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### Part 1 is the Offense

#### I affirm the resolved – The appropriation of outer space by private entities is unjust.

#### Civilian space programs is a smokescreen of tropes and ideology that masks military development---empirically used as the face of American space programs to deflect scrutiny

Michael Sheehan 7, Professor of International Relations, University of Swansea, 2007, The International Politics of Space, p. 43-44

In 1958 the PSAC identified four drivers of the American space programme: the human urge to explore, the need to use space for military purposes to enhance US security, national prestige, and new opportunities for scientific discovery.28 As with the Soviet Union, it was the second and third factors that would be the most compelling for the next two decades. The desire to regain and enhance national prestige would take centre stage in the short-term. Given the nature of the ideological competition between the two superpowers, prestige and national image were crucial not only in terms of how the United States perceived itself, but in terms of how the US was perceived by other countries. US statesman Bernard Baruch argued that ‘we have been set back severely not only in matters of defence and security, but in the contest for the support and confidence of the peoples of the world’.29 US foreign policy was driven by the need to win the hearts and minds of the population of America’s allies, and the uncommitted nations of the ‘Third World’, the non-aligned states neither communist nor pro-American. There was also a need to impress the governments and peoples of the Soviet Union and its allies. In all cases, it was essential that the United States was able to project successfully an image of strength and leadership.

The 1958 Space Act declared that the United States was keen to explore space for ‘peaceful purposes for the benefit of [hu]mankind’, and allowed for ‘cooperation by the United States with other nations and groups of nations’.30 This declaration had a dual purpose. The first statement was designed to deflect attention away from the military dimension of US space research and reduce foreign concerns that the United States was seeking to militarise outer space. The second statement’s purpose was to promote the image of the United States as a scientific leader that was willing to share the development of space with other nations, and which therefore clearly had no hidden agenda beyond space exploration for the general benefit of humanity. In this regard, it fitted in with other US policy initiatives designed to promote the image of the United States as a country eager to cooperate internationally in an open and transparent manner. The Marshall Plan, Atoms-for-Peace and the Peace Corps were all part of this general image-building approach, though all had other motivations as well, as did the space policy.

The apparent separation of civilian and military activities allowed the United States considerable flexibility. By having a largely transparent civilian-dominated programme, American public insecurity was alleviated, yet at the same time the US was able to continue its military programmes away from the glare of national and international scrutiny, and often successfully camouflaged behind actual or fictitious civilian space projects.

In fact, unknown to the American public, there were three, not two space programmes, white, blue and black. The white programme was the high profile civilian programme led by NASA. The blue programme was the classified military programme run by the Department of Defense. In addition, there was the ‘black programme’, the reconnaissance programme run by the intelligence agencies.

The apparent separation of the elements of the US space programme made it easier for the vast majority of the American political establishment to rally behind a substantial and energetic space programme. Liberals could support it as an alternative form of competition with the Soviet Union in an era when the dangers of nuclear war were very real, while conservatives saw the programme as developing military hardware and providing capabilities that would in the long run enhance the effectiveness of US armed forces.31

#### The collapse of the non-appropriation principle causes space arms races and implodes space law – also turns any commercial development impacts

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ABSTRACT Since the beginning of the space era, States agreed to consider outer space, including the Moon and other celestial bodies as a res communis omnium, i.e. as an area open for free exploration and use by all States which is not subject to national appropriation. The non-appropriative nature of outer space, first declared in the UN General Assembly Resolution 1721 and 1962, was formally laid down in Article II of the 1967 Outer Space Treaty. Since then, the non-appropriation principle has provided guidance and direction for all activities in the space beyond the earth’s atmosphere. Nowadays, however, the non-appropriation principle is under attack. Some proposals, arguing the need of abolishing this principle in order to promote commercial use of outer space or claiming private ownership rights over the Moon and other celestial bodies, are undermining its importance and questioning its role as a guiding principle for present and future space activities. In order to counter such proposals and to demonstrate their fallacy, this paper stresses the binding legal value of the non-appropriation principle contained in Article II of the Outer Space Treaty by arguing that such principle should be considered a rule of customary international law holding a special character. Indeed, not only is the principle prohibiting national appropriation of outer space affirmed in the main space law treaties and declarations, but it also represents the basis of approach followed by States in elaborating and setting up international space law itself. Therefore, following this interpretation, neither States nor private entities are allowed to act in contrast with the nonappropriation principle and any amendment or modification thereof should only be carried out by all States acting collectively. PRELIMINARY CONSIDERATIONS The non-appropriation principle represents the cardinal rule of the space law system. Since this principle was incorporated in Article II of the Outer Space Treaty (OST)1 in 1967, first declared in the United Nations General Assembly (UNGA) Resolutions 17212 and 19623 , it has provided guidance and basis for space activities and has contributed to 40 years of peaceful exploration and use of outer space. The importance of the non-appropriation principle stems from the fact that it has prevented outer space from becoming an area of international conflict among States. By prohibiting States from obtaining territorial sovereignty rights over outer space or any of its parts, it has avoided the risk that rivalries and tensions could arise in relation to the management of outer space and its resources. Moreover, its presence has represented the best guarantee for the realization of one of the fundamental principles of space law, namely the exploration and use of outer space to be carried out for the benefit and in the interest of all States, irrespective of their stage of development. When in the end of the 1950’s and in the beginning of the 1960’s States renounced any potential claims of sovereignty over outer space, indeed, they agreed to consider it as a res belonging to all mankind, whose utilization and development was to be aimed to encounter not only the needs of the few States involved in space activities but also of all countries irrespective of their degree of development. If we analyse the status of outer space 40 years after the entry into force of the Outer Space Treaty, it is possible to affirm that the non-appropriation principle has been successful in allowing the safe and orderly development of space activities. Nowadays, however, despite its merits and its undisputable contribution to the success of the system of space law, the non-appropriation principle is the object of direct and indirect attacks. On one side, there are some legal proposals arguing the need for amending or abolishing it in order to promote the commercial development of outer space4 . In these proposals the non-appropriation principle is considered to be an obstacle to the exploitation of extraterrestrial resources and an anti-economic measure preventing the free-market approach to be applied to outer space. On the other side, there is day-by-day an increasing number of websites where it is possible to buy acres of the lunar and other celestial bodies’ surface5 . The enterprises behind these questionable business, which claim to be allowed to carry on such activities by relying on an erroneous interpretation of Article II of the Outer Space Treaty, substantially operate as the non-appropriation principle was not in force. Indeed, these enterprises promise to their customers the enjoyment of full property rights over the acquired acres, thus acting in flagrant violation of the non-appropriative nature of outer space. All these practices are undermining the importance and value of the nonappropriation principle and questioning its leading role in the upcoming commercial era of outer space. Hence, the need to protect the non-appropriation principle arises. This paper aims to fulfil this purpose by proposing a new interpretation of the nonappropriation principle which is based on the idea that this principle represents a customary rule of international law holding a special character. Simply stated, this special character comes from the consideration that the nonappropriative nature of outer space and other celestial bodies is the fundamental concept on which the entire system of space law is based. If this concept is applied and properly respected, this system works; if not, this system is likely to collapse and to generate unforeseeable consequences. These factors make the non-appropriation principle a rule whose legal value and implications are unique not only in the context of space law but also in that of public international law as such. Hence, I propose an interpretation of the nonappropriation principle that appropriately expands upon its classic definition in terms of a customary rule and suggest to consider it something more than a usual customary rule but less than a jus cogens norm. Thus, having in mind the special characteristics and importance of the non-appropriation principle, the above mentioned theories proposing its abolition or its non-relevance must be rejected. ARTICLE II OF THE OUTER SPACE TREATY: A MATTER OF DEBATE The legal content of Article II of the Outer Space Treaty is one of the most debated and analysed topic in the field of space law. Indeed, several interpretations have been put forward to explain the meaning of its provisions. Article II states that: “Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”. The text of Article II represents the final point of a process, formally initiated with Resolution 1721, aimed at conferring to outer space the status of res communis omnium, namely a thing open for the free exploration and use by all States without the possibility of being appropriated. By prohibiting the possibility of making territorial claims over outer space or any part thereof based on use or occupation, Article II makes clear that the customary procedures of international law allowing subjects to obtain sovereignty rights over un-owed lands, namely discovery, occupatio and effective possession, do not apply to outer space. This prohibition was considered by the drafters of the Outer Space Treaty the best guarantee for preserving outer space for peaceful activities only and for stimulating the exploration and use of the space environment in the name of all mankind. What has been the object of controversy among legal scholars is the question of whether both States and private individuals are subjected to the provisions of Article II. Indeed, while Article II forbids expressis verbis the national appropriation by claims of sovereignty, by means of use and occupation or other means of outer space, it does not make any explicit mention to its private appropriation. Relying on this consideration, some authors have argued that the private appropriation of outer space and celestial bodies is allowed. For instance, in 1968 Gorove wrote: “Thus, at present an individual acting on his own behalf or on behalf of another individual or private association or an international organisation could lawfully appropriate any parts of outer space…”6 . The same argument is used today by the enterprises selling extraterrestrial acres. They base their claim to the Moon and other celestial bodies on the consideration that Article II does not explicitly forbid private individuals and enterprises to claim, exploit or appropriate the celestial bodies for profit7 . However, it must be said, that nowadays there is a general consensus on the fact that both national appropriation and private property rights are denied under the Outer Space Treaty. Several way of reasoning have been advanced to support this view. Sters and Tennen affirm that the argument that Article II does not apply to private entities since they are not expressly mentioned fails for the reason that they do not need to be explicitly listed in Article II to be fully subject to the non-appropriation principle8 . Private entities are allowed to carry out space activities but, according to Article VI of the Outer Space Treaty, they must be authorized to conduct such activities by the appropriate State of nationality. But if the State is prohibited from engaging in certain conduct, then it lacks the authority to license its nationals or other entities subject to its jurisdiction to engage in that prohibited activity. Jenks argues that “States bear international responsibility for national activities in space; it follows that what is forbidden to a State is not permitted to a chartered company created by a State or to one of its nationals acting as a private adventurer”9 . It has been also suggested that the prohibition of national appropriation implies prohibition of private appropriation because the latter cannot exist independently from the former10. In order to exist, indeed, private property requires a superior authority to enforce it, be in the form of a State or some other recognised entity. In outer space, however, this practice of State endorsement is forbidden. Should a State recognise or protect the territorial acquisitions of any of its subjects, this would constitute a form of national appropriation in violation of Article II. Moreover, it is possible to use some historical elements to support the argument that both the acquisition of State sovereignty and the creation of private property rights are forbidden by the words of Article II. During the negotiations of the Outer Space Treaty, the Delegate of Belgium affirmed that his delegation “had taken note of the interpretation of the non-appropriation advanced by several delegations-apparently without contradiction-as covering both the establishment of sovereignty and the creation of titles to property in private law”11. The French Delegate stated that: “…there was reason to be satisfied that three basic principles were affirmed, namely: the prohibition of any claim of sovereignty or property rights in space…”12. The fact that the accessions to the Outer Space Treaty were not accompanied by reservations or interpretations of the meaning of Article II, it is an evidence of the fact that this issue was considered to be settled during the negotiation phase. Thus, summing up, we may say that prohibition of appropriation of outer space and its parts is a rule which is valid for both private and public entity. The theory that private operators are not subject to this rule represents a myth that is not supported by any valid legal argument. Moreover, it can be also added that if any subject was allowed to appropriate parts of outer space, the basic aim of the drafters of the Treaty, namely to prevent a colonial competition in outer space and to create the conditions and premises for an exploration and use of outer space carried out for the benefit of all States, would be betrayed. Therefore, the need to protect the non-appropriative nature of outer space emerges in all its relevance.

CUSTOM VS JUS COGENS: SHOULD THE NONAPPROPRIATION PRINCIPLE CONSIDERED A CUSTOMARY RULE? As anticipated, this paper is based on the idea that the non-appropriation principle is a customary rule holding a special character. In order to understand the reasons of this special status, it is necessary to clarify the legal meaning of the word custom and to explain why the interpretation of the nonappropriation principle in terms of a customary rule, and not, for instance, in terms of a rule of jus cogens, has received so large support in the legal literature. Let’s start with this last example13. According to Article 53 of the Vienna Convention on the Law of Treaties the expression jus cogens refers to a peremptory norm that is “accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”. The primary purpose of a jus cogens rule is to protect values and principles constituting the basis of the modern system of international law. Because of their fundamental role, the rules of jus cogens have a higher rank than ordinary rules deriving from treaty or custom. Hence, they do not permit derogation and once a State breaches their provisions, it becomes responsible towards the whole international community. Classic examples of jus cogens rules are: the prohibition of aggression, slavery, genocide and apartheid. Despite playing a fundamental role within the system of space law and despite being aimed to protect the interests of all mankind in relation to the utilization of outer space, the non-appropriation principle does not have the requisites and importance to be considered a jus cogens rule. Therefore, a hypothetic interpretation of the non-appropriation principle in terms of a peremptory norm should be refused. On the contrary, the nonappropriation principle shows the characteristics required to be classified as a customary rule. In accordance with Article 38.1 (b) of the Statute of the International Court of Justice international custom is defined as “evidence of a general practice accepted as law”. This definition reflects the widely accepted view that custom consists of two elements: general practice, or usus, and the conviction that such practice reflects, or amounts to, law (opinio juris). As for the practice, its features have been indicated by the ICJ in the North Sea Continental Shelf cases, where the Court stated that “State practice, including that of States whose interests are specially affected should…(be) both extensive and uniform”14. These elements were considered indispensable for the formation of a customary rule. Moreover, in the Nicaragua v. United States, the Court added that it was not necessary that the practice in question had to be “in absolute rigorous conformity” with the customary rule but that “the conduct of States should, in general, be consistent with such rule, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule”15. Usually, a practice emerges among certain States under the impulse of economic and political demands. If such practice does not encounter strong and consistent opposition from other States but is increasingly accepted, a customary rule comes into being. At this latter stage, it may be said that this practice becomes dictated by international law. In other words, now States start to believe that they must conform to the practice because an international rule obliges them to do so. Therefore, an opinio juris is formed. Thus, in order to support the view which considers the non-appropriation principle a customary rule, it is necessary to prove the existence of a States’ practice and opinio juris confirming this theory. The analysis of the practice before the conclusion of the 1967 Outer Space Treaty shows that the prohibition of the extension of State sovereignty to outer space was one of the first principles on which States agreed upon. Since the beginning of the space era, indeed, the US and the Soviet Union, the only two superpowers able to carry out space activities at that time, decided to consider outer space as non-appropriable and their behaviours confirmed such interpretation. Indeed, when space activities began, no territorial claims were put forward. The first incorporation of the nonappropriation principle into a legal document was made by means of UNGA Resolution 1721 (XVI) of 20 December 1961 which declared “Outer space and celestial bodies…are not subject to national appropriation”. Two years later Resolution 1962 (XVIII) of 13 December 1963 stated that “Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”. The formulation and content of these two Resolution was largely influenced by the willing of the two superpowers. Nonetheless, both Resolutions encountered the full support of the rest of the members of the United Nations and were adopted unanimously. This fact was the evidence of the existence of an opinio juris among the UN members confirming that the principles contained in the Resolution, and in particular the non-appropriation one, were accepted by the community of States. As affirmed by the Canadian Delegate in 1963, “the legal principles contained in the draft resolution…reflected international law as it was currently accepted by Member States”16. The US Delegate supported this view by declaring: “We believe these legal principles reflect international law as it is accepted by the Member of the United Nations”17. The above mentioned text of Resolution 1962 was restated and spelled out in Article II of the Outer Space Treaty. From a legal point of view, the Treaty transformed the nonappropriation principle into a binding legal obligation. Indeed, the legal effect of a principle set out in a treaty or convention ratified by Governments is not comparable to that of a principle laid down in a Resolution by the General Assembly. However, in my opinion, Article II simply reaffirmed a principle that was already part of general law and, as a consequence, already valid erga omnes and binding upon all States, being or not active in space operations. Article II, indeed, was declaratory of a formerly set out rule of customary law. SPECIAL NATURE OF THE NONAPPROPRIATION PRINCIPLE: CHARACTERISTICS OF A STRUCTURAL RULE OF INTERNATIONAL LAW The interpretation of the non-appropriation principle in terms of a rule of customary law has received a broad support in the legal literature. I fully agree with such interpretation. However, I suggest to goes further this classic interpretation and to give the non-appropriation principle a special character. Having in mind the fundamental role that the non-appropriation principle plays in the proper functioning of space activities and the numerous examples deriving from States practice which attest its importance, I think that the non-appropriation principle should be considered a rule holding a legal effect which is superior to that of a classic customary norm. In short words, along with the typical characteristics belonging to a customary rule, the non-appropriation principle incorporates some other elements which provides it with a peculiar status and that allow this author to collocate the nonappropriation principle in a intermediate position between a customary and a jus cogens rule. Using as a starting point the words of the ICJ, which in the North Sea Continental Shelf Case, affirmed the existence of a particular category of provisions of “a fundamentally norm-creating character…”18, I propose to classify the non-appropriation principle as a “structural” norm. The adjective structural refers to the fact that this principle represents the essence of the space law system. In my opinion, in order to identify a principle as a “structural” norm, such principle needs to hold the following characteristics: 1) It must represent the basis of the legal framework regulating a field of international law, i.e., it must constitute the fundamental pillar on which such framework is built on. 2) Its presence ensures that the other principles constituting such legal framework can operate and fulfil the purpose for which they are set out. Thus, we may say that without this structural principle the other rules of the above mentioned legal system lose their significance. 3) There must be a historical and present evidence of the special status of the norm in question. 4) If the structural norm is abolished, the legal system of which such norm constitutes the basis will collapse. 5) Its violation generates a special regime of responsibility for the State involved. Let’s see now if the non-appropriation principle incorporates these features. 1) The non-appropriation principle: the basis of space law The non-appropriative nature of outer space is the basic concept of space law. Since the first satellite was launched States agreed to renounce to any sovereignty claim on outer space and to consider outer space as nonappropriable. The upcoming space era was seen as an unrepeatable opportunity for all mankind and as a possible instrument to improve the quality of live of all people on Earth. The non-appropriation principle represented the best guarantee that this “humanitarian” and idealistic approach to the management of the space environment was put in practice. Its presence, indeed, was a manifest promise that States were willing to base space activities on a cooperative basis and to carry out the exploration and use of outer space for the benefit of all. 2) Predominance of the non-appropriation principle over the other space law rules The non-appropriation principle constitutes the premise for the putting into practice and realization of the other principles set out in the Outer Space Treaty. First of all, the freedom of exploration and use by all States of outer space (Article I, par. 2 of the Outer Space Treaty) may exist only in the presence of the non-appropriation principle. If each State was allowed to acquire territorial rights over parts of outer space, the freedom to accede to and use outer space would be reduced or completely abolished. The nonappropriation principle, indeed, is to be considered the crucial component of the res communis idea. Secondly, if national appropriation in space was allowed, the preservation of outer space for peaceful purposes only would cease to exist (Article III of the Outer Space Treaty). As analysed, the non-appropriative nature of outer space has prevented to transport terrestrial conflicts and rivalries into outer space so far. Moreover, if States were free to “nationalize” parts of outer space I seriously doubt that the principle of cooperation and mutual assistance (Article IX of the Outer Space Treaty) would keep guiding the activities of States in outer space. 3) Evidences of the structural status of the non-appropriation principle It is possible to enumerate numerous examples which support and confirm the structural status of the non-appropriation principle. These examples come both form the past, namely from the process leading to the setting up of space law, and from the current practice of States and private operators in space. Therefore, I have classified such evidences as either historical or modern. 3.1) Historical evidences The res communis omnium nature of outer space found support in legal theory and in official declarations since the beginning of the space era. Already in 1947, D. Manuilsky, UN Delegate of the USSR, proposed to submit a resolution to the UN with the purpose to declare outer space “an international entity”19. Such proposal did not find any echo. However, in the literature of the pre and post satellite era there was a generally accepted view that outer space could not be subject to national appropriation. For instance Prof. Jenks in 1965 stated “Space beyond the atmosphere is and must always be a res extra commercium incapable of appropriation by the protection into such space of any particular sovereignty based on a fraction of the earth’s surface”20, while M.S. Smirnoff in 1959 declared that “The right of occupation and discovery does not exist in space which is considered as res communis”21. The principle that outer space was non-appropriable was also affirmed in the 1960 Resolution of the International Law Association declaring “outer space may not be subject to the sovereignty or other exclusive rights of any State”22 and in the 1962 Draft Code of the David Davies Memorial Institute laying down: “Outer space , and the celestial bodies, therein, are recognized as being res communis omnium,…and neither outer space nor celestial bodies in it are capable of appropriation or exclusive use by any State”23. As to the official declarations, already in 1958 Senator Johnson addressed the United Nations by declaring that: “We of the United States have recognized and recognize, as most all men, that the penetration into outer space is the concern of all mankind. If nations proceed unilaterally, then their penetration into space becomes only extension of their policies on earth. Today outer space is free. It is unscarred by conflict. No nation holds a concession there. It must remain that way”. On 14 September 1959, the Soviet space device Lunik-2 crashed on the surface of the Moon by carrying metal emblems bearing the coat of arms of the Soviet Union and the Soviet Republics. Immediately after the Lunik’s reaching the Moon, the soviet academics L.I. Sedov and A.V. Topchiyev declared that the coat of arm did not symbolize any territorial claim24. This interpretation was confirmed by Premier Khruschev during his staying in the US. He stated: “The Soviet pennant as an old resident, will then welcome your pennant and they will live together in peace and friendship and as well as people should live who inhabit our common mother the earth…We regard the sending of the rocket into outer space and the deliverance of our pennant to the Moon as our achievement, and by this word ‘our’ we mean the countries the countries of the entire world, i.e. we mean that this is also your achievement and the accomplishment of all the people living on the earth”25. From the United States side, we can quote the significant declaration of President Eisenhower which on September 22, 1960, addressed the United Nations General Assembly by indicating some basic concepts that in his opinion had to constitute the basis for international space cooperation. Among those there were the following principles: “We agree that celestial bodies are not subject to national appropriation by any claims of sovereignty”26. Later, as we have seen, the non-appropriation principle was incorporate in UNGA Resolution 1721 and 1962. In June, 1966, both the United States and the Soviet Union submitted to the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) drafts of an instrument that would become the Outer Space Treaty. These drafts were based on the nonappropriative nature of outer space. In 1967, the non-appropriation principle of outer space was formally laid down in Article II of the Outer Space Treaty. Nine years after the signature of the Outer Space Treaty, an international case took place confirming the importance and the general acceptance of the non-appropriative nature of outer space. In 1976, eight equatorial States which were not parties to the Outer Space Treaty, claimed, by means of the Bogotà Declaration, sovereignty rights on the part of the geostationary orbit above their territory27. These States affirmed their non-acceptance of the principles of the Treaty, especially regarding the principle of non-appropriation. Their claim was rejected by the overwhelming majority of States on the ground that the non-appropriative nature of outer space was a rule binding all States independently by their participation to the Treaty. 3.2 Modern evidences As indicated in the beginning of this paper, there is an increasing number of legal authors who consider the non-appropriation principle the major obstacle to the commercial development of outer space. With particular regard to the possibility to use and exploit extraterrestrial mineral resources, these authors affirm that the current space law regime, which prohibits the creation of property rights in outer space, fails to guarantee predictability for space entrepreneurs and to protect the rewards of their efforts. Therefore, private operators are discouraged to undertake missions to exploit such resources. In order to make these exploitative activities possible these authors propose the following theories: 1) To amend or simply to remove Article II of the Outer Space Treaty and to replace it with a clause allowing for the creation of titles of property rights in outer space28; 2) To extend the existing terrestrial regime of property rights in outer space. As a consequence, all individuals would be entitled to use, exclude and dispose of outer space and its resources29; 3) The United States should ignore the 1967 non-sovereignty provision and start to appropriate parts of outer space30; 4) The United States should recognise the claim of those who discover valuable mineral resources31. According to this theory the recognition of these claims would not constitute national appropriation, but rather the exercise of the US jurisdiction over its citizens. All these theories must be rejected because they lack a solid legal basis and because none of these proposals is able to prove that a system allowing the creation of property rights, would guarantee the orderly and coordinated development of space exploitative activities. The important consideration for this paper is that, in my opinion, all these attacks on the non-appropriation principle symbolize a confirmation of the special status of such principle within the context of space law. The more such authors attack the nonappropriation principle, the more its importance and the need for keeping it as the basis of space activities emerge. The fact that this authors only focus on this principle and not on the others, such as the one establishing that the exploration and use of outer space shall be carried out for the benefit and in the interests of all mankind, is an indication that it is the essence of the space law system. Apart from these theories, the other major threat to the non-appropriation principle comes from companies which sell lunar and other celestial bodies’ acres. Among these companies one of the most popular is Lunar Embassy. Lunar Embassy has established the practice of setting out twin companies and to nominate ambassadors from around the world. Recently a juridical controversy has emerged involving the so-called Lunar Embassy in China. The legal consequences of this controversy are particularly relevant for the purpose of this paper. In October 2005 Beijing industrial and commercial authorities suspended the license of Lunar Embassy in China for having engaged in speculation and profiteering and fined it 50,000 yuan. Lunar Embassy in China sued the Beijing Administration32. The Haidian District People’s Court ruled against the company in November 2005. Then, the company decided to appeal against the Court’s decision33. In March 2007 the Beijing First Intermediate People’s Court ruled against the company, stating that no individual or State could claim ownership of the Moon34. In its pronunciation the Court cited the fact that China was part of the Outer Space Treaty, which prohibits appropriation of outer space and its parts, since 1983.

The ruling of the Chinese Court represents a very significant confirmation of the nonappropriative nature of outer space after forty years of its entry into force. It is a clear-cut indication of the fact that the nonappropriation principle holds a special status. Individuals are not allowed to act in contrast to it because its presence is vital for the safe management of outer space. If violation to the non-appropriation principle were allowed, the consequences for the whole space law system would be catastrophic. Another important re-affirmation of the importance of the non-appropriation principle has been made in 2004 by the Board of Directors of the IISL by means of the “Statement of the Board of Directors of the International Institute of Space Law on Claims to Property Rights Regarding the Moon and Other Celestial Bodies35. The Statements reads: “The prohibition of national appropriation…precludes the application of any legislation on a territorial basis to validate a private claim. Hence, it is not sufficient for sellers of lunar deeds to point to national law, or the silence of national authorities, to justify their claims…”. The Statements also calls the States Parties to the Outer Space Treaty to: “comply with their obligation under Articles II and VI of the Outer Space Treaty…under a duty to ensure that, in their legal systems, transactions regarding claims to property rights to the Moon and other celestial bodies or parts thereof, have no legal significance or recognised legal effect”. The Statement on one side rejects those theories supporting the national registration of private claims to the Moon and other celestial bodies and on the other restates the special obligation relying on States to respect and to ensure the respect of the non-appropriative nature of outer space. 4) The abrogation of the non-appropriation principle will generate the collapse of the system of space law If the non-appropriation principle was removed, it is very likely that the system of space law as we have know it so far would cease to exist. In a future space scenario without the presence of the non-appropriation principle, conflicting claims among States would arise. This situation would engender international tension and increase the risk for armed conflict in outer space. Moreover, as soon as a State was able to gain control over an area of a celestial body, there would be nothing to prevent such a State to impose taxes and royalties for the acquisition of rights by private operators to use such area and its resources. As indicated by Sters and Tennen, in a similar scenario the costs for utilizing space resources and for carrying out exploitative missions would increase36. Therefore, the abrogation of the nonappropriation principle would prevent instead of favour, as it is suggested by some, the commercial development of outer space. Additionally, if States were allowed to acquire sovereignty rights over parts of outer space, obviously they would pursue their own purposes and interests. Thus, the idea that the exploration and use of outer space is the “province of all mankind” would lose its relevance. 5) Special responsibility and consequences for the violation of the non-appropriation principle As we have just seen, if the non-appropriation principle was removed, the risk for an armed conflict in outer space would be high. Therefore, States have a special duty to act in conformity with such principle. But what if a State should suddenly decide to violate such principle and to appropriate one part of outer space? What would be the legal consequences of such behaviour? Considering the fact that Article III of the OST makes international law, including the Charter of the United Nations, applicable to the exploration and use of outer space and having in mind that Article I (1) of the UN Charter lays down the obligation to maintain peace and security, and to prevent or remove threats to peace, the individual violation by a State of the principle contained in Article II of the OST should be considered a threat to international peace. Such a State should be seen as responsible for an act of particular gravity towards the whole community of States. Therefore, in a similar situation the other States would be entitled to act collectively through the United Nations to stop such behaviour and to remove this threat to peace. A joint effort and pressure in that direction should be likely to restore the status quo ante. The argument could be put forward that if a State should decide to withdraw from the Outer Space Treaty, it would be no longer bound by the provisions of Article II and thus it could appropriate parts of outer space. This argument should be rejected on the basis that even after that withdrawal, such a State would be obliged to respect the non-appropriation principle in consideration of its structural and special status. CONCLUSION The non-appropriation principle represents the basic principle of space law. Considering its importance and its role in providing the conditions for the peaceful and orderly management and development of space activities, this paper has put forward the hypothesis of considering that principle a structural rule of international law. As it has been shown, there exist several historical and modern examples which confirm the peculiar status of the principle contained in Article II of the Outer Space Treaty. Having in mind the special characteristics of the non-appropriation principle, the theories proposing its abrogation or suggesting unilateral State actions against it are unacceptable. If these theories were put into practice, the use of outer space would evolve into a situation of chaos and, moreover, its commercial development would be hindered instead of favoured. Any hypothetical amendment of the nonappropriation principle should be carried out by all States acting collectively. This would be the only option to prevent the risk of war in outer space and to allow the harmonized management of space activities in the era of space commercialisation.

#### Western militarization of space *consolidates* an extra-terrestrial system of rule designed to increase coercion of non-Western powers and strengthen neoliberal exploitation of the space environment.

**Duvall et al, 8**

(\*Dr. Raymond Duvall, Professor of Political Science, University of Minnesota, Distinguished Scholar Award, from the International Theory Section of the International Studies Association, \*Dr. Jonathan Havercroft is Associate Professor in International Political Theory within Politics & International Relations at the University of Southampton, “Taking sovereignty out of this world: space weapons and empire of the future”, *Review of International Studies* (2008), 34, 755-775 Copyright© British International Studies Association dot 10. 101 7IS02602 10508008267, Ak.)

Space weapons, sovereignty, and the constitution of empire Our argument, in simple terms, is that the **unilateral militarisation of space reconstitutes and alters the social production of political society** globally in three interlocked ways that are rooted respectively in the three forms of deploying technologies/cartographies of violence in orbital space identified in the previous section: **missile defence; space control; and force application**. The conjoint effect of those three technologically induced processes of reconstitution33 is to **substitute the consolidation of an extra-territorial system of rule** - which we refer to as **empire of the future** - **for the competitive sovereignties of** the **modern states**-system. Missile defence The first weapons in **space** will probably be **deployed** for **missile defence**. The US military is testing several prototypes of components of such a system, one of which, the MDA Space Test Bed, is being funded as 2008, with the aim of integrating already existing space technologies into a system that, from orbital space, can intercept ballistic missiles in their boost phase.34 Such a system, when/if highly effective, **replaces mutual deterrence with the singular US capability** (perhaps extended to allies) **to launch unilateral pre-emptive and preventative attacks freed from concerns of retaliation** through ballistic missile counter-attacks. The missile defence system now envisioned by the US thus undermines the logic of mutual deterrence. **States not included under its umbrella become** increasingly **vulnerable to** (even **nuclear**) **attack** **by the state that controls it**.35 The **sovereignty of a state is conceptually and practically linked to its ability to maintain territorial integrity by deterring enemies from attacking**. **During the Cold War**, the deterrent effect of **nuclear weapons** was acknowledged as a primary means by which 'great power' states in conflict **protected** their **territorial integrity**, **and**, in turn, their **sovereignty**.36 Kenneth Waltz argued that the proliferation of nuclear weapons would extend deterrent effects to otherwise not-yet 'great powers', thereby strengthening the security of larger numbers of sovereign states and stabilising the international system.37 Following the logic of Herz's nuclear 'one-worldism', an **effective missile defence** system, by contrast, **will strip states of** **whatever** **'hard shell' of territorial defensibility that had been** or might be **provided by mutual deterrence** of missile attacks. The realist argument that has largely carried the day for the past half century in critical response to Herz (that the deterrent effect of mutual assured destruction of two states possessing nuclear weapons reinscribes territorial state sovereignty) accordingly is brought into doubt. If the **US** were to develop a sufficiently sophisticated **missile defence** shield, the **deterritorialising effect on the sovereignty of all other states** would be precisely those that Herz forecasted - their 'hard shell' of defensibility would be lost. There would be a significant twist, however, because, **for the US**, control of an effective **missile defence** system **would** markedly **reinscribe** its territorial 'hard shell' and **its sovereignty** in exclusively shielding it from the threat of (missile-based) attack by others. **The sovereignty of one state is reinscribed**, **while** that of **other states**, most notably 'great powers' that have depended thus far on their **deterrent capacities, is eroded**. Space control The doctrine of space control has emerged out of the belief that assets in space represent a potential target for enemies of the US.38 There are two kinds of vulnerable US assets: private-commercial; and military. One **concern** is that **rivals** may **attack commercial satellites**, thereby disrupting the flow of information and **inflicting significant harm on global markets**.39 Militarily, the concern is that, through **increasing reliance on satellites** for Earth-based military operations, **the US has created an 'asymmetrical vulnerability'**. **An adversary** (**including** **a** non-state, **'terrorist' organisation**) **could** effectively **stop** ~~immobilise~~ **US forces by destroying** ~~disabling~~ the **satellites that provide communication, command, and control** capabilities. Consequently, the project of **space control is designed to** protect commercial and military satellites from potential attacks. Its broader purpose, however, is to **prevent** **rivals** **from having any access to space for activities antithetical to US interests**; this is the imperative for **'denial of** the use of **space to adversaries'**. Thus **space control has dual functions** - it **is** both a **privatising** of **the commons of orbital space and a military exclusion** - in a form of 'inclusive exclusion'.40 **Space control represents the extension of US sovereignty into orbital space**. Its **implementation** **would** reinforce the constitutive effect identified in the previous section on missile defence, namely to **reinscribe** **the 'hard shell' border of the US, now extended to include the 'territory' of orbital space**. **US sovereignty is projected out of this world and into orbit**. Under Article II of the 1967 Outer Space Treaty, 'Outer Space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. **The US project of space control** would entail a clear violation of this article.41 In addition to expanding the scope of US sovereignty, however, this **violation of international law** has a second constitutive effect of importance, namely **to produce** a **distinctly capitalist sovereignty**. In Volume One of Capital, Marx chided classical political economists for their inability to explain how workers became separated from the means of production. Whereas political economists such as Adam Smith argued that a previous accumulation of capital was necessary for a division of labour, Marx argued that this doctrine was absurd. Division of labour existed in pre-capitalist societies where workers were not alienated from their labour. Instead, Marx argued that the actual historical process of primitive accumulation of capital was carried out through colonial relations of appropriation by force.42 While not a perfect analogy, **because of the lack of material labour**, the value of which is to be **forcibly appropriated in orbital space**, **space control is** like such **primitive accumulation in constituting** **a global capitalist order through** the **colonisation of space as previously common property**. One of the purposes of the 1967 Outer Space Treaty was to preserve a commons where all states, regardless of technical ability or economic or military power, could participate in the potential benefits space has to offer. In the years since this treaty was signed, the **primary economic use of space** has been **for commercial communications satellites**. This industry has expanded dramatically in the last two decades. Total revenues for commercial space-related industries in 1980 were $2.1 bn; by 2003 this figure had expanded to $91 bn and it was expected to increase at least as rapidly into the foreseeable future.43 **Space control is about determining who has access to this new economy**. **Positions in orbit for satellites are a new form of 'real estate'**. By controlling access to orbital space **the US would be forcibly appropriating the orbits**, in effect **turning them into primitively accumulated private property**.44 In this way, **the US becomes** even more than it is now the sovereign state for global capitalism, **the global capitalist state**. Force application from orbital space **Force application entails using weapons** either based **in space** or **deployed** **through space** **to attack targets** **on Earth** or within Earth's atmosphere. Such weapons systems (other than missiles) are many years off, but substantial research is being conducted, and military strategists are already discussing how they might be used.45

#### Weaponization and distortion of the space environment is a unique threat and is *far* more pernicious than conventional militarism. Space warfare creates a domain that distorts sovereign relations by breaking down deterrence, MAD, and institutional coherence. Such a surveillance panopticon makes resistance to violent institutions *impossible*.

**Duvall et al, 8**

(\*Dr. Raymond Duvall, Professor of Political Science, University of Minnesota, Distinguished Scholar Award, from the International Theory Section of the International Studies Association, \*Dr. Jonathan Havercroft is Associate Professor in International Political Theory within Politics & International Relations at the University of Southampton, “Taking sovereignty out of this world: space weapons and empire of the future”, *Review of International Studies* (2008), 34, 755-775 Copyright© British International Studies Association dot 10. 101 7IS02602 10508008267, Ak.)

The major advantage of **space**-based **weapons** is that they **can be deployed to attack extremely quickly**. Additionally, **it is very difficult to defend against them**. They **become the violent parallel to the surveillance panopticon**. In order to investigate the constitutive effects of force application from outer space, we need to look at two aspects of these weapons: technical (what they can do); and tactical (how they would be used).46 Technically, the two types of force application weapons systems currently envisioned, laser-energy and kinetic-energy, have different features. **Laser weapons would take only seconds to deploy**, and **they could reach any target on** or near **Earth instantaneously and very precisely**. They are not very destructive, however, and as such would not be very useful against large-scale and/or heavily shielded targets. **Kinetic**-energy **weapons**, in contrast, **have the potential to deliver very destructive force**, even well below the Earth's surface (in deep bunker-busting). They would take a few hours to deploy, however.47 While they could also be designed to attack any point on earth, they are only useful against fixed targets, because of deployment lag-time. In addition to laser and kinetic-energy systems, **conventional weapons**, such as **bombs and missiles**, **might** also **be placed in space**. They would occupy a middle ground. It would take approximately ten minutes to launch them and they could attack any targets that have relatively fixed locations.48 The tactical advantages are obvious. Their **tremendous range would enable space-based weapons to reach targets** that **other weapons cannot**, and because they are **based in orbital space** there are no concerns about violating the airspace of other states in transit, as there is with airplanes or non-ballistic missiles. They could also be **used on very short notice, in contrast to the days to weeks typically required to deploy Earth-based weapons**, such **as airplanes, ships, or troops**. Their major drawback is cost, both for development and for placing in orbit.49 As such, they would likely have limited use,50 particularly if other weapons and tactics can accomplish the same mission for lower cost. Why, for instance, would the military use a kinetic-energy weapon orbiting in space against a target when a similar result could be produced by a cruise missile or a bomb? Thus, to repeat, **the prime advantage of these weapons** is their **ability to be used very quickly against targets** that are **out of the reach of other weapons**. In what kind of military operations, then, would space-based weapons for force application be useful? Military analysts have speculated on just such questions: Alternatively, **a space weapon might be the weapon of choice** for an otherwise lower-value target **if the space weapon were the only choice available in time**, particularly for a time critical political effect. For example, a locomotive might not be worth a space-delivered smart munition. However, it might be well worth the use of a **space**-delivered smart **munition to target a locomotive** **pulling a train full of people forced from their homes for transport** **to the border** **or** to **a concentration camp** **at the beginning of an ethnic cleansing campaign** - particularly if aircraft and helicopters cannot reach the train because air defenses have not been suppressed, basing and overflight rights have not been granted, or coalition consensus on the action has not been reached.51 This scenario is fascinating for the political logic at work within it - **force application from space is required to attack an otherwise inaccessible target**. All three reasons stated for inaccessibility involve **potential gaps in US capacity to project its power globally**. **Either the defences of the target country have not been suppressed**, **or other states have not consented to let US forces fly through their airspace**, **or** other **coalition members** - presumably in NATO or the UN - **have not consented to the action**. What places **targets 'out of reach'** in this scenario, then, is **the sovereignty of other states** as **exercised through their abilities to defend their territory**, **control** their **airspace**, **and**/or **participate** (jointly) **in authorised** decision of the (global) **exception to international law**. As Schmitt has argued with respect to domestic law, **the sovereign is constituted through the capacity to decide the exception to the application of law in a moment of crisis**.52 The effect of **space weapons** for force application is to **erase that sovereignty** - **states are constituted as subjects lacking authorisation of decision, and lacking a boundary** effectively **demarcating inside from outside**. **While** **other** **weapons systems** **can** **be** **used to intervene in affairs within a state's borders**, their **constitutive logic** (with the possible exception of nuclear and some forms of biological weapons) **is not**, per se9 **corrosive of sovereignty**, **because in principle**, even if not in every instance, **they can be defended against**. **Precision space-based strikes happen so rapidly**, however, **that a defensive response is not possible**. As such **they strip states of the defensive 'hard shell' that**, classical realists argued, **is constitutive of sovereignty**. All three justifications thus **buttress the exclusive capacity of the US to 'decide the exception' globally**, **while diminishing, by circumvention**, the **sovereignty of other states**. The **hypothetical use of space weapons** in this scenario **is an imperial project**.53 Furthermore, these weapons would be **most useful against small targets, such as groups and individuals**. While the justification for the **use of space-based weapons** in the quoted scenario was to prevent genocide, the hypothetical attack **constitutes their possessor as global police**, **punishing without trial** those specific actors it deems responsible for genocide. Even if the specific act provoking space-based attack is not a violation of international law, the political society with the capacity to intervene - and with it the capacity to decide when to intervene - constitutes itself as sovereign police of the international system.54 **Space-based weapons** for force application, then, **are most useful at targeting individuals and groups at short notice** in order **to achieve** the **policing** objective of **'order' and control under a rule of law**, even as that sovereign policing decision is made outside of the very law in whose name it is made. We have already seen glimpses of this type of warfare in recent years. Consider, for example, that **the Iraq War began with a** so called **'decapitation strike'** **aimed at assassinating Saddam** Hussein in the hope of ending the war before it began. **Similar tactics have been used by the Israeli Defence Forces to kill** specific leaders of the **Palestinians**. Also, the US has used Unmanned Aerial Vehicles equipped with missiles to target members of Al Qaeda and the Taliban in Afghanistan and Pakistan. **Placing weapons in space aimed at terrestrial targets would markedly accelerate the ability to carry out** these types of **'targeted killings'** (**assassinations**). Thus, **application of force from orbital space** would have at least three crucially important constitutive effects. First, it would constitute the US, as possessor of these weapons, as the centre of a globally extensive, late-modern empire,55 a sovereign of the globe. But **this sovereign would exercise its power in a new way**. Rather than needing to have occupying forces in place to control the Earth's lands and seas, **it could rely heavily on space weapons to exercise social-political control**. While these weapons are not particularly useful in fighting large-scale wars, or in the conquest of territory, **there would no longer be a need to hold territory**. **All the global sovereign would have to do is to kill, or** perhaps even **threaten** to kill, potential adversaries around the world in order **to 'police' social and political activities** throughout its global empire.56 Second, **these weapons**, just as space-based missile defence, **would** effectively **strip other states of their territorial sovereignty**. While de jure sovereignty may remain intact, **de facto sovereignty would be** effectively **erased**, in a manner **reminiscent of classical empire**. For decades, realist international relations scholars have promoted the idea that states secure their sovereignty through self-help.57 **If states lack the capacity to defend themselves from adversaries, they are particularly vulnerable to attack and conquest**. While liberal and constructivist scholars have questioned how closely sovereignty is linked to military capability, realists have responded that throughout history states with disproportionate military power have repeatedly violated the sovereignty of weaker states.58 While **space-based weapons** in and of themselves would not enable conquest of another state, they **could be used very effectively to achieve precise political objectives on the territories nominally under the sovereign authority of other states**. Imagine what impact these weapons would have on US foreign policy with respect to two of its currently most pressing objectives. Consider, for one, how useful such weapons might be with respect to preventing a rival state, such as Iran or North Korea, from acquiring nuclear weapons. While there has been speculation that the US or Israel may launch **air strikes** against potential nuclear weapons manufacturing facilities in these countries, the logistics - **getting access to airspace from neighbouring countries, and the possibility of retaliation** against military forces in the area - **make such operations difficult**. **Using weapons in space would avoid these logistical difficulties**, thereby **making** the **missions easier** (**and** presumably **more likely**). Threatening spaced-based attack on either manufacturing sites of weapons or on the political leadership of an adversary might be sufficient in many cases to alter the behaviour of targeted governments. In short, if the **US** were to deploy such **weapons in space**, they **would** likely **be used** to similar effect **as** the **gunboat diplomacy** of the 19th century A second contemporary policy objective is to fight specific non-state actors. The 9/11 Commission Report discussed in great detail the logistical obstacles that prevented the Clinton administration from capturing or killing Osama Bin Laden,59 principally the difficulty in either launching cruise missiles into Afghanistan through another state's airspace or deploying US Special Forces in an area remote from US military bases. Had the US possessed space-based weapons at the time, they probably would have been the weapons of choice. When combined with intelligence about the location of a potential target, they could be used to kill that target on very short notice without logistical hurdles. The sovereignty of states would no longer be an obstacle to killing enemies. All that would stand in the way would be international norms against assassination and the potential political backlash of imperial subjects. While much has been made by constructivists in recent years of the **capacity of norms and taboos to restrain state behaviour** in a world of sovereign states, it does **not** necessarily follow that in a world of only one effectively global sovereign such taboos and norms would continue to function or even **exist**. The example of using space weapons to target non-state actors such as Osama Bin Laden and Al Qaeda points to a third constitutive effect of space weapons capable of force application. Because **these weapons could target anyone, anywhere, at anytime**, **everyone on Earth is** effectively **reduced to 'bare life.'**60 As Agamben demonstrates, **sovereign power determines who is outside the laws and protections of the state in a relationship of 'inclusive exclusion.'** While human rights regimes and the rule of law may exist under a late-modern global empire policed by space weapons,61 **the global sovereign will have the ability to decide the exception to** this **rule of law**, and this **state of exception** in many cases may be **exercised by** the use of **space weapons** that **constituted the sovereign in the first place**.

### Part 2 is the Method

#### Plan - Private entities and space-faring governments will ban the appropriation of outer space by private entities.

#### Enforcement is using anti-satellite weapons against presently privately appropriated space materials in an effort to repossess the space after all personnel have been returned. This makes sure any past appropriation goes away as per the ban

#### The role of the ballot is to vote for the debater whose advocacy best reveals and breaks down militarism in outer space.

#### The plan *accelerates* the collapse of the US satellite network by *locking in* Kessler Syndrome. *Increasing* ASAT attacks against Satellites both demilitarizes space and creates enough space debris to make spacecraft operation impossible.

**Dunlop et al 17**

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**There are over 22,000 Earth-orbiting debris objects larger than a softball** (10 centimeters) **and** around **a million shrapnel fragments** between 0.5 and 10 centimeters (ESA 2013). **With relative impact velocities** reaching **higher than 55,000 kilometers per hour in** low Earth orbit (**LEO**—between 160 and 2,000 kilometers in altitude—even **debris as small as a pea can take out spacecraft** (Liou 2014). **The deliberate destruction in 2007 of the Chinese** Fengyun **satellite with an antisatellite weapon** **and the catastrophic 2009 collision** **between** a **defunct Russian Cosmos satellite** and an operating Iridium satellite **have** together more than **doubled the number of cataloged debris fragments** (National Academy 2011). NASA, analyzing data from six space agencies, estimates that **if nothing is done** about the growing quantity of debris and increasing number of satellites in Earth orbit, **there will be a**nother **catastrophic collision every five** to nine **years** and the pace will accelerate (Liou 2014). At least some who have been studying orbital debris for many years believe that we may have already reached **a** “**tipping point**” **where**by orbital **debris in** congested **LEO** altitude bands **is colliding in a runaway** debris-generating **cascade**, often called the **Kessler syndrome**. Although this assertion is controversial, and a debris cascade **would take years to** **unfold**, at some point a Kessler cascade would nevertheless **make spacecraft operation in affected altitude** bands virtually **impossible** (McKnight 2012). Orbital debris is an ever-growing hazard to the International Space Station (NASA 2015) and the approximately 1,300 operating satellites, which represent only six percent of the 22,000 tracked objects in orbit (Baiocchi 2015). Although about 70 countries operate satellite, **the US, China, and Russia** **have the three largest fleets** (Aerospace 2015) **and** thus **have the most at risk**.

#### The plan resists state power by destroying imperial technologies. A counter-hegemonic strategy that destroys space weapon systems through ASAT and kinetic attacks allows insurgency against the worst state violence.

**Duvall et al, 8**

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Imagining resistance Give1n these grim prospects for a deterritorialised global rule,69 **what are the possibilities for resistance?** Historically, **every advance in the weaponry of imperial powers has been met with an advance in counter-hegemonic strategy**. Most recently, **insurgents in Afghanistan and Iraq** **have been able to counter** the **technological superiority of US forces with** very **simple yet effective Improvised Explosive Devices**. In these instances, **those subjugated by the technologies and scientific knowledge linked to emerging weapons systems** have **reappropriated** these **weapons systems to resist** their **imperial overlords**. As such, it is reasonable to conclude that **space weaponry could be countered through** a variety of **asymmetrical tactics** such as: **destroying** ~~disabling~~ **space weapons while in orbit** **through kinetic energy, or even nuclear anti-satellite attacks**; **destroying** the **facilities where space weapons are produced or launched**, **or** the **research and development centres** (such as **universities**) that are **integral to the production of these systems**; organising strikes for the workers involved in harvesting the necessary raw materials; and refusing to pay taxes to the political apparatuses that control these systems. While it is difficult to imagine what precise forms resistance to space weapons might take, it is not unreasonable to conclude that even in a context of space-based empire, some form of political and military resistance will be possible, and will occur. Indeed, **China's** recent **launch of an Anti-Satellite system** **is an example of a state actor at the boundaries of imperial order engaging in** such a **reappropriation of a weapons technology**. **One of the reasons Chinese military strategists have given for developing Anti-Satellite tech**- nology **is that this** technology **exposes an asymmetrical vulnerability in the US military structure**. **The US military is already dependent on satellite systems to co-ordinate** its **communications and weapons targeting systems**. **By developing** a **technology that can destroy** ~~disable~~ **US communications and targeting satellites**, **the Chinese military would hope to disrupt the operational abilities of conventional US forces** should an actual shooting war between the two powers take place.70 The development gives us some idea of how **state and non-state actors at the margins of an empire** of the future **might resist space power by reappropriating its technologies**. Sovereignty as strategy Yet, even as China's ASAT test points to one possible way of resisting the empire of the future it also points to one way in which this empire is currently being constituted. Within US strategic planning circles China's ASAT test has been used as an impetus to increase funding to American space weapons research and development initiatives. This reaction by the US defence policy establishment is indicative of the strategic logic at work in the empire of the future. This strategic logic accelerates processes of deterritorialisation by pursuing the development of technologies that make the control of territory irrelevant; yet the logic simultaneously pursues the reterritoriali- sation of the US and orbital space as areas that should be off-limits to non- American actors. We are explicitly drawing on Deleuze and Guattari's concepts of deterritorialisation and reterritorialisation here.71 In their writings deterritorialisation refers to 'the movement by which "one" leaves the territory'. Reterritorialisation is the process that accompanies deterritorialisation, whereby the sovereign state apparatus recom- bines the deterritorialised elements to constitute a new assemblage. This is precisely the logic of the singular control by the US of weapons in Earth's orbital space. The strategy of the empire of the future undermines the binary logic of a states-system predicated either on territorially bounded sovereign states or a globally diffused, decentralised and deterritorialised biopolitical Empire as proposed by Hardt and Negri. Our analysis reveals a third possibility: in the empire of the future space power combines a set of otherwise heterogeneous processes. **Space based missile- defence strips all states** - **except the possessor** of the system - of **their hard shells by eroding nuclear deterrence** capabilities, **while providing the possessor of missile defence with a territory more secure from nuclear attack**. **Space control denies all states with the exception of the controlling power unfettered access** to space. Furthermore **it annexes orbital space as a territory of** the **space power**. Finally, **force application from orbital space makes any point on earth a** potential **target for the military force of empire** of the future. **This makes the traditional imperial imperative to project force through controlling territory no longer necessary**. **Empire of the future combines strategies of deterritorialisation and reterritorialisation to** simul- taneously **undermine** **some features of state sovereignty and reinforce others**. Therefore **the current assumption that many IR theorists make that international society must be based on either a collection of sovereign territorial states or deterritorialised biopolitical apparatuses ignores the possibility that these two processes can be co-constitutive**. In the empire of the future **the locus of authority is centralised but this authority governs a deterritorialised political entity**. While this new constellation of political power will present new possibilities for resistance, we should not underestimate how this empire's new modes of killing will constitute structures of domination potentially more terrifying than anything humanity has yet encountered.

#### Resisting status quo modes of commercial military spaceflight are in line with global anti-colonial movements toward self-determination.

**Durrani, 19**

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In **2017**, **protesters** occupied the Guiana Space Centre **in** **Kouru**, French Guiana, **shutting down half the world’s space launches** **for** nearly **the entire month of April**. French Guiana is a “department” of France, a territory whose currency is the euro and residents are French citizens. It is one of the few remaining European territories in the Americas. The territory was **a former penal colony**, Devil’s Island, which operated from 1853 to 1953, and, since 1964, **France has exploited its control over French Guiana to operate the space center**. **Against this history**, **the massive demonstration in 2017 sought redress** **for** a range of debilitating conditions that protesters attributed to mainland France: growing **unemployment**, decaying infrastructure, **paltry wages**, burdensome cost of living, high **homicide** rate, and **limited access to schools**, **medical services**, **and** potable **water**. **Occupying the** center, the “**second-busiest** **spaceport in the world** after Cape Canaveral,” **was a powerful way for the protesters to command** the **attention** of the mother country. **They pressed on** a vulnerability—French, European, and **global dependence on the center**—in order **to make visible** their **imperial plight** to the world. Demonstrators protest near Guiana Space Centre on April 4, 2017 in Kourou, French Guiana. (Sipa France via AP Images) As Americans celebrate the monumental semi-centennial of the Apollo 11 landing, the commemorations should also invite reflection on the troubled history of spaceflight and the laws that govern it. Two years before Neil Armstrong and Buzz Aldrin stepped onto the moon, the Outer Space Treaty of 1967 had ensured that no nation could declare sovereignty in space; planting an American flag on the lunar surface, US officials knew, did not amount to a national claim. But while this “anti-**imperial**” element of the Space Treaty has received deserved attention, it by no means represents the **history of spaceflight and outer-space law** as **practiced** by countries and corporations in **the Global North**—a point upon which I elaborate in the Columbia Journal of Transnational Law. While the recent spate of billionaires cashing in on spaceflight points to the inequalities that shape its development, these inequalities are hardly new. The postcolonial unrest in French Guiana is not an isolated incident. **Because of** its **proximity to the equator**, **territory in developing countries is particularly valuable for launching** into space, communicating with spacecraft, **and monitoring orbit**. This March, Jair **Bolsonaro** signed a **deal with** Donald **Trump to open** **Brazil’s** Alcântara **Launch Center** **to the US space industry**. This has **revived concerns about the land rights of** the **quilombola, indigenous black**, **and poor communities in Brazil**. **In the 1980s, the Brazilian government displaced the quilombolas when it established the space center**, **promising economic development** that has yet to be realized. Recent scholarship has pointed to the **contingencies of launch-site territory, nationalism, and self-determination** **in India and Kenya**. Recently, **protesters in Hawaii** have **attempted to prevent** the **construction of a telescope on a mountain sacred to indigenous peoples**. Meanwhile, the **US** Global Positioning System (**GPS**) has **established communication bases** **on numerous islands where America claims territory**, **disrupting communities that live there**. Similarly, the US Air Force’s **Lockheed Martin**–commissioned Space Fence, which **will monitor spacecraft and debris** in orbit, **will run 80 percent of its capabilities** out of a military base **in the Marshall Islands**, a continuing subject of US empire. In these histories, **spaceflight relies upon and continues imperial claims over territory and resources**. Within the United States, launch sites can exploit marginalized populations as well. For instance, industry and government agencies in the Mojave Desert region—one of the nation’s oldest sites for space activities—employ locals as manufacturers and engineers and teach students about spaceflight. But these developments do not seem to have improved the economy in Mojave, where the median income is below the national median. The population is predominantly black and Latino. **The US Department of Interior’s** long **history of imperial expansion** even **includes plans for a lunar colony** **and** the **use of satellites to survey resources on indigenous lands** in the United States and abroad. Moreover, the massive **technological feats of spaceflight** **rely on** **imperial claims over natural resources**. **Luxembourg**, a recent hub for commercial space, **accumulated wealth by** virtue of **its history of mining**, but **marginalized communities with valuable raw materials have fallen prey to the “resource trap” common to imperial encounters**. For instance, the fact that Mojave was a key manufacturing and mining site for the Southern Pacific Railroad implicates the region in a longer history of indigenous violence and economic difficulty. Similarly, **amid** the advent of aerial technology and **the Space Age, the US military-industrial complex funded mining projects throughout the Caribbean**, **extracting bauxite** (aluminum) with which **to construct US aerospace vehicles**. Likewise, the Ball Corporation, famous for its subsidiary Ball Aerospace, is predominantly an aluminum, steel, and packaging company. Over the last decade, China has sought to instrumentalize its space capabilities to grow a network of soft power and economic resources, offering telecommunications satellites to several states, including Nigeria, Venezuela, and Bolivia, in exchange for access to natural resources like oil, raw materials, and agriculture. **Spaceflight** almost **invariably involves activities that directly subjugate marginalized peoples**. **Space provides a strategic military position** **from which to continue postcolonial violence on Earth**, **exacerbating inequalities between spacefaring countries and** **the** so-called “**Third World**.” Space is critical for surveilling and enacting violence upon communities throughout the Third World, **from Moroccan spy satellites over occupied Western Sahara**, **to remote sensing of Afghanistan** and other strategic regions, to **monitoring** of **the US-Mexico border**: The United States spends $10 billion per year on publicly known space projects, but $15 billion on classified military activities. Moreover, **drones and** most other **military technologies that harm and surveil marginalized communities depend on** **g**lobal **p**o**s**itioning technology **and space**-based **communications**. **Significant advances in space technology developed in the context of US intervention in the Middle East and Latin America**: Remote sensing and GPS developed in the Gulf War, and, decades earlier, the first US telecommunications satellites were used to communicate with troops in Saigon. More recently, consider the US Air Force’s aforementioned Space Fence or Boeing’s Space Based Space Surveillance satellite constellation and X-37B orbital drone, which has orbited Earth several times over the past decade. Boeing and the US Air Force's unmanned X-37B space plane. (Photo by US Air Force) These **claims over territory, resources, and populations highlight** the **enormous accumulation of capital necessary to access** space. The US government and its corporate entities can afford the cost of spaceflight because it is but a fraction of their annual budgets. But for developing countries and marginalized communities, that cost is prohibitive: Spending on space is contingent on accumulated wealth.

#### Liberal heg impacts are threat construction – impacts are so abstract that their war scenarios are useless

David Chandler 9, Professor of IR at University of Westminster, "Liberal War and Foucaultian Metaphysics", Review of Dillon and Reid’s *The Liberal Way of War: Killing to Make Life Live*, www.research.kobe-u.ac.jp/gsics-publication/jics/chandler\_18-1.pdf

This is a book about the ‘liberal way of war’. But the liberal referred to in the title remains under theorized. On several occasions the authors highlight the distinction between the liberal way of war and the general framing of war in the modern liberal era as a geo-strategic contestation, taking the territorial state as its referent object. For Dillon and Reid, ‘liberalism never fitted this model of modern politics and the modern problematization of war very well’（p.83). They therefore seek to define liberalism and the liberal way of war as distinct from war in the liberal era. The liberal way of war refers not to real wars and conflicts but to an abstract model of conflict, defined as a desire to‘remove war from the life of humanity’which‘derives from the way in which liberalism takes the life of the species as its referent object of politics ─ biopolitics’（p.84）. In this framing, the liberal nature of war very much depends on the self-description of the conflict by its proponents: these range from Gladstone’s occupation of Egypt in the cause of‘suffering humanity’, to US liberal ideological constructions of the cause of‘freedom’in the Cold War struggle against the Soviet Union up to Bush and Blair’s war on Iraq in the cause of humanity（p.6）. As the authors state, of course, wars may be fought on other grounds than universal humanity: ‘liberal states may…also act as geopolitical sovereign actors as well…and may also have geopolitical motives for the wars they wage’（p.84）.¶ It is clear from the beginning that the distinctiveness of ‘the liberal way of war’ which they seek to explore cannot be more than a fool’s quest. They assert that they will critically uncover the paradox of liberal war: why it is that Realist or geostrategic war accepts the necessity of war but attempts to limit it, while liberals wish to end war but, to do so, are willing to fight unlimited wars. Yet, they admit that this starting point is already an ideological dead end ─ the wars of the twentieth century give the lie to the idea that there is some distinction between ‘unending crusades’ and ‘limited jousts between rationally calculative political subjects’: war has its own dynamic（p.7). Nevertheless, Dillon and Reid press on and seek to go beyond a Schmittian critique to ground this paradox in the biopolitical‘driver’of the liberal way of rule ─ biopolitics: wars waged under the banner of the human（against humans）are liberal and, allegedly biopolitical, as human life is declared to be the referent in need of being secured. These wars are alleged to be fought differently to geo-political wars for territory, because the ‘drivers’ of war are not territorialized interests but the biopolitical framings of the needs of the human, how human life can and should be lived. Inevitably there are insuperable methodological hurdles to this Sisyphusian task. Already, there occurs the first fundamental aporia: how do we tell the difference between a liberal and non-liberal war? There appears to be no way of preventing the category of liberal war from becoming a lifeless and descriptive one: wars are liberal and fought biopolitically only if we are told that these are the motives by those fighting them.¶ This separation of liberal ways of war from territorialised framings of geostrategic contestation makes little sense as a framework for understanding either liberal rule or liberal ways of war. In fact, in defining liberal war in this way the connection between liberal rule and war is entirely severed. ‘Liberal war may on occasions also be geopolitical; which is to say that war may be simultaneously geopolitical as well as biopolitically driven since the imperatives behind war are never uniform or simple; but what distinguishes the liberal way of war as liberal are the biopolitical imperatives which have consistently driven its violent peace-making.’（p.85）Liberal rule has also resulted in wars for territory or in defence of territories; nevertheless, a story, of course, could have been told about how views of the human fitted those of struggles to command territory. This is acknowledged, but sits uneasily with the narrow view of liberal war for species life. If the racial doctrines of European empires, up to and including the genocidal racism of the Nazi regime, were also biopolitically driven ─ and the authors, indeed, write of race as part of the‘liberal biopolitics of the seventeenth century’─ then it seems difficult to separate a liberal way of war from allegedly ‘non-liberal’ wars of territorial control.¶ It seems clear that Dillon and Reid do not seek to take the logical step of arguing that the view of the human reflects, and is reflected by, how the human is ruled and how wars are both thought and fought. Why? Because for them there is something suprahistorically unique and distinct about the liberal way of war: a distinctly liberal view which foregrounds the human as the referent of security. Therefore, a second aporia arises: on what basis is this specifically ‘liberal’? It would appear that every form of rule and of war has at least an implicit view of the ‘human’ and through this view of the human the form of rule and the way of war are rationalized. There is not and cannot be anything specifically ‘liberal’ about this. The humanity in need of securing, through war on other humans, could be formed by Alexander the Great’s stoic cosmopolitan vision, or could be‘God’s chosen people’, ‘the master race’, or ‘the gains of the proletarian revolution’: there is little doubt that beliefs of what the human is, or could become, were a vital part of many non-Liberal dispositifs ─ the discourses and practices - of both rule and war. ¶ The key starting assumption, that the liberal way of war can be isolated from any other - and its alleged specific form, of ‘unending violence’, explained by its referent of the human - appears to be a particularly unproductive one. At the level of abstraction at which Dillon and Reid choose to work, there is very little here that would help to distinguish between a liberal and a non-liberal way of war（the asserted purpose of the book）. Of course, what matters is what this view of the human is. Here Dillon and Reid appear to recognise the limits of their essentializing approach: …just as the liberal way of rule is constantly adapting and changing so also is the liberal way of war. There is, in that sense, no one liberal way of rule or one liberal way of war. But there is a fundamental continuity which justifies us referring to the singular…the fact that each takes the properties of species existence as its referent object…finding its expression historically in many changing formations of rule according…to the changing exigencies and understanding of species being…（p.84）¶ Rather than understand our forms of post-political rule and post-territorial war today on their own terms and then consider to what extent this way of rule and war can be theorized, and to what extent, if any, Foucault’s conception of biopolitics may be of assistance, Dillon and Reid start out from the assumption that we live in a liberal world of rule and war and that therefore both can be critiqued through the framework developed by Foucault in his engagement with understanding the rise and transformation of liberal forms of rule. In transposing Foucault’s critical engagement with liberal ways of rule to an understanding of liberal ways of war, Dillon and Reid take a body of historical work about the changing political nature of liberal rule and transpose it into an essentialised and under theorized understanding of liberal war. This is no mean feat; how they manage this accomplishment will be discussed in the next two sections.

#### Dominant power structures like the forces behind militarism inform media and information overload – affects day to day life for everyone, from me to my opponent to the judge

Herman, Edward S., and Noam Chomsky. *Manufacturing consent: The political economy of the mass media*. Random House, 2010.

lr..• THIS BOOK, WE SKETCH OUT A "PROPAGANDA MODEL" AND apply it to the performance of the mass media of the United States. This effort reflects our belief, based on many years of study of the workings of the media, that they serve to mobilize support for the special interests that dominate the state and private activity,l and that their choices, emphases, and omissions can often be understood best, and sometimes with striking clarity and insight, by analyzing them in such terms. Perhaps this is an obvious point, but the democratic postulate is that the media are independent and committed to discovering and reporting the truth, and that they do not merely reflect the world as powerful groups wish it to be perceived. Leaders of the media claim that their news choices rest on unbiased professional and objective criteria, and they have support for this contention in the intellectual cornrnunity.2 If, however, the powerful are able to fix the premises of discourse, to decide what the general populace is allowed to see, hear, and think about, and to "manage" public opinion by regular propaganda campaigns, the standard view of how the system works is at serious odds with reality.) The spedal .imponance of propaganda in what Walter Lippmann referred to as the "manufacture of consent" has long been recognized by writers on public opinion, propaganda, and the political requirements of social order.4 Lippmann himself, writing in the early 1920S, claimed that propaganda had already become "a regular organ ofpopular government," and was steadily increasing in sophistication and importance. 5 We do not contend that this is all the mass media do, but we believe the propaganda function to be a very important aspect of their overall service. In the first chapter we spell out a propaganda model, which describes the forces that cause the mass media to playa Ix PREFACE propaganda role, the processes whereby they mobilize bias, and the patterns of news choices that ensue. In the succeeding chapters we try to demonstrate the applicability of the propaganda model to the actual performance of the media. Institutional critiques such as we present in this book are commonly dismissed by establishment commentators as "conspiracy theories," but this is merely an evasion. We do not use any kind of "conspiracy" hypothesis to explain mass-media performance. In fact, our treatment is much closer to a "free market" analysis, with the results largely an outcome of the workings of market forces. Most biased choices in the media arise from the preselection ofright-thinking people, internalized preconceptions, and the adaptation of personnel to the constraints of ownership, organization, market, and political power. Censorship is largely self-censorship, by reporters and commentators who adjust to the realities of source and media organizational requirements, and by people at higher levels within media organizations who are chosen to implement, and have usually internalized, the constraints imposed by proprietary and other market and governmental centers of power. There are important actors who do take positive initiatives to define and shape the news and {Q keep the media in line. It is a "guided market system" that we describe here, with the guidance provided by the government, the leaders of the corporate community, the top media owners and executives, and the assorted individuals and groups who are assigned or allowed to take constructive initiatives.I; These initiators are sufficiently small in number to be able to act jointly on occasion, as do sellers in markets with few rivals. In most cases, however, media leaders do similar things because they see the world through the same lenses, are subject to similar constraints and incentives, and thus feature stories or maintain silence together in tacit collective action and leaderfollower behavior. The mass media are not a solid monolith on all issues. Where the powerful are in disagreement~there will be a certain diversity oftactical judgments on how to attain generally shared aims, reflected in media debate. But views that challenge fundamental premises or suggest that the observed modes of exercise of state power are based on systemic factors wilJ be excluded from the mass media even when elite contro~ versy over tactics rages fiercely. We will study a number of such cases as we proceed, but the pattern is, in fact, pervasive. To select an example that happens to be dominating the news as we write, consider the portrayal of Nicaragua, under attack by the United States. In this instance, the division of elite opin~ ion is sufficiently great to allow it to be questioned whether sponsorship I PREFACE lxi of a terrorist army is effective in making Nicaragua "more democratic" and "less of a threat to its neighbors." The mass media, however, rarely if ever entertain opinion, or allow their news columns to present materials suggesting that Nicaragua is more democratic than E1 Salvador and Guatemala in every non-Orwellian sense of the word;? that its government does not murder ordinary citizens on a routine basis, as the governments of E1 Salvador and Guatemala dO;8 that it has carried out socioeconomic reforms important to the majority that the other two governments somehow cannot attempt;9 that Nicaragua poses no military threat to its neighbors but has, in fact, been subjected to continuous attacks by the United States and its clients and surrogates; and that the U.S. fear of Nicaragua is based more on its virtues than on its alleged defects. 1o The mass media also steer clear of discussing the: background and results of the closely analogous attempt of the United States to bring "democracy" to Guatemala in 1954 by means of a CIA-sponsored invasion, which terminated Guatemalan democracy fot an indefinite period. Although the United States supported elite rule and helped to organize state terror in Guatemala (among many other countries) for decades, actually subverted or approved the subversion of democracy in Brazil, Chile, and the Philippines (again, among others), is "constructively engaged" with terror regimes on a global basis, and had no concern about democracy in Nicaragua as long as the brutal Somoza regime was firmly in power, nevertheless the media take government claims of a concern for "democracy" in Nicaragua at face value.lI Elite disagreement over tactics in dealing with Nicaragua is reflected in public debate, but the mass media, in conformity with elite priorities, have coalesced in processing news in a way that fails to place U.S. policy into meaningful context, systematically suppresses evidence of U.S. violence and aggression, and puts the Sandinistas in an extremely bad light. 12 In contrast, El Salvador and Guatemala, with far worse records, are presented as struggling toward democracy under "moderate" leaders, thus meriting sympathetic approval. These practices have not only distorted public perceptions of Central American realities, they have also seriously misrepresented U.S. policy objectives, an essential feature of propaganda, as Jacques Ellul stresses: The propagandist naturally cannot reveal the true intentions of the principal for whom he acts.... That would be to submit the projects to public discussion, to the scrutiny ofpublic opinion, and thus to prevent their success.... Propaganda must serve instead as a veil for such projects, masking true intention. 13 I Ixii PREFACE The power of the government to fix frames of reference and agendas, and to exclude inconvenient facts from public inspection, is also impressively displayed in the coverage of elections in Central America, discussed in chapter 3, and throughout the analysis of particular cases in the chapters that follow. When there is little or no elite dissent from a government policy, there may still be some slippage in the mass media, and facts that tend to undermine the government line, ifthey are properly undersrood, can be found, usually on the back pages of the newspapers. This is one of the strengths of the U.S. system. It is possible that the volume of inconvenient facts can expand, as it did during the genam War, in response to the growth of a critical constituency (which included elite: elements from 1968). Even in this exceptional case, however, it was very rare for news and commentary to find their way into the mass media ifthey failed to conform to the framework of established dogma (postulating benevolent U.S. aims, the United States responding to aggression and terror, etc.), as we discuss in chapter 5. During and after the Vietnam War, apologists for state policy commonly pointed to the inconvenient facts, the periodic "pessimism" of media pundits, and the debates over tactics as showing that the media were "adversarial" and even "lost" the war. These allegations are ludicrous, as we show in detail in chapter 5 and appendix 3, but they did have the dual advantage of disguising the actual role of the mass media and, at the same time, pressing the media to keep even more tenaciously to the propaganda assumptions ofstate policy. We have long argued that the "naturalness" ofthese processes, with inconvenient facts allowed sparingly and within the proper framework of assumptions, and fundamental dissent virtually excluded from the mass media (but permitted in a marginalized press), makes for a propaganda system that is far more credible and effective in putting over a patriotic agenda than one with official censorship. In criticizing media priorities and biases we often draw on the media themselves for at least some of the facts. This affords the opportunity for a classic non sequitur, in which the citations of facts from the mainstream press by a critic of the press is offered as a triumphant "proof" that the criticism is self-refuting, and that media coverage of disputed issues is indeed adequate. That the media provide some facts about an issue, however, proves absolutely nothing about the adequacy or accuracy of that coverage. The mass media do, in fact, literally suppress a great deal, as we will describe in the chapters that follow. But even more important in this context is the question ofthe attention PREFACE lxiii given to a fact-its placement, tone, and repetitions, the framework of analysis within which it is presented, and the related facts that accompany it and give it meaning (or preclude understanding). That a careful reader looking for a fact can sometimes find it with diligence and a skeptical eye tells us nothing about whether that fact received the attention and context it deserved, whether it was intelligible to the reader or effectively distorted or suppressed. What level of attention it deserved may be debatable, but there is no merit to the pretense that becaus.e. ,-enain- facts. m~ he.. fJUUld. in. thJ'.. me.d.ia.. h.~ etiJiv.rJ1r. JUld.. skeptical researcher, the absence of radical bias and de facto suppression is thereby demonstrated. 14 One of our central themes in this book is that the observable pattern ofindignant campaigns and suppressions) ofshading and emphasis, and of selection of context, premises, and general agenda, is highly functional for established power and responsive to the needs ofthe government and major power groups. A constant focus on victims of communism helps convince the public of enemy evil and sets the stage for intervention, subversion, support for terrorist states, an endless arms race, and military conflict-all in a noble cause. At the same time) the devotion of our leaders and media to this narrow set of victims raises public self-esteem and patriotism) as it demonstrates the essential humanity of country and people. The public does not notice the silence on victims in client states) which is as important in supporting state policy as the concentrated focus on enemy victims. It would have been very difficult for the Guatemalan government to murder tens of thousands over the past decade if the U.S. press had provided the kind of coverage they gave to the difficulties of Andrei Sakharov or the murder of Jerzy Popieluszko in Poland (see chapter 2). It would have been impossible to wage a brutal war against South Vietnam and the rest of Indochina, leaving a legacy of misery and destruction that may never be overcome, if the media had not rallied to the cause, portraying murderous aggression as a defense of freedom) and only opening the doors to lal,;lll:al"ufsagreemeni wnen Ine COSIS IO Ine liueresrs triey represent became too high. The same is true in other cases that we discuss, and too many that we do not. We would like to express our thanks to the following people for their assistance in the preparation of this book: James Aronson) Phillip Berryman, Larry Biros, Frank Brodhead, Holly Burkhalter) Donna Cooper, - 'I lxiv PREFACE Carol Fouke, Eva Gold, Carol Goslant, Roy Head, Mary Herman, Rob Kirsch, Robert Krinsky, Alfred McClung Lee, Kent MacDougall, Nejat Ozyegin, Nancy Peters, Ellen Ray, William Schaap, Karin Wilkins, Warren Wine, and Jamie Young. The authors alone remain responsible for its contents. THE MASS MEDIA SERVE AS A SYSTEM FOR COMMUNICATING messages and symbols to the general populace. It is their function to amuse, entertain, and inform, and to inculcate individuals with the values, beliefs, and codes of behavior that will integrate them into the institutional structures ofthe larger society. In a world of concentrated wealth and major conflicts of class interest, to fulfil this role requires systematic propaganda. 1 In countries where the levers of power are in the hands of a state by official censorship, makes it clear that the media serve the ends of a dominant elite. It is much more difficult to see a propaganda system at work where the media are private and formal censorship is absent. This is especially true where the media actively compete, periodically attack and expose corporate and governmental malfeasance, and aggressively portray themselves as spokesmen for free speech and the general community interest. What is not evident (is the limited nature of such critiques, as well as the huge inequality in command of resources, and its effect both on access to a private media system and on its behavior and performance. A propaganda model focuses on this inequality of wealth and power and its multilevel effects on mass-media interests and choices. It traces the routes by which money and power are able to filter out the news fit to print, marginalize dissent, and allow the government and dominant private interests to get their messages across to the public. The essential ingredients of our propaganda model, or set of news "filters," fall under the following headings: (1) the size, concentrated ownership, owner wealth, and profit orientation ofthe dominant mass-media firms; (2) advertising as the primary income source ofthe mass media; (3) the reliance ofthe media on information provided by government, business, and "experts" funded and approved by these primary sources and agents of power; (4) "flak" as a means of disciplining the media; and (5) "anticommunism" as a national religion and control mechanism. These elements interact with and reinforce one another. The raw material of news must pass through successive filters, leaving only the cleansed residue fit to print. They fix the premises of discourse and interpretation, and the definition of what is newsworthy in the first place, and they explain the basis and operations of what amount to propaganda campaigns. The elite domination of the media and marginalization of dissidents that results from the operation of these filters occurs so naturally that media news people, frequently operating with complete integrity and goodwill, are able to convince themselves that they choose and interpret the news "objectively" and on the basis of professional news values. Within the limits of the filter constraints they often are objective; the constraints are so powerful, and are built into the system in such a fundamental way, that alternative bases of news choices are hardly imaginable. In assessing the newsworthiness of the U.S. government's urgent claims of a shipment of MIGs to Nicaragua on November 5, 1984, the media do not stop to ponder the bias that is inherent in the priority assigned to government-supplied raw material, or the possibility that the government might be manipulating the news,2 imposing its own agenda, and deliberately diverting attention from other materiaJ.3 It requires a macro, alongside a micro- (storyby-story), view of media operations, to see the pattern of manipulation and systematic bias. Let us turn now to a more detailed examination ofthe main constituents of the propaganda model, which will be applied and tested in the chapters that follow. I l A PROPAGA~DA MODEL 3 1.1. SIZE, OWNERSHIP, AND PROFIT ORIENTATION OF THE MASS MEDIA: THE FIRST FILTER In their analysis of the evolution of the media in Great Britain, James Curran and Jean Seaton describe how, in the first half ofthe nineteenth century, a radical press emerged that reached a national working-class audience. This alternative press was effective in reinforcing class consciousness: it unified the workers because it fostered an alternative value system and framework for looking at the world, and because it "promoted a greater collective confidence by repeatedly emphasizing the potential power of working people to effect social change through the force of 'combination' and organized action."4 This was deemed a major threat by the ruling elites. One MP asserted that the workingclass newspapers "inflame passions and awaken their selfishness, contrasting their current condition with what they contend to be their future condition-a condition incompatible with human nature, and those immutable laws which Providence has established for the regulation of civil society."5 The result was an attempt to squelch the working-class media by libel laws and prosecutions, by requiring an expensive security bond as a condition for publication, and by imposing various taxes designed to drive out radical media by raising their costs. These coercive efforts were not effective, and by mid-century they had been abandoned in favor of the liberal view that the market would enforce responsibility. Curran and Seaton show that the market did successfully accomplish what state intervention failed to do. Following the repeal ofthe punitive taxes on newspapers between r853 and 1869, a new daily local press came into existence, but not one new local working-class daily was established through the rest of the nineteenth century. Curran and Seaton note that Indeed, the eclipse of the national radical press was so total that when the Labour Party developed out of the working-class movement in the first decade of the twentieth century, it did not obtain the exclusive backing of a single national daily or Sunday paper.6 One important reason for this was the rise in scale of newspaper enterprise and the associated increase in capital costs from the midnineteenth century onward, which was based on technological 4 MANUFACTURING CONSUlT improvements along with the owners' increased stress on reaching large audiences. The expansion of the free market was accompanied by an "industrialization ofthe press." The total cost of establishing a national weekly on a profitable basis in 1837 was under a thousand pounds, with a break-even circulation of 6,200 copies. By 1867)the estimated start-up cost of a new London daily was 50,000 pounds. The Sunday Express, launched in 1918, spent over two million pounds before it broke even with a circulation of ovcr 2.SQ,flQ.Q.·'? Similar processes were at work in the United States, where the start-up cost of a new paper in New York City in 1851 was 569,000; the public sale of the St. Louis Democrat in 1872 yielded $456,000; and city newspapers were selling at from $6 to $18 million in the 1920s.8 The cost of machinery alone, of even very small newspapers, has for many decades run into the hundreds of thousands of dollars; in 1945 it could be said that "Even small-newspaper publishing is big business ... [and] is no longer a trade one takes up lightly even if he has substantial cash-or takes up at all if he doesn't."9 Thus the first filter-the limitation on ownership of media. with any substantial outreach by the requisite large size of investment-was applicable a century or more ago, and it has become increasingly effective over time.lO In 1986 there were some 1,500 daily newspapers, II,OOO magazines, 9,000 radio and I,sao TV stations, 2>400 book publishers, and seven movie studios in the United States-over 25,000 media entities in all. But a large proportion of those among this set who were news dispensers were very small and local, dependent on the large national companies and wire services for all but local news. Many more were subject to common ownership, sometimes extending through virtually the entire set of media variants.a Ben Bagdikian stresses the fact that despite the large media numbers, the twenty-nine largest media systems account for over half of the output of newspapers, and most of the sales and audiences in magazines, broadcasting, books, and movies. He contends that these "constitute a new Private Ministry of Information and Culture" that can set the national agenda. 12 Actually, while suggesting a media autonomy from corporate and government power that we believe to be incompatible with structural facts (as we describe below), Bagdikian also may be understating the degree of effective concentration in news manufacture. It has long been noted that the media are tiered, with the tOp tier-as measured by prestige, resources, and outreach-comprising somewhere between ten and twenty-four systems.u It is this top tier, along with the government and wire services, that defines the news agenda and supplies much of I I A PROPACA~DA MODEL 5 the national and international news to the lower tiers of the media, and rhus for the general publk '4 Centralization within the top tier was substantially increased by the post-World War II rise of television and the national networking of this important medium. Pre-television news markets were local, even if heavily dependent on the higher tiers and a narrow set of sources for national and international news; the networks provide national and international news from three national sources, and television is now the principal source of news for the public.'5 The maturing of cable, however, has resulted in a fragmentation oftelevision audiences and a slow erosion ofthe market share and power of the networks. Table 1-1 provides some basic financial data for the twenty-four media giants (or their controlling parent companies) that make up the top tier of media companies in the United States.l6 This compilation includes: (I) the three television networks: ABC (through its parent, Capital Cities), CBS, and NBC (through its ultimate parent, General Electric [GEl); (2) the leading newspaper empires: New York Times, Washington Post, Los Angeles Times (Times-Mirror), Wall Street Journal (Dow Jones), Knight-Ridder, Gannett, Hearst, Scripps-Howard, Newhouse (Advance Publications), and the Tribune Company; (3) the major news and general-interest magazines: Time, Newsweek (subsumed under Washington Post), Reader's Digest, TV Guide (Tdangle), and U.S. News & World Report; (4) a major book publisher (McGraw-Hill); and (5) other cable-TV systems of large and growing importance: those of Murdoch, Turner, Cox, General Corp., Taft, Storer,l7 and Group W 01/estinghouse). Many ofthese systems are prominent in more than one field and are only arbitrarily placed in a particular category (Time, Inc., is very important in cable as well as magazines; McGraw-Hill is a major publisher of magazines; the Tribune Company has become a large force in television as well as newspapers; Hearst is important in magazines as well as newspapers; and Murdoch has significant newspaper interests as well as television and movie holdings). These twenty-four companies are large, profit-seeking corporations, owned and controlled by quite wealthy people. It can be seen in table I-I that all but one of the top companies for whom data are available have assets in excess of $1 billion, and the median size (middle item by size) is $2.6 billion. It can also be seen in the table that approximately three-quaners of these media giants had after-tax profits in excess of $100 million, with the median at $183 million. Many of the large media companies are fully integrated into the market, and for the others, too, the pressures ofstockholders, directors, and bankers to focus on the bottom line are powerful. These pressures have intensified in recent years as media stocks have become market favorites, and actual or prospective owners of newspapers and television properties have found it possible to capitalize increased audience s.ize and adverti"iing revenues. into multiQlied values of the media franchises-and great wealth. 18 This has encouraged the entry of speculators and increased the pressure and temptation to focus more intensively on profitability. Family owners have been increasingly divided between those wanting to take advantage of the new opportunities and those desiring a continuation of family control, and their splits 8 MANUFACTURI~G CO~SENT have often precipitated crises leading finally to the sale of the family interest. 19 This trend toward greater integration of the media into the market system has been accelerated by the loosening of rules limiting media 'OC~'I,\t"'2.t~'I,\, ~"%",--'Vw'M...,,,h\p, 'dnd 'C'i)1\t'rm by m:m-mt;dia cmnpanies.20 There has also been an abandonment ofrestrictions-previously quite feeble anyway--on radio-TV commercials, entertainmentmayhem programming, and "fairness doctrine" threats, opening the door to the unrestrained commercial use of the airwaves.21 The greater profitability of the media in a deregulated environment has also led to an increase in takeovers and takeover threats, with even giants like CBS and Time, Inc., directly attacked or threatened. This has forced the managements of the media giants to incur greater debt and to focus ever more aggressively and unequivocally on profitability, in order to placate owners and reduce the attractiveness oftheir properties to outsiders,22 They have lost some of their limited autonomy to bankers, institutional investors, and large individual investors whom they have had to solicit as potential "white knights."23 While the stock of the great majority of large media firms is traded on the securities markets, approximately two-thirds of these companies are either closely held or still controlled by members of the originating family who retain large blocks of stock. This situation is changing as family ownership becomes diffused among larger numbers of heirs and the market opportunities for selling media properties continue to improve, but the persistence offamily control is evident in the data shown in table 1-2. Also evident in the table is the enormous wealth possessed by the controlling families of the top media firms. For seven of the twenty-four, the market value of the media properties owned by the controlling families in the mid-I98os exceeded a billion dollars, and the median value was close to half a billion dollars.24 These control groups obviously have a special stake in the status quo by virtue of their wealth and their strategic position in one of the great institutions of society. And they exercise the power of this strategic position) if only by establishing the general aims of the company and choosing its top management.2S The control groups of the media giants are also brought into close relationships with the mainstream ofthe corporate community through boards of directors and social links. In the cases of NBC and the Group W television and cable systems, their respective parents, GE and Westinghouse, are themselves mainstream corporate giants, with boards of directors that are dominated by corporate and banking executives. Many of the other large media firms have boards made up predomi- A PROPAGANDA M nantly of insiders, a general characteristic of relatively small and owner-dominated companies. The larger the firm and the more widely distributed the stock, the larger the number and proportion of outside directors. The composition of the outside directors of the media giants is very similar to that of large non-media corporations. Table 1-3 shows that active corporate executives and bankers together account for a little over half the total ofthe outside directors often media giants; and the lawyers and corporate-banker retirees (who account for nine ofthe thirteen under "Retired") push the corporate total to about two-thirds ofthe outside-director aggregate. These 95 outside directors had directorships in an additional 36 banks and 255 other companies (aside from the media company and their own firm of primary affiliation).26 In addition to these board linkages, the large media companies all do business with commercial and investment bankers, obtaining lines of credit and loans, and receiving advice and service in selling stock and bond issues and in dealing with acquisition opportunities and takeover threats. Banks and other institutional investors are also large owners of media stock. In the early 1980s, such institutions held 44 percent ofthe stock of publicly owned newspapers and 35 percent of the stock of publicly owned broadcasting companies,27 These investors are also frequently among the largest stockholders ofindividual companies. For example, in 1980-81, the Capital Group, an investment company system, held 7.1 percent of the stock of ABC, 6.6 percent of KnightRidder, 6 percent of Time, Inc., and 2.8 percent of Westinghouse. 28 These holdings, individually and collectively, do not convey control, but these large investors can make themselves heard, and their actions can affect the welfare of the companies and their managers.29 If the managers fail to pursue actions that favor shareholder returns, institutional investorS will be inclined to sell the stock (depressing its price), or to listen sympathetically to outsiders contemplating takeovers. These 12 MANUFACTURING CONSENT investors are a force helping press media companies toward strictly market (profitability) objectives. So is the diversification and geographic spread of the great media companies. Many ofthem have diversified out of particular media fields into others that seemed like growth areas. Many older newspaper-based media companies, fearful of the power of television and its effects on advertising revenue, moved as rapidly as they could into broadcasting and cable TV. Time, Inc., also, made a major diversification move into cable TV, which now accounts for more than half its profits. Only a small minority ofthe twenty-four largest media giants remain in a single media sector.30 The large media companies have also diversified beyond the media field, and non-media companies have established a strong presence in the mass media. The most important cases ofthe latter are GE, owning RCA, which owns the NBC network, and Westinghouse, which owns major television-broadcasting stations, a cable network, and a radiostation network. GE and Westinghouse are both huge, diversified multinational companies heavily involved in the controversial areas of weapons production and nuclear power. It may be recalled that from 1965 to 1967, an attempt by International Telephone and Telegraph (lIT) to acquire ABC was frustrated following a huge outcry that focused on the dangers of allowing a great multinational corporation with extensive foreign investments and business activities to control a major media outlerY The fear was that ITT control "could compromise the independence of ABC's news coverage of political events in countries where lIT has interests."32 The soundness of the decision disallowing the acquisition seemed to have been vindicated by the later revelations of ITT's political bribery and involvement in attempts to overthrow the government of Chile. RCA and Westinghouse, however, had been permitted to control media companies long before the lIT case, although some of the objections applicable to ITT would seem to apply to them as well. GE is a more powerful company than ITT, with an extensive international reach, deeply involved in the nuclear power business, and far more important than lIT in the arms industry. It is a highly centralized and quite secretive organization, but one with a vast stake in "political" decisions.33 GE has contributed to the funding of the American Enterprise Institute, a right-wing think tank that supports intellectuals who will get the business message across. With the acquisition ofABC, GE should be in a far better position to assure that sound views are given proper attention.34 The lack of outcry over its takeover of RCA and NBC resulted in part from the fact that RCA control over NBC had already breached the gate of separateness, but J A PR.OPAGANDA MODEL 13 it also reflected the more pro-business and laissez-faire environment of the Reagan era. The non-media interests of most of the media giants are not large, and, excluding the GE and Westinghouse systems, they account for only a small fraction of their total revenue. Their multinational outreach, however, is more significant. The television networks, television syndicators, major news magazines, and motion-picture studios all do extensive business abroad, and they derive a substantial fraction oftheir revenues from foreign sales and the operation of foreign affiliates. Reader's Digest is printed in seventeen languages and is available in over 160 countries. The Murdoch empire was originally based in Australia, and the controlling parent company is still an Australian corporation; its expansion in the United States is funded by profits from Australian and British affiliates.35 Another structural relationship of importance is the media companies' dependence on and ties with government. The radio-TV companies and networks all require government licenses and franchises and are thus potentially subject to government control or harassment. This technical legal dependency has been used as a club to discipline the media, and media policies that stray too often from an establishment orientation could activate this threat. 36 The media protect themselves from this contingency by lobbying and other political expenditures, the cultivation of political relationships, and care in policy. The political ties of the media have been impressive. Table 1-3 shows that fifteen of ninety-five outside directors of ten of the media giants are former government officials, and Peter Dreier gives a similar proportion in his study of large newspapers. 37 In television, the revolving-door flow of personnel between regulators and the regulated firms was massive during the years when the oligopolistic structure ofthe media and networks was being established.38 The great media also depend on the government for more general policy support. All business firms are interested in business taxes, interest rates, labor policies, and enforcement and nonenforcement of the antitrust laws. GE and Westinghouse depend on the government to subsidize their nuclear power and military research and development, and to create a favorable climate for their overseas sales. The Reader's Diges4 Time, Newsweek, and movie- and television-syndication sellers also depend on diplomatic support for their rights to penetrate foreign cultures with U.S. commercial and value messages and interpretations of current affairs. The media giants, advertising agencies, and great multinational corporations have a joint and close interest in a favorable climate of investment in the Third World, and their interconnections I I I 14 MAN\JFACTURISG CONSENT and relationships with the government in these policies are symbiotic.39 In sum, the dominant media firms are quite large businesses; they are controlled by very wealthy people or by managers who are subject to sharp constraints by owners and other market-profit-oriented forces;40 and they are closely interlocked, and have important common interests, with other major corporations, banks, and government. This is the first powerful filter that will affect news choices. 1.2