

THE 1996 UN-DECLARATION ON "SPACE BENEFITS" ENDING THE NORTH-SOUTH DEBATE ON SPACE COOPERATION

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Abstract

At its 1996 session, UNCOPUOS adopted by consensus a "Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries". It was recommended for adoption at the 1996/97 session of the UN General Assembly.

This Declaration finalizes the agenda item in the UNCOPUOS Legal Subcommittee which has become known as "Space Benefits". It provides an authoritative interpretation of the cooperation principle in Article I of the Outer Space Treaty. It furthermore puts an end to the North-South confrontation in shaping the international order for space activities.

The authors, members of the German delegation to the UNCOPUOS Legal Subcommittee, describe in this paper the background of the agenda item "Space Benefits", analyse the first draft resolutions by a group of developing countries, explain the philosophy of the German-French counter-proposal of 1995, report about the merger of the two approaches during the 1996 session of UNCOPUOS and introduce the Declaration in its final form.

1. Putting "Space Benefits" on the Agenda (1988)

The agenda setting process in the UNCOPUOS Legal Subcommittee (LSC) has - as it is quite common in the UN - so far been a political tightrope-act. Not the straight solution of legal problems but the maintenance of an equilibrium between regional interests has clearly been in the forefront. So, after UNCOPUOS had adopted the Principles on Remote Sensing in 1986, this group provided the next agenda item replacing „Remote Sensing“ especially since the group of Western countries could not agree on any new approach or even a common proposal. Nevertheless, it was obviously difficult for the developing countries to find an appropriate subject.

Having failed to see their interests adequately reflected in the existing body of space law the developing countries approached the basic question, which was rather posed than answered in the first article of the Outer Space Treaty: On the one hand outer space is free for exploration (para. 2), on the other hand space exploration shall be carried out for the benefit and in the interests of all countries (para. 1). Raising the statement of para.1 over the statement para. 2 therefore was the not yet clearly defined aim of the developing countries, when in 1988 the agenda item "Consideration of the Legal Aspects Related to the Application of the Princi-

ple that the Exploration and Utilization of Outer Space Should be Carried out for the Benefit and in the Interest of all States Taking into Particular Account the Needs of Developing Countries" appeared on the agenda of the LSC.

The longer the text of an agenda item is, the more controversy it surely contains. In this case the industrialized countries softened the subject in so far that they only allowed for the "Consideration of the legal aspects ...". For years, the industrialized countries used this wording to support their position that the LSC should consider and discuss but not dare to draft any sort of legal text. Without any ideas of their own at that stage, the developing countries were assisted by the UN Office for Outer Space Affairs in finding a position*.

2. The Questionnaires on International Cooperation (1988-1991)

The lack of orientation - due to the political deadlock - in the first phase of discussions produced what so often is done to avoid embarrassment: questionnaires were sent out†. A first questionnaire on national frameworks for space activities‡ and a second one on the States' assessment of existing treaties in the field of space activities§. When the chairman of the Working Group on "Space Benefits" presented his analysis of the answers to these two questionnaires in 1992 ¶, the results were already obsolete because the developing countries had already figured out a bold new approach.

3. The Draft Set of Principles by the Developing Countries and Its First Revision (1991-1994)

The developing countries became serious about integrating the issues of outer space into their concept of New International Orders (like for the world economy, the High Sea or the information and communication sys-

* See *Nandasiri Jasentuliyana*, Article I of the Outer Space Treaty Revisited, in: *Journal of Space Law* (17,2) 1989, pp.129-144.

† For an assessment of this phase see *Kai-Uwe Schrogl*, "Space Benefits" - A New Aspect of Global Politics, in: *German Foreign Affairs Review* (42,4) 1991, pp.373-382.

‡ Distributed in September 1988. The replies are documented in UN Doc. A/AC.105/C.2/15 and Add. 1-13 of 9 February 1989 ff.

§ Distributed in December 1989. The replies are documented in UN Doc. A/AC.105/C.2/16 and Add. 1-10 of 27 February 1990 ff.

¶ UN Doc. A/AC.105/C.2/L.187 of 22 January 1992.

tem)** . Nine developing countries presented a working paper containing a draft for "Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes"^{††} . This draft set of principles was rich in New International Order language aiming at forced cooperation and an automated transfer of financial and technological resources from North to South. This came as a shock for the industrialized countries since such a strong attack on the freedom of space exploration and utilization had not been expected. Doubting that the LSC had any mandate to discuss such texts, the industrialized countries refused to even talk about the working paper. When the developing countries realized that they had gone too far and produced a less aggressive revision of their working paper in 1993^{§§} , they had to concede that their attempt for a redistributive revolution in international space cooperation had failed^{¶¶} .

4. The German-French Counter-Proposal and the Developing Countries' Response (1995)

Although the developing countries could not in any way persuade the industrialized countries to accept their approach, the four sessions from 1991 to 1994, when the draft set of principles was discussed in the LSC made clear that passivity was detrimental to the international climate as well. Industrialized countries realized that they could act up as well by exhibiting their broad programmes with developing countries. Making clear that numerous developing countries already participated in bilateral space projects and that industrialized countries do provide considerable amounts of money for building satellite utilization capacities in developing countries (i.a. through multilateral programmes like the UN Space Applications Programme), the industrialized countries set a new tone for the debate: the North is already making considerable efforts voluntarily and cooperation has to be beneficial for both sides.

In this situation Germany and France decided to present - at the 1995 session of the LSC - a working paper containing a draft "Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of all States, Taking into Particular Account the Needs of Developing Countries"^{***} . The German-French working paper rested on two basic considerations: first, that States are free to determine all aspects of their international cooperation,

** See the analysis by *Stephan Hobe and Kai-Uwe Schrogl*, "Space Benefits" - Towards a new international order for space, in: *Space Communications* (11,1) 1993, pp.3-11.

†† UN Doc A/AC.105/C.2/L.182 of 9 April 1991.

§§ UN Doc. A/AC.105/C.2/L.182/Rev.1 of 31 March 1993.

¶¶ For an analysis of the working paper and its first revision see *Kai-Uwe Schrogl*, "Space Benefits", in: *Marietta Benkő and Kai-Uwe Schrogl (eds.)*, *International Space Law in the Making*, Editions Frontières, Gif-sur-Yvette 1993, pp.195-231. The two texts are annexed to that article. For a different view see *Nandasiri Jasentulyana*, *Ensuring equal access to the benefits of space technologies for all countries* in: *Space Policy* (10,1) 1994, pp. 7-18.

*** UN Doc. A/AC.105/C.2/L.197 of 27 March 1995.

whether it is bilateral or multilateral or whether it is commercial or non-commercial, including of course development cooperation; second, that States shall choose the most effective and appropriate mode of cooperation in order to allocate resources efficiently^{†††} . Glad that at last a dialogue had begun, the co-sponsors of the developing countries' working paper - now led by Brazil, which (a space-power itself) was less redistribution-minded and diplomatically more constructive - presented a far more conciliatory second revision^{§§§} . Time for a merger was however not yet right at that session. First of all there were still some fields of disagreement and secondly States are not very quick in acting, when matters like the reconciliation of different ideological positions are concerned. Therefore, the attempt by the chairman of the working group to more or less simply add the two texts in a voluminous but rather incoherent version had of course to be doomed. Anyhow, it was above all meant to put pressure on the two parties to find their own solution quickly^{¶¶¶} .

5. The Merger of the Two Texts (1996)

A merger happened surprisingly quick in 1996. It was prepared in the LSC among the German, the French and the Brazilian delegations in March^{†††} and finalized in the plenary of the Main Committee of UNCOPUOS in June on the basis of the merged text, which - with a few square brackets - had been introduced in the LSC as a chairman's paper^{****} . The final text of the Declaration, adopted in the UNCOPUOS Main Committee in June 1996 is annexed to this paper. It will, after having passed the Political Committee, be presented to the UN General Assembly for adoption during its 1996/97 session. The possibilities that the Political Committee or the General Assembly itself might change the text is rather small.

With regard to the text adopted in UNCOPUOS, we should not look at details, as to which text is taken from which paper. For example: the title of the legal text originates from the German-French working paper and

††† For an in-depth account on the background of the German-French working paper see *Marietta Benkő and Kai-Uwe Schrogl*, "Space benefits" - towards a useful framework for international cooperation, in: *Space Policy* (11,1) 1995, pp.5-8.

§§§ UN Doc. A/AC.105/C.2/L.182/Rev.2 of 23 March 1995.

¶¶¶ For a more detailed report on the results of the 1995 session of the LSC see *Marietta Benkő and Kai-Uwe Schrogl*, *The UN Committee on the Peaceful Uses of Outer Space: Progress on "Space Benefits" and Other Recent Developments*, in: *German Journal for Air and Space Law ZLW* (44,3) 1995, pp.291-305. The texts of the German-French working paper and the second revision of the developing countries' working paper are annexed to that article.

**** The two parties had each presented slightly modified versions of their texts from 1995: UN Doc. A/AC.105/C.2/L.197/Rev.1 of 19 March 1996 by Germany and France and UN Doc. A/AC.105/C.2/L.182/Rev.3 of 22 March 1996 by Brazil and at that time already 11 other developing countries (but with the exception of Argentina, which - a co-sponsor of the original working paper - left the group in 1995 in order to press for a more conciliatory approach).

***** UN Doc. A/AC.105/C.2/L.202 of 27 March 1996.

the structure resembles more the developing countries' proposal. It is far more important that all member States of UNCOPUOS finally agreed on the basics of a liberal regime, such as it was pointed out in the German-French proposal, and had to a great extent already been reflected in the later drafts of the developing countries.

The Declaration is introduced by a preamble pointing out the relevant provisions of international law and stressing equally the demand for more international (mutually beneficial!) cooperation (para. 8) and the fact that international cooperation is already well-established (para. 7). The Preamble also mentions (para. 6) international organizations as participants in international space cooperation. The Declaration itself, however, only speaks of States since they are the ones to adopt it as a Resolution in the UNGA. However, it is evident, that international organizations, like the European Space Agency, are - through their member States - as free to determine their cooperation as are their single member States.

The text of the Declaration itself

- presents in para.1 the basis for international cooperation;
- stresses in para.2 the freedom of cooperation and - as a novelty in space law - refers to intellectual property rights as legitimate right and interest of States in this field, which is of importance for all fields of space technology but of particular importance for the field of earth observation data;
- makes clear in para. 3 that the space powers must not forget to integrate the developing countries into space exploration. However, this para. does not intend to force cooperation but instead focusses on an already broadly developed net of space cooperation, bilaterally or - as already mentioned - through international activities like the UN Space Applications Programme;
- introduces in para. 4 effectiveness as a basic principle for international cooperation, thus providing an instrument for countering fancy demands like e.g. for the creation of a World Space Organizations. So this para. could be regarded as containing the "subsidiarity principle" for international space activities. This para. - also for the first time in UN space law making - sets commercial space activities on one level with State activities (however without changing anything in the way, the Outer Space Treaty has regulated State responsibility). This has a more political than legal impact but it is a tribute to the changed environment;
- enumerates in para. 5 the fields of international cooperation and makes again clear what efficiency means;
- calls upon all players in para. 6 to use space services for development cooperation. This will for example also help space agencies in industrialized countries to stimulate the use of satellite data by their development aid ministries and agencies most of which still have rather conservative tendencies in selecting their tools;
- supports in para. 7 the efforts of UNCOPUOS;
- asks all States in para. 8 to support the UN Space Applications Programme, which for example Germany -

one of the parents of this Declaration - fulfilled in 1996 through hosting the 6th UN/ESA Workshop on Basic Space Science in Bonn.

6. The Expected Impact of the 1996 Declaration

The Declaration should - at least in the point of view of their drafters - have basically three broader impacts:

1. It marks the end of a North-South debate which had focussed on the introduction of forced cooperation and transfer of resources. By now providing an authoritative interpretation of the cooperation principle of Art. I of the Outer Space Treaty the Declaration prevents further confrontation on a general political level.
2. It cements the freedom of the exploration and utilization of outer space but at the same time reminds the space powers - in a productive and mutually fruitful manner - to fulfill their obligation to conduct their activities for the benefit of all countries, which means that the space powers should foster international cooperation - on an equitable and mutually acceptable basis. This means that developing countries interested in space activities have now higher incentives to put their energies in a, by own efforts well-prepared, "demand-pull" instead of waiting for a politically induced "technology push". This will make many of them more equal partners in cooperation, the space powers are ready to accept. Maybe this will even lead to the only reasonable way for them to become active in space, which is to pool resources on a regional basis (as even the industrialized countries of Europe had to do).
3. In parallel to the adoption of the Declaration, UNCOPUOS took the basic decision to organise a third UNISPACE Conference alternatively in 1999 or in 2000. While the UNISPACE Conferences of 1968 and even more so of 1982 had been used as platforms for conflicts over distribution, UNISPACE III will - thanks to the Declaration - be able to avoid an ideological debate on the international order for outer space and concentrate instead on the benefit, space applications can provide for all mankind.

Annex

UN Doc. A/AC.105/L.211 of 11 June 1996 "Text of Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries"

The General Assembly,

Having considered the report of the Committee on the Peaceful Uses of Outer Space on the work of its thirtieth session and the text of the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries, as approved by the Committee and annexed to its report,

Bearing in mind the relevant provisions of the Charter of the United Nations.

Recalling notably the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Recalling also its relevant resolutions relating to activities in outer space,

Bearing in mind the recommendation of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other international conferences relevant in this field,

Recognizing the growing scope and significance of international cooperation among States and between States and international organizations in the exploration and use of outer space for peaceful purposes,

Considering experiences gained in international cooperative ventures,

Convinced of the necessity and the significance of further strengthening international cooperation in order to reach a broad and efficient collaboration in this field for the mutual benefit and in the interests of all parties involved,

Desirous of facilitating the application of the principle that the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind,

Adopts the Declaration on International Cooperation in the Exploration and Use of Outer Space for the benefit and in the Interests of All States. Taking into Particular Account the Needs of Developing Countries, set forth in the annex to the present resolution.

Annex

Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of all States, Taking into Particular Account the Needs of Developing Countries

1. International cooperation in the exploration and use of outer space for peaceful purposes (hereafter „international cooperation“) shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. It shall be carried out for the benefit and in the interests of all States, irrespective of their degree of economic, social or scientific and technological development, and shall be the province of all mankind. Particular account should be taken of the needs of developing countries.

2. States are free to determine all aspects of their participation in international cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. Contractual terms in such cooperative ventures should be fair and reasonable and they should

be in full compliance with the legitimate rights and interests of the parties concerned as, for example, with intellectual property rights.

3. All States, particularly those with relevant space capabilities and with programmes for the exploration and use of outer space, should contribute to promoting and fostering international cooperation on an equitable and mutually acceptable basis. In this context, particular attention should be given to the benefit for and the interests of developing countries and countries with incipient space programmes stemming from such international cooperation conducted with countries with more advanced space capabilities.

4. International cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned including *inter alia*, governmental and non-governmental; commercial and non-commercial; global, multilateral, regional or bilateral; and international cooperation among countries in all levels of development.

5. International cooperation, while taking into particular account the needs of developing countries, should aim, *inter alia*, at the following goals, considering their need for technical assistance and rational and efficient allocation of financial and technical resources:

Promoting the development of space science and technology and of its applications;

Fostering the development of relevant and appropriate space capabilities in interested States;

Facilitating the exchange of expertise and technology among States on a mutually acceptable basis.

6. National and international agencies, research institutions, organizations for development aid, and developed and developing countries alike should consider the appropriate use of space applications and the potential of international cooperation for reaching their development goals.

7. The Committee on the Peaceful Uses of Outer Space should be strengthened in its rôle, among others, as a forum for the exchange of information on national and international activities in the field of international cooperation in the exploration and use of outer space.

8. All States should be encouraged to contribute to the United Nations Programme on Space Applications and to other initiatives in the field of international cooperation in accordance with their space capabilities and their participation in the exploration and use of outer space.