

UN GENERAL ASSEMBLY RESOLUTIONS AND OUTER SPACE LAW

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Introduction

The leading role in developing outer space law is played by treaties, while custom acquires an increasingly meaningful role as the mankind expands its activities in outer space and more States are becoming involved in the exploration and use of this environment¹.

From the beginning of the space age, the United Nations has become a focal point in the international cooperation in the field of outer space, including developing a legal framework for orderly activities in the "sixth ocean".² In 1966, the General Assembly of the United Nations commended the Treaty on the Principles Governing Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty)³, which was destined to become a universally recognized cornerstone of international space law.

The starting point for elaborating the Outer Space Treaty was General Assembly resolution 1962 (XVIII) entitled "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space" adopted on 13 December 1963. Since that time the Assembly has adopted, and continues to adopt, numerous resolutions, including declarations of principles, on various outer space matters.

The purpose of this paper is to attempt to examine the role played by the UN General Assembly resolutions in the development and codification of international space law.

A. Legal status of General Assembly resolutions: brief general overview

As Paul Szasz noted, "it is common practice to start, and sometimes to end, any listing of various forms of international law by referring to the four subparagraphs of Article 38(1) of the Statute of the

International Court of Justice".⁴ Indeed, according to that Article, there are three sources of international law: international conventions, international custom, and the general principles of law recognized by civilized nations. The Article also refers to judicial decisions and the teachings of the most highly qualified publicists as "subsidiary means for the determination of rules of law".

A norm of international law is a legally binding rule of behaviour of States and other subjects of international law in their international relations⁵. In accordance with the Charter of the United Nations, the General Assembly makes recommendations on the issues within its competence. Thus, as a general rule, Assembly's resolutions are not obligatory and do not create norms of international law.

A wide variety of opinions exists, both among States⁶ and in the doctrine, concerning the legal role and force of at least some categories of General Assembly resolutions. The matter of contention appears to be whether or not certain Assembly resolutions should be viewed as sources of international law in addition to the three traditional sources (treaty, custom, general principles).

Many distinguished authors wrote on the subject of the legal character and force of General Assembly resolutions. Professor Blaine Sloan provided an almost ten pages-long bibliography list which, in his words, "gives a broad sampling of opinion on General Assembly resolutions"⁷. Professor Sloan's article contains a comprehensive review of various views on the subject, and, although this author does not share all the conclusions of the above article, there is no need to duplicate that thorough effort.

This article is not intended to address all aspects of this continuing debate or review general aspects of the problem. Rather the objective of this author is to review specifically some aspects of the role that General Assembly resolutions have played and are playing in the development of the law of outer space. However, for purposes of this paper, it is necessary to briefly summarize the existing views on the topic in order to put in a correct perspective this author's comments on the role of General Assembly resolutions in the development of international space law.

While, as stated above, substantive differences

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exist, it appears possible to identify areas of converging views on the subject of the legal force of General Assembly resolutions. Everybody seems to agree that an overwhelming majority of such resolutions are recommendations as provided in relevant Articles of the UN Charter. Those resolutions are not binding. However, they have moral and political weight, and cannot be simply ignored especially if adopted by consensus or without voting. Everybody also seems to agree that there are General Assembly resolutions that are binding: they concern the internal functioning of the United Nations, administrative, budgetary and some other questions. It is a third category or group of General Assembly resolutions which are evaluated differently both by States and scholars. Those resolutions are, in the most cases, adopted in the form of "declarations" which have "a special place among the General Assembly resolutions".⁸ Without going into details, according to one view, all those resolutions (declarations) are merely recommendations. According to the second view, some of those resolutions, sometimes referred to as "soft law"⁹, establish obligatory rules binding on States or rather help to establish existence and contents of such rules. According to the third view, while not exactly binding, those resolutions, contribute to the establishment of legal rules which may become obligatory in due course.

The United Nations Office of Legal Affairs has written that "...there is probably no difference between a 'recommendation' and or a 'declaration' in the United Nations practice as far as strict legal principle is concerned". This opinion, provided to the General Assembly some 35 years ago, stated that:

"A 'declaration' or a 'recommendation' is adopted by a resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or a convention is binding upon parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'... However, in view of the greater solemnity and significance of 'declaration' it may be considered to import, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon states".¹⁰

In 1981 the same Office advised that:

"In the practice of the United Nations a declaration is a formal and solemn instrument suitable for those occasions when principles considered to be of special importance are being enunciated. Apart from the solemnity and formality associated with a declaration there is

legally no distinction between a declaration and a recommendation which is less formal."¹¹

The above views continues to be fully valid nowadays.

