

## The Concept of “Peaceful Purposes”/ “Peaceful Uses” in the Exploration and Use of Outer Space -- -- Some Practical Examples<sup>1</sup>

John B. Gantt, MIZRACK & GANTT, COUNSELLORS at LAW, Washington DC USA  
johngantt@aol.com

### Introduction

Much has been written about the concept of peaceful uses of outer space, including the Moon and other celestial bodies.<sup>2</sup> This paper will summarize the key aspects and show how the concept has been interpreted and dealt with in practice by the United States (U.S.) with respect to various multinational civil space activities.

In 1962, at the height of the Cold War, the U.S. Government made a unilateral declaration that it was not the desire or intention of the Government to orbit in space satellites which contained nuclear weapons or any other weapon of mass destruction. As a result of this declaration, the United States was able to get the agreement of the Soviet Union that this principle should be made a matter of common declaration by the UN General Assembly.<sup>3</sup> As a result, on October 17, 1963 the General Assembly unanimously adopted a resolution reciting this common commitment of the U.S. and the Soviet Union.<sup>4</sup> Prior to that, the General Assembly adopted the Nuclear Test Ban Treaty (NTBT) to which each party agreed to “prohibit, to prevent, and not to carry out and nuclear weapon test explosion, or any other nuclear explosion” in “outer space”. Later that year, the General Assembly unanimously adopted the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.<sup>5</sup> These principles, although not referring specifically to weapons of mass destruction, recognized in the preamble

“the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes.”<sup>6</sup>

The U.S., not satisfied with the concept of “peaceful use” being expressed only in a set of non-binding principles, sought instead to have the principles expressed in the form of a binding treaty. Thus, after several years of negotiation, the General Assembly unanimously approved the text of the Outer Space Treaty of 1967 (OST).<sup>7</sup> In addition to the Preamble, articles IV, IX, and XI of the Treaty refer to “peaceful uses.” It is Article IV that is particularly important in seeking to ascertain the scope of the terms “peaceful uses” and “peaceful purposes”.

### Relevant Provisions of International Law

#### 1. UN Charter, Article 51<sup>8</sup>

Article 51 excludes from the Charter any obligation that would “impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member...” Implicit here is the right of a Member to establish defensive measures prior to any such armed attack, such as a standing armed force and the necessary weapons to support such a force. This would include space-based defensive objects consistent with the provisions of the Outer Space Treaty (OST).

## 2. OST, Article III<sup>9</sup>:

This article requires that “in the interest of maintaining international peace” and promoting international cooperation and understanding, the States Parties to the Treaty carry on their activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the UN Charter. Article 51 of the Charter<sup>10</sup> expressly recognizes the “inherent right of individual or collective self defense.” Implicit in such a right is the right to be prepared to undertake such self defense should the need arise in the future, i.e., to establish and maintain a national or collective armed force.

## 3. OST, Article IV<sup>11</sup>:

The scope of the first paragraph of this article addresses the entire continuum of the universe, beginning with Earth orbit and extending throughout the void of space including the Moon and other celestial objects, and prohibits the placing, installing or stationing therein or thereon “any objects carrying nuclear *weapons* or any other kinds of weapons of *mass destruction*.” (Emphasis added). Neither the term “peaceful purposes” nor “peaceful uses” appears in this paragraph, and the objects referred to are expressly confined to those carrying nuclear weapons or other weapons of mass destruction. Thus, space-based defensive objects in Earth orbit such as lasers and reconnaissance satellites are not foreclosed by this paragraph.

The second paragraph introduces the concept of use for *peaceful purposes*, but confines the requirement with

respect to such use only to activities of the States Parties on the “Moon and other celestial bodies.” Thus, with respect to activities conducted elsewhere by the Parties, i.e., in Earth orbit and elsewhere in the void of outer space, there appears no restriction to peaceful purposes, or at least in Article IV.

## 4. OST, Article IX:<sup>12</sup>

This article, *inter alia*, requires a party to the Treaty to consult with other Parties if it has reason to believe that activities or experiments planned by it (or its nationals) in outer space, including the Moon and other celestial bodies, “would cause potentially harmful interference” with the activities of other States in their peaceful exploration and use thereof. Likewise a Party to the Treaty may request consultations with another State if the former has reason to believe that an activity or experiment by the latter would cause such interference with activities in the peaceful exploration and use thereof.

## 5. OST, Article XI:<sup>13</sup>

This article sets forth elements of transparency as to activities conducted in outer space by States Parties to the Treaty so as to promote international cooperation in the peaceful exploration and use of outer space. This article formed the basis for the later Registration Convention.

## Multinational Civil Space Activities

A review of four major multinational space activities of a commercial or quasi-commercial nature reveals that the approach adopted with respect to the concept of “peaceful

purposes/ peaceful uses" has essentially been one of "non-aggressive" purposes/uses as opposed to non-military purposes/uses. The U.S., has taken the position that peaceful purposes/uses, in light of Article 51 (UN Charter), means "non-aggressive" uses/purposes. In the four multilateral undertakings discussed below, the U.S. was a major founding party in three of the organizations and successfully pursued this "non-aggressive" interpretation.

## INTELSAT

The Preamble to the Intelsat definitive arrangements, which entered in to force in 1973, referred to a "single global commercial telecommunications satellite system [...] which will contribute to world peace and understanding." The Preamble also made reference to the Outer Space Treaty and the Principles set forth in Resolution 1721 (XVI) of the General Assembly. The terms peaceful purposes/uses weren't used into the definitive agreement.

