scientific activities, *Professor*

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\* **Editor's note:** This article was written before the recent death of Dr. Eugène Pépin who not long ago celebrated the 100th anniversary of his birth and to whom the previous and current issues of the JOURNAL OF SPACE LAW have been dedicated. The JOURNAL joins his colleagues and friends all over the world in expressing its deepest sympathy to his relatives and loved ones.

+ **Professor, Doctor of Sciences (Law);** Honorary Director of the International Institute of Space Law; member of the International Academy of Astronautics.

*Pépin*, from the beginning of the space age up to the present, has contributed to the creation and progressive evolution of international space law. Additionally, he has been the author of many publications, among them "Cours de Droit de l'Espace."

In June of 1958, *Professor Pépin* delivered the world's first academic lectures on space law at the International Institute of Air and Space Law at the Institute of Contemporary International Relations in Paris, France (1961-1982). At that Institute, he created special courses on international law, scientific and technological progress, space and air law, telecommunications law, nuclear law, and admiralty.

*Professor E. Pépin* has been invited to give lectures on international space law all over the world, including several universities in Europe (Netherlands, Italy, U.S.S.R.), Canada, United States, South America (Brazil, Mexico, Argentina, Chili, Bolivia, Peru), and Asia (Indonesia). *Pépin's* lectures and publications on space law are consistently avant-garde revealing his original insights, as gleaned from his wide experience and knowledge..

*Professor Pépin* is known around the world as one of the truly great pioneers in the formulation of air law. From 1922 to 1944 he was a member of the Legal Committee of the International Aviation Commission. From 1944 to 1954, he was the first Director of the Legal Bureau of the International Civil Aviation Organization (I.C.A.O.). He was the guest of honor at the 26th Session of the ICAO Legal Committee (Montreal, April 28-May 13, 1987) at which the Committee paid tribute to his contributions to the development of international air law and its codification.

From 1951 to 1954, he gave lectures on the regulation of international civil aviation at what was then called the Institute of Air Law in Montreal, Canada. In 1955, he became the second Director of the Institute, a position he held until 1959.

In 1958, on the request of *Professor Pépin*, the Board of Governors of McGill University changed the name of the Institute to the "Institute of Air and Space Law." During his directorship, *Professor Pépin* continued lecturing at a rate of three hours every morning, seven months a year.

In 1974, *Professor Pépin* gave a series of lectures on air law at The Hague Academy of International Law. On the eve of his 100th anniversary, *Professor Pépin* was invited by alumni of this Institute to speak on a topic of great importance to world peace and human survival: The Denuclearization and Demilitarization of Outer Space.

With all that has been said it is necessary to add that *Professor Pépin* received a sound university education and had a brilliant diplomatic career.

For nine years (1904-1913), *Professor Pépin* studied law at the Law Faculty of Paris University, where he received his doctorate degrees on history of law and international law. He also received degrees at the Literary Faculty (licence es lettres) of Sorbonne, the School of High Commercial Studies (Ecole des Hautes Etudes Commerciales) and the Archives School (Ecole des Chartes).

From 1918 to 1920, *Professor E. Pépin* was the Secretary of the Central Drafting Committee of the Paris Peace Conference. The task of this committee was to finalize the text of all Peace Treaties, as well as other international conventions, such as the 1919 Convention on international air navigation. He was also a member of the geographic committee on the delimitation of the frontiers of new states.

In January 1920, *Dr. E. Pépin* was put in charge of publication of the Acts of the Peace Conference. This publication was completed in 1934.

From 1920 to 1930, *Dr. E. Pépin* was in charge of the Legal Section of the League of Nation's Service at the French Ministry of Foreign Affairs. In that capacity, he attended the Council and Assembly sessions of the League and many other international conferences (on opium traffic, arms, military munitions and material trade; and the first conference on international law codification). In 1928, at the Panamerican Conference in Havana, he participated in the discussions on the Panamerican Aviation Convention. From 1930 to 1933, he was a legal advisor to the Ministry of Foreign Affairs of Japan. From 1934 to 1939, he assisted the VII Panamerican Conference in Montevideo and was involved in studying Pacific problems. He assisted in different functions during World War II.

*Professor Pépin's* achievements have been recognized by his receiving many outstanding awards, including the Legion d'honneur, the Cross of War G.M.I., the Order of the Rising Sun, and the Andrew G. Haley Gold Medal. Moreover, he is a Doctor "*honoris causa*" of McGill University, and a distinguished member of the International Academy of Astronautics.

*Professor Pépin* has been very active in different French professional societies. He served as President of the French Association of Air and Space Law in 1984, he was elected "Membre d'Honneur" of the New French "Academie Nationale de l'air et de l'espace." *Professor E. Pépin* is known for being a pioneer in aviation photography, as well as for his capability to direct balloons. Those who have had the privilege to meet and to speak with *Professor E. Pépin*, will always remember his extraordinary personal qualities.

THE ROLE OF UNITED NATIONS DECLARATIONS  
OF PRINCIPLES IN THE PROGRESSIVE  
DEVELOPMENT OF SPACE LAW

*Vladimir Kopal\**

In his papers published before and shortly after the launch of the first man-made objects into outer space, *Professor Dr. Eugène Pépin* called for the timely establishment of an adequate legal basis for space activities by the international community. For example, in a lecture delivered on 6 November 1957 he said: "I sincerely hope that some international agency or a government will take, in the near future, the lead for the preparation of a convention. Its universal acceptance would benefit not only the immediate future of scientific research in space, but also the safety of present circulation within the atmosphere and of the people on the surface; it would also prepare the future of the circulation of man in space."<sup>1</sup>

This idea was extended by *Professor Pépin* even before the General Assembly of the United Nations adopted its Resolutions 1348 (XIII) of 13 December 1958 and 1472 (XIV) of 12 December 1959 which established a special body to deal with international co-operation in the peaceful uses of outer space. This body, originally an *Ad Hoc* Committee and since 1959 the permanent Committee on the Peaceful Uses of Outer Space (COPUOS), was requested, *inter alia*, "to study the nature of legal problems which may arise from exploration of outer space."<sup>2</sup> This mandate of COPUOS was confirmed and even amplified in Resolution 1721 A (XVI) of 20 December 1961, which also recommended some basic principles to States for their guidance in the exploration and use of outer space.

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\* Professor of Law, Doctor of Sciences. Chief, Outer Space Affairs Division, United Nations. The opinions expressed in this paper are those of the author and do not necessarily reflect the views of the United Nations.

1. See Prof. E. Pépin, "Legal Problems Created by the Sputnik," lecture given on 6 November 1957 to the Canadian Bar Association (Quebec Maritime and Air Law Section), reprinted in *LEGAL PROBLEMS OF SPACE EXPLORATION, A SYMPOSIUM 187* (Prepared by Legislative Reference Service, the Library of Congress, Washington, 1961).

2. See para. 1(b) of U.N. Resolution 1472A (XIV) of December 12, 1959.

When the Committee's consideration of legal aspects of space activities started, it became clear that an attempt at drafting immediately a comprehensive code to govern space activities would be premature. The rule of law in outer space should instead be elaborated step-by-step,<sup>3</sup> reflecting the progress in the conquest of space and the actual need for international co-operation in this new area of human endeavor. Thus the idea of a single international convention on outer space was replaced by that of a progressive development of the law of outer space through a number of legal instruments dealing with the most urgent problems of space activities.

Moreover, the first discussions in the Legal Sub-Committee, which was established, together with the Scientific and Technical Sub-Committee at the ninth meeting of COPUOS in 1962<sup>4</sup> and convened its first session in Geneva on 28 May of the same year, indicated that the development of a legal basis for space activities would lead first to the drafting of a document that should establish a set of general principles, rather than detailed rules to govern the rapidly developing space activities. And when the question of the legal form was considered, it was found more appropriate to adopt such a document first in the form of a General Assembly declaration.<sup>5</sup> In this way, the first legislative act of the United Nations in the field of space law emerged as the 1963 Declaration of Legal

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3. This approach was already reflected in the *Report of the Ad hoc Committee on the Peaceful Uses of Outer Space to the United Nations General Assembly*, U.N. Doc. A/4141, Part III, para. 7 (1959).

