CHAPTER V

LEGAL REGULATION OF OUTER SPACE MILITARY ACTIVITIES:
PROPOSALS, PROBLEMS AND PROGRESS
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V.1. Introduction

From the preceding examination it must have become apparent that the military pursuits in outer space are to a great measure unbridled. Unquestionably, they are doomed to mar global security and stability. In the circumstances, no one would doubt that the legal regime needs purposeful and imaginative aggrandizement to ensure that peace and order prevail in outer space. This makes adoption of additional legal measures inevitable and imperative. Already proposals of various nature from different sources are emerging. While proposing legal measures, utmost care must be taken to ensure that they are pragmatic and plausible rather than idealistic or Utopian. It must also be ensured that the proposals are acceptable to the concerned states, given the prevailing political climate in the international community.

In this chapter various proposals and progress made in the direction of legal regulation of military activities in outer space have been surveyed and critically examined. The problems encountered in improvisation of the legal regime have also been highlighted. It is expected that certain trends towards legal regulation are discernable in the following examination. Needless to mention, legal-rather than political and strategic - aspects have been stressed.

V.2. The Role of the United Nations :

The first and foremost purpose of the United Nations as enshrined in Article 1 of the U.N. Charter is:
To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, ... and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

Pursuant to this, and the general objective of the world organization, a significant role is played by the U.N. in maintaining peace and order in outer space. Since the dawn of space age, various issues involving outer space activities are being considered by the U.N. and substantive legal measures have been adopted under its auspices. Besides, the U.N. also encourages and facilitates arms control and disarmament which is doubtless complementary to maintaining international peace and security. Legal restraints are instrumental in maintaining peace. The U.N. has been discharging a creative role in the process of international law-making. It has been rightly observed that the U.N. has had three main functions concerning law, namely, it is an originator, an applier and a developer of international law and that these functions overlap each other to a very great extent. In the context of space law, it has been generally admitted that because of the reality of political and technological developments, and because of the quasi-universal character of the U.N. it has been the natural forum for the emergence of international legal standards on topics like outer space.

2. Ibid., p.39.
One of the earlier steps taken by the U.N. in this respect is establishment in 1959 of the Committee on Peaceful Uses of Outer Space (COPUOS), as an intergovernmental organ subsidiary to the General Assembly to which it is supposed to report. In 1962, a Scientific and Technical Subcommittee were established. The initiative taken in the COPUOS was instrumental in successful conclusion of various space treaties which undoubtedly form the core of contemporary space law. In view of the rapid advances in space technology and particularly growing military interest in outer space, the General Assembly in 1978 expressed the concern of international community and called upon the member states to adopt additional legal measures and initiation of appropriate international negotiations on this issue. Since then the matter is being discussed and debated in various fora under the auspices of the U.N., such as the General Assembly, the COPUOS and the Committee on Disarmament and later, the Conference on Disarmament.

Before proceeding to examine the progress so far made by the U.N. in dealing with military activities in outer space, it is necessary to passingly note the controversy that arose on account of deciding the appropriate forum for consideration of the issue. At the Twenty-fourth Session of

the COPUOS in 1981 the delegates of Austria, Brazil, Canada, Chile, Egypt, India, Roumania and Sweden expressed the opinion that the COPUOS would be an appropriate forum for dealing with the issue of prevention of arms race in outer space. However, the United States uncompromisingly and emphatically objected to this proposal and asserted that the issue of prevention of an arms race in outer space is inseparably intertwined with the complex question of general disarmament and arms control on the Earth, and that it goes beyond the expertise and mandate of the COPUOS. It has also been contended that the principle of consensus on which the COPUOS works is likely to hinder progress in this respect.

The Soviet Union and other Eastern European States consider the COPUOS as appropriate forum for negotiation of a treaty to prevent arms race in outer space. Thus, the Soviet delegate is reported to have said that the COPUOS should remain the focal point for promoting co-operation among states and setting forth legal norms governing relations in outer space, for the militarization of outer space represented a very serious threat to peaceful co-operation in outer space.

6. Ibid.
8. Ibid.
Because of the controversy which prevailed for some time regarding the forum to which the question of arms race in outer space may be referred for consideration, it was suggested, albeit outside the U.N., that within the framework of the U.N. a special forum consisting of representatives of the Committees which are dealing with the issue may be established. In the U.N., there never was any serious move to establish a special forum and it is axiomatic that the states directly concerned with the issue would never have agreed to any such move.

Turning back to the existing U.N. machinery, the records and reports of the COPUOS during the last few years indicate that no discussion and consideration of the issue of arms control in outer space could proceed because of the opposition voiced by the Americans. Indeed, the trend of events compelled the General Assembly during its Thirty sixth Session in 1981, to ask the Committee on Disarmament to include in its 1982 agenda the issue of arms control in outer space under the head 'Prevention of an arms race in outer space.' Since then the issue was discussed in the Committee on Disarmament until 1983 and thereafter its


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successor, the Conference on Disarmament. Thus, at least for the immediate future, it seems that the issue will be considered in the Conference on Disarmament.

V.3. Legal Measures Proposed in the United Nations:

Various measures have been proposed by members of the United Nations for legal regulation of military activities in outer space. It is apposite to examine the significant proposals, for they merit particular attention.

V.3.(1) Italian Proposal to the Committee on Disarmament:

Italy, in 1979 submitted a proposal to the Committee on Disarmament regarding adoption of an additional protocol to the Outer Space Treaty, 1967. A draft protocol comprising six articles was proposed. The operative provision is contained in draft article I(1) which reads as under:

Outer space including the moon and other celestial bodies, shall be used for peaceful purposes only. States Parties to this Protocol undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in any measures of a military or other hostile nature, such as the establishment of military bases, installations and fortifications, the stationing of devices having the same effect, the launching into earth orbit or beyond of objects carrying weapons of mass destruction or any other types of devices designed for offensive purposes, the conduct of military manoeuvres, as well as the testing of any type of weapons.

Although the proposal appears to be excessively ambitious, at the same time it is replete with several

defects. The term 'peaceful purposes' is not defined or described. The earlier controversy regarding its meaning is bound to persist. The draft article would require the states parties to use outer space and celestial bodies for 'peaceful purposes only', unlike the second paragraph of Article IV of the Outer Space Treaty which requires the use for 'exclusively peaceful purpose.'

The draft article refers to 'measures of a military or other hostile nature' and prohibits them in outer space. This would outlaw some military activities in outer space which have come to be regarded as lawful. The draft does not make any allowance for legitimate military space activities. Further, the draft article contains a list of prohibited military activities without expressly clarifying whether the list is exhaustive or is merely exemplificatory. The wording resembles that of Article I of the Antarctic Treaty, but misses the crucial words 'inter alia' in describing prohibited military activities, the effect of which is to keep the list of prohibited military activities open.

The draft article prohibits placing in outer space 'objects carrying weapons of mass destruction or any other types of devices designed for offensive purposes'. This clause is open to several objections. First, the meaning of mass-destruction weapons is unclear. Secondly, it is impossible to identify offensive weapons. A weapon inherently possesses destructive capability. It would be
used for offence as well as defence. Its actual application for a particular purpose at a given time is decisive. It is quite reasonable to foresee deployment of weapons in outer space claiming that they are defensive, but which could be readily used for offensive purposes.

The second paragraph of the draft article permits use of military personnel and equipments for peaceful purposes in the same vein in which Article IV the Outer Space Treaty permits them. But it further declares that their participation in 'control systems to be established in order to ensure compliance with disarmament and security agreements' would be a lawful exercise. So far no such control system has come into existence. But even if one is created in future, it would in all probability involve deployment of several satellites in outer space for supervising arms control measures. But this is admittedly a military use of outer space which would come under the comprehensive ban contained in the first paragraph of draft article I. It may be argued that the second paragraph serves as an exception to the obligation in the first paragraph. If that is the case, the exceptional provisions ought to be clear and comprehensive so as to permit other lawful military activities in outer space. Besides, it is not clear which disarmament and security agreements are envisaged by the draft article - whether bilateral or multilateral or both.

The draft protocol contains a dispute settlement procedure which gives a prime role to the U.N. Security
Council. It is needless to highlight the problems which may be encountered if the U.N. Security Council — a highly politicised organ — has a decisive role to play in settlement of disputes pertaining to military activities in outer space.

V.3.(2) The Soviet Proposal, 1981:

The U.S.S.R. submitted a draft treaty on 'the Prohibition of the Stationing of Weapons of Any Kind in Outer Space' to the Secretary General of the United Nations in 1981. While presenting the draft it was pointed out that the existing legal regime of outer space does not rule out stationing of weapons other than nuclear and mass-destruction weapons in outer space and as a consequence, the danger of the militarisation of outer space still exists and is increasing.

Article 1(1) of the draft is aimed at prohibiting placing weapons of any kind in orbit around the earth, installing them on celestial bodies and stationing in outer space in any other manner, or placing on reusable or other types of future space vehicles. The most significant term in the draft article is 'any weapon'. It can be interpreted comprehensively so as to create an absolutely weapon free outer space. So far as celestial bodies are concerned, the draft article is superfluous because the Outer Space Treaty

13. Ibid.
and the Moon Treaty have unequivocally demilitarized the moon and other celestial bodies.

Article 1(2) of the draft is intended to prevent parties from assisting, encouraging or inducing any state, group of states or international organizations in engaging activities contrary to draft article 1(1). This would prohibit circumventing the obligations by indirectly engaging in activities prohibited by draft article 1(1).

Article 2 of the draft reiterates the obligation already assumed under the Outer Space Treaty and other space treaties to carry out the activities in accordance with international law and the U.N. Charter, in the interest of maintaining international peace and security and promoting international co-operation and mutual understanding. A slight change is made in the language in the following manner:

States Parties shall use space objects in strict accordance with international law....

But by and large it would not make a substantial difference in the nature of obligations already assumed by states under other space treaties.

Article 3 of the draft is another significant provision which purports to protect lawfully launched space objects. It would prevent a state from destroying or otherwise

interfering with the normal functioning of space objects which do not violate draft article 1(1).

Withdrawal from the Treaty is permitted under Article 7 by giving six months' notice in the event of occurrence of an extraordinary event related to the subject matter of the Treaty which might jeopardize the supreme interest of such a state. This is precisely on the lines with other arms control agreements. But it is significant to note that all the previous agreements which contained similar clause are bilateral. The Soviet draft treaty is expected to be multilateral. The rest of the provisions of the draft deal with procedural and formal matters,

The most commendable feature of the draft is that it seeks to proscribe deployment of weapons in outer space, but it in no way bans all military activities in outer space. It rightly takes into consideration the significance of military satellites and related lawful military activities in outer space. A total ban on all military activities in outer space is out of the question. However, as regards prohibition of deployment of weapons, a practical difficulty may arise as regards defining the term 'weapon' comprehensively. A capacious definition of 'weapon' would reinforce the ban and make it comprehensive.

One of the major shortcomings in the draft is the possibility of circumventing the obligations by deploying land based, sea based or air based anti-satellite weapons
As a reply it may be argued that draft article 3 which purports to protect lawfully launched space objects would afford adequate protection to such space objects. But there is no guarantee that land, air or sea based antisatellite weapons will not be deployed at all. It is therefore exigent to strengthen the proposed obligations by specifically outlawing development and deployment of any weapon which can be used against objects in outer space from the surface of the earth and air space. But this will also necessitate a spatial delimitation of air space from outer space. As noted in Chapter III; the space powers have concrete plans of developing directed energy weapons, radio-frequency weapons, kinetic energy weapons for antisatellite applications; which need not be based in outer space, but could be operated from land, sea or air. The draft treaty, in its present form, would leave such weapons untouched.

The draft does not provide for settlement of disputes which might arise in the context of the Treaty regime. The only provision which obliquely deals with violation of the Treaty is contained in draft article 3. Draft article 3 provides that the states parties shall not destroy, damage, disturb the normal functioning of space objects launched by other states parties in accordance with the provisions of draft article 1(1). This provision could be so interpreted

as to entitle a state party to destroy, damage or otherwise interfere with the objects deployed in outer space in contravention with draft article 1(1) of the Treaty. Such an action could lead to a serious conflict because the draft appears to leave it to states parties to make a subjective determination regarding treaty compliance and take forcible action in pursuance of the determination.

With some improvements, the draft would have been regarded as a starting point for negotiations, but the U.S. did not encourage the Soviet initiative. On the contrary, the Americans sacrilegiously declared that the Soviet draft is a hypocritical propaganda ploy.

V.3.(3) The Soviet Proposal, 1983:

In August 1983, the Soviet Union presented another draft treaty titled 'Prohibition of the Use of Force in Outer Space and From Space Against the Earth' to the thirty eighth Session of the U.N. General Assembly. The Soviets while proposing an item on the agenda of the Committee on Disarmament entitled 'Conclusion of a treaty on the prohibition of the use of force in outer space and from space against the earth' stated that it was seeking to avoid the militarization of outer space, being particularly concerned

about the plans to create and deploy various space weapons systems capable of destroying targets both in space and on the earth. It is perhaps because of the shortcomings in their earlier draft treaty of 1981, the Soviets decided to present another draft in 1983.

Article 1 of the draft treaty seeks to prohibit use or threat of force in outer space, atmosphere and on the earth with the help of space objects located in earth orbit or on celestial bodies, or in outer space in any other manner. The second paragraph seeks to prohibit use of force or threat of force against space objects in earth orbit or on celestial bodies or in outer space in any other manner. In brief, use or threat of force from space objects against earth targets and from earth against space objects is sought to be prohibited.

Article 2 of the draft is divided into five clauses. Clauses 1 and 2 deal with prohibition on testing, deployment and use of space objects which are intended to destroy objects on the earth, atmosphere and outer space. Clause 3 deals with prohibition of destruction, damage or disturbing normal functioning or changing flight trajectory of space objects of other states. Clause 4 seeks to prohibit testing or creation of new antisatellite systems and protect the existing antisatellite systems of other states. Finally,

clause 5 seeks to prohibit testing or use of manned spacecraft for military purposes.

Articles 3 and 4 of the draft resemble in all respects articles 1(2) and 4 respectively, of their 1981 draft treaty. Article 5 of the draft embodies an obligation to consult and co-operate with each other for solving any problems that might be encountered in implementation of the treaty. It also seeks to enjoin the states to undertake consultations and co-operate under the auspices of the United Nations. It also provides for formation of a Consultative Committee to facilitate dispute resolution.

International responsibility of states in adoption of appropriate measures for observance of the treaty by their nationals is incorporated in draft article 6. Article 7 of the draft declares that rights and obligations of states under the United Nations Charter shall remain unaffected.

Article 8 of the draft lays down a procedure to complement provisions in Article 5 for dispute settlement. It provides that the disputes shall be settled exclusively peacefully and through recourse to the procedure provided for in the U.N. Charter. The rest of the draft deals with formal matters.

From a general examination of the draft it is readily apparent that many provisions contained therein are superfluous. First, Article 1 which seeks to prohibit use or
threat of force in and from outer space is unnecessary since Article 2(4) of the U.N. Charter is all pervading with the same force and efficacy with which it is applicable on the earth. This principle of non-use of force protects objects in outer space, on celestial bodies, as well as prohibits use of force against the earth from outer space and celestial bodies. It has been pointed out by Sune Danielsson, and the researcher is entirely in accord with his view, that since the use of force is already prohibited from outer space, the proposed article 1 may cause confusion, and hence, it would be advisable to simply confirm the provisions of Article 2(4) of the U.N. Charter.

As regards testing of weapons, the approach appears to be confused. Article 2(1) of the draft could be so interpreted as to prohibit testing of weapons in outer space only. This leaves enough scope to test weapons on the surface of the earth or in the air. The fourth paragraph of the same draft article prohibits testing of new anti-satellite weapons systems, presumably everywhere including the air, land, sea, outer space and celestial bodies. But this injunction is limited only to antisatellite systems and is not extended to all space weapons. However, the same provision may also be interpreted to prohibit testing of

weapons for use from space against objects on land in the airspace and outer space irrespective of the place where such testing is conducted. This interpretation appears reasonable but the wording of relevant provisions needs revision to free it from ambiguities.

It is significant to note that the draft does not make it obligatory to scrape the existing weapons which could be deployed in space unless they are antisatellite systems. This would enable the states parties to continue to possess space weapons devised for ballistic missile defence. But one practical difficulty in this respect may arise. As noted earlier, states could develop dual purpose weapons - a weapon which could be used for ballistic missile as well as for antisatellite applications. The dual role is sometimes indistinguishable. To circumvent the treaty obligations, the possibility of developing dual purpose space weapons cannot be overlooked.

Article 2(5) of the draft is very poorly drafted. The obligation laid down therein is 'not to test or use manned space-craft for military, including antisatellite, purposes'. Here the use of word 'military' is undesirable and is bound to attract objections. This prohibition would render unlawful such activities as launching or placing satellites for legitimate military purposes. Reference to manned spacecraft is obviously intended to denote the U.S. space
shuttle. It has been rightly pointed out that this clause ought be removed from the draft Treaty at the time of negotiations. Needless to mention, the U.S. would never agree to such a provision. It has time and again been observed by many, and not implausibly, that to proscribe all military manned missions in outer space is both unrealistic and contradicts the incontrovertible fact of last three decades of the military man in space.

The draft Treaty expects resort to the United Nations machinery for two purposes. First, for holding consultations to solve any problem that might arise in connection with the objectives of the Treaty or its implementation. Secondly, for the disputes which might arise in connection with the subject matter of the Treaty. This has been done without clarifying the precise scope of such reference. It would be appropriate to entrust the settlement of disputes to an independent third party authority created especially for this purpose, instead of referring them to the General Assembly or the Security Council. In all probability, reference of


22. Draft Article 5.

disputes to these highly politicized organs would be unproductive and inconclusive.

There are serious misgivings regarding the issue of dismantling the existing antisatellite systems, for possibly it could prove problematic since verification of such dismantling may be impossible. However, it is submitted that this problem could be surmounted by establishing an independent international panel of experts or observers to oversee dismantling, if both the U.S. and the U.S.S.R. are prepared to act in good faith.

Two appreciable features of the draft are that it provides no scope for withdrawal and secondly the proposed treaty regime is expected to be of unlimited duration. This would doubtless strengthen the treaty obligations and create a hope for perpetual observance and permanancy.

In conclusion, the 1983 draft would serve as a negotiating text and in the course of negotiations the undesirable and injudicious elements contained therein could be eliminated and substituted by more plausible, precise and pragmatic obligations so as to make the treaty attractive and acceptable.

V.3.(4) The Canadian Working Papers:

Canada has submitted two working papers, the first one in 1982 and the second in 1985, which are now before the Conference on Disarmament. Although these working papers do not propose any measures for development of the legal regime of outer space for regulation of military activities in outer space, nevertheless, both are contributory in different ways for appreciation of the gravity of the problem, understanding the context of the issues involved and in general for facilitating negotiations. The first working paper entitled 'Arms control and Outer Space' highlights the technological aspects of the arms race in outer space. It examines various emerging space weapons technologies, types of antisatellite weapons contemplated by the space powers, the destruction mechanism and consequences of the use of such weapons. Among the weapons systems' technological aspects discussed are - nuclear warheads, high explosive warhead, mechanical collision, laser beam and particle beam weapons.

The 1985 working paper, on the other hand, is a survey of the existing legal regime applicable to armaments in outer space. It is titled as 'Survey of International Law Relevant to Arms Control and Outer Space'. Beginning with the obligations contained in the U.N. Charter, the working paper proceeds to examine the Antarctic Treaty, Partial Test Ban

25. U.N.Docs. CD/320 and CD/618, respectively.
Treaty, Outer Space Treaty, Treaty of Tlatelolco, Astronauts Agreement, Non-Proliferation Treaty, Seabed Treaty, Liability Convention, ABM Treaty, Registration Convention and the Moon Treaty. The most significant aspect of this working paper is that it specifically enumerates certain military activities in outer space as activities consistent with international law. This survey will be helpful in determining the scope and object of future treaty to regulate military activities in outer space.

V.3.(5) The French Proposals:

In April 1983 France submitted a working paper entitled 'Prevention of an Arms Race in Outer Space'. The noteworthy features of this working paper are that unlike the Canadian working papers; it comes up with some concrete proposals, and secondly, it raises some vital issues regarding protection of space objects, especially in view of the 1981 Soviet draft Treaty. It also highlights certain ambiguities in the Soviet draft and suggests possible remedial measures.

First the working paper accentuates, and very rightly so, the importance of satellites for military purposes. Referring to proposed articles 1 and 3 of the U.S.S.R. draft, it points out that these provisions afford a risk of attack

27. Ibid., p.4.
on satellites of other states, and that article 3 would have the effect of authorizing states to take the law in their hands on the basis of their suspicion and that this might create distrust and insecurity for all and that they would legitimate deployment of antisatellite systems. The possible measures suggested in the working paper are summarized below:

(a) All existing satellites must be immuned from attack. They must be internationally protected on the lines with bilateral protection afforded to them by arms control agreements between the U.S. and the U.S.S.R.

(b) Components of a space weapon system located not only in space but in other spatial areas such as the air space, surface of the earth, etc., ought to be subjected to legal constraints.

(c) Co-operation among space users to strengthen confidence in the immunity system must be developed.

(d) Manned space activities must not be looked upon with suspicion, for human presence in outer space introduces elements of initiative in judgement in space missions.

(e) Finally, the working paper reiterates the need of establishing an international satellite monitoring agency to promote international co-operation.

28. Ibid., p.5.

29. The establishment of an international satellite monitoring agency and attendant issues have been examined below at V.8.

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Unquestionably, concern for the safety of satellites launched for lawful purposes motivated the French to make the above proposals. It must be admitted that the proposals are reasonable and the concern for safety of legitimate satellites is genuine. It would be injudicious and inopportune to think of future legal controls on military activities in outer space without due considerations for protection of legitimate satellites.

V.3.(6) Pakistan's Proposal to Supplement the ABM Treaty:

In June 1986 Pakistan submitted a working paper to the Conference on Disarmament, which calls for amplification and improvement of the contemporary legal regime relating to outer space. It further suggests that pending the creation of a global arrangement for prevention of an arms race in outer space, the Conference on Disarmament should strive to:

(a) establish an international space agency,
(b) adopt a moratorium on the development, testing and deployment of antisatellite weapons,
(c) establish immunity of space objects.

Further, as an interim measure, the working paper proposes adoption of 'an international instrument to supplement the ABM Treaty', incorporating the following

(a) Recognition and reconfirmation of the importance of the ABM Treaty, 1972, in preventing the escalation of an arms race in outer space.

(b) The commitment of the U.S. and the U.S.S.R. under the ABM Treaty not to develop, test or deploy ABM systems or components thereof that are sea-based, air-based, space-based or mobile land based.

(c) Clarification of the meaning of ambiguous terms like 'research', 'use of other physical principles' as used in the ABM Treaty, for the benefit of not only the parties to the Treaty, but also for the benefit of other technologically advanced states.

(d) A commitment on the part of other technologically advanced states not to take their own research beyond the limits accepted by the U.S. and the U.S.S.R.

(e) A mechanism to provide for the redress of such activities that are contrary to the limitations contained in the ABM Treaty.

The whole exercise appears to be aimed at internationalising the bilateral commitments of the U.S. and the U.S.S.R. As it is, the ABM Treaty has proved to be a controversial instrument in recent times. Therefore, supplementing the ABM Treaty, even as a transient measure, is unavoidable.

31. Ibid., p. 2.
appears implausible. Besides, the idea of supplementing a bilateral commitment by an international instrument is itself preternatural.

v.3.(7) Canadian Working Paper: Terminology for Arms Control in Outer Space:

For a methodical examination of proposed legal regulations, it is doubtless essential to define relevant and important concepts in precise and incontrovertible terms, because ultimately such definitions determine the effectiveness and efficacy of the legal mandates. This also minimizes ambiguity and contradiction in construction not only during the negotiating process, but even thereafter. With this objective Canada submitted a working paper titled 'Terminology Relevant to Arms Control and Outer Space.'

The definition of 'Military Uses of Space' suggests that verification of arms control via satellites, though a military use of space, may be regarded as a legitimate military use. It also suggests that stabilizing military uses of space like early warning, military communication, etc., may also be considered as legitimate uses. The working paper does not provide any comprehensive or exemplificatory definition of military uses of space.

'Weaponization of Space' is defined as 'placement of weapons in space or their use in or from space.' Most

33. Ibid., p.4.
34. Ibid., p.5.
The noteworthy aspect of this definition, which resembles a Chinese proposal, is that it includes use of weapons in outer space, no matter from what place or space the weapon is used. Thus use of a weapon against a target in outer space from the land, sea, air space would be tantamount to weaponization of space. Besides, placing any weapon - offensive or defensive - could be treated as weaponization of space.

The working paper admits that the term 'militarization of space' is vague and contends that it falls between 'military use of space' and 'weaponization of space'. In our submission, militarization of space is something more than mere military use of space, for it implies full-fledged military activities in space on perpetual or more or less permanent basis, rather than a sporadic or incidental military activity. Militarization of outer space implies a systematic exploitation of outer space in furtherance of military objectives. Weaponization of space is one facet of militarizing space. Militarization of space would encompass both - legitimate as well as unlawful military activities therein.

The working paper also deals with the unproductive controversy regarding the meaning of 'peaceful purposes'. It endorses the narrow interpretation of that term which restricts military activities only to the extent expressed in


V.3.(8) Venezuelan Working Paper on Space Strike Weapons:

The Venezuelan working paper submitted to the Conference on Disarmament in July 1986, proposes a definition of 'Space Strike Weapons'. After taking into account the nature, place of deployment, location of the target, scientific principle on which it is based, and the distinction between antisatellite and antimissile weapons, the following definition is proposed:

Space Strike Weapons means (sic) any offensive or defensive device, including its operational components, whatever the scientific principle on which its functioning is based,

(a) capable of destroying or damaging from its place of deployment in outer space an object situated in outer space, in the air, in water or on land,

(b) capable of destroying or damaging from its place of deployment in the air, in water or on land an object situated in outer space.

The working paper further provides that any offensive or defensive device and its operational components, any system of such devices, whatever the scientific principle on which its functioning is based, that is capable of intercepting, from outer space or from land, water or the atmosphere,

38. Ibid., p.2.
ballistic projectiles during their flight are also space strike weapons.  

The definition is certainly capacious to embrace within its scope all those weapons which are currently being considered and developed by the space powers. Besides, it would also bring within its purview futuristic weapons if at all developed on the basis of other scientific principles. But one aspect of it, which may make it unattractive, is its excessive comprehensive nature. Particularly, reference to operational components may imply inclusion of certain facilities which are ordinarily used for peaceful purposes, but could also be used for weapons purposes, such as communications centers and means located in the territory of a state, or its air space or even outer space. Perhaps this may make the definition unacceptable to some states.

V.3.(9) Joint Proposal of The German Democratic Republic and The Mongolian People's Republic:

A joint proposal entitled 'Main Provisions of a Treaty on the Prohibition of Anti-satellite Weapons and on Ways to Ensure the Immunity of Space Objects' was presented by the German Democratic Republic and the Mongolian People's Republic to the Conference on Disarmament in July 1987.  

39. Ibid.  
At the outset, the proposal mentions that the future treaty should be based on the obligation under the U.N. Charter to refrain from threat or use of force as laid down in Article 2, paragraph 4, as well as on the Outer Space Treaty, 1967. It also calls for undertaking obligations not to develop, test or deploy in outer space, the atmosphere and on the earth antisatellite weapons systems. It also obliges destruction of existing antisatellite weapons, to abstain from utilizing any space objects to destroy, damage or interfere with normal functioning of any space object of other states. It also proposes to prevent states from modifying existing space objects for antisatellite operations, and to impose a moratorium on testing or using manned spacecraft for antisatellite purposes. States are also to abstain from assisting other states as well as international organizations to engage in activities sought to be banned by the proposed Treaty. The principle of international responsibility for nationals' activities contravening the treaty is also incorporated.

41. Ibid., p.1.
42. Ibid.
43. Ibid.
44. Ibid., p.2.
45. Ibid.
46. Ibid.
As respects compliance with the treaty, a three fold mechanism has been proposed. First, the national technical means of verification may be resorted to; secondly, international consultative procedure and inspectorate is proposed, and finally, on-sight challenge inspection procedure is suggested.

The proposed scheme of the Treaty is exclusively concerned with antisatellite weapons, rather than dealing comprehensively with space weapons as such. It is apparent now that space powers have a serious plan to develop weapons for antiballistic missile applications as well. It is to be hoped that the future treaty ought to encompass both antisatellite and antimissile space weapons so as to ensure that the limited treaty obligations are not circumvented.

V.3.(10) Venezuelan Proposal to Amend the Outer Space Treaty

In August 1988, Venezuela submitted to the Conference on Disarmament a proposal to amend the Outer Space Treaty of 1967. The proposal suggests extending the prohibition in the first paragraph of Article IV which in its present form applies to nuclear weapons and other weapons of mass-destruction to 'any kind of space weapon or system of such space weapon'. The proposal reiterates definition of space

47. Ibid., pp.2, 3.
49. Ibid.

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strike weapons proposed by them in 1986. As noted earlier, the definition is comprehensive so as to encompass weapons capable of destroying objects in outer space, airspace, water or land when stationed in outer space; as well as weapons capable of destroying objects in outer space from air, water or land. In other words, space to earth and earth to space strike weapons are envisaged by the definition.

In the submission of the researcher, for improving and developing the legal regime of outer space so as to effectively regulate military activities therein, the proper approach would be striving for adoption of an independent multilateral treaty rather than amending the existing treaties. As noted earlier, the principles contained in the Outer Space Treaty need to be refined and articulated in view of subsequent technological advancements in space exploration and uses. This has been to some extent achieved by the four treaties adopted since 1967. But it has generally been admitted that the Outer Space Treaty contains general principles, rather than detailed regimes. Hence adoption of a separate treaty to deal with military activities in outer space is desirable, rather than amending the existing instruments.

V.3.(11) Peruvian Proposal to Amend the Outer Space Treaty

In July 1989 Peru submitted a proposal for amending the

50. *Supra*, V.3.(8).
Outer Space Treaty, 1967. It points out that the Treaty does not seem completely satisfactory for dealing with the growing dangers resulting from the possibility of a shift of the arms race to outer space. To strengthen the obligations contained in Article IV of the Outer Space Treaty, it is suggested that the first paragraph of that article be replaced with the following:

The States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying any kinds of weapons, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

Admittedly, such an amendment will have the effect of deweaponizing outer space in the same manner in which currently celestial bodies have been demilitarized, but such a change will not be adequate to protect space objects, because weapons for application in outer space from air space and land surface are being devised. Recognizing this, the proposal recommends adoption of an additional protocol for the purpose of prohibiting the development, production, storage and deployment of antisatellite weapons systems which are not space-based, and also to negotiate bans on anti-ballistic missile systems. It also recommends creation of

52. Ibid., p.1.
53. Ibid., p.2.
54. Ibid.
The proposal appears to be commendable. But as pointed out earlier in the context of immediately preceding Venezuelan proposal, a separate multilateral treaty, rather than piecemeal changes in existing legal regime will prove appropriate and effective in the long run.

V.4. Consideration of Military Activities in Outer Space by the United Nations Organs:

The researcher has not examined the United Nations action as regards military activities in outer space at great length; because, as will be apparent soon, conclusive and substantial progress has been hindered on account of stubbornness of some nations on this issue. From the debates and deliberations in some U.N.organs, it is not difficult to surmise that some nations have a predilection for procrastinating the question, rather than resolving it. But one cannot summarily dispense with the examination of developments within the U.N.system. Because it is only such examination would highlight what kinds of differences exist between the nations, why do they exist, what are the attendant problems and what possible remedial measures may be adopted so as to pragmatically deal with the issue.

V.4.(1) Consideration by the General Assembly:

For the first time in 1978 the General Assembly formally

55. Ibid.
recognized the need to take effective measures for prevention of an arms race in outer space, and to that end called for holding appropriate international negotiations on the issue. In 1981, at the request of the Soviet Union, the General Assembly included in its agenda an item entitled 'conclusion of a treaty on the prohibition of the stationing of weapons of any kind in outer space.' It may be recalled that the U.S.S.R. request was accompanied by a draft Treaty. Various views were expressed in the General Assembly as regards how the issue may be dealt with. However, there was no unanimity of opinion in the First Committee as to whether the matter was urgent and required careful consideration. Much discussion took place on whether the matter needs to be considered and if so, by which organ. There seemed to be majority support to the proposal of establishing an ad hoc working group of the Committee on Disarmament to consider the issue.

During the 37th Session of the General Assembly in 1982, various views were expressed by the members on the issue of


57. Supra V.3.(2)


59. Ibid.

60. Ibid. Also see, Supra V.2.
arms race in outer space and many called for adoption of an international agreement for prevention of an arms race in outer space. During this and the subsequent sessions, the General Assembly has done nothing more than recognizing the need to adopt legal measures to prevent an arms race in outer space and calling upon the members to co-operate to that end. The General Assembly from time to time requests the Conference on Disarmament to establish an ad hoc working group with a view to undertaking negotiations for the conclusion of an agreement or agreements to deal with the issue.

V.4.(2) Consideration by the Committee and Conference on Disarmament:

In 1981, during its thirty-sixth session, the General Assembly recognized the Committee on Disarmament as single multilateral negotiating forum for negotiation of multilateral agreement or agreements on prevention of an arms race in outer space. The Committee on Disarmament established an ad hoc working group to consider the issue in 1983. During 1982 and 1983 extensive debate took place on the precise nature of the mandate of the working group. In the Conference on Disarmament, as the Committee was renamed from 1984, the debate concerning the mandate continued.

Three trends are discernable in the debates and proposals which took place in the Committee/Conference on Disarmament from 1982 to 1984. These are as under:

(a) The U.S.S.R. and the Eastern European states stressed that the mandate of the proposed working group should be comprehensive in scope, so as to negotiate a draft treaty aimed at prohibition of all kinds of weapons in outer space. They opposed the idea of prohibiting only certain kinds of weapons.

(b) The Western States have consistently opposed the above approach. In 1982, the U.K. and the U.S. regarded the establishment of an ad hoc working group as premature and maintained that the best procedure to consider the issue would be through informal meetings of the Committee. However, they have shown their preparedness to negotiate a treaty on prohibition of antisatellite weapons. They favour negotiation of a treaty to prohibit a certain type of weapons as opposed to the Eastern European proposal to adopt a comprehensive ban. Thus, the Western delegates have emphasized that the mandate of the working group should be specific and precise.

65 Ibid.
The third approach is the one advocated by the states forming the Group of 21 who assert that the mandate of the working group should be comprehensive so that the working group would undertake negotiations for the conclusion of an agreement or agreements to prevent an arms race in outer space in all its aspects. These nations have emphasized the principles of common heritage of mankind and preservation of outer space for exclusively peaceful purposes.

From the foregoing, it is apparent that basically two major approaches prevail: the first, adoption of a comprehensive ban on all weapons and second, imposing a specific prohibition on only certain type of weapon or weapons.

In 1985, an ad hoc Committee of the Conference on Disarmament to consider 'Prevention of an arms race in outer space' was established. The programme of work of the ad hoc Committee contained the following points:

(a) Consideration of issues relevant to the prevention of an arms race in outer space;
(b) Consideration of the existing agreements relevant to the prevention of an arms race in outer space;

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67. Ibid.
69. Ibid.
(c) Proposals and future initiatives on the prevention of an arms race in outer space.

Irrespective of the adoption of the mandate, divergent views continued to be expressed in the ad hoc Committee on the question of the contents of the mandate.

During the 1986 session, programme of work similar to the one adopted in 1985 was adopted by the Conference. A view was expressed that the present legal regime of outer space needs reinforcement for prevention of an arms race in outer space. The importance of strict compliance with existing legal instruments was also emphasized.

In 1987, no change was made in the mandate of the ad hoc Committee. Some delegations expressed the view that a group of experts be established to provide technical expertise and guidance to the ad hoc Committee in problems of definition. Because of very limited scope of the mandate, the ad hoc Committee could not go beyond examining and

70. Ibid., p.344.
72. Ibid., p.107.
73. Ibid.
75. Ibid., p.173.
identifying issues relevant to the prevention of an arms race in outer space.

In November 1987, the General Assembly requested the Conference on Disarmament to submit a special report for consideration during its special session on disarmament. The special report submitted by the Conference on Disarmament contains a section on 'Prevention of an arms race in outer space'. The report summarizes the work done by the ad hoc Committee during the period 1985-1988. As it is evident from the foregoing, the ad hoc Committee could not succeed in resolving the disagreement among its members over preliminary issues. The report outlines the proposals made so far for prevention of an arms race in outer space.

In 1988, as usual, the ad hoc Committee concluded its session without achieving any significant progress. It simply believed that there was general recognition in the Committee of importance and urgency of preventing an arms race in outer space and readiness to contribute to that common objective.

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76. Ibid., p.174.
79. Ibid., p.190.
The 1989 session of the ad hoc Committee, quite expectedly, concluded without any significant progress. The programme of work adopted for consideration by the Committee did not depart from preceding programmes. As usual, there was general recognition of the importance and urgency of preventing an arms race in outer space. The ad hoc Committee also recognized that the legal regime applicable to outer space plays significant role in the prevention of an arms race in that environment and also stressed the need to consolidate and reinforce that regime and enhance its effectiveness. It also recognized the significance of strict compliance with existing bilateral and multilateral treaties relevant in this respect. Re-establishment of ad hoc Committee in 1990 was recommended.

V.4.(3) Special Session of the General Assembly on Disarmament, May 31 - June 26, 1988:

The General Assembly's third special session on disarmament was held from May 31 to June 26, 1988. It is not surprising to note that the session ended without reaching a

82. Ibid., p.30.
83. Ibid.
84. Ibid.
85. Ibid.
consensus on a concluding document setting out new aims and priorities in the field of disarmament. One of the major issues that exacerbated the inconclusiveness was prevention of an arms race in outer space. The major proposals that were made during the Session related to the following:

(a) Adoption of international treaties to ban space strike weapons and anti-satellite weapons and immunity of space objects.
(b) An international verification system on non-deployment of all weapons in outer space.
(c) Creation of a world space organization to promote the peaceful activities of states in outer space.
(d) Creation of a United Nations agency to process and interpret space images.

V.4.(4) UNISPACE - 82:

The second United Nations Conference on the exploration and peaceful uses of outer space (UNISPACE-82) was held at Vienna from August 9 to 21, 1982. Although the issue of military activities in outer space was not specifically on the agenda of UNISPACE-82, yet it was extensively and

87. Ibid., p.6.
fervently discussed in the First Committee of the Conference and also in the plenary meetings, in the context of implications of projected developments in space technology. The Report of the Conference was adopted by consensus. The Conference expressed grave concern and urged the General Assembly and the Committee on Disarmament to give appropriate attention and high priority to the issue of prevention of an arms race in outer space. The Conference recognized that arms race in outer space is detrimental to humanity as a whole and supplicated the concerned nations to contribute actively to the goal of preventing an arms race in outer space and to refrain from any action contrary to that aim.

V.4.(5) Consideration by the Committee on Peaceful Uses of Outer Space (COPUOS):

As noted earlier, the U.S. and other Western Countries vehemently opposed the consideration of the question of military activities in outer space by the COPUOS. Irrespective of this, the COPUOS has expressed concern regarding the growing dangers posed by the military activities in outer space and stressed early consideration by

90. Ibid.
91. Ibid., pp.102, 103.
92. Ibid., p.5.
93. Supra, V.2.
the international community. But in 1987, the COPUOS noted that the question of the prevention of an arms race in outer space was properly a matter for the First Committee of the General Assembly and for the Conference on Disarmament.

V.5. The U.S.-U.S.S.R. Bilateral Talks for Arms Control and Space Weapons:

It is an indelible fact that future trends in legal regulation of space activities in general and military space activities in particular will be influenced by the stands taken by the two leading space powers. Legal controls on military activities in outer space will not only be abysmal, but ludicrous if they are not acceptable to the U.S. and the U.S.S.R. A super power understanding and approbation is an essential prerequisite for effective legal controls on military activities in outer space. This makes an overview of the progress made by the two states in their bilateral negotiations pertaining to arms control apposite so as to prognosticate the future course of events. Whatever type of legal instrument is adopted - a bilateral agreement between the U.S. and the U.S.S.R. or a multi-lateral treaty - it is the super powers' conjoint efforts, concurrence of opinion and confluence of ideas that will determine the viability and

efficacy of future legal controls. Progress in bilateral talks is overviewed below only insofar as necessary to find out the stands taken by the two nations on the issue. It is common knowledge that arms control and disarmament are multifaceted problems, and they are inextricably intertwined with political, strategic and the like issues.

For the first time antisatellite weapons controls were discussed bilaterally by the U.S. and the U.S.S.R. at Helsinki in June 1978. These were followed by Bern talks in January 1979 and Vienna talks in April-June 1979. The first round was expected to be an exploratory rather than a substantive negotiating session. The Helsinki talks proved to be unproductive for rather than a frank exchange of views, the negotiations were one sided. It has been observed that at that time the U.S.S.R. had not given a serious thought to the issue until the commencement of negotiations and that the Soviet negotiators were ill-informed. After the Bern round it turned out that the U.S.S.R. was willing to discuss an antisatellite testing moratorium, but was not willing to talk about the dismantling of their existing antisatellite systems. This was obviously unacceptable to the U.S.

96. Stares, n.16, p.196.
97. Ibid.
98. Ibid.
99. Ibid.
100. Ibid.
101. Ibid., pp.197-198.
However, the negotiations reflected the only common ground between the two sides, namely, a non-use agreement. This further progressed during the third round when both the sides tabled their draft non-use agreements. However, substantial progress could not be made on account of mutually unacceptable demands and stands. The grey areas covered the Soviet objections to the U.S. space shuttle and restricting the non-use agreement to the U.S. and the U.S.S.R. satellites only. It has been observed that further progress on the issue was hindered on account of the Soviet invasion of Afghanistan in December 1979 which embittered the two states. However, despite the discomposure which marred the mutual relations for a considerable time, it was hoped that the talks would be resumed, especially after the then impending election for the U.S. presidency.

The U.S. military space policy was reviewed by the Reagan administration soon after it was installed, and was given utmost priority and unanticipated momentum. This naturally shattered hopes for drawing up a treaty or an agreement to control space weapons. The ominous deflection in the policy became apparent when in the United Nations the

102. Ibid., p.198.
103. Ibid.
104. Ibid.
105. Ibid., p.199.
106. Ibid., p.200.
U.S. categorically dismissed the idea of discussing the draft treaty submitted by the U.S.S.R. in 1981. The American indifference indicated that the Reagan administration was disinterested in negotiating constraints on development of space weaponry. On the contrary, it was bent upon achieving military supremacy in space before the Soviets would do so. In March 1984, President Reagan appraised the U.S. Congress regarding their official stance towards a negotiated constraint on space weaponry. He stressed the paramount consideration of the U.S. security and assured that the U.S. will conduct space activities in the pursuit of fundamental national security objectives. He contended that no arrangements or agreements beyond those already governing military activities in outer space have been found to be in the overall interest of the United States and its allies.

He outlined the factors which impeded the identification of effective antisatellite arms control measures: difficulties of verification, diverse sources of threats to the U.S. and allied satellites, and threats posed by Soviet targeting and reconnaissance satellites that undermine conventional and nuclear deterrence.

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107. Supra, V.3.(2).
109. Ibid.
110. Ibid.
111. Ibid.
This capricious and uncompromising stance of the Reagan administration was fervently attacked by the U.S. Congressmen. The U.S. Senate, by imposing constraints on the U.S. space weapons programme exulted pressure on the administration to change the hardline attitude towards negotiating a ban on antisatellite systems. Probably this compelled Robert McFarlane, the then National Security Advisor of the President to announce in June 1984 that the U.S. was willing to meet with the Soviets to work out feasible negotiating approaches to verifiable and effective limitations on anti-satellite systems, as a response to the Soviet offer. A White House Statement issued on June 29, 1984 admitted that the militarization of outer space has begun, and that there is a pressing need for the resumption of negotiations aimed at a radical reduction of nuclear weapons on a balanced and verifiable basis. The most significant point to be noted is that the U.S. irrevocably linked talks on antisatellite systems with those on reduction of strategic and intermediate range nuclear weapons.

At the Reagan - Gorbachev Reykjavik Summit in October 1986, though the issue of space weapons was specifically not...
on the agenda, nevertheless it was expected that the two leaders will allude to space weapons during talks on arms control in general. Even before the commencement of the Summit talks, it was prognosticated that the U.S. is going to the Summit hoping for an agreement for reducing intermediate range weapons, while the Soviets wanted the U.S. strategic defence initiative programme be expunged from the U.S. military agenda. This expectation proved to be accurate from what transpired at the Summit. President Gorbachev insisted that limitations on offensive weapons ought to be linked to a ban on space weapons research and development. The Soviets were willing to make several concessions on variety of issues, including eliminating all intermediate range missiles from Europe, but all concessions were tied to agreement on space weapons. President Reagan was inclined to make some adjustments in the strategic defence initiative, but not enough to satisfy the Soviets. The Soviets insisted on limiting the research, development and testing of the strategic defence initiative systems to laboratories, essentially barring any space testing of the systems. Not unexpectedly, the American response was in the negative.

118. Times of India (Bombay), October 14, 1986, p.6.
119. Ibid.
120. Ibid.

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Before leaving Reykjavik, President Reagan made a statement that restricting strategic defence initiative to laboratory research would have killed the American 'defensive shield.' He added that he could not and would not deny himself and future American Presidents the right to 'develop, test and deploy a defense against nuclear missiles for the people of the free world.' He assuaged the Soviets by conceding that he was, at the most, ready to delay for ten years the deployment of space weapons so long as both the Soviet Union and the U.S. proved their good faith by destroying nuclear missiles year by year.

During the Washington Summit in December 1987, one of the major achievements was signing of the U.S. - U.S.S.R. treaty on intermediate nuclear forces. The issue of strategic defence initiative did surface during the talks. The U.S. reiterated its determination to proceed with the space weapons programme. A significant proposal to make a commitment not to withdraw from the ABM Treaty for a fixed period was considered during the summit and it appears that it was acceptable to both the powers. However, the Soviet Union wanted a ten year period of no-withdrawal whereas the Americans insisted on seven years rather than

121. Ibid., p.1.
122. Ibid.
123. Ibid.
125. Ibid.
ten. This and two more questions remained unresolved. One of these was regarding the ABM Treaty interpretation, and secondly, what happens after the no-withdrawal period ends. As regards the ABM Treaty interpretation, both the sides were unable to change their positions. The Americans asserted that the Treaty permits testing of components of antiballistic missiles systems in space. President Reagan is reported to have said: 'We are going forward with the research and development necessary to see if this is a workable concept. If it is, we are going to deploy it'. This enables one to presciently answer the second question, namely, what happens after the end of the non-withdrawal period. Obviously, as the Americans have hinted, both the sides would be free to deploy the systems. The Soviets have, in reply, argued that in any case, at the end of non-withdrawal period, the Treaty will continue to bind the parties as long as formal withdrawal procedure is not complied with. In the meantime, the Soviets insisted, the Treaty forbids testing of components of the strategic defence initiative programme.

126. Ibid.
127. Ibid.
128. Ibid.
129. Ibid.
130. Ibid.
The Moscow Summit of June 1988 was distinctly characterized by an impasse on arms control issues. Not only on the issue of weapons in space, but on other prominent issues related to arms control like the Strategic Arms Reduction Talks (START), no progress was made. As a consequence, the parties stuck to the positions held by them since the previous Summit.

During the first Bush-Gorbachev Summit in December 1989 on board Maxim Gorky in Marsaxlokk Bay, off the Maltese coast, the question of space weapons as well as that of the ABM Treaty did not come to forefront. It was reported that just before this Summit an informal accord was reached between the U.S. and the U.S.S.R. that the Soviet attempts to restrain SDI development and the U.S. plans to deploy SDI components will be negotiated separately from the overall START issue. It may be recalled that earlier the Soviets had declined to separate this issue. It is significant to note that the Soviets have not altogether abandoned their position, because during a meeting with the U.S.Secretary of State James Baker, the Soviet Foreign Minister Eduard

132. Ibid.
133. Ibid.
Shevardnadze made it clear that although for the time being the Soviets concede that SDI issues need not be resolved prior to START agreement, yet SDI and START issues remain 136 linked in the long run.

When one considers the question of disarmament and arms control for outer space, one realises that in formulating space policy in the context of strategic stability, the roles of the President of the U.S. and that of the Soviet President differ substantially. While the Soviet leader is less inhibited and enjoys more freedom since he is not constrained to take the people of his country in confidence, the position of the U.S. President is precarious in that he has to consult the electorate, albeit indirectly, has to face criticism of the opposition, and he will try to gain an advantage over his adversaries in his own political party. But this may not be so hereafter in view of the winds of change in the Soviet Union, especially those brought about by the policies of Glasnost and Perestroika.

As regards the progress made so far, if at all if could be called progress, it may be observed that still there appears to be a long way before the Americans and the Soviets will seriously and sincerely agree to a legal ban to contain 137

136. Ibid.
their activities of military nature in outer space. This formidable issue is inextricably intertwined with other issues of equally crucial significance.

V.6. Draft Treaty Proposed By The Union Of Concerted Scientists:

A draft treaty was presented to the U.S. Senate Foreign Relations Committee in May 1983, entitled 'A Treaty, Limiting Anti-satellite Weapons. It emerged as a result of a study conducted under the aegis of the Union of Concerted Scientists, United States.

The proposed treaty is purported to be a bilateral agreement between the U.S. and the U.S.S.R. It deals with antisatellite weapons exclusively. Further, it is aimed at limiting, rather than banning antisatellite weapons. Article I of the draft embodies an undertaking of general character that a party to the treaty shall not destroy, damage, render inoperable or change the flight trajectory of space objects of other states. Article II of the draft is very specific in that it seeks to prohibit placing in the earth orbit weapons for antisatellite applications, as well as for use against objects in atmosphere and on the ground. Stationing of such weapons in outer space or their installation on celestial bodies is also prohibited. Testing of such weapons in space or against space objects is also prohibited.

138. For the text of the proposed draft treaty, see 40, Bulletin of the Atomic Scientist, 1984, p.11, (supplement).
Article III of the draft contains an elaborate provision regarding verification for assurance of compliance, which is similar to the one contained in other U.S. - U.S.S.R. arms control agreements. For promoting the objectives and implementation of the treaty provisions, Article IV provides that the Standing Consultative Commission established by the U.S. and the U.S.S.R. in 1972 shall be used. It further lays down the functions of the commission as regards the draft treaty and its subject matter. The draft treaty embodies an undertaking for active negotiation for further limitation and reduction of weapons after the coming into force of the treaty.

Article VI of the draft is intended to prevent circumventing the treaty obligations through other states, presumably by encouraging and assisting them to deploy weapons of prohibited type. The draft also prevents the parties from assuming any international obligation which would conflict with the treaty provisions. Withdrawal from the treaty is permitted on the same basis as by the ABM Treaty. The treaty is purported to be of unlimited duration.

Protection of legitimate satellites appears to be the primary goal of the proposed Treaty. However, Article II is aimed at prohibiting weapons in outer space and celestial bodies which could be used not only against space objects,

139. See XI International Legal Materials, 1972, p. 800.
but also 'for damaging objects in the atmosphere or on the ground'. Thus, weapons contemplated by Article II include all kinds of space weapons including those for ballistic missile defence because such missiles when launched could be regarded as 'objects in the atmosphere'. They could also be treated as 'space objects' for the purposes of the Treaty when they leave the air space and enter outer space. It would also include weapons capable of destroying objects on ground which need not be antisatellite weapons necessarily. But this is not in conformity with the avowed object as expressed in Article I as well as the title of the treaty. This seems to be a major ambiguity in the draft. If the drafters intended to prohibit only anti-satellite weapons, then this object must be reflected in the letter and spirit of the proposed treaty. The draft, in its present form, would result into a total ban on all types of space weapons.

The draft does not specifically prohibit development and deployment of surface based or air based weapons for anti-satellite applications. This is a major shortcoming of the proposal. It could be argued that Article I gives a protection to all space objects from all spaces and hence specific prohibition on surface or air based antisatellite weapons is unnecessary. But then this would make Article II - which proscribes space-based weapons - superfluous, unless the drafters intended to protect objects in atmosphere and on ground especially by Article II. A plain reading of Articles
I and II makes an impression that they are complementary to each other. Therefore, overt prohibition of space based weapons and no reference to surface based or air based weapons for space applications may imply that only the former category of weapons is prohibited.

The draft does not prohibit possession of antisatellite weapons systems. This has been admitted by the drafters who hope that a more comprehensive agreement that bans possessing antisatellite weapons would be desirable. It is understandable as pointed out by Gottfried, who participated in the preparation of the draft, that verification problems are not so easy to overcome and pose a formidable problem for comprehensive antisatellite weapons ban. The draft bans testing of prohibited weapons in outer space. But testing is not prohibited on the surface of the earth as well as in the atmosphere.

If the draft is intended to serve as a negotiating text, it needs revision and changes on the lines suggested above. The researcher is of the view that proposed legal measures ought to be multilateral rather than confining them to the U.S. and the U.S.S.R.

141. Ibid.
142. This issue is discussed by the researcher separately, infra, Chapter VI.3.(4).
V.7. Proposals Regarding Verification of Space Weapons Controls:

One of the major impediments in adopting negotiated constraints in the form of a bilateral or a multilateral legal instrument to regulate and control space weapons systems is the critical issue of verification. By verification what is commonly understood is the process or mechanism to ensure that arms control measures accepted by states are not violated. The U.S. - U.S.S.R. arms control agreements presuppose verifiability of the obligations and also oblige the parties not to interfere with the national technical means of verification. The national technical means of verification are admittedly reconnaissance satellites launched by the respective parties.

The Americans are very critical regarding verifiability of arms control measures. It is the major excuse to procrastinate space weapons regulation and control. It has been contended by the Americans that 'in general verification of arms control agreements is more important for the United States than it is for the Soviet Union because, while the United States is a very open society, the Soviet Union is

143. It is also defined as a process which serves to provide confidence that the provisions of an agreement (presumably for disarmament and arms control) are being observed, that is, that the parties are complying with their obligations. See Alessandro Corradini, 'Verification and Compliance' Vol.XII Disarmament 1989, p.155.
comparatively closed society. 144 It was further contended that the verification issue is one of the key problems in arriving at antisatellite ban treaty. Therefore, it has been claimed that until verification problems associated with outer space arms control are resolved, formal bilateral negotiations with the U.S.S.R. would be unproductive.

The American apprehension is not totally unreasonable. A space object may have a facade of civilian object, but in essence it may be a weapon carrier. By assigning a cover role to a space object it might be possible to circumvent legal constraints with subterfuge.

Rendering a space object of an adversary useless without apparently causing physical harm, but by sending contrived radio signals and the like may be envisaged in view of recent advances and plans. Any such interference with an adversary's space objects can be made to appear a mechanical dysfunction developed by the object rather than an intentional act. In such cases, unless highly sophisticated and impeccable verification means are devised, observance of legal constraints may pose a formidable problem.


145. Ibid.

146. Ibid., p.48.
There is yet another reason why verification must be more exacting for space weapons controls than for other arms control measures. The existing satellites discharging legitimate military as well as non-military functions are crucial to the deploying states in many ways. A fear has been expressed that if a clandestine anti-satellite capability is acquired by a state, it might not take much time to render useless the adversary's crucial satellites and gain a military advantage. Hence it would be impossible to judge confidently whether hypothetical verification systems will indeed be able to cope with hypothetical antisatellite cheating. Therefore, the proposed verification systems must be so exacting as to assure each side that it will not lose even a handful a vital satellites to covertly acquired antisatellite weapons in the event of conflict.

It has also been highlighted that immediate steps for legal controls on anti-satellite weapons are imperative, for once such a weapon is tested and deployed, it would be very difficult to verify it. Verification of the ban, it is claimed, would not pose any significant problem since in the early stages of their deployment, they are likely to be large

148. Ibid.
149. Ibid.
150. B.Jasani, n.140, p.35.
and therefore verifiable.

But whether verification of space weapons controls is really beyond the technological reach of the space powers as unceasingly contended by the Americans so as to justify their intransigence? Michel Guionnet, a French technical expert has examined some of the technological facets of verification problem. By categorizing various antisatellite systems, he concludes that only antisatellite tests, the deployment of space mines or of large radiation transmitters from the ground or from space can be monitored with some degree of confidence. It has been admitted that existing antisatellite systems cannot be monitored. But there are contrary claims as well. Some American scientists have demonstrated that certain technologies which the U.S. currently possesses could be adequately used for verification of space arms control measures. After describing various technologies which the Americans can use to unilaterally monitor military activities in the U.S.S.R., it is claimed

151. Ibid.
153. Ibid., p.196.
154. Ibid. .
155. David Hafemeister, et.al., 'The Verification of Compliance with Arms Control Agreements,' 252 Scientific American 1985, p.35.
that the actual intelligence capabilities are much greater than those described.

During the recent past, a demand for adoption of measures to secure international verification to monitor space weapons control measures as a reliable mean for observance of international obligations is growing. It is not only in the recent times, but even at the dawn of space age, international lawyers presciently propounded the need to create a system of international inspection. Thus, writing in 1962, Bin Cheng has observed:

"[T]he systems of inspection administered by international agencies in the field of nuclear energy, as found in the Statute of IAEA and in the ENEA Security Treaty, if allowed to operate will provide valuable lessons not only for similar schemes of international co-operation in the peaceful uses of outer space but also for any effective plan of general disarmament without which there is no real hope in the complete demilitarization of either nuclear energy or outer space." 157

Such suggestions to create a system of international inspection to ensure international co-operation and demilitarization of outer space made at that time are forerunners of recent demands to establish an international verificatory system to oversee outer space activities and ensure observance of legal obligations. A similar suggestion

156. Ibid.

is to be found in the observations of McDougal, Lasswell and Vlassic made in 1963:

"A very high priority should be given to the establishment of an international police force. Such a force, if it is to assume eventually the role of the principal enforcer of community decisions, must obviously be equipped with weapons in quantity and quality at least equal to those possessed by the most powerful state." 158

Although today it seems implausible to expect equipping international verification system with actual weapons, yet it is not unreasonable to create one and equip it with necessary technological measures to discharge the functions of an 'international police force'.

One of the prime reasons to insist on international verification is that the space potential is growing in many countries other than the two space powers. Therefore, verification by national technical means may not be adequate to guarantee complete and comprehensive arms control, and that it will not subserve the international community as such. It has been rightly emphasized that there would be less chance of 'dangerous misapprehension' among the super powers if a neutral international system performed the function of verification. It has also been suggested that


159. Danielsson, n.15, p.168.

an international space station may be created to perform a significant role in verification of treaty compliance. Although the idea is laudable, yet there is a long way to go in terms of super power relationship, whose wholehearted cooperation and efforts would be an essential prerequisite to make any such international space station a viable and successful venture.

It is interesting to note that the U.S.S.R. in March 1988 made a proposal in the Conference on Disarmament for establishment of an international system of verification of the non-deployment of weapons of any kind in outer space. Establishment of an International Space Inspectorate has been suggested to verify that objects to be launched in outer space are not weapons and are not equipped with weapons of any kind. To that end, there should be on sight inspection, advance submission of information on proposed space missions, permanent presence of inspection teams and so forth; but significantly the proposal excludes ballistic missiles from the scope of the verification system. It also deals with structure and financing of the inspectorate, creation of permanent inspection teams, working procedure, verification of undeclared launches, etc.

161. Ibid.
163. Ibid., pp. 3-7.
164. Ibid.
165. Ibid.
It seems that the Soviet proposal is tantamount to putting cart before the horse. The first and foremost objective before the international community in the context of space activities is adoption of legal measures to regulate military activities in outer space by accepting space arms control measures. A verificatory system ought to be created along with adoption of arms control measures.

V.8. Proposals For Establishment of an International Satellite Monitoring Agency:

Akin to the proposals for creation of an international verification system, there is a demand for establishment of an international satellite monitoring agency (ISMA). It is because satellites would be the prime targets of space weapons and it is the concern for safety and security of vital satellites that engendered proposals for establishment of an ISMA.

It is remarkable to note that a suggestion was made in the early days of space exploration for creation of a system of community vigilance in outer space. Thus, McDougal and associated have observed:

"Proposals recommending the creation of a surveillance force which would sound alarm when apparent preparations for violence have been discovered ... deserve attention. In the space age the extreme speeds attainable by, and vast reaches open to, instruments of violence demand some degree of centralised community intelligence if the strategy of deterrence is to succeed and, no less importantly, if accidental war is to be prevented."166

166. McDougal, et. al., n. 158, p.508.
It is practically the same objective as suggested above is underlying the proposal to establish an ISMA. Admittedly, the system envisaged by McDougal and his associates in 1963 contemplated a general monitoring rather than modern proposals dealing exclusively with satellite monitoring.

At the first session of the U.N. General Assembly on Disarmament in 1978, the French delegation submitted a proposal for establishing an ISMA. Recognizing the fact that creation of an ISMA will have advantages of great significance, the General Assembly, during its thirty third session, requested the Secretary General to undertake an expert study of technical, legal and financial implications of establishing an ISMA. Accordingly, the Secretary General established a Committee of Experts to examine various facets of the issue. The Secretary General submitted the report of the Committee entitled 'The Implications of Establishing an International Satellite Monitoring Agency' to the General Assembly in June 1981.

The report is divided into three major parts; each dealing with technical, legal and financial implications of an ISMA. As regards the legal aspects, the report states

168. U.N.G.A.Res.33/71 J.
that the establishment of an ISMA would be consistent with the U.N. Charter. It is also noted that the establishment would also be in conformity with general space treaties so far concluded. As regard its status, the report notes that it should be an independent body closely linked with the U.N., as it is only through a close relationship with the U.N. that an ISMA will be able to attract to its membership a large number of states and enjoy full trust of the international community. It is also noted that since the functions of an ISMA involve matters beyond the scope of the Economic and Social Council of the U.N., it was felt that the Agency's link with the United Nations should be established through the General Assembly. The report further deals with details of the Agency's working and other administrative aspects. What is most significant is the concept of ISMA rather than its nature. Because, once an agreement is reached on establishing an ISMA, details pertaining to its nature and functioning can be worked out. It is not surprising that creation of an ISMA has many impediments.

170. Ibid., p. 61.
171. Ibid., p. 85.
172. Ibid., p. 80.
173. Ibid.
174. For further details see pp. 80-95 of the Report submitted to the General Assembly, n. 169.
though they are not unsurmountable. It has been rightly pointed out that the super powers may not be readily willing to make available the necessary technology, over which they might like to retain monopoly and guard it closely. Besides, since the acquisition and dissemination of data acquired involves sensitive security considerations, it may make nations to adopt a cautious attitude. It is believed that the U.S. and the U.S.S.R. are not favouring the establishment of an ISMA, which is confirmed by the fact that they did not participate in the Governmental Expert Group that studied and reported to the Secretary General the implications of an ISMA.

The issue of creation of an ISMA was discussed at length during the sixty-first conference of the International Law Association in 1984 at Paris. The general view was that, although the prevailing political climate of tension in international relations makes it improbable to expect that the super powers will agree on the establishment of an ISMA, yet a study of legal and other aspects of an ISMA may contribute to a more speedy acceptance of an ISMA when the

175. B. Jasani, n. 9, p. 246.
176. Ibid.
177. M. Abdel Hady and A. Sadek, 'Verification Using Satellites, Feasibility of an International or Multinational Agency' in Jasani, ed. n. 9, p. 293.
political climate becomes favourable for it. It was generally recognised that an ISMA will greatly contribute to the cause of maintenance of peace in outer space.

It is obvious that developing nations, which are profoundly concerned about the arms race in outer space, ardently support the proposal for establishing an ISMA. These nations believe that creation of an ISMA is necessary for effective arms control and disarmament. It also holds promise to such nations who may look forward to the eventual use of such a system for peaceful activities in outer space since they cannot afford indigenous satellite systems.

Thus, it may be concluded that the need of an ISMA is generally recognized by majority of nations except those whose participation in it is crucial and determinative for its success. It may be hoped that ISMA proposal in its presently envisaged version or otherwise will receive support of both the super powers in course of time. In a significant move, in October 1988 the U.S.S.R. endorsed the French proposal for creation of an ISMA which indicates a reversal in their policy.

179. Ibid., pp.371, 375.


In August 1989, France has suggested establishment of a Satellite Image Processing Agency (SIPA) as a first step towards creation of an ISMA. The principal function of the agency would be to gather and process data emanating from existing civilian satellites, and to disseminate the results of these operations among its members. One of the many advantageous uses of such data is verification of disarmament agreements.

There are suggestions for establishment of a regional satellite monitoring agency if creation of an ISMA is not feasible. It has been suggested that Europe may be identified as the first region for a regional satellite monitoring agency, for, in Europe, already there exists the necessary infrastructure. Thus, it is suggested that facilities of the European Space Agency (ESA), Interkosmos, Council of Eastern Europe which have co-operated and worked together on earlier occasions, could be used. A probable advantage could be that the problem of dissemination of data

182. U.N.DOC. CD/945.
183. Ibid., p.4.
184. Ibid.
187. Ibid.
which an ISMA will face may be less intense in case of a regional agency.

Creation of a regional agency has also been recommended as a first step towards creation of an international agency. It could have apparent advantages since participating states would have a common interest in controlling the proliferation of arms in outer space.

V.9. Concluding Observations:

It is evident from the foregoing that the issue of legal regulation of military activities in outer space is being considered by the international community with utmost priority. Although the proposals which are emerging are not impeccable in all respects, yet the fact that nations are proposing measures for legal controls is itself commendable and it must be encouraged. Admittedly, very insignificant progress has been made so far. The political climate between the two space powers is still not conducive to further progress in this respect. It is for the rest of the international community to exert moral pressure on the two recalcitrant states.

It must be admitted that the issue is intertwined with other issues of great significance to both the powers. It is

188. Ibid.
189. Matte, n.178, p.373.
190. Ibid.
hoped that their relations improve and a propitious climate is created so that both will sagaciously realise that it is necessary to contain their military space activities and adopt constrains to that end. All that is needed is a mutual sense of trust and understanding between themselves and a genuine desire to make the earth a safe place to inhabit.