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UN Space Conference: Key Issues and Country Positions

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This paper was prepared by 25X1
Resources Division, Office of Global Issues, with
contributions by 25X1
Office of Scientific and Weapons Research.
Comments and queries are welcome and may be
directed to the Chief, Minerals and Resources 25X1
Branch, OGI,

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UN Space Conference: Key Issues and Country Positions

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Summary

The UN-sponsored conference on space—UNISPACE-82—is being held this month in Vienna. Numerous issues will be addressed by the more than 100 nations represented. The issues will range from technical discussions on satellite communications to questions of jurisdiction and access to Western technology. Few, if any, of these issues will be resolved at the Conference, and the final report will not be binding. But the Conference will serve as a sounding board for positions that will carry over into follow-on meetings.

We expect the Third World delegations to press their view that the developed countries have an obligation to the less developed nations in the use of the space resource and to begin a campaign to create an international space authority. Such an authority might:

- Control the activities of remote sensing satellites and the distribution of their products.
- Ensure that all nations have access to satellite programs, satellite technology, and the geostationary orbit.
- Possibly administer a scheme to share any revenue from space manufacture.

Although they are apt to act as a bloc on this issue, the LDCs have little leverage on space matters. If the Conference gets deeply involved in the polemics of such issues, however, UNISPACE-82 will be a turning point in international sessions on the use of outer space; heretofore, space forums have been mainly technical meetings at which the developed nations planned cooperation in essentially scientific space ventures.

On other issues, the LDCs will be less united. The equatorial nations acknowledge they must dilute claims to control of the geostationary orbit to collect support from other LDCs. As a result, their special interests will be couched in "common heritage" language. Access to remote sensing products is important mainly to the mineral-rich LDCs. And Yugoslavia, Chile, Brazil, and Nigeria are especially concerned about the militarization of space.

The Soviets may use the Conference to again allege US militarization of space, but the USSR shares US concerns about the regulation of space activities by the United Nations or any international entity. Thus, Moscow

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will probably play the role of friend of the developing world by sympathizing with Third World goals but will avoid firm commitments. Besides working to hinder US military developments where possible, they will campaign to vilify the United States in the eyes of the Third World.

The Western industrial countries hold basically similar views on outer space issues dealing with control and use of the geostationary orbit and the need to contain the growth of the UN role in space. France, Japan, and the Nordic states, however, may subscribe to some of the Third World rhetoric, as they have in other international forums. Canada and France are also disturbed about communications satellites eroding their sovereign right to regulate broadcasting.

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Information available as of 31 July 1982 has been used in the preparation of this report.

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UN Space Conference: Key Issues and Country Positions

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The space-interested nations of the world are meeting in Vienna this month for the Second Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE-82). [1] Heretofore, space conferences have been mainly technical and scientific forums at which the developed nations planned future cooperation in essentially scientific ventures. At this Conference, however, we expect the LDCs to fire the opening salvos in their drive to have the space resource declared a global commons to be exploited by the developed countries for the benefit of all nations, particularly the less developed countries. The Indonesians, for example, have already served notice that they are not coming to UNISPACE-82 to witness another developed country show and tell. The issues will range from technical discussions on satellite communications to questions of jurisdiction and access to Western technology. Few, if any, of the issues will be resolved at the Conference, and the final report will not be binding. But the Conference will serve as a sounding board for positions that will carry over into follow-on meetings.

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The Issues

During the deliberations of the Committee On the Peaceful Uses of Outer Space (COPUOS) in New York last spring, delegates from more than 50 nations reached consensus on most of the UNISPACE-82 Conference report to be completed this summer. They did not, however, resolve a number of issues:

- *Militarization.* Should the Conference's final report include a statement concerning the military use of space? If so, then a statement must be drafted.
- *Geostationary Orbit (GSO) and Frequency Allocation.* Should changes be made in the scheme that allocates frequencies and controls the location of the geostationary satellites which serve communications and broadcasting interests? Who has sovereignty over the GSO?
- *Responsibilities of the Developed World.* What obligations do the industrialized countries have to share with the LDCs the benefits that will come from development of the space resource?
- *Expansion of UN Responsibilities.* How far should the UN role in space be expanded and by what institutional mechanism?

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[1]The first conference was held in Vienna in 1968.