4. The two Sub-Committees, composed of the members of COPUOS, were created for detailed consideration of specific proposals and suggestions concerning scientific, technical and legal questions made by members of COPUOS for the development of international co-operation in the field of space exploration for peaceful purposes. (See the statement of the Chairman of COPUOS in *Verbatim Records of the Ninth Meeting held on 29 March 1962*, U.N. Doc. A/AC.105/PV.93. at 3 (1962).

5. Concerning the assessment of the first stage of international co-operation in the field of space law, see MANFRED LACHS, *THE LAW OF OUTER SPACE, AN EXPERIENCE IN CONTEMPORARY LAW-MAKING* 27-41 (Sijthoff, Leiden, 1972).

Principles Governing the Activities of States in the Exploration and Use of Outer Space.<sup>6</sup>

*The 1963 Declaration of Legal Principles*

Twenty-five years have elapsed since the adoption of this document, but even in light of what has been done in the progressive development of space law since then, we must recognize that the 1963 Declaration of Legal Principles was a remarkable achievement. Almost all of the fundamental principles of space law of our times originated in this Declaration and they still provide a succinct picture of the general nature and content of this new branch of international law.

As to its structure, the 1963 Declaration consisted of a preamble and nine operative paragraphs which may be divided into two groups. The first group included four general principles which established the purposes of the exploration and use of outer space, characterized the legal status of outer space and celestial bodies and outlined the scope of legality of activities of States in this new environment. While outer space and celestial bodies were declared free for exploration and use by all States on a basis of equality, this freedom should be exercised within certain limits. As declared in paras. 1 and 4 of this document, space activities "shall be carried on for the benefit and in the interest of all mankind... in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding."

The second group of paragraphs of the 1963 Declaration were of a different nature. In fact, each of them provided a set of initial rules for handling some already known problems of space activities. Thus they created a starting point for further, more specifically oriented space law projects.

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6. This Declaration was included in General Assembly Resolution 1962 (XVIII) adopted by unanimity on 13 December 1963. See its text in 18 U.N. GAOR Supp. (No. 15), at 15-16, U.N. Doc. A/5515 (1963).

The adoption of the UN Declaration was preceded by discussions on similar subjects in some concerned international non-governmental organizations. At its session in Brussels, the prestigious *Institut de Droit International* adopted a resolution on outer space called "Le régime juridique de l'espace". See 50 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 361-364 (Tome II/1963). Since 1960, the International Law Association (ILA) has also been involved in space matters, first through its Air Law Committee, which was later transformed into the Air and Space Law Committee. The results of these discussions can be found in the reports of the biennial conferences of the organization. Finally, we should recall the systematic work of the International Institute of Space Law (IISL), which was established by the International Astronautical Federation (IAF) in 1960 and which developed its activities particularly after 1963, when Professor E. Pepin was elected its President.

The first of these sets of rules (para. 5) dealt with international responsibility for national activities, taking account of different subjects or entities carrying on such activities. The next paragraph declared the principle of co-operation and mutual assistance of States in the exploration and use of outer space, as well as their regard for the corresponding interests of other States. A procedure of consultation was also outlined in this paragraph for solving problems of potential interferences. Paragraph 7 enshrined an important principle of jurisdiction and control of the State of registry over its space objects and any personnel thereon while in outer space, confirmed the continuity of ownership of objects launched into outer space and stipulated the return of a space object or its component parts to the State of registry. Paragraph 8 established the principle of international liability of a launching State (or States in a similar position) for damage caused to foreign subjects in all environments. Finally, the principle of assistance, in case of distress, to astronauts, who were designated as envoys of mankind, was declared and a promise of their safe and prompt return in case of emergency landing in foreign States or on the high seas was made.

If we compare the content of all these principles with the elements suggested by *Professor Pépin* (in his above-mentioned paper) for inclusion in an international regulatory act for outer space, we conclude that practically all of *Professor Pépin's* elements were reflected in the 1963 Declaration of Legal Principles. Of course, this Declaration was not an international convention of a type like the 1944 Chicago Convention on International Civil Aviation. This is because the state of development of astronautics in the early 1960's was significantly different from that of aviation which, by the end of World War II, already had a relatively long record and was seen to have enjoyed wide prospects for further growth.

Nevertheless, progressive amplifications of the legal principles set out in the 1963 Declaration followed at relatively short intervals. During the period between 1966 and 1979, five general multilateral treaties, which incorporated the initial principles into legally binding instruments and developed them further, were successfully worked out in COPUOS, which has, since its establishment, played the role of a focal point in the development of international multilateral co-operation in the

peaceful uses of outer space.<sup>7</sup> Without any doubt, the most important of the subsequent instruments has been the 1967 Outer Space Treaty, which was directly based on the 1963 Declaration. On the occasion of the twentieth anniversary of the entry into force of the 1967 Outer Space Treaty, which has become one of the significant law-making instruments of present international law, enjoying wide endorsement among the members of the international community,<sup>8</sup> the General Assembly commemorated the conclusion of this Treaty in its Resolution 42/68 which was adopted on the basis of consensus on 2 December 1987. The Resolution stated that the Treaty "has played and continues to play a positive role in the implementation of the purposes and principles of the Charter of the United Nations and the progressive development of the law of outer space, including the elaboration and adoption of other international instruments governing the outer space activities of States."<sup>9</sup> It should be observed in this connection that much of this praise also belongs to the 1963 Declaration of Legal Principles, the qualities of which greatly facilitated its transformation into the fundamental instrument of space law - the 1967 Outer Space Treaty.

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7. These instruments are as follows:

1. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies - adopted by the UN General Assembly on 19 December 1966, opened for signature on 27 January 1967, entered into force on 10 October 1967;

2. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Object launched into Outer Space - adopted by the UN General Assembly on 19 December 1967, opened for signature on 22 April 1968, entered into force on 3 December 1968;

3. Convention on International Liability for Damage Caused by Space Objects - adopted by the UN General Assembly on 29 November 1971, opened for signature on 29 March 1972, entered into force on 1 September 1972.

4. Convention on Registration of Objects Launched into Outer Space - adopted by the UN General Assembly on 12 November 1974, opened for signature on 14 January 1975, entered into force on 15 September 1976;

5. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies - adopted by the UN General Assembly on 5 December 1979, opened for signature on 18 December 1979, entered into force on 11 July 1984.

For the the texts of all these instruments, see THE UNITED NATIONS TREATIES ON OUTER SPACE. ( United Nations, New York, 1984).

8. According to an informal list prepared for the 27th session of the Legal Sub-Committee of COPUOS in 1987, eighty-eight States, including all space-faring Nations, have become parties to this Treaty by ratification, accession or succession, and twenty-nine additional States have signed it. See *Present Status of Outer Space Treaties* 2-5 (1987).

9. See para. 5 of the preamble to this resolution.

*1982 Principles Governing Direct Television Broadcasting*

Because of its relatively high rate of production of multilateral instruments, the period from 1966 to 1979 could be characterized as the golden age of space law. However, we should not forget that during the 1970's COPUOS and its Legal Sub-Committee also started discussing some politically and technically complex problems, in which the positions of different groups of States were farther apart from the very beginning than had been the case with respect to the subjects of the five space law treaties. The negotiations relating to the last of the five treaties, the 1979 Moon Agreement, already signalled growing difficulties in reaching consensus resulting in a delayed entry of this instrument into force.<sup>10</sup> The controversies relating to the Principles Governing Direct Television Broadcasting provided still more conspicuous evidence of this changing situation.

The topic of Direct Broadcasting by Satellites (DBS) appeared in United Nations documents for the first time in 1967,<sup>11</sup> shortly after the conclusion of the Outer Space Treaty which did not directly touch on this issue. The following year COPUOS established a Working Group on DBS, which was requested "to study and report on the technical feasibility of communication by direct broadcast from satellites and the current and foreseeable developments in this field". The Group was also requested to take up "the implications of such developments in social, cultural, legal and other areas".<sup>12</sup>

The Group on DBS held five sessions during 1969-1974 and arrived at many useful conclusions which were incorporated in its successive reports. The legal aspects of the problem were elaborated primarily in the last two reports of this series.<sup>13</sup> The Group also had at its disposal a number of proposals from individual States, including particularly a draft convention on principles governing the use of States of artificial Earth satellites for direct television broadcasting, submitted by the USSR to the twenty-seventh session of the General Assembly.<sup>14</sup>

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10. The 1979 Moon Agreement entered into force almost five years after its adoption by the General Assembly, on 11 July 1984, and so far has only seven States Parties with six more signatories. See *supra*, note 8.

11. See para. 13 of U.N. Res. 2260 (XXII) of 3 November 1967.

12. See para. 5 of U.N. Res. 2453 B (XXIII) of 20 December 1968.

13. See *Report of the Working Group on DBS on the Work of Its Fourth Session*, U.N. Doc. A/AC.105/117 at 9-15 (1973) and *Report of the Working Group on DBS on the Work of Its Fifth Session*, U.N. Doc. A/AC.105/127, at 9-20 (1974).

14. See U.N. Doc. A/8771, which is reproduced in the 1973 report of the Working Group on DBS, U.N. Doc. A/AC.105/117, Annex III, 1-6 (1973).

A significant impetus to the discussions on the legal aspects of this topic was given when the General Assembly, by Resolution 2916 (XXVII) of 9 November 1972, stated that it considered it necessary "to elaborate principles governing the use by States of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements."<sup>15</sup>

Almost simultaneously with the United Nations, UNESCO, a specialized agency concerned with educational, scientific and cultural problems of international co-operation, was considering the topic of DBS from its particular point of interest. At the adoption of Resolution 2916 (XXVII) by the General Assembly, UNESCO was completing work on a document called Declaration of Guiding Principles on the Use of Satellites Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange. This Declaration was adopted by the General Conference of UNESCO at its seventeenth session in Paris on 15 November 1972.<sup>16</sup>

Another specialized agency of the United Nations system, the International Telecommunication Union (ITU), acting primarily through its World Administrative Radio Conferences, (WARCs), has been harmonizing the actions of nations in regard to the development and use of all forms of telecommunications, including those using space techniques. The 1971 WARC discussed the problem of use of the geostationary satellite orbit in which the DBS satellites were to be placed. The 1977 WARC was specifically convened for the Planning of the Broadcasting Satellite Service. This Conference agreed on a specific orbital position and frequency allotment plan for the Broadcast Satellite Service in the 12 GHz band for the countries of Europe, Africa, Asia and Oceania. A similar plan for the countries of the Americas was worked out later by the 1983 Regional Administrative Radio Conference (RARC) for Region 2, the Americas.<sup>17</sup>

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15. See 27 GAOR Supp. (No. 30), at 14, U.N. Doc A/8730 (1972). On the same day, another resolution was adopted by the General Assembly on the same topic Resolution 2917 (XXVII) entitled "Preparation of International Instruments or United Nations Arrangements on Principles Governing the Use By States of Artificial Earth Satellites for Direct Television Broadcasting". It was noted in this document that the work done on the draft Convention on Freedom of Information and deliberations thereon in the General Assembly might be useful in the discussion and elaboration of international instruments or United Nations arrangements relative to direct television broadcasting. Id. at 14-15. The simultaneous adoption of two different resolutions on one subject reflected the two opposing approaches to the problem that would characterize all subsequent discussion on this item.

16. The text of the UNESCO Declaration was reprinted in UN Doc. A/AC.105/109 (1973).

17. For a more detailed assessment of the work done by ITU in the field of space telecommunications, see Arnold A. Matthey, *International Legislation in Relation to Space Radio-Communications*, in 52 TELECOMM. J. 341-367 (VI,1985).

In the United Nations itself, further efforts took place in COPUOS, and its Legal Sub-Committee toward the "Elaboration of Principles Governing the Use by States of Artificial Earth Satellites for DBS", as this item of the Legal Sub-Committee agenda was called since 1975. Following the recommendation of the General Assembly, the Sub-Committee started the formulation of principles, using several drafts and working papers submitted during the course of these discussions. Negotiations were generally held in a special Working Group established by the Legal Sub-Committee for this purpose and several areas of agreement emerged during these debates. In particular, the Members of the Sub-Committee agreed, or were close to a consensus, on the purposes and objectives of these Principles, the applicability of international law, rights and benefits, international co-operation, peaceful settlement of disputes, copyright and neighboring rights, and notification to the United Nations. On the other hand, a number of disagreements persisted. They related particularly to State responsibility for these types of activities, duty and right to consult, and consultation and agreements between States.<sup>18</sup>

The disagreement on these issues reflected the gap between the position of the group of Western nations, which were emphasizing the need to ensure a free flow of information and ideas, and the position of other groups of nations (the developing and the Socialist countries), which shared a concern for the sovereign rights of all States and requested adoption of adequate measures for protecting their political, economic and cultural identity.

In order to facilitate the bridging of this gap, a group of twelve nations (mostly developing countries) submitted a negotiating text in 1981.<sup>19</sup> During the thirty-sixth session of the General Assembly in 1981, as well as during the twenty-fourth session of COPUOS and the thirty-seventh session of the General Assembly in 1982, further attempts were made to reconcile the outstanding issues. Despite these efforts, agreement was not reached. Under these circumstances, the final version of the above mentioned draft was presented to the General Assembly for its decision. On 10 December 1982 the United Nations General Assembly adopted by a vote Resolution 37/92 including, in an annex, the

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18. See *Report of the Legal Sub-Committee on the Work of Its Eighteenth Session* (12 March - 6 April 1979), U.N. Doc. A/AC.105/240 Annex II, Appendix A at 8-13 (1979).

19. See *U.N. Doc. A/AC.105/C.2/L.131 in Report of the Legal Sub-Committee on the Work of Its Twentieth Session (16 March - 10 April 1981)* Annex IV, 1-4 (1981).

"Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting."<sup>20</sup>

Without doubt, the fact that consensus, which has been the usual method of work of COPUOS and its Legal Sub-Committee in developing space law, was not attained on this particular item, was a certain setback in these endeavours. Nevertheless, Resolution 37/92 was adopted in accordance with the United Nations Charter and the Rules of Procedure of the General Assembly in force.

If we read carefully the text of the 1982 Principles Governing Direct Television Broadcasting as a whole, we must admit that its language is moderate and the requirements addressed to States and other international persons are not excessive. This conclusion also applies to those principles which remained controversial until the end. Thus the principle of State responsibility for activities in the field of international direct television broadcasting, both with regard to States and international intergovernmental organizations, is based on Articles VI and XIII of the 1967 Outer Space Treaty. The principle of Duty and Right to Consult in fact only recommends a prompt entering into consultations between the broadcasting and the requesting receiving State within the same service. And though the final principle of Consultations and Agreements between States goes farther by making the establishment of such a service dependent on agreements between the States concerned, the language of para. 14 of the 1982 Principles remained fairly soft and flexible even in this point. The establishment of an international DBS service is made conditional on notification, consultation and "on the basis of agreements and/or arrangements in conformity with the relevant instruments of the International Telecommunication Union and in accordance with these principles".<sup>21</sup>

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20. Resolution 37/92 was adopted by a recorded vote of 107 votes in favor, 13 votes against and 13 abstentions. See its text in 37 U.N. GAOR Supp. (No. 51) at 98-99, U.N. Doc. A/37/51 (1982). The lack of consensus during the adoption of the 1982 Principles led some authors to a skeptical assessment of this document. According to Professor Christol "The circumstances surrounding the introduction of the subject at the General Assembly, and the distribution of votes, have cast a doubt on the significance of the resolution. Proponents, as well as opponents, have taken note of its non-binding status." C. Q. Christol, *Prospects for an International Legal Regime for Direct Television Broadcasting*, 34 INT'L & COMP. L.Q. 149-150 (1985).

