

THE QUESTION OF SPACE

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The satellites in orbit overhead herald our entry into a new era, an era which will be as different from the Machine Age as the Machine Age was from the Middle Ages. We have conquered the basic problem of launching vehicles into outer space, but we have not determined a program for controlling space. If the space age is to provide opportunities for mankind greater than merely providing the staging ground for World War III, a legal system must be formulated which will regulate the use of outer space by the earth. Outer space is not covered by international law; yet we cannot afford the luxury of anarchy.

The scientific achievements demonstrated by the satellites were a result of many years of careful planning and research. Almost no planning and research has gone into the problem of how to live in the new era. After the launching of the Explorer on January 31, the President indicated that no determination had yet been made of the method of administering our own national satellite and missile program. Since we were not prepared to administer our own program, it is not too surprising that we failed to offer a sound approach to international control.

The administration's lack of ingenuity is a departure from our approach of a few years ago. When we were in sole possession of the atom bomb, the government proposed the Baruch plan, pointing the way toward effective control of nuclear power. At Geneva, President Eisenhower stimulated real hope for disarmament with his "open skies" proposal. Our emphasis today rests upon competition rather than control. We seem to feel that by some fortuitous circumstances, if we have more missiles and satellites than the Russians, we will have peace.

We have made some weak overtures to the concept of international control. In his State of the Union message to Congress in 1957, the President indicated that the United States is ready to "enter any reliable agreement" designed to "control the outer space missile and satellite development." In 1958, he expanded this concept when he recommended the creation of an international agency presumably to coordinate national endeavors in space as we do in nuclear energy through the International Atomic Energy Agency.

Russia had the opportunity to exercise real leader-

ship when it successfully launched the first satellites into outer space. It was and remains well ahead of the United States in its space program. The U.S.S.R. has given some indication that it is aware of its international responsibilities through its participation in the International Geophysical Year program. But international control? Not before a general disarmament agreement—as if the problem of space control and armaments were the same. In the final analysis, Russia has been content thus far with sabre-rattling and has made no fundamentally constructive effort at conflict resolution.

In the light of the dangers which would accompany space control by any one country or would result from competition for space supremacy, it is unfortunate that a reliable plan of international control has not been developed. The need for such a plan is obvious; the time for conception and institution is now. Senator Lyndon Johnson has said: "This is the time to act—now while the satellites are searching for facts instead of targets."

The governments have failed to bring forth constructive proposals for control of outer space because they have been thinking in traditional terms. The space age is revolutionary and it will take revolutionary concepts to meet the demands of the new era. Yet we speak of balance of power as if it were the same today as it was in the nineteenth century. The United States has been reluctant, for example, to press for international control until we achieve a position in outer space at least equal to that of the Soviet Union. The administration indicates that we must have at least as many satellites in orbit as they do—indeed, they must be more useful satellites. The balance which might be achieved, however, is the possession of even more efficient destructive power. This is not balance of power but, as Churchill described it, balance of terror—it is the balance of deterrence. The deterrence is the inevitability of the destruction of the destroyer. Man has the rational powers to avoid reliance on this outmoded device which can only produce disaster.

One proposal which has been suggested looks for the control of space by extending the application of international air law to outer space. Under contemporary international law, each country has jurisdiction over the air space above its territory. If we were to apply this law to space, we would merely extend national jurisdiction beyond the earth's atmosphere into outer space. Following this suggestion to its logical, albeit ridiculous, conclusion, we would find that at various times of the day each country would

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have jurisdiction over the moon by reason of the moon's passing through that country's jurisdictional radial.

We are not limited to the use of awkward syllogisms to deny the traditional approach in this instance. International air law refers to the area above the earth where there is sufficient gaseous air to enable airplanes to fly. Outer space is beyond this—it is the space beyond which there is not sufficient air to permit of the operation of airplanes and balloons. International law in its present state does not apply to outer space; to adapt it to outer space would involve no little difficulty.

At least one international conference involving all of the countries which have adhered to the 1944 Chicago Air Convention which established the law of superjacent air space would have to be convened. James Avery Joyce, writing in the *Saturday Review*, stated: "Of course, the Chicago convention did not envisage an object located nearly 1,000 miles above the surface of the earth, racing across frontiers and oceans at the rate of 18,000 miles per hour." Securing extension of this legal principle by such a conference would be difficult to achieve and, if achieved, would still not resolve the basic problem—the possibility that space might be used for belligerent purposes. Countries would still have the right to use the outer space in their jurisdictional radial for any purpose of their choice. Finally, if this principle were adopted, satellites could not be permitted to circle about the earth in orbit for they would then be encroaching in other countries' territorial jurisdictions. At present, at least, satellites cannot be so confined in their journeys.

Another proposition which has been advanced is that outer space is *res communis*, that it belongs to all the earth. This concept means that no one country can make claim to jurisdiction over space. Each country, according to this doctrine of international law, would then have the right to use space as it pleases, so long as it does not interfere in another country's use. Since neither the Soviet Union nor the United States has challenged the other's right to launch missiles and satellites into outer space, it may be concluded that they have assumed outer space to be *res communis*. But this proposition offers nothing in the way of preventing the use of space for aggressive purposes and in fact creates a new legal concept since none existed before. If a new legal concept is established, it should be one which will contribute to purposes of peace, not to the extension of a dangerously tenuous status quo.

In the absence of any laws of outer space, there is

nothing but the threat of war to prevent a country from assuming jurisdiction. If Country X declares itself to be the owner of space, it might forcibly attempt to exclude any other country from entering its sphere of interest. The United States could hardly permit this to occur; that is, unless the United States assumed control. If the United States assumed control, Russia could not be expected to acquiesce. The threat of war is not a sufficiently stable device upon which to rely. The threat of war must result in war eventually.

What is needed is a new approach, an approach which will establish an international regime for outer space. The failure of the governments to promote such a regime is an indication of weakness; it is a lack of conceptual innovation. Leadership is necessary now more than it was at any time in world history.

The governments all acknowledge the necessity for some kind of space control; however, few practical programs have been proposed. Some members of Congress have suggested that the United States and Russia enter into negotiations concerning outer space. Indeed, many have urged that the problem should be dealt with at the projected summit conference. Certainly the assumption must be drawn from many of the press reports concerning a summit meeting that missiles and satellites are topics which should be discussed along with disarmament. Yet little mention has been made of the propriety of U.S.-Soviet manipulation of space. This is not a subject which lends itself to American-Russian settlement. It is ironic that even the neutrals, who have consistently opposed the idea that the two super-powers could divide up the world, seem to acquiesce in the suggestion that they might divide up space.

Space control is an international problem and requires action by the international community, not national action by a few countries. Activities in outer space must be regulated if space is not to be used for military purposes. But before regulation might be achieved, the legal status of space must be determined. Space is not covered by international law at this time simply because use of space by man was not conceived of until recently.

The first thing, then, is to determine where space jurisdiction lies, to determine who has control of space. This determination requires overt action on the part of the international community. The only agency of the international community which has the power to take such action is the United Nations. In an editorial, the *New York Times* of Sunday, Feb-

ruary 2, 1958, said: "The United Nations is the proper agency to assure that all humanity's interests are safeguarded in the incredible new era man is now entering as he breaks the bonds with which gravity has always hitherto bound us and our artifacts to this small planet."

At the earliest possible time, the United Nations should declare that it, as the agency of the international community, has jurisdiction over outer space. The organization should affirm that outer space is the property of the international community, owned and administered by the United Nations. Since the property of an international organization is inviolable, permission would have to be obtained from the organization prior to any incursions into space, whether by means of satellites, rocket ships, or ballistics missiles.

Of course, the United Nations cannot take such action unless a member or members introduce a resolution to that effect and unless two-thirds of the member countries sitting in the General Assembly pass the resolution. Therefore, the United States should introduce the resolution establishing United Nations jurisdiction. Introduction of the resolution by the United States would have a salutary effect. First, the fact that the United States is one of the two powers which have successfully launched satellites will lend greater authority to the resolution. Second, introduction of the resolution would serve to emphasize our pacific intentions. And third, introduction by the United States would serve to enlist the strong support of the American public—the public which will have to pay the major share of the cost of UN space control.

Following the establishment of jurisdiction, the United States should introduce a resolution creating a United Nations Space Authority (UNSA). This would be somewhat in the line of the President's recommendation to Congress in January; however,

since the United Nations would have jurisdiction, the UNSA would have more power than would be required for simple coordination of national endeavors. The UNSA would have to establish procedures for the registration and licensing of satellites, rocket ships and other space vehicles. Orbits and frequencies would have to be allocated. Spotting stations and computing centers would have to be maintained to ascertain compliance by the several countries. It might even prove necessary for the organization to operate its own space stations and rocket ships. All this would be quite expensive; however, compared to the cost of war, the expense would be inconsequential.

With careful presentation the United States could assure the adoption of this plan. There would not be opposition to the principle from the neutral powers and the Soviet bloc has not sufficient strength to defeat the resolution. Effective opposition to UNSA would require the use of force. Using force for this purpose would mean war and there is ample evidence to justify the conclusion that Russia does not want war. If the alternative to United Nations jurisdiction is war, Russia will abide.

Mere agreement between the major powers would not suffice. It must be made quite evident that no country has the right to use space without the express permission of the United Nations. This would constitute a major limitation upon national sovereignty and many will oppose the plan upon these grounds. The alternative, however, is world suicide. In the space age which is now unfolding even more than during the past few decades, we must see that national sovereignty and national action are becoming obsolete concepts. As Clark M. Eichelberger, Executive Director of the American Association for the United Nations, has stated: "The isolationist man of the twentieth century is as antiquated as the Neanderthal Man."

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