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## Cosmos I Mezhdunarodmoe Pravo: The Cosmos and International Law: A Collection of Articles Published by the Commission on the Legal Questions of the Interplanetary Space of the Academy of Sciences of the Soviet Union

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## BOOK REVIEW

COSMOS I MEZHDUNARODMOE PRAVO: THE COSMOS AND INTERNATIONAL LAW: A COLLECTION OF ARTICLES PUBLISHED BY THE COMMISSION ON THE LEGAL QUESTIONS OF THE INTERPLANETARY SPACE OF THE ACADEMY OF SCIENCES OF THE SOVIET UNION.

EDITED BY PROFESSOR E. A. KOROVIN, CORRESPONDENT MEMBER OF THE ACADEMY OF SCIENCE OF THE SOVIET UNION

In his foreword, the editor explains that the leading position of the Soviet Union in the exploration of the cosmos presents the need for an examination of the legal status of cosmic space. In this connection, he mentions the work of the United Nations, the various Space Law Colloquia which have been held since 1958 in conjunction with the annual meetings of the International Astronautical Federation, and the creation, within that Federation, of the International Institute of Space Law.

In view of the need for such an examination, a special commission was set up, as a part of the section of the Economic, Philosophic and Legal Sciences of the Academy of Sciences of the Soviet Union, to make such determinations of the legal questions concerning interplanetary space.

The volume contains six papers, the first of which is entitled "The Struggle for the Cosmos and International Law" by E. A. Korovin. In this paper, the author gives an extensive account of the United States' program, relying on numerous American sources and on a paper by the Russian author M. Milchtei, entitled "The American Plans for Warlike Use of the Cosmos" published in *Mezhdunaradnaia Ziabn*, No. 5 (1959). He further claims that the United States practice fully confirms the programs and objectives outlined in these writings. For example, he points to the "U-2 plane episode" and to the Samos and Tiros satellites.

Those are occasional inaccuracies in the paper concerning Soviet facts as, for example, when he cites quotations from a Soviet Manual of International Law concerning the height of sovereign airspace, an assertion which is not in the original Russian publication.

In the author's opinion, the following problems are of present interest: the liability of the cosmonaut for accomplishing his mission (*e.g.*, spying), the status of the crew and passengers of the cosmic ship, the norms for the protection of the work and health of the cosmonauts and the question of their social security. In his view, many of the questions considered by western jurists, with regard to outer space, are of an abstract character. However, he does not deny that some of such problems are in need of a prompt solution, such as the question of liability of States for launching rockets through the airspace of other States (*e.g.*, the case of the American cosmonauts on foreign territory, and the liabilities involved as the result of such an occurrence. These problems, it is felt, must be solved on the international level.

The author reviews his article published in 1934 in the *Revue Générale de Droit International Public*, concerning the conquest of the stratosphere

and its relation to international law. He insists the need is for an approach along the lines of international cooperation by all states for the solution of these problems, and he argues that the general principles of law and some established rules of international law govern the cosmos. Such rules which are applicable to human activity wherever men happen to be, whether on land, on the sea, in the air or in the cosmos govern. The author concludes that as of today, the chief objective of legal regulation must be the peaceful use of the cosmos, and this aim is, and must be, coupled with general and complete disarmament.

The second paper of the volume is entitled "Fundamental Problems of the Science of the Cosmic Law," by C. P. Zadorozhnii. In the course of his paper the author warns his Western colleagues not to accept opinions of Soviet writers as Soviet policy, and points out that policy can be found only in official documents.

The author considers cosmic or interplanetary law as a new branch of international law as it is known today. However, with Korovin, he recognizes that no special rules are applicable to cosmic space. He also agrees with Korovin that wherever men act, they are never in a legal vacuum. The author takes the position that in the elaboration of new rules, the sovereign States, whenever possible, must rely on the general principles of present international law, the requirements and principles of the United Nations charter and the spirit of peaceful coexistence. He then details what he regards as the main problems of cosmic law.

In his opinion the problem of neutralization of the cosmos cannot be separated from the liquidation of war bases in foreign territories. He further points out that the prohibition of intercontinental ballistic missiles without the removal of long range airplanes and close and medium range rocket bases would disrupt any balance, and is therefore unacceptable by the Soviet Union. Such a situation would not in the slightest degree avoid the danger of nuclear war. The author takes the position that under the present circumstances the Soviet intercontinental missiles are a powerful factor for the maintenance of peace, as they neutralize the American long-range air bases and missile launching sites built around the Soviet Union in Europe and Asia.

Regarding the limits between air space and outer space, he does not accept the view held by many Soviet writers, that the determining factor is the point where no danger obtains for the State. He would adopt the criterion of the orbital perigee. However, he suggests that the question of limit is not so important as the protection from cosmic activity (e.g., aggression, piracy, spying activities, etc.). He also considers that a right of innocent passage for peaceful flight might be introduced into international law. He is careful, however, to qualify his positions. He states that the cosmos should never be used for warlike purposes or spying activities. On the other hand, it is his contention that American jurists consider spying in the cosmos to be allowed by international law. The author asserts that this position is wrong and that it is illogical to admit spying in outer space while prohibiting it in the air. With respect to rockets and satellites, he stresses the fundamental difference in nature between spacecraft and aircraft. His main argument is that spacecraft have to cross foreign territory because of the very movement of the earth.

On the sovereignty question, the author believes that as the States have

sovereignty over their ships on the High Seas, they also reserve full sovereign rights over their launched space vehicles, platforms and satellites. As to whether stars, planets or other celestial bodies would be *res nullius* or *res communis juris*, the author considers the question premature because we do not know what kind of beings we may meet there. However, States which establish installations on uninhabited celestial bodies should keep their sovereignty over those installations, unless there is an international agreement providing otherwise. It would seem that the author grants a particular status to the moon, which is a satellite of our earth and *belongs to it*. American declarations in that respect are carefully scrutinized. The declaration of Premier Khrushchev at the National Press Club in Washington on September 16, 1959, is here repeated. He declares that Soviet Russia has no claim to the moon, and that Soviet pioneering work is for the benefit of mankind. It is his contention that propaganda in the West, of supposed intentions by the Soviet Union to dominate the moon, is calculated to screen American aggressive measures in the cosmos presently being carried out by the United States.

He proceeds to stress the fact that no theoretical or practical solution to the problems of cosmic law can succeed if not based on international cooperation between States of the bipolar system in accordance with the concept of peaceful coexistence. The author argues that the Soviet Union, although she has made gigantic efforts in the cosmos, does not claim any privilege, but is satisfied with cooperation on equal terms. On the other hand, the author complains that the United States rejected the offer for peaceful use of the cosmos at the Fourteenth Session of the General Assembly of the United Nations, and that the efforts of the United States strive towards strategic armament, with an aim towards non-peaceful use of the cosmos.

The conclusion of the article is devoted to a discussion of the two trends developing in an approach to the legal regulation of the cosmos. One, a code of general principles, the other, negotiation and conclusion of international agreements on particular specific topics or problem areas. However, he points out that there is complete agreement among Soviet scientists that, at present, it is premature to draft a code of cosmic law. There are, however, certain questions which require urgent decision, such as the neutralization of the cosmos and disarmament on earth. It is the author's opinion that our world faces the alternatives of peaceful coexistence of States of the two different systems or rocket nuclear war. Humanity expects the United Nations and, above all, the Great Powers to take all necessary measures for the maintenance of world peace and the furtherance of the concept of peaceful coexistence. That is the struggle of the Soviet Union and all socialist States.

The third paper, by G. A. Osnitskaia, entitled "The Doctrine of International Law and the Regulation of the Cosmic Space," is a survey of the legal literature on the regulation of the cosmos. The authoress gives an accurate account of the different theories concerning the upper limit of airspace. Since those theories are known, it would be superfluous to restate them here. It might, however, be useful to recall that among the Russian authors Kovalev, Tcheprov and Galina, all declare the question of vertical limits is dependent upon considerations of security, rather than on the existence of any body of air. She states that in her opinion the theory of

unlimited sovereignty is open to serious criticism, and that the final decision on the question will be an arduous one. It is her contention that the limit can be determined only by international agreement. However, she does not accept the criterion of gravity, but follows the Russian majority opinion which adheres to the security concept.

The authoress examines the questions concerning the norms of international law which can be applied in cosmic space. She analyzes the opinion of those who would, by analogy, extend the concept of freedom of the High Seas to cosmic space. Here, she points out the major flaws in such an analogy, *i.e.*, cosmic space having no defined limits and spacecraft being potentially much more dangerous than ships. She also considers the analogy of the law of the air on the point, but contents herself with a mere reference to Latchford.

All Soviet jurists agree, and many foreign jurists concur in this opinion, that the existing general principles and norms of international law apply to cosmic space. The authoress adheres unreservedly to that opinion, and further argues that the principle of coexistence should be foremost among guiding principles. She favors the adoption of special rules for cosmic space, but feels this task is of no real urgency because of the lack of scientific data concerning the cosmos. She rejects the concept advanced by Araujo Bauza that all such questions should be referred to a supranational organization. It is her opinion that this is an anti-scientific bourgeois concept, and argues that the very nature of international law excludes any such supranational organization. To support this argument she cites Tunkin. In the opinion of the authoress, it is nonsense to grant States the right to establish sovereignty over any part of limitless cosmic space. She further argues that no State or any combination of States or even the United Nations could establish sovereignty there. She repeats that international agreement is the only way to approach the legal regime of cosmic space, and any such agreement should be based on equal rights with the foremost view being towards the peaceful use of the cosmos.

Regarding the status of celestial bodies, she reviews and considers various doctrinal opinions, then states her own view. She believes that those bodies should not be used for any warlike purposes. She also feels that it is too early to establish governing rules, but the principle that State sovereignty should not extend to celestial bodies should be proclaimed.

In considering the status of spacecraft, she reviews and surveys appropriate literature, then states her satisfaction with the plea for the total proscription of all spacecraft used as instruments of war.

The volume's fourth paper is entitled, "International Cooperation in the Peaceful Use of the Cosmos," authored by G. P. Zhukov. In this paper, the author points out the beneficial advantages and usefulness of such cooperation, such as would be found in weather forecasting, better understanding of solar activity, photo and television, infrared, radio, and other related activities. On the other hand, like all Soviet authors, he stresses the major question of whether cosmic space will be used for peaceful constructive purposes or for destructive warlike purposes. In answer to this question, the author contends that much depends upon the United Nations, which he feels can and should take the necessary measures to insure that exploration of space will not be turned against humanity.

The author contrasts the views of the United States and the Soviet Union on certain matters which he considers of the utmost importance, e.g., the use of spy satellites. In the author's view, the United States seems to consider as illicit all aggressive activity in the cosmos. But, according to Beresford, all warlike activities which the United States does not consider as aggressive are included in the peaceful use of the cosmos. As Beresford would not exclude spy satellites acting over the territory of other states, the author contends that Beresford's position is the official position of the United States.

On the other hand, the author stresses the Soviet view that the prohibition of intercontinental ballistic missiles and the toleration of all other means of nuclear weapons delivery would not only fail to prevent nuclear war, but would, indeed, increase the danger of its outbreak. The author contends that intercontinental ballistic missiles are not a danger *per se*; they become so only in their capacity as carriers of nuclear weapons. Therefore, the Soviet Union considers the problem to be one of prohibition of all the means of delivery of nuclear weapons. He further contends that this problem should be met within the framework of general and complete disarmament. The author repeats the Russian proposal of March 15, 1958, concerning the simultaneous prohibition of all long range weapons and the withdrawal from foreign bases. He dwells upon the topic of general and complete disarmament, and the work of the General Assembly of the United Nations in this area. There is a plea for international cooperation to provide better use and a more efficient adjustment of material and human capital. There is also an extensive account of the work of the United Nations in the field of cosmic exploration and space law. The author is somewhat critical of the work done by the Legal Subcommittee of the United Nations. His complaint is that the work was neither fundamental nor original, in that it did no more than repeat the writings already published on the subject.

The fifth paper by V. C. Veretchetin, entitled "International Scientific Organizations in the Field of the Exploration of Cosmic Space," is a description of the work of two international organizations active in the field. The first discussed is the International Astronautical Federation. The author states that since the 1956 Copenhagen meeting, the Soviet Union has taken part in the Congresses of the organization.

The second discussed is COSPAR, and the author states that the Soviet Academy of Sciences is a member of that Committee. According to the author, COSPAR does not fulfill the requirements of wide international cooperation. He further states that the Soviet Academy of Sciences does not, in fact, exert any influence on the decisions of the Committee. The author complains that the Academy has only one vote, while the United States, as well as other Western countries are represented by several societies each having the right to vote.

The sixth and concluding paper of the volume is entitled "Spy Satellites and International Law" and was prepared by G. A. Petrov. The paper is concerned with a discussion of the so-called spy satellites which the United States have placed in orbit, and the Soviet view as to their legality under international law.

The author states that Samos II was launched on January 31, 1961, for the purpose of reconnaissance, photography and other activities. Also at