21. The Georgetown Space Law Group directed by Professor Paul B. Larsen, on the basis of a detailed analysis of the negotiations, came to similar conclusions on this document: "Compared to previous drafts of the Working Group of COPUOS, the DBS principles in final form are surprisingly moderate in their requirements for obtaining prior consent and, even more surprisingly, practically silent on the issues of program content and recourse for the unwilling recipient of DBS transmissions." The Georgetown Space Law Group, *DBS Under FCC and International Regulation*, 37 VAND. L. REV. 131 (1984). A similar conclusion is spelled out also on p. 135 of this study.

The 1982 Principles Governing Direct Television Broadcasting represent the outcome of the first attempt to ensure the expansion of the most advanced telecommunication technology under the conditions of the co-existing plurality of social, political and cultural groups in the world today. Though reflecting the decline of international co-operation that prevailed during the late 1970's and early 1980's, these Principles, too, should be counted as a valid contribution to the progressive development of space law.

*The 1986 Principles Relating to Remote Sensing*

Almost simultaneously with the debates over Principles Governing Direct Television Broadcasting, another topic of comparable significance was under consideration in COPUOS and its Legal Sub-Committee for years that of remote sensing. While the first proposal relating to remote sensing was introduced in 1970,<sup>22</sup> the views on this subject crystallized by the mid 1970's. In 1974 a joint working paper on principles relating to remote sensing was presented to the Legal Sub-Committee by France and the USSR, two space nations with significant activities in this field.<sup>23</sup> The title of the agenda item became more specific in 1975 when it was spelled out as "Legal Implications of Remote Sensing of the Earth from Space" to which the phrase "with the Aim of Formulating Draft Principles" was added in 1978.<sup>24</sup> In these discussions, as on DBS, different opinions on problems and diverging approaches to their solutions persisted for many years. Nevertheless, it became possible to surmount these differences on the basis of a new impetus given to the deliberations on this item between 1981 and 1984, when a number of working papers seeking ways to compromise solutions on the remaining issues were introduced at the sessions of the Legal Sub-Committee and its

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22. See Argentina: *Draft International Agreement on Activities Carried Out Through Remote Sensing Satellites Surveys of Earth Resources*, U.N. Doc. A/AC.105/C.2/L.73 (1970) in *Report of the Legal Sub-Committee on the Work of Its Ninth Session (8 June - 3 July 1970) to the Committee on the Peaceful Uses of Outer Space*, U.N. Doc. A/AC.105/85 Annex II, at 2-14 (1970).

23. See France and USSR: *Working Paper* (Doc. A/AC.105/C.2/L.99 of 27 May 1974) *Draft Principles Governing the Activities of States in the Field of Remote Sensing of Earth Resources by Means of Space Technology*, in *Report of the Legal Sub-Committee on the Work of Its Thirteenth Session (6-31 May 1974)*, U.N. Doc. A/AC.105/133, Annex IV at 9-10 (1974). See also Eugène Pépin "French Proposals with Respect to Remote Sensing of Earth Resources by Satellites" in *LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE 85-87* (A.W. Sijthoff, Leyden 1976).

24. See 1975 and 1978 reports of the Legal Sub-Committee, U.N. Doc. A/AC.105/147 (1975) and U.N. Doc. A/AC.105/218 (1978).

special Working Group for this subject.<sup>25</sup> The completion of the Remote Sensing Principles at the 1986 session of the Legal Sub-Committee and the adoption, without a vote, of Resolution 41/65 of 3 December 1986, to which the "Principles Relating to Remote Sensing of the Earth from Outer Space" were annexed, were the outcome of these intensified efforts.<sup>26</sup>

Considering the legislative techniques, it is interesting to note that the 1986 Principles start with a number of definitions of terms, as is usual in international treaties. This fact distinguishes them from most other United Nations declarations of principles and is clear evidence that it was the intention of their authors not to formulate vague guidelines, but rather to establish general regulatory norms of conduct with a precise area of application.

As to the terms defined in Principle I, it should be particularly noted that "remote sensing" does not embrace all types of observation of the Earth or all analysis of the phenomena observed and data collected. Remote sensing, in the sense of the Principles, is considered to cover only those activities which are performed for the purpose of improving natural resources management, land use and the protection of the environment. The Remote Sensing Principles apply only to these activities.<sup>27</sup> On the other hand, the sensing of the Earth's surface for these specified purposes can be effected by any available techniques, which are also listed in very general terms in Principle I.

Politically, the most outstanding feature of the 1986 Principles was the attempt at compromise between the interests of the sensing States, *i.e.* States possessing the necessary space capabilities on the one hand, and the needs of sensed States, many of them developing countries, on the other hand. The elements of the compromise reached are reflected in different principles. Thus in Principle IV, the respect for full and permanent sovereignty of all States and peoples over their own wealth and natural resources, as well as due regard to the rights and interests of

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25. A significant role in the shaping of the final draft of the Remote Sensing Principles was played in particular by two working papers submitted by France in 1984 and 1985. U.N. Doc. A/AC.105/C.2/L.144 (1984) and U.N. Doc. A/AC.105/C.2/L.150 (1985), in *Report of the Legal Sub-Committee on the work of Its Twenty-third Session* (19 March - 6 April 1984), U.N. Doc. A/AC.105/337 Annex IV, at 33-36 (1984) and *Report of the Legal Sub-Committee on the Work of Its Twenty-fourth Session* (18 March-4 April 1985), U.N. Doc. A/AC.105/352 Annex IV, at 35-39 (1985).

26. See the text in 41 U.N. GAOR Supp. (No. 53) at 115-116, U.N. Doc. A/41/53 (1986).

27. The adoption of the 1986 Principles Relating to Remote Sensing therefore has no implications regarding the status of observation and data gathering for other purposes, such as *e.g.* military reconnaissance. Nor do these principles reflect the existence of any general international right to engage in fact-gathering from outer space for any purpose whatsoever.

other States and entities under their jurisdiction, are emphasized side by side. Moreover, according to the same Principle IV, remote sensing activities shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed States.

The most important part of this compromise, however, as enshrined in Principles XII and XIII, consists of 1) the access of sensed States to the results of remote sensing, and 2) the duty of sensing States to consult with the sensed States.

The access of the sensed States is ensured both to "the primary data and the processed data" and to "available analyzed information" on equal terms, *i.e.* "on a non-discriminatory basis and on reasonable cost terms."

The duty of a State carrying out remote sensing to consult with a State whose territory is sensed is qualified by a number of elements limiting its extent. The sensing State is obliged to enter into consultations only upon request and such consultations need not necessarily take place before the beginning of a remote sensing programme. Another significant feature is the lack of any guidelines concerning the outcome of such consultations, though it may be expected that they would lead to opportunities for participation and mutual benefits, as declared in Principle XIII.

Unlike the 1982 Principles Governing Direct Television Broadcasting, the 1986 Principles Relating to Remote Sensing do not require any form of prior consent on the part of the sensed State or States with respect to either the collection of remote sensing data of its territory in general, or the dissemination of economically important products of these activities in particular.<sup>28</sup>

Another major compromise between the interests of the sensing States and the sensed States, and also between the divergent positions of the Western and Eastern countries, was reached in the formulation of Principle XIV which deals with international responsibility of States for their activities. It is not quite clear, however, whether according to this Principle as adopted, "activities" for which States shall bear international responsibility are "remote sensing activities" in the sense of Principle I,

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28. Such a requirement formed an essential element of the position of many States concerning the rights of sensed States during the earlier stages of negotiations and was still reflected in the bracketed text of Principle XV in the 1981 Report of the Legal Sub-Committee. See U.N. Doc. A/AC.105/288 Annex I, at 10 (1981). A change in the attitude of these States, which opened the way to reaching a compromise, was first signalled in the Working Paper of Brazil (WG/RS (1982) /WP.11 of 8 February 1982) which concentrated on ensuring access to primary data and analyzed information, and on international responsibility for the dissemination of primary data or analyzed information that would adversely affect the interest of a sensed State. At the same time the working paper of Brazil suggested the deletion of Principle XV. See Report of the Legal Sub-Committee on the Work of Its Twenty-first Session, U.N. Doc. A/AC.105/305 Annex I, at 20 (1982).