

A New Approach For the Debate on "Space Benefits" in the UNCOPUOS

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Abstract

The discussion on "Space Benefits" - i.e. the analysis of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out in the interest of all States taking into particular account the needs of developing countries - has become the focal point of deliberations in UNCOPUOS' Legal Subcommittee during the past three years. Originally embraced by developing countries to aim at implementing a dirigist order based on forced cooperation and technology transfer, this position - inspired by the past debates on New International Orders - has gradually been toned down during the past two years.

For the purpose of receiving this positional change in a constructive way, Germany and France have prepared for the 1995 session of the Legal Subcommittee a working-paper depicting their position on the principles of freedom and efficiency of international cooperation in space activities. This paper analyses the background of the debate on "Space Benefits" and introduces the basic concept of the German-French working-paper, which rests on an adaptation of the so-called principle of "subsidiarity". Through the introduction of this working-paper the so far confrontational and ideologically nurtured debate on "Space Benefits" has for the first time been opened for promisingly exploring common ground in order to outline a useful framework for international cooperation.

Introduction¹

For more than five years now, developing countries in the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) have been aiming

at the adoption of a legal text which would establish their preferential treatment in international cooperation and result in the redistribution of the benefits derived from space activities.

Referring to Article I of the Outer Space Treaty² which states that space activities "shall be carried out for the benefit of all countries, irrespective of their degree of economic or scientific development", they fear structural disadvantages in the way space is internationally explored and utilized. As a remedy they began to advocate a new international order for space activities in UNCOPUOS.³

From its outset in 1988, when "Space Benefits", as the agenda item is known for short⁴, was formally discussed for the first time, up to now, the developing countries had to tackle various dilemmas:

- * First of all, this agenda item was an attempt, forced by some delegations, to revive the debate on distributive justice for the proliferation of the benefits from space applications.
- * Secondly, the developing countries quickly indulged in a dirigist approach of redistribution which had already be overcome at the end of the 80s, when New World Orders (e.g. for the economic or communication fields) had lost their appeal.
- * Lastly, during the 80s some developing countries (especially Brazil, China and India) had themselves emerged as qualified space powers, thus correcting the vision of the developing countries as a coherent block of "have-nots" and introducing conflicts of interest within this group of countries.

These three dilemmas are currently developing to the full. Since this opens up the chance to break the ideologically nurtured deadlock between developing and industrialized countries, which

has characterized the debate so far, a new initiative based on more pragmatism was urgently needed. For UNCOPUOS as the central institution for the development of international space law it is simply an essential task to find a constructive and appropriate solution, if it does not want to threaten its *raison d'être*.

Calming the ideological challenge

The danger for UNCOPUOS in introducing an agenda item like "Space Benefits" was clear: the lack of an exact mandate (it is only the "consideration" of "legal aspects", which are "related" to a certain "principle") could inevitably lead to irreconcilable approaches. Whereas the industrialized countries intended to have a more casual debate, the developing countries had first to make up their mind on what they should make out of "their" agenda item.

When they finally reached that decision, the industrialized countries were profoundly surprised about the verve of the developing countries' attack on the system of international space cooperation. The main characteristic of the first working paper containing a draft set of principles put forward by nine developing countries in 1991⁵ was its adherence to the school of thought nurtured by the demand for a New International Economic Order (NIEO) and a New World Information and Communication Order (NWICO). Under a regime of forced cooperation and an automated technology and resources transfer from North to South, the industrialized countries would virtually have lost their freedom in choosing their cooperative partners and in determining the modalities of such cooperation.

Forseeably, this gambit raised tremendous controversy and induced an negative reaction by the industrialized countries. Finally it resulted in a re-drafting of the working paper now under the guidance of Brazil. This country perfectly exemplifies the dilemmas enumerated in the introduction. As a developing country with strong initiative of its own in space activities (even outmatching most industrialized countries in the field of the utilization of remote sensing data) it looks upon the concept of distributive justice and dirigism in international cooperation from a

different perspective than many other developing countries.

The following revision of the 1993 working paper⁶ therefore considerably calmed down the ideological challenge since it contains the explicit statement that "States are sovereign in deciding the modalities of their cooperation". Thus it paved the way for the industrialized countries to at least cautiously consider the working paper as the basis for more constructive discussions. Nevertheless, discussions have stalled in 1994 on demands of preferential treatment for developing countries contradicting on the same page the principle of free and sovereign decision on the modes of cooperation or even the attempt to address missile proliferation issues and the whole idea of drafting a set of principles was suddenly as open as before.

A new approach - the German-French working-paper of 1995

Taking the lead, Germany and France drafted for this year's session a working paper containing a counter-proposal (UN Doc. A/AC.105/C.2/L.197 of 27 March 1995, reprinted in Annex 1 to this article). This new working paper was discussed together with a second revision of the developing countries' working paper (UN Doc. A/AC.105/C.2/L.182/Rev.2 of 23 March 1995, reprinted in Annex 2 to this article). While the latter working paper contained an almost unaltered position, the German-French working paper provided the debate with a new alternative approach.

The German-French paper rests on two basic considerations: first, that States are free to determine all aspects of their cooperation, 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 efficient and appropriate mode of cooperation in order to allocate resources efficiently. The ideas of the paper reflect the successful cooperation of the co-sponsors during the last decades. It therefore does not indulge into a theoretical debate like a New Order for Outer Space. The three parts of this draft declaration contain general elements of international cooperation, modes of cooperation

and areas of cooperation. In the first part, the basic considerations mentioned above are laid down. The second part develops a "subsidiarity principle" for space cooperation, i.e. choosing the most efficient and least lavish mode of cooperation. The third part lists the fields of cooperation and presents the idea of "demand pull" versus "technology push" in development cooperation. So called "enlightened liberalism" has so been introduced into the debate on "Space Benefits".

The initial reactions on this working paper were promising throughout. While numerous industrialized countries supported it, even a number of developing countries reacted positively. In fact, the working paper does not contain any elements which could be interpreted as being outright against the interests of developing countries. It even intends to stimulate cooperation between space-faring countries and developing countries. The difference between this paper and the other working paper of a group of developing countries lies in the fact, that all cooperative partners are regarded as equal, thus negating preferential rights as well as discriminatory treatment. Although consensus was not yet reached and not striven for - at least for this session - the German-French proposal clearly received much support. An attempt by the chairman of the working group to merge the two working papers (reprinted in Annex 3 to this article) got no opportunity to be discussed at this session.

The 1996 session of the LSC will show how near North and South can converge in this question, which already has shown its potential for being bridged in the near future.

Annexes

Agenda Item: Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

Annex 1: Working-Paper Submitted by Germany and France (UN Doc. A/AC.105/C.2/L.197 of 27 March 1995 Original: English/French)

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

I General elements of international cooperation

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, taking into particular account the needs of developing countries.
2. International cooperation should strive to allocate resources efficiently. It should promote the development of space science, technologies and applications, taking into particular account the needs of developing countries.
3. States are free to determine all aspects of their cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. By all means, contractual terms in such cooperative ventures shall be fair and reasonable. They shall be in full compliance with the legitimate rights and interests of the parties concerned as e.g. with intellectual property rights.

II Modes of cooperation

1. States are free to choose among different modes of cooperation, namely, between governmental or non-governmental cooperation, which can be effected on a global, regional or bilateral level. International cooperation can be carried out between industrialized and developing countries as well as among developing countries, including those with appropriate space capabilities or programmes, and among industrialized countries. All these activities can be effected on a commercial as well as on a non-commercial basis.
2. States shall choose the most effective and appropriate mode of cooperation among these alternati-

ves with the aim of an efficient allocation of resources.

3. International cooperation should be based on durable and balanced foundations bearing in mind i.a. the consistency between national and international space activities. Thereby States can mutually benefit from international cooperation. This involves the sharing of experiences and learning together, taking into particular account the demand for special training and education activities. Cooperation should intensify and become more productive as countries, working together over a period of time, discover the benefits of such cooperation and develop mechanisms for reaching their common goal.

III Areas of cooperation

1. Activities involving the exploration and peaceful use of outer space which are 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, can be considered for international cooperation according to sections I and II above. Such activities are for example:
 - a) remote sensing of the Earth from outer space including the observation of the Earth environment, management of natural and agricultural resources, oceanographic and meteorological observation and the prevention of natural disasters;
 - b) the use of telecommunication services, including the improvement of the communications infrastructure in the fixed as well as mobile services, navigation and education services;
 - c) microgravity research and life science;
 - d) further manned and unmanned space exploration.
2. National and international agencies, research institutions, as well as organizations for development aid in industrialized and developing countries alike should consider the potential of space services i.a. through the exchange of results and data for reaching their development goals.
3. The United Nations Committee on the Peaceful Uses of Outer Space should be strengthened in its role as a forum for the exchange of information on national and international activities in the field of cooperation for the exploration and use of outer space.