General Assembly resolutions, both declarations and, as will be shown, "conventional" resolutions, play an important role in the development of the law of outer space. Several areas in this respect may be distinguished as described below.

B. Declarations of legal principles adopted by the General Assembly

Before examining the five outer space declaration, a potential terminological misunderstanding should be clarified. Four of the five declarations have the term "principles" in their titles. It is important to remember that these principles are not those meant in Article 38 of the Statute of the International Court of Justice as one of the sources of international law (the general principles of law recognized by civilized nations).

As indicated by Professor Bin Cheng over 30 years ago in connection with the 1963 Declaration:

"Although the title... is 'Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space', this does not mean that the principles are necessarily binding. For example, in innumerable treaties, States have developed a vast number of optional rules of conduct in the field of international economic relations and international air transport. These optional rules are legal in character, but their binding force is potential (*in posse*) rather than actual (*in esse*)... [The 1963 Declaration], to the extent to which it is not restating existing rules of international law, merely expresses non-binding standards of international law governing the activities of States in the exploration of outer space".¹²

The above evaluation is equally applicable to outer space declarations adopted after the 1963 one.

The following parts of this section briefly review the five outer space declarations elaborated in the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and adopted by the General Assembly, and also examines certain related legal issues.

1. Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space

As indicated above, the starting point for elaborating the Outer Space Treaty was General Assembly resolution 1962 (XVIII) of 13 December 1963, "Declaration of Legal Principles Governing the Activities

of States in the Exploration and Use of Outer Space".

This Declaration was the first comprehensive¹³ international intergovernmental document reflecting the position of the world community as a whole concerning general principles by which States should be guided in the exploration and use of outer space.

Those principles stipulate¹⁴ that:

- outer space should be explored and used for the benefit and in the interests of all mankind;
- outer space is free for exploration and use by all States;
- outer space is not subject to national appropriation;
- activities in outer space should be carried out in accordance with international law;
- States bear international responsibility for national activities in outer space;
- In the exploration and use of outer space, States should be guided by the principle of co-operation and mutual assistance;
- States should retain jurisdiction and control over space objects which they registered;
- States should be internationally liable for damage caused by their space objects;
- States should regard astronauts as envoys of mankind in outer space, and should render them all possible assistance.

Although legally not binding at the time of adoption, this unanimously approved document "solemnly declare[d]" the above principles all of which subsequently had become obligations under the Outer Space Treaty.

Manfred Lachs who was Chairman of the Legal Subcommittee of COPUOS at the time of the adoption of the 1963 Declaration, having reviewed the circumstances of the approval of the document, came to the conclusion that "it is difficult to regard the 1963 Declaration as a mere recommendation: it was an instrument which has been accepted as law".¹⁵

The importance of the 1963 Declaration has not disappeared with the conclusion of the Outer Space Treaty¹⁶; it continues to serve as universally accepted guidelines, especially for those States which, for certain reasons, have not so far acceded to that Treaty.¹⁷

In connection with the 1963 Declaration, as a basis for the Outer Space Treaty, it is pertinent to recall that, at the same session, the General Assembly adopted another important resolution the substance of which had also been subsequently incorporated in the Outer Space Treaty.

This resolution, 1884(XVIII) of 17 October 1963 entitled "Question of General and Complete Disarmament", welcomed the expressions by the USSR and the USA "of their intention not to station in outer space any objects carrying nuclear weapons or other kinds of weapons of mass destruction". In addition, that

resolution "solemnly call[ed] upon all states:

(a) To refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner;

(b) To refrain from causing, encouraging or in any other way participating in the conduct of the foregoing activities".

This resolution may be viewed as a symbolic "ratification" by the international community of an agreement reached by the USSR and the USA. The Secretary-General of the United Nations, addressing the Assembly because of the significance of the occasion, stated that the adoption of the resolution implied acceptance by the UN of the political and moral responsibility for its implementation.¹⁸ As a general obligation, this provision subsequently formed a part of Article IV of the Outer Space Treaty.

Both above resolutions - 1962(XVII) and 1884(XVII) - are "recalled" in the Preamble of the Outer Space Treaty.¹⁹

Of all General Assembly resolutions relating to outer space, the 1963 Declaration is the one which has come closest, in the opinion of this author, to stating law. Its unanimous adoption, the intention of the Assembly to make it a "solemn" document reflecting its significance, a strong expectation that members of the international community will abide by it,²⁰ subsequent confirmation of all its substantive provisions in the Outer Space Treaty, actual practice of States acting in conformity with the principles proclaimed in the Declaration - the totality of those circumstances can be viewed as evidence that at least most fundamental principles of the Declaration are acquiring (and perhaps have already acquired) the character of customary norms of international law.²¹

Indeed, as a theoretical example concerning just one principle of the declaration, if, a State which is not a Party to the Outer Space Treaty (which prohibits national appropriation of outer space and celestial bodies) were to attempt to-day to "nationally appropriate" part of, say, the lunar surface, there is little doubt that such action would be viewed by international community as violating **universally recognized** international law.²²

2. Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting

On 10 December 1982 General Assembly adopted resolution 27/92 "Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting" (the DTBS²³ Principles). This action by the Assembly concluded a decade of

intensive negotiations conducted in COPUOS and its Legal Subcommittee.²⁴

The DTBS Principles contain ten sections dealing with "Purposes and objectives", "Applicability of international law", "Rights and benefits", "International co-operation", "Peaceful settlement of disputes", "State responsibility", "Duty and right to consult", "Copyright and neighbouring rights", "Notification to the United Nations", and "Consultations and agreements between States".

The DTBS Principles are the only outer space principles adopted by General Assembly by voting.²⁵ While the detailed examination of the negotiating process and of provisions of this document goes beyond the scope of this paper, it is pertinent, however, to recall that the main disagreement with regard to the DTBS Principles was whether or not establishment of international direct television broadcasting service should require a prior consent of a State which would be receiving those foreign broadcasts. This central difference between proponents and opponents of the notion of free flow of information had not been overcome, and eventually led to voting whereby some Western and developing States either voted against or abstained. The final principle of the document, "Consultations and agreements between States", envisages that DTBS service "shall only be established... on the basis of agreements and/or arrangements". In other words, under the DTBS Principles, consent of a receiving State is required.

Explaining the US vote on the DTBS Principles, the American delegate, basically reflecting sentiments of other countries which did not support the resolution, stated, *inter alia*, that:

"His delegation recognized that the concept of direct television broadcasting by means of artificial earth satellites caused much wider concern than other forms of broadcasting, even among Governments which did not have a philosophy of state control of all information flows. It strongly believed however that, in a United Nations set of principles, such legitimate concerns should not be dealt with by suggesting that every State, including totalitarian States, should be afforded a non-conditional veto over that form of broadcasting. In the view of his delegation, any principle requiring that broadcaster must obtain the consent of a foreign Government would violate United States obligations towards both the broadcasters and the intended audiences; it would also violate article 19 of the Universal Declaration of Human Rights on the right to freedom of expression".²⁶

The DTBS Principles resolution is obviously a recommendation, and thus is not legally binding. As far as its moral and political force is concerned, it is

undermined by the fact that the declaration was adopted by voting and that a few major nations actively involved in the exploration and use of outer space, including first of all the US, did not support it. As Eilene Galloway indicated in connection with the DTBS voting, "this type of decision is not effective in gaining compliance as compared with consensus".²⁷

It is only natural that General Assembly resolutions supported by all States acquire more significance than those to which objections had been raised, and compliance with their provisions has a much better chance to become a reality than in the case of a resolution adopted by voting.

3. Principles Relating to Remote Sensing of the Earth from Outer Space

On 3 December 1986 the General Assembly adopted resolution 41/65 "Principles Relating to Remote Sensing of the Earth from Outer Space" (the RS Principles). Unanimous approval of this document was a final act of over a decade of complex negotiations.²⁸

This declaration contains fifteen principles relating to: definitions (Principle I); carrying remote sensing activities for the benefit of all States, and taking into particular consideration the needs of developing countries (Principle II); conducting those activities in accordance with international law (Principle III); conducting remote sensing activities in accