NATIONAL SECURITY AND FOREIGN POLICY

So far, this paper has examined the desirability and feasibility of a mediasat from the perspective of the press. It is also important to examine the U.S. Government's interests, attitudes, and concerns regarding this concept. The remainder of this technical memorandum will focus primarily on the tensions that are certain to develop between this Nation's commitment to freedom of the press and its commitments to current national security and foreign policies. As one author framed the problem:

> In a robustly pluralist society such as ours, free speech is easy to accept and to enjoy, and in a hostile, potentially lethal international environment such as the one in which we live, national security seems a fundamentally worthwhile pursuit. The difficulty lies in making tradeoffs.[30]

In the preceding discussion, this technical memorandum concluded that, in the near-term, the high cost of gathering and processing satellite imagery would inhibit the news media's attempts to establish a mediasat. Nonetheless, in the long run, the media are likely to continue using satellite imagery and gain access to increasingly sophisticated remote sensing technology. Accepting this fact, the United States will eventually have to balance the guarantees of free speech and the need for national security with respect to media use of remotely sensed data from spacecraft.

National Security Concerns

Experts generally agree that the media's extensive use of high-resolution satellite imagery for newsgathering could complicate certain U.S. national security activities and certain U.S. foreign policies. They also agree that this Nation's strong and unwavering commitment to the principle of freedom of the press has served it well. The task, therefore, is to balance these two fundamental concerns. As the following discussion illustrates, the arguments on both sides of this issue are strong and clear choices are few.

Participants identified and discussed five sets of national security and foreign policy concerns during the workshop.

[30] Paul B. Stephens, *T& First Amendment and National Security*, Center for Law and National Security, University of Virginia, vol. 1:2, May 1984, p. 1.

1. Dissemination of Information Concerning U.S. Military Operations

Some panelists expressed the concern that, without adequate oversight of a mediasat, the media might disclose information concerning U.S. military operations under circumstances that could result in casualties and/or frustrate U.S. objectives. The disclosure by the media of information concerning U.S. troop movements, shipments of materiel, or the location or heading of ships and cargo planes could deprive U.S. troops of the element of surprise—a critical tactical advantage in fast-paced, modern warfare.

The most common media response to such allegations is that, although a mediasat could provide a substantial new source of data, the media's extensive contacts and information sources within the United States and around the world already provide the press with real-time information concerning fast-breaking news stories. "The system leaks like crazy anyway," asserted one panelist, "I find it hard to get excited over the incremental damage that a mediasat could do. " The media are also quick to assert that their past record is a good one. *Where* lives were at stake or serious national security issues in question, they argue that the news media have acted responsibly, often refusing to release information that would seriously prejudice national security .31

One media representative said that in 1986, his network's correspondent was flying in a chartered airplane and saw the U.S. fleet turn south towards Libya hours before the United States' retaliatory bombing. Although this information was radioed to the network affiliate in Rome and then passed back to the United States:

> We did not go on the air with it because we realized that specific lives were in jeopardy , . .

[31] Although the workshop participants generally accepted the proposition that the news media acts responsibly, a minority of experts and media pundits have argued the opposite. For example, analysts at Accuracy in Media, Inc. (AIM), have argued generally that the media's "policy of publishing sensitive information . . . may jeopardize the lives of innocent people. " (See: "AIM Report, " July-A, 1985, No. XIV-13, p.1) The media have been criticized for speculating about sensitive programs such as the launches of classified DOD payloads on the Space Shuttle. More recently, the media were criticized because some felt that they were putting the lives of the Beirut hostages in danger by speculating on the nature of U.S. efforts to free them.

> It is our policy that when there is a specific issue of life or death we will not broadcast that information.

Another panelist commented that although the network's restraint in the Libyan incident was commendable:

> I assume you don't have fancy cryptographic communication equipment; therefore, you gave Libya the message when you radioed it from the airplane to the ground station.

This comment identifies two important problems:

1. the media have only a limited ability to protect sensitive information even if they desire to do so; and
2. the national security community may have to rely on the press' restraint to withhold information that once was under the control of the national security community.

Some media experts argue that a "newsgathering" satellite would work to the advantage of the United States by providing additional reconnaissance capability. It would be more difficult for nations to cheat on treaties or hide hostile activities if faced with frequent overflights by both media- and government-owned satellites.

2. Retaliation by Foreign Governments for Media Disclosures

Recent world events have demonstrated the strange symbiotic relationship that exists between the U.S. Government and the U.S. news media. The taking of media hostages in Beirut and the arrest and detention of Nicholas Daniloff in Moscow are just two examples of the willingness of certain foreign governments to use the U.S. media as pawns in their struggle with the U.S. Government. Mediasat raises the opposite concern—that the U.S. Government might be held responsible for the actions of the news media .32 Some workshop participants expressed the concern that friendly foreign governments might retaliate by expelling diplomats or closing valuable U.S. military bases should the press reveal information that embarrassed or threatened the national security of those nations. Governments already hostile to the United States could resort to terrorism or direct armed aggression .33

Some panelists felt that this was neither a significant nor a novel issue, and that although countries might initially complain, eventually they would accept a mediasat as they now accept EOSAT and SPOT.[34] The Soviets, one panelist noted, had complained bitterly through diplomatic channels when the magazine *Aviation Week and Space Technology* first ran pictures of its launch facilities at Tyuratam, but over the years their complaints gradually ceased .35 Other panelists took an uncompromising view of threats of foreign retaliation. They maintained that this issue was one that should now and always be nonnegotiable by the U.S. Government as it lies at the heart of the principle of freedom of the press. One panelist commented hotly:

> When the Soviets or other countries call and say, "why aren't you stopping that story on the evening news," you say, "we can't, and that's the difference between our country and yours."

3. Loss of Control During a Crisis

Advances in transportation and communication technologies have made the world smaller and reduced the time available to leaders to make decisions. Although far from perfect, the communi-

[32] The U.S. Government accepted *legal* responsibility for the actions of its citizens in space in the Outer Space Treaty (18 U.S.T. *2410:* T.I.A.S, *6347).* Article VI of the Outer Space Treaty states:

> States shall bear international responsibility for national activities in outer space whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with (this) Treaty The activities of non-governmental entities in outer space shall require authorization and continuing supervision by the appropriate State party to the Treaty

[33] One panelist pointed out that some nations already have, and others may eventually have, the capability to destroy or incapacitate satellites of the types likely to have commercial value.

[34] For many years after the U.S. Landsat program began, many developing countries claimed that a state should not be "sensed without its prior consent. It is significant to note that the *Principles Relating to Remote Sensing of the Earth From Space* (A RES 4165, Jan. 22, 1987), recently published by the United Nations, omits any reference to prior consent. This is at least some indication that as nations become more familiar with this technology and as the technology becomes more widely available, countries will cease to regard it with suspicion.

[35] The initial Soviet complaints resulted in part because this was the first publication of such images and, in part, because of the timing of the release. The pictures appeared immediately before the 1975 Apollo-Soyuz U.S. Soviet link-up in space and may have been regarded by the Soviets as a violation of the "spirit of cooperation" which both governments were trying to project to the world, One panelist noted, however, that the Soviet's ability to disable satellites was far less in 1975 than it is today.

Soviet nuclear testing facility, Semi palatinsk, U.S.S.R. Visible are cable scars and access roads connecting with drill holes. Ten meter panchromatic image taken by the French SPOT satellite.

cation and information assets available to world leaders have allowed them to stay just ahead of breaking events. This small grace period has given leaders time to plan and confer with advisors before being forced to make critical decisions that could lead to confrontation or conflict. As mediasats become more capable, some fear that this "grace period" could be reduced to zero and that world leaders would be forced to respond to press reports on which they had little or no information. One analyst noted that President Kennedy had 6 days to formulate a response to the discovery that Soviet missile sites were being built in Cuba. How might the President have handled this

crisis had he been forced by media disclosures to respond to Congress, the press, and the American people within the first few hours?

During the workshop, participants put forward two responses to this issue. The first was similar to the response to the issue of dissemination of military information; that is, that a mediasat would provide only an incremental increase over current capabilities. The sophisticated communication equipment now employed by the media already forces world leaders to respond in real-time to breaking news. Second, no matter how advanced the media's assets were, they could never rival the sophistication and timeliness of the entire intelligence apparatus currently available to the superpowers, of which satellites are only a small part.

4. Providing Valuable Intelligence to Third Parties

The United States and the Soviet Union still hold a virtual monopoly on sophisticated, global reconnaissance data. These data are, for the most part, jealously guarded, although in certain circumstances discrete portions of these data have been released to aid allies or confound adversaries. Some panelists expressed concern that mediasat activities, by making satellite images more generally available, would erode this important U.S. advantage. Workshop participants were unable to reach consensus on either the dangers posed by this potential erosion or the nature of the supposed advantages now enjoyed.

The issue seems to turn on the judgment that: 1) there exists a sizable set of issues about which the United States and the Soviet Union would have a common interest in withholding or controlling the flow of information, and 2) the fact that Soviet reconnaissance systems *could* detect something does not necessarily mean that they have detected it. Some panelists simply discounted the importance of the first concern, stating that, "the situations where the United States wants to conceal something from a third country that the Soviets wouldn't cooperate with would be few and far between." In response to the second concern, certain panelists noted that the likelihood that commercial news gathering satellites would find out things that the Soviets didn't already know was, "conceivable but extremely unlikely."

5. Dangers of Media Misinterpretation of Data

The previous section has already discussed the problems that the media have had in interpreting the satellite imagery they have already obtained. Some panelists expressed fears that inaccurate reporting—caused primarily by the strong pressure to "break the news"—could precipitate a crisis. For example, one expert recently wrote that:

> [S]everal networks showed SPOT photographs of the Soviet nuclear proving grounds at Semipalatinsk and claimed that the Soviets were preparing to resume nuclear testing. They showed photos of what was described as a "drill site." Looking at the photo, any competent imagery analyst would have pointed out that the arrangement and the cable scars terminating at the site would have proved that it was not a drill site but rather an instrumentation site, common to all nuclear proving grounds.[36]

It is conceivable that similar media misinterpretations on more serious issues such as troop movements or arms control violations could seriously disrupt international affairs, Some media experts discount this concern, arguing: first, that as the media continue to use satellite data they will grow more sophisticated and become less prone to error; and second, the common practice of verifying major stories with multiple sources of information should reduce the likelihood of misinterpretation,

One panelist felt that the media should be forced to use a common pool of qualified analysts to ensure that image misinterpretation was kept to a bare minimum. Most panelists strongly disagreed with this suggestion, claiming that:

> It's part of the process of free speech to permit and encourage diverse interpretation. Attempts to limit interpretation will have a direct impact on the American people's ability to get information and make their own judgments.

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[36] D. A, Brugioni, *Satellite Images on TV: The Camera Can Lie*, Washington Post, Dec 14, 1986, p. H1, col. 1.

The Effect of Foreign Remote Sensing Systems on U.S. Policies

Within a decade, many nations will have their own remote sensing systems. The U.S. Government cannot effectively limit or control media access to satellite imagery if foreign governments do not exercise similar controls. At present, the only non-U. S. commercial remote sensing system is France's SPOT. However, research-oriented remote sensing systems are currently under development by Canada, China, the European Space Agency, India, and Japan. Japan launched its first Marine Observation Satellite (MOS I) in February 1987. In addition, instruments flown on the shuttle and on the proposed international space station and its related polar platforms will supply another source of high-quality data with potential media application. All these systems, even those not considered "commercial," add to the pool of data available for exploitation by the media.

The almost assured proliferation of sophisticated remote sensing systems has caused many analysts to question the practicality—except for minimal launch vehicle and payload licensing[37]—of attempting to regulate the media's use of satellites to gather news. The most obvious means for controlling a mediasat organization would be to: 1) allow the launch of only certain types of satellites (e.g., limit the type and resolution of sensors); 2) control what the satellite takes pictures of in orbit; and/or 3) limit the flow of data from the satellite to the end user. Disregarding for the moment the constitutionality of any of these proposals, U.S. laws attempting to accomplish one or more of these tasks would not be applicable to foreign systems. As a result, U.S. news agencies could purchase data from, or invest in, foreign remote sensing systems. In the opinion of some panelists, the only effect of U.S. limitations would be to stifle a domestic mediasat industry.

Others argue that foreign remote sensing systems—either as a result of high costs, less sophisticated technology, foreign government policies, or a simple lack of need for high-resolution images—may have only limited capabilities .38 Therefore, with minimum international coordination, U.S. policies could substantially delay the time when the media would have access to very high-resolution satellite images. The U.S. Government might attempt to negotiate agreements[39] with other countries regarding sensor resolution or data dissemination. Such agreements would certainly be opposed by the news media and, given the U.S. commitment to both the freedom of the press and the "open skies" policy, *40 it is not certain* how much support such agreements would find in either Congress or the executive branch.

[37]Both the Land Remote-Sensing Commercialization Act of 1984 [15U.S.C. 4201-4292] and The Commerical Space Launch Act *[49* U.S.C. **2601-2623] require** licensing for private systems operated within the United States.

[38]The option of a satellite owned by a U.S. entity but launched under a foreign "flag of convenience, " to evade U.S. Government regulation appears to be foreclosed by the recent 7 national agreement not to export rockets that could serve as long-range missiles—and therefore also rockets capable of launching satellites into polar orbits, See John H. Cushman, Jr., **"7 Nations Agree to Limit Export** of Big Rockets, " *The New York Times,* Apr. *17, 1987,* p. 1.

[39]Such an "agreement" could be a formal treaty or a more flexible set of gentlemen's agreements concerning topics such as sensor resolution or data distribution. COCOM is a current example of such an informal agreement. COCOM coordinates the export control regimes of the member nations but COCOM agreements have no legal standing in any of its member nations.

[40]To reduce tensions between the United States and the Soviet Union, President Eisenhower in *1956* suggested to the Soviets that each country should allow the other to overfly its territory on a regular basis. Although the Soviets rejected this suggestion as a transparent espionage device, the United States' continued commitment to the principle of "open skies" allowed it to support its later assertion that spaceborne reconnaissance was a peaceful activity. *See:* Walter A. McDougall, *The Heavens and the Earth (New* York: Basic Books, Inc., 1985), p. 127.