Annex 2: Working-Paper Submitted by Brazil, Chile, Colombia, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela (UN Doc. A/AC.105/C.2/L.182/Rev.2 of 23 March 1995 Original: English)

Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes

The General Assembly

Bearing in mind the provisions of the Charter of the United Nations, in particular Articles 1, 13, 55 and 56 thereof,

Bearing also in mind 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 all relevant General Assembly resolutions, in particular resolutions 2625 (XXV) of 24 October 1970, 3362 (S. VII) of 16 September 1975, 41/65 of 3 December 1986 and 47/68 of 14 December 1992,

Recalling also the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other relevant international conferences on this subject,

Desirous of strengthening and further developing 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 interest of all States, irrespective of their degree of economic or scientific development, and shall be the province of all mankind", and also taking into particular account the special needs of the developing countries,

Further recalling that outer space, including the Moon and other celestial bodies, shall be free for exploration and utilization by all States without discrimination of any kind, on a basis of equality and in accordance with international law.

Welcoming that significant international cooperation in the exploration and utilization of outer space for peaceful purposes has already been undertaken and continues to be pursued among States and international organizations,

Stressing the need to continue to enhance and encourage international cooperation in the exploration and utilization of outer space, taking into particular account the special needs of the developing countries,

Stressing also that the exploration and utilization of outer space shall be maintained for peaceful purposes,

Determined to maintain outer space for peaceful purposes through the promotion of international cooperation in its exploration and utilization,

Conscious of the need to utilize outer space in a rational and equitable manner as well as to preserve it for future generations,

Adopts the principles regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes set forth in the annex to the present resolution.

Annex

PRINCIPLES REGARDING INTERNATIONAL COOPERATION IN THE EXPLORATION AND UTILIZATION OF OUTER SPACE FOR PEACEFUL PURPOSES

I.

1. 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 special needs of developing countries.
2. States with relevant space capabilities and with programmes for the exploration and utilization of outer space should contribute to promoting and fostering international cooperation in outer space science and technology, and in their applications.
3. States are sovereign in deciding the modalities of their participation in cooperation activities, taking into account the importance of multilateral cooperation in the domain of Outer Space, as a province of all mankind.

II.

1. States should have access to the knowledge and applications derived from the exploration and utilization of outer space for peaceful purposes on an equitable, non-discriminatory and timely basis.
2. States pursuing programmes of exploration and utilization of outer space should facilitate access to the knowledge and applications derived therefrom to other States, particularly developing countries, through programmes of international cooperation adequately designed for that purpose.
3. Cooperation activities should be promoted with a view to assisting all countries interested in deve-

loping international programmes in the domain of outer space.

4. In pursuing international cooperation in the exploration and utilization of outer space for peaceful purposes, States should mutually benefit from such cooperation. This is especially relevant in programmes oriented to the dissemination of scientific and technological knowledge, which should take into account the level of development of the countries involved in such cooperation.

III.

1. The main objective to be pursued by international cooperation in outer space should be the development by States of relevant indigenous capability in space science and technology and their applications.
2. States with relevant space capabilities and with programmes of exploration and utilization of outer space should promote and facilitate the exchange of expertise and technology to other States, particularly the developing countries.
3. States should promote the exchange of material and equipment for, and transfer of technology on, the exploration and utilization of outer space within just and equitable parameters of price and payment.

IV.

1. International cooperation in the exploration and utilization of outer space should be for peaceful purposes
2. States providing or benefiting from international cooperation in outer space science and technology and its applications should ensure that they are used for peaceful purposes.
3. No arbitrary or discriminatory conditions should be applied to exchanges of knowledge and applications destined for the peaceful exploration and utilization of outer space. To this end, negotiated international guidelines so established would facilitate the objective settling of the needs for equipment and technological transfers.

V.

1. All States should pursue their activities in outer space with due regard to the need to preserve the outer space environment, in such a way as not to hinder its continued exploration and utilization.
2. States should pay attention to and coordinate their efforts in all aspects related to the protection and

2. States pursuing programmes of exploration and utilization of outer space should facilitate access to the knowledge and applications derived therefrom to other States, particularly developing countries, through programmes of international cooperation adequately designed for that purpose.
3. Cooperation activities should be promoted with a view to assisting all countries interested in developing international programmes in the domain of outer space.
4. In pursuing international cooperation in the exploration and utilization of outer space for peaceful purposes, States should mutually benefit from such cooperation. This is especially relevant in programmes oriented to the dissemination of scientific and technological knowledge, which should take into account the level of development of the countries involved in such cooperation.
5. *States are free to determine all aspects of their cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. By all means, contractual terms in such cooperative ventures shall be fair and reasonable. They shall be in full compliance with the legitimate rights and interests of the parties concerned e. g. with intellectual property rights.*

III.

1. The main objective to be pursued by international cooperation in outer space should be the development by States of relevant indigenous capability, where appropriate and desired, in space science and technology and their applications.
2. States with relevant space capabilities and with programmes of exploration and utilization of outer space should promote and facilitate the exchange of expertise and technology with other States, particularly with developing countries.
3. States should promote the exchange of material and equipment for, and the transfer of technology on, the exploration and utilization of outer space within just and equitable parameters of price and payment.

IV.

1. International cooperation in the exploration and utilization of outer space should be for peaceful purposes.
2. States providing or benefiting from international cooperation in outer space science and technology

and its applications should ensure that they are used for peaceful purposes.

3. No arbitrary or discriminatory conditions should be applied to exchanges of knowledge and applications destined for the peaceful exploration and utilization of outer space. To this end, negotiated international guidelines so established would facilitate the objective settling of the needs for equipment and technological transfers.

V.

1. All States should pursue their activities in outer space with due regard to the need to preserve the outer space environment, in such a way as not to hinder its continued exploration and utilization.
2. States should pay attention to and coordinate their efforts in all aspects related to the protection and preservation of the outer space environment, especially those potentially affecting the Earth's environment.
3. States with relevant space capabilities and with programmes for the exploration and utilization of outer space should share on an equitable basis with other States, in particular developing countries, the scientific and technological knowledge necessary for the proper development of programmes oriented to the more rational exploration and utilization of outer space, with a view to preserving the outer space environment for present and future generations.

VI.

1. The role of the United Nations and the scope of its activities in international cooperation in the exploration and utilization of outer space should be strengthened and enlarged, particularly through the United Nations Programme on Space Applications and the Committee on the Peaceful Uses of Outer Space as a forum for the exchange of information on the national and international activities in this field.
2. All States should contribute to the Programme on Space Applications in accordance with their space capabilities and their participation in the exploration and utilization of outer space.
3. *National and international agencies, research institutions, as well as organizations for development aid in industrialized and developing countries alike should consider the potential of space services i. a. through the exchange of re-*

sults and data for reaching their development goals.

4. In order to give concrete meaning to this *Declaration of Principles*, States should cooperate in the following areas:
 - (a) Promotion of the development of indigenous capability, where appropriate and desired, in space science and technology, particularly in developing countries;
 - (b) Continued exchange of information, data, materials and equipment on space science and technology;
 - (c) Promotion of joint partnerships or ventures in the spheres of space science and technology;
 - (d) Promotion of easy and low-cost accessibility and availability of remote-sensing data, the ground receiving stations and the digital image processing systems;
 - (e) Technical cooperation to promote and facilitate the transfer of technology and expertise in space science and technology, particularly with developing countries;
 - (f) Enhancement of spin-off benefits of space science and technology, taking into particular account the needs of developing countries.
5. *In this connection, the following are a few examples of activities which States should consider for international cooperation:*
 - (a) *remote sensing of the Earth from outer space including the observation of the Earth environment, management of natural and agricultural resources, oceanographic and meteorological observation and the prevention of natural disasters;*
 - (b) *the use of telecommunication services, including the improvement of the communications infrastructure in the fixed as well as mobile services, navigation and education services;*
 - (c) *microgravity research and life sciences;*
 - (d) *further manned and unmanned space exploration*

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- and *Other Recent Developments*, in: German Journal for Air and Space Law, ZWL (44,2) 1995, in print.
 - ² Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. Done on 27 January 1967. Entered into force on 10 October 1967. UNTS Vol 610, p 205.
 - ³ For detailed analyses of the background of the debate see Marietta Benkő and Kai-Uwe Schrogl (eds.), *International Space Law in the Making - Current Issues in the UNCOPUOS*, Editions Frontières, Gif-sur-Yvette 1993, chapter E, pp 195-231 and Nandasiri Jasentuliyana, *Ensuring Equal Access to the Benefits of Space Technologies For All Countries*, in: Space Policy (10,1) 1994, pp 7-18.
 - ⁴ The exact title of the agenda item is "Legal aspects related to the application of the principle 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". This clumsy phrasing perfectly reflects waxy UN compromise language provoking divergent approaches to this subject.
 - ⁵ Working paper submitted by Argentina, Brazil, Chile, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela: *Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes*, UN Doc. A/AC.105/C.2/L.182 of 9 April 1991.
 - ⁶ Working paper submitted by Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela: *Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes*, UN Doc. A/AC.105/C.2/L.182/Rev.1 of 31 March 1993.

Endnotes

¹ This paper is based on two previous articles of the authors:
 „Space Benefits“ - towards a useful framework for international cooperation, in : Space Policy (11,1) 1995, pp. 5-8 and *The UN Committee on the Peaceful Uses of Outer Space: Progress on „Space Benefits“*