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From COPUOS deliberations, we expect other issues not on the Conference agenda to arise in the course of committee discussions or as part of the above deliberations:

- *The Boundary Between Outer Space and Airspace.* Should a definitive boundary be set and if so how should it be determined?
- *Products of Remote Sensing.* Do nations have a right to "guaranteed access" to remotely sensed information about their own natural resources?
- *International Broadcasting Satellites.* Does satellite television and radio broadcasting violate the "sovereign right" of each country to regulate its telecommunications?

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Third World Positions

Third World solidarity is not as strongly developed in the space forum as it was in the recently concluded Third UN Conference on the Law of the Sea (UNCLOS III). The delegates have not worked together long enough to develop easy familiarity with one another or to fully agree on positions. Also, the self-interests of some LDCs—and the suspicions of others—still tend to pull them apart, as, for example, in the debate over control of the geostationary orbit. Nevertheless, the Third World delegations will probably act as a group—whenever possible—to face the developed nations with unified positions, although they lack the leverage on outer space issues that they have had at other international forums.

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The Common Heritage Issue

The assertion that the world's great commons—the unclaimed territory and resources of the deep seabeds, outer space, and possibly even Antarctica—ought to be developed for the benefit of all, particularly the less developed nations, is by now a fundamental policy in many Third World countries.

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To buttress their position, we expect LDC spokesmen to cite the 1967 Outer Space Treaty, which declares that outer space shall be used for the benefit and the interest of all peoples, irrespective of the status of their economic or scientific development. It is possible that Brazil and Nigeria may propose an international mechanism that:

- Controls the activities of remote sensing satellites and the distribution of their products, possibly including the analysis of that data.
- Shares the other economic benefits from outer space ventures, for example, space manufacturing.

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- Creates one-nation, one-vote governance to assure that all nations have access to satellite programs, satellite technology, and the geostationary satellite orbit.

Such proposals mirror those made at UNCLOS III when the Third World created a specific institution—the International Seabed Authority—to serve these ends. 25X1

The United States and the Soviet Union, both signatories to the 1967 Treaty, do not interpret "benefit of all mankind" to represent an obligation to redistribute the wealth of the world. In the US view, the "common heritage of mankind" principle means that space is open to development on a first-come, first-served basis. Judging from their behavior at UNCLOS III we believe that Germany and Great Britian will join the two major space powers in working to keep space development options open. France, Japan, and the Nordic states may accept some of the Third World notions. 25X1 25X1

The Geostationary Orbit

Third World unity might well give way to individual country interests on what may become the most heated controversy at the Conference, the geostationary orbit, that is, control of access to the orbit and the distribution of radio frequencies among orbiting satellites. [2] US Embassy reporting suggests that countries such as Iraq, Mexico, and Nigeria will lead the LDCs in arguing for fixed spacing assignments and a relaxation of satellite construction standards. Both proposals would permit use of lower powered, less expensive vehicles that are within the financial reach of poorer countries, thus assuring them access to the GSO. With technological change and demand for GSO services moving ahead briskly, the space-using nations do not want to inhibit that growth by artificially reducing the capacity of the GSO. The developed nations, relatively united on this issue, will argue that the International Telecommunications Union (ITU) Conference this fall is a more appropriate forum in which to discuss these questions. 25X1

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25X1 In the past, Brazil and Colombia asserted that the equatorial states should have sovereignty over GSO satellites operating over their territory. Brazil, however, has modified

[2] Geostationary satellites orbit over one location on earth and thus can monitor or maintain continuous contact with the same terrestrial location to serve telecommunication and broadcasting interests. Their size, stability, and tolerance of electromagnetic interference determine spacing of these satellites in the orbit. 25X1

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its position—realizing that the developed nations would not surrender sovereignty over their satellites—and now argues that the GSO is a "unique" global resource. Bogota has similarly changed its position, prompted by the realization that the other developing countries fear that the equatorial nations might try to gain economic benefits at the expense of other lesser developed countries. 25X1

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The Boundary Between Outer Space and Airspace

Much of the attention given the sovereignty question will focus on the delimitation of the space boundary. The Chicago Convention [3] of 1947 defined airspace by the principle of territoriality, that is, each nation exercises sovereignty over the airspace above its land and territorial sea. No international treaty, however, defines the upper limit of airspace. From COPUOS discussions, we know that Brazil, Colombia, Ecuador, and Nigeria want to establish a cap on airspace to provide a clear region for the definition of the limits of national sovereignty and to protect the security of national airspace. 25X1

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we believe that the Soviet Union, its Eastern allies, and France as well as Brazil, Colombia, and other LDCs support a fixed-altitude cap on airspace. A fixed-altitude limit would set the lower boundary of space at a designated altitude, 100 kilometers for example. The functional approach, supported by the Netherlands and Spain, defines outer space by designating activities that take place there and objects that are found there. 25X1

Remote Sensing

A sovereignty issue potentially more disruptive than airspace boundaries is the claim by Argentina and Brazil that the developing nations should have "guaranteed access" to remotely sensed information about their own natural resources. Heretofore, they and other developing countries and the Eastern Bloc, according to US Embassy and UN Mission reporting, have only called for "prior consent" before dissemination of high resolution data

[3] Convention of International Civil Aviation of 1944, Chicago, entered into force on 4 April 1947. 25X1

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to third parties. Recently, however, the Argentines and Brazilians changed their claim from prior consent to the right of guaranteed access to not only the data acquired by remote sensing but also to the analysis of that data.

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Such claims are based on national security concerns and possibly fear that other nations will use resource information obtained from satellites to their advantage in negotiating the development of the natural resources of nonspace nations. Similar concerns for the protection of national resources were evidenced during UNCLOS III. In that forum, developing coastal nations argued for jurisdiction over scientific research in their 200-mile economic zone and continental shelf. And the land-based producers of minerals, fearing competition from states that will mine minerals from the sea, sought and won limitations on seabed minerals production.

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Having learned the value of remote sensing in resource and transportation uses, a number of less developed countries are using open literature to express their concerns about the future costs, the continuity of the information, and the compatibility of remote sensing systems.

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France and Japan will probably join the United States in opposing any UN coordination mechanism that deals with questions of compatibility and complementarity of systems. Both nations plan to market remote sensing materials and probably are not anxious to have a UN overseer on the scene.

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Militarization

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This issue is not a separate item on the Conference agenda, but many countries will insist on its airing.

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The UN Committee on Disarmament is assigned such discussions, but recent media campaigns and frustration with the stalemate in the Special Session on Disarmament will cause the more concerned nations to press for some statement in the final UNISPACE-82 report.

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The 1967 Outer Space Treaty states that the moon and other celestial bodies shall be used for peaceful purposes and prohibits the orbiting of nuclear weapons or weapons of mass destruction and their placement on celestial bodies. However, the treaty authorizes the use of space "in the

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interest of maintaining international peace and security" and follows the UN Charter in recognizing a nation's right of self-defense. The treaty also states, "The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited." 25X1

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The United States interprets peaceful purposes to mean nonaggressive intentions, permitting the use of military satellites for communication, navigation, strategic warning, and arms control verification. A third position—and the one held by most nations—is that the present limited military uses of space are permissible, but the gaps in existing space treaties that would permit deployment of new weapons must be filled. 25X1

Third World nations 25X1

such as Egypt, Brazil, and Chile adhere to this more moderate view.

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The Soviet Perspective

In the UN space arena, the USSR and the United States, as superpowers in space, find themselves together on many issues. The Soviets oppose Third World language about the so-called obligation of the developed world to assist the developing countries. Recently a Soviet Embassy official in Washington informed US UNISPACE-82 officials that the Soviets want to emphasize the scientific and technological side of the conference, but he added that Moscow attaches political importance to the meeting. In our judgment, based on Moscow's performance at UNCLOS III and in other forums, the Soviets will campaign to vilify the United States in Third World eyes and appear to sympathize with LDC objectives, but avoid firm commitments. 25X1

Weapons in Space

We believe that Moscow's chief concern in space matters is the potential threat of US space capabilities and the strong technology base supporting these capabilities. US systems that could be used to destroy or interfere with Soviet satellites appear to be of particular concern to the USSR:

- Last summer, during the US shuttle's first space flight, Brezhnev proposed a ban on the militarization of space, including the banning of weapons of mass destruction onboard existing and future piloted space vehicles.

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- In the fall of 1981, Moscow fully endorsed the Mongolian-sponsored General Assembly resolution for space arms control. (The General Assembly assigned the arms race and limitation question to the Committee on Disarmament.)
- The Soviet press has repeatedly accused the Reagan administration of taking a step along the path of militarization by placing military satellites as well as killer-satellites into orbit and accused Washington of planning to place laser weapons in space.

Such reports suggest that the Soviets are interested in the demilitarization issue. We believe they will avoid the issue if possible and certainly will not take a leadership stance in promoting a militarization statement; in our judgment they fear the issue will get away from them. [redacted] 25X1

International Broadcasting Satellites

This issue has been debated in the United Nations for over a decade and has come to an impasse on the question of "prior consent"—whether or not a nation being beamed by a satellite broadcast must give its consent prior to launching or broadcasting. It is of prime concern to the USSR, which fears the political and cultural impact of information not under its control. The Soviets argue that unauthorized broadcasting is an illegal intrusion on their sovereignty, and they demand the right to protect themselves against satellites that deliberately engage in "hostile" or "illegal" nonweapon activities. Moscow can be expected to support broadcast limitation proposals. They will find support among some Western democracies, particularly France and Canada, who are worried about the erosion of their sovereign right to regulate broadcasting into their territory. [redacted] 25X1

Expansion of UN Functions

Because the Soviets are reluctant to give out data on their space operations, are traditionally resistant to international control efforts, and dislike increased financial obligations, we expect them to join the Western states in resisting efforts to expand the UN's role in space and to establish an Outer Space Center to replace the existing Outer Space Affairs Division (OSAD). The Soviets have already informed the United States of their opposition to a new Space Center. Judging from the UNCLOS III negotiations, Moscow can also be relied upon to resist the creation of any mechanism that controls space developments or promotes the transfer of technology. At the moment, a Soviet has supervisory authority over the principal UN agency concerned with space affairs, which is headed by a US citizen. [redacted] 25X1

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US Allies

we perceive that most US allies have the same general approach to UNISPACE-82 as the United States and the Soviet Union—they want the Conference to enhance the peaceful uses of outer space through the exchange of views on space technology and applications. We also believe that they will seek maximum freedom of maneuver in developing the space resource since several of them plan to have space programs before 1990.

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On specific issues, we expect that Western unity will be greatest on issues of the geostationary orbit and the role of the United Nations:

- *On the GSO.* Our allies believe that the ITU Conference this fall is the appropriate forum to debate jurisdictional and radio frequency allocation issues. The looming competition of our allies in communications may raise GSO questions to a heated three-corner debate in the ITU.
- *On Expansion of the UN's Role in Space.* The allies accept growth of UN involvement in space as inevitable, but they do not want to expand the international bureaucracy or its funding, or to constrain the growth of technology.

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The Western group will probably split on the meaning of the common heritage principle, the militarization of space, and the need for UN control of international broadcasting from satellites. At UNCLOS III, both France and Japan were hesitant to openly reject proposals of the Third World, even though mandatory technology transfer and production controls do not appeal to them.

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Appendix

The Current Status of Space Law

The present body of international space law does little to restrict the exploitation of outer space. Four international treaties establish broad, legal parameters for space ventures. A fifth treaty, informally known as the Moon Treaty, contains controversial provisions for the exploitation of celestial bodies; two more countries must ratify the treaty before it enters into force. All of these treaties have been negotiated under the auspices of COPUOS. Originally 24 countries participated in COPUOS and 53 countries are now involved in deliberations. The United States is a signatory to all but the Moon Treaty. [redacted] 25X1

The five treaties are:

- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 1967 (entered into force 10 October 1967).
- Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched Into Outer Space (entered into force 3 December 1968).
- Convention on International Liability for Damage Caused by Space Objects (entered into force 1 September 1976).
- Convention on Registration of Objects Launched Into Outer Space (entered into force 15 September 1976).
- Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (completed in 1979, but not in force). [redacted] 25X1

Other multilateral and bilateral agreements which affect space law include the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water (entered into force, October 1963) and the Anti-Ballistic Missile Agreement(entered into force, October 1972). In addition, provisions of the International Telecommunications Convention (entered into force, January 1973) and associated radio regulations contain sections pertaining to broadcast satellites and the use of the geostationary orbit. [redacted]

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Outer Space Treaty

The Outer Space Treaty of 1967 is the basic international document that regulates the use of outer space. It establishes the principles and provides the framework for the evolution of space activities. The other four agreements in effect elaborate on the provisions of the Outer Space Treaty which states that the exploration and use of outer space should be carried

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out for the benefit and in the interest of all countries and shall be the province of all mankind. It prohibits states from making claims of sovereignty or appropriating space, but, it does not address delimitation between airspace and outer space.

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This treaty stipulates that the exploration and use of space shall be for peaceful purposes and that nuclear weapons or any other kinds of weapons of mass destruction shall not be sent into orbit in outer space. The United States has declared that "peaceful" connotes nonaggressive as opposed to nonmilitary purposes and therefore considers military uses of space, if nonaggressive, to be legal. Later in the document, the treaty allows military personnel to be used for scientific research or other peaceful purposes.

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Although the treaty bans the orbiting of nuclear weapons and other weapons of mass destruction, it fails to specify these weapons. Furthermore, it does not expressly prohibit weapons not put into complete orbit or fractional orbit weapons. Therefore, conventional weapons, lasers, and particle beam weapons in space and the passage of intercontinental ballistic missiles through space could be interpreted as being exempt.

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The treaty contains the principles for international responsibility for activities in outer space, calls for assistance to astronauts both civil and military, calls for the registration of objects launched into outer space, and provides for international liability. There is also a clause that no party shall engage in any activity or experiment in outer space that would harmfully interfere with activities of other parties without first undertaking appropriate international consultations.

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In the spirit of the Outer Space Treaty and international cooperation in space, international communications satellite organizations such as INTELSAT (1973) and INTERSPUTNIK (1971) have been established. Today INTELSAT provides communications links to more than 100 countries; INTERSPUTNIK with 13 members provides links mainly with the Eastern Bloc but is expanding to the Third World. Singapore has applied for membership in INTERSPUTNIK, and Nicaragua recently announced its intention to join.

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Rescue and Return

This agreement requires cooperation and assistance among parties to the treaty in the event of an accident or distress. If a space object returns to earth, the state in which it falls is to notify the launching state of the accident, rescue and give assistance to the astronauts, and assure the safety and prompt return of the astronauts to the launching state. If requested, the launching state is to cooperate in the search and rescue.

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The treaty also provides steps to be followed on the request of the launching authority for the recovery and return of space objects. In 1978, a Soviet nuclear-powered satellite, Cosmos 954, reentered the atmosphere and disintegrated over Canada. Deliberations are continuing on what to do with the debris. During the spring 1982 session of the legal subcommittee of COPUOS, part of the discussion centered on assistance and liability in the wake of such disasters. The Canadians, along with the United States, argued that the launching state should take back debris if requested by the affected state. Although Canada has sent two diplomatic notes since the Cosmos 954 cleanup, the Soviets have not accepted the satellite debris.

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Liability

While higher orbits will become more common in the future, the lower orbit levels are becoming heavily trafficked. The lower the orbit, however, the more likely a satellite is to return to earth, either whole or in pieces, and cause contamination and pollution. The use of the space shuttle and the orbiting of larger objects into space increase the likelihoood of damage.

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The 1972 Liability Convention states that a launching state shall be liable for damage to the earth's surface or to an aircraft in flight caused by the launching state's space object. Furthermore, the state must restore the damaged area to the condition which would have existed had the damage not occurred. If damage is caused to a space object of another state, the launching state shall be liable only when it is at fault. The Convention allows for prompt and adequate payment with compensation for direct damage and for moral damages based on pain, suffering, and humiliation.

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The crash of Skylab debris into the Australian desert and the reentry of Cosmos 954 raised the possibility of human and property damage as well as damage to the environment. In January 1979, Canada presented a $6 million claim to the Soviet Union for damages from the Cosmos 954 reentry. This sum represented US and Canadian costs of cleanup and necessary monitoring operations in Canadian territory. Eventually, the Canadians received a $3 million settlement; they did not press for collection of US assistance costs. The members of COPUOS will continue to debate state responsibility in cleanup situations.

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The Liability Convention does not deal with accidents which occur on board an orbiting space vehicle. In addition, there is no provision for imputing negligent conduct to others or for the attribution of a principal's vicarious liability for an agent or employee.

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Registration

The Registration Convention has the potential to be restrictive, but at present is so loosely constructed that it does not restrain space activities. This 1976 convention requires parties to it to register all objects launched into space. All countries with a launching capability, including the Soviet Union, abide by it. 25X1

When a space object is launched, the launching country must keep a registry of the launch, register the launch with the Secretary General of the United Nations, and should have marked the space vehicle. Considerable leeway is given as to how much information must be recorded and the timing of reporting; the only requirements are the name of the state, a number or designator, the launch date, the place of launch, basic orbital parameters, and the general function of the space object. 25X1

A new question can be posed with the evolution of multiple launches. The European Space Agency's new launcher, Ariane, can place two satellites in orbit with one launch, and both the Soviets with their space stations and the United States with its shuttle can place numerous objects in orbit with one launch from the earth. The law is unclear whether each object placed in orbit must be registered or if only registration of the launch of the vehicle is required. 25X1

Canada has requested that notification of satellites with nuclear power sources be specially designated. This point is in conjuction with other questions under COPUOS deliberation relating to these satellites. 25X1

The Moon Treaty

After the moon landings of the late 1960s, UN member nations realized that the 1967 Outer Space Treaty did not cover exploitation of resources on the moon. Thus, during the 1970s the committee crafted a treaty governing the activities on the moon and other celestial bodies. Three countries have ratified it as of May 1982—Chile, Philippines, and Uruguay. Only two more ratifications are needed for the treaty to enter into force. In addition, eight other countries [4] have signed the document. While not necessarily committing a country to ratification, signing does commit a state to do nothing to violate the spirit or intent of a treaty. As of 31 July 1982, the Moon Treaty has been neither signed nor ratified by the United States or the Soviet Union. 25X1

Mining the moon is not now economically feasible or likely to be so in the next 10 to 15 years. The most important raw materials discovered on or just below the moon's surface thus far are aluminum, iron, silicon, magnesium, and oxygen, all of which would be useful in supporting a lunar colony or base, or a space colony near the earth-moon system. In addition,

[4] France, Romania, Austria, Morroco, Guatemala, the Netherlands, India, and Peru.

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some have suggested capturing meteorites and moving asteroids to the place of construction of a space colony. Article 7 of the Moon Treaty states that, "States Parties shall take measures to prevent the disruption of the existing balance of its environment, whether by introducing adverse changes . . . or by its harmful contamination . . . ," and might be a stumbling-block to such proposals. 25X1

The prospect of crafting a universally acceptable mining regime for the moon looks gloomy after the recent experience with developing a law of the sea treaty. Like the UNCLOS III Treaty, the Moon Treaty states that the natural resources of the moon are the common heritage of mankind and that use of the moon shall be carried out for the benefit and in the interests of all countries. The treaty goes on to call for an equitable sharing by all States in the benefits derived from the moon's natural resources. 25X1

Proponents of the treaty indicate that the models of international agreements in space, such as INTELSAT, are based on equitable sharing in the sense of contribution by use. That is, as one's share of the use of the system increases, so does one's financial obligation. This is not the case in UNCLOS III's Authority, where contributions will be based on UN funding, and 65 percent of the upkeep would come from the USSR, the United States, Japan, the United Kingdom,Germany, and France. 25X1

The Moon Treaty does, however, give some credence to private ownership with respect to mining which the Outer Space Treaty does not. The Outer Space Treaty states that outer space including the moon and other celestrial bodies is not subject to national appropriation. The Moon Treaty phrasing is different—"Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international, intergovernmental, or nongovernmental organization, national organization, or nongovernmental entity or of any natural person." The key words "in place" can be interpreted to mean that minerals removed from the moon can be owned privately. 25X1

The Moon Treaty gives States parties the right to exploration and "use" of the moon. However, it states that when "exploitation" is about to become feasible, the States must undertake to establish an "international regime" to govern exploitation. Even though the United States made a unilateral statement at the close of negotiations that the treaty does not pose a moratorium on mining the resources in space, the developing countries would probably disagree. Without knowing what the "international regime," which will regulate all activities on the moon, will be, states find it difficult to commit themselves to this treaty. 25X1

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