### Article II

It was a major precept of the definitive agreement that relations between an Intelsat Signatory and its government Party were to be governed by the domestic law of the Party. Therefore usage of the Intelsat system by a Signatory (i.e., owner/user of the Intelsat space segment) was to be governed by domestic law. Thus, the question of compliance with the provisions of the OST were in the first instance, an issue of domestic law of the Signatory's Party as to what type of telecommunications could be transmitted

up to and received from an INTELSAT satellite by that Signatory.

### Article III

Several priorities of telecommunication were established as to the type of telecommunications to be provided by signatories through the Intelsat space segment. The primary service was "international public telecommunications" which were defined in Article I (k) of the Agreement as

*"fixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public such as telephony, telegraphy, telex, facsimile, data transmission and transmission of radio and television between approved Earth stations having access to the Intelsat space segment for further transmission to the public and leased services for any of these purposes...;"*

The international public telecommunications service constituted the bulk of the telecommunications services provided by Intelsat under the definitive Agreement. It consisted of both private and government communications. For all practical purposes, one could not be distinguished from the other due to the technologies used to transmit these various services.

### Article III (d) & (e)

An additional, albeit lower priority service, which INTELSAT was authorized in the Agreement to provide under certain conditions was

"specialized telecommunications services" either international or domestic.

However, one of the conditions expressed in the Agreement was that the provision of these "specialized telecommunications services" could not be for "military purposes." Thus, while the international public telecommunications service could, and did include military communications, the express exclusion of "military purposes," mentioned only with respect to "specialized services," suggests that the parties didn't intend to exclude "non-aggressive" military uses from the international public telecommunications services.

#### Article XIV (a)

This was a general Article providing that the Parties and Signatories in exercising their rights and meeting their obligations had to do so in a manner fully consistent with and in furtherance of the principles stated in the Preamble and other provisions of the Agreement. Since, in practice, the international public telecommunications service of INTELSAT was used by Parties for government communications, including military, this use demonstrates a practice of these governments consistent with the "non-aggressive" interpretation "peaceful uses" / "peaceful purposes."

#### EUTELSAT

The European Telecommunication Satellite System (EUTELSAT) Agreement followed closely the provisions of the Intelsat Agreement. In this respect, Article III (f) (iii) concerning separate systems for

telecommunications services, specifies that they must be for "other than military purposes." As in the Intelsat Agreement, this recognized that the Organization was established for peaceful purposes/uses of a "non-aggressive" nature since the public telecommunications contained no such express restriction as to "military purposes."

#### INMARSAT

INMARSAT was established initially for the provision of telecommunications services and safety of life at sea in support of maritime operations. During the course of negotiations of the INMARSAT Agreement, there was considerable focus on the use of the INMARSAT space segment for "peaceful purposes." As the result, Article III (3) states that, "the Organization shall act exclusively for peaceful purposes." Furthermore, Article IV (4), requires the Parties to ensure that their Signatories not act "in a manner which violates obligations" accepted by the Parties under the INMARSAT Convention or related international agreements. Therefore, to the extent that Navies have utilized the INMARSAT system could suggest a practice consistent with a "non-aggressive" interpretation of "peaceful purposes/uses as opposed to "non-military."

#### International Space Station (ISS)

The concept of "peaceful purposes" in the use of the ISS was raised and resolved near the end of the 1988 ISS IGA negotiations. As there was no consensus as to the scope of the term "peaceful purposes," the issue was resolved, consistent with the unique

ownership, jurisdiction and control scheme of the partnership, Namely, each of the partner-furnished elements (e.g., modules), is owned and provided by and remains under the jurisdiction and control of the providing partner (i.e., no joint ownership). Thus, with respect to a given element, (e.g., the U.S. module), the owning partner (e.g. NASA) will determine whether activity and use of its element are under U.S. law for "peaceful purposes."

## Conclusion

Of 3 key international satellite-telecommunications organizations initially established under international law, the drafters interpreted "non-aggressive" uses of the services and facilities as being consistent with the concept of "peaceful purposes"/"peaceful uses". In the case of the ISS, these issues weren't resolved in the IGA Agreement, but rather, due to the unique concept of jurisdiction and control of the various elements, was left to the individual partners as to their respective elements.

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<sup>22</sup> See, e.g., Bin Cheng, *Studies in International Space Law*, Chapters 19 and 20, Clarendon Press Oxford (1997); Nandasiri Jasentuliyana, ed., *Maintaining Outer Space for Peaceful Uses*, United Nations University (1984).

<sup>3</sup> Statement of Hon. Arther Goldberg, U.S. Ambassador to the United Nations, at Hearings on the Treaty on Outer Space before the

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Committee on Foreign Relations, United States Senate. 90<sup>th</sup> Cong., 1<sup>st</sup> Sess. March 7, 1967, at 8.

<sup>4</sup> Resolution 1884 (XVIII).

<sup>5</sup> Resolution 1962 (XVIII) (December 13, 1963).

<sup>6</sup> Ibid.

<sup>7</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, entered into force, October 10, 1967.

<sup>8</sup> Article 51 reads:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way effect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

<sup>9</sup> Article III reads:

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.

<sup>10</sup> Article 51 of the UN Charter reads, in pertinent part:

Nothing in the present Charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. \*\*\*

<sup>11</sup> 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 type of weapons and the conduct military manoeuvres on celestial

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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.

<sup>12</sup> Article IX reads in pertinent part:

\*\*\* If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the Moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the Moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, may request consultation concerning the activity or experiment.

<sup>13</sup> Article XI reads:

In order to promote international cooperation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the Moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations, and results of such activities. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively.