

THE USSR AND THE 1967 TREATY ON OUTER SPACE

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ABSTRACT

The beginning of codification and progressive development of international outer space law was laid down by the United Nations General Assembly Resolution 1721 (XVI) of 20 December, 1961, in which the first principles were formulated. The USSR actively contributed to this achievement.

The USSR was the first State to submit to the Legal Sub-Committee of the Outer Space Committee on 6 June, 1962, a draft declaration on the basic principles governing the activities of States pertaining to the exploration and use of outer space. Most of the provisions of the Soviet draft were included into the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, of 13 December, 1963.

On May 30, 1966, the USSR proposed to conclude an internationally binding treaty incorporating the principles of the Declaration of 1963.

In June 1966 the USSR and the USA submitted to the UN draft treaties on outer space activities which fact testified the race in political and legal aspects of outer space activities. Collaboration of the USSR and the USA made the Outer Space Treaty a reality. To-day the leadership in the development of outer space law has no importance.

The new agenda item of the Legal Sub-Committee ("Over-view of the Status of the

Five International Legal Instruments on Outer Space") might bring to the necessity of evaluating the interpretations of the Outer Space Treaty of 1967 by scholars. It was impossible in 1966 to agree on prohibition of military use of outer space. Some countries would like to amend the Treaty to that end.

The ever increasing role of NGO's may have its impact on an over-view of the Outer Space Treaty.

Collaboration between the USA and Russian Federation might play the same role in future development of outer space law as in the days of adoption of the Outer Space Treaty.

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Outer space law in the USSR takes its origin form academic teachings. Professor of international law Evgheni Korovin published his article "The Conquest of the Stratosphere and International Law" as early as 1934¹.

Since then Soviet lawyers published many hundreds of scientific works in the field of outer space law².

The launching of the first man-made satellite by the USSR on October 4, 1957, not only gave the new impetus to legal research but also made the use of outer space an acute political problem. The issue at stake was the legal regime of outer space.

On 18 November 1958 the Soviet Union submitted in the First Committee of the UN General Assembly a draft resolution on setting up an international agency for co-operation

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in research in outer space for peaceful purposes³. In the course of discussions the UN General Assembly drafted and adopted Resolution 1348 (XIII) of 13 December 1958 entitled "Question of the peaceful use of outer space". It established an ad hoc Committee on the Peaceful Uses of Outer Space which got the mandate to report to the General Assembly at its next session on the nature of legal problems which may arise in the carrying out of programmes to explore outer space.

The composition of the ad hoc Committee was unacceptable to the USSR and its representatives did not participate in its work.

The UN General Assembly Resolution 1472 (XIV) of 12 December 1959 adapted the composition of the Committee to the Soviet interests (7 socialist States out of 24 became its members) and since then Soviet representatives have been actively involved in its deliberations and contributed to the success in developing international outer space law.

The XVI-th session of the General Assembly agreed on a number of principles guiding the exploration of outer space: international law, including the Charter of the United Nations, applies to outer space and celestial bodies; outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation. Besides, the same resolution called upon States launching objects into orbit or beyond to furnish information promptly to the Committee on the Peaceful Uses of Outer Space, through the Secretary - General, for the registration of launchings⁴. Those were the first bricks laid in the foundation of the future Outer Space Treaty.

In his message to the President of the USA dated 20 March 1962 the Chairman of the Council of Ministers of the USSR welcomed the agreement on the first principles of outer space law and suggested that an agreement on refraining from potentially harmful experiments in outer space be reached⁵.

On 6 June 1962 the USSR submitted to the Legal Sub-Committee of the Outer Space Committee a draft declaration on the basic principles governing the activities of States pertaining to the exploration and use of outer space⁶. Later the United Arab Republic, the

United Kingdom and the USA submitted their own draft declarations.

The respective Declaration was adopted by the UN General Assembly on 13 December 1963⁷ after the second attempt of the USSR to formulate a compromise text⁸.

The comparison of the texts of the draft and of the adopted Declaration testifies that most of the provisions of the Soviet draft were incorporated into the Declaration. However, three Soviet proposals were not included into the Declaration. One dealt with prohibition of use of outer space for propaganda of war, national or racial hatred and enmity among peoples. Another one suggested that only States were allowed to undertake all activities in outer space. The third was intended to prohibit the use of satellites for military reconnaissance⁹.

To a large extent the text of the Declaration was used in the process of drafting the Outer Space Treaty as a legally binding instrument.

In Resolution 1963 (XVIII) the General Assembly recommended that consideration be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space. This recommendation was repeated in the UN General Assembly resolution 2130 (XX) of 21 December 1965.

On May 30, 1966, the USSR proposed to include in the agenda of the XXI-st session of General Assembly an item "On concluding an international agreement regarding legal principles of activities of States in exploration and use of the Moon and other celestial bodies"¹⁰. There was no draft treaty attached to the letter of the Foreign Minister of the USSR to the Secretary-General of the United Nations, but four principles were formulated.

The draft treaty governing the exploration of the Moon and other celestial bodies was submitted to the Outer Space Committee by the United States¹¹. Its scope was limited to the Moon and other celestial bodies. But one day earlier the USSR submitted a draft which was more relevant to respond the recommendations of the UN General Assembly, i.e. Draft Treaty on principles Governing the Activities of States in the

Exploration and Use of Outer Space, the Moon and Other Celestial Bodies¹².

Thus the race in outer space was accompanied with the race in political and legal aspects of outer space activities. Already in 1976 the Committee on Aeronautical and Space Sciences of the United States Senate made the conclusion that "current Soviet policy is built around international cooperation in space activities. This has led to treaties governing the use of outer space... At the same time, Soviet jurists believe U.S. representatives are trying to dominate the writing of rules and of treaties to fit U.S. interests"¹³.

The Outer Space Committee had the choice of two draft proposals. The Soviet proposal was closer to the recommendations of the UN General Assembly.

In July-September 1966 the Working Group of the Legal Sub-Committee of the Outer Space Committee drafted several articles of the future Outer Space Treaty. On October 4, 1966 the USSR, in the course of the XXI-st session of the General Assembly submitted a revised draft of the treaty which incorporated the already agreed by the Working Group articles. This effort enabled the UN General Assembly to adopt unanimously the text of the treaty entitled "Treaty Governing the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies" on 19 December 1966¹⁴.

Although the Soviet and the USA representatives to the United Nations expressed during the period of drafting the Outer Space Treaty controversial views on the leading role of the two States in the development of outer space law¹⁵, to-day after 30 years since its entry into force it has no importance. Very many UN members actively contributed to the successful adoption of the Treaty.

Since the Legal Sub-Committee of the Outer Space Committee decided to include into its agenda a new item, i.e. "Over-view of the Status of the Five International Legal Instruments on Outer Space"¹⁶, the background of the Outer Space Treaty may be important not only historically and academically. To-day it might be relevant to

go back to the evaluation of the Treaty made three decades ago.

The USSR Minister for Foreign Affairs in his statement upon signature of the Outer Space Treaty on 27 January 1967 expressed firm belief that the Outer Space Treaty would be a step on the way of further development of co-operation and mutual understanding among States and peoples and would contribute to solving most important international problems which the humanity was facing on the Earth¹⁷. This hope has become the reality of life.

Unfortunately it was not possible to agree on prohibition of military use of outer space by analogy with the Moon and other celestial bodies (Art. IV of the Treaty).

Therefore the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) mentions in its report the prevention of an arms race and hostilities in outer space as an essential condition for the promotion and continuation of international co-operation in the exploration and use of outer space for peaceful purposes¹⁸.

Some delegations at the Conference expressed the urgent need to supplement the 1967 Treaty on Outer Space and to elaborate norms aimed at banning the arms race from outer space¹⁹. Thus we might be facing a new splash of discussions on this vital issue.

In Resolution 1721 (XVI) the General Assembly requested the Outer Space Committee in co-operation with the Secretary-General to maintain close contact with governmental and non-governmental organizations concerned with outer space matters. During the last decade the role of NGO's has been rapidly increasing in the field of human rights. By analogy, the role of NGO's, including the International Institute of Space Law, the International Astronautical Federation and the International Academy of Astronautics, may be increasing in the course of the over-view of the five outer space treaties.

In conclusion, the UN success resulting in the adoption of the first multilateral Treaty on Outer Space in history of mankind became possible due to the successful adoption in 1963 of the Declaration of Legal Principles

Governing the Activities of States in the Exploration and Use of Outer Space". As Nicolas Matte put it, the Declaration was "the result of direct cooperation between the United States and the Soviet Union"²⁰. And it is noteworthy that the Declaration contained "nine points, most of them reappearing in the Treaty on the Peaceful Uses of Outer Space"²¹. This last remark means that the Treaty became possible due to direct cooperation between the two major space powers.

Collaboration between the United States and the Russian Federation might play not lesser role in future codification and progressive development of outer space law. Positions of the two States will be even closer in connection with the increasing interest of Russia for outer space commercial activities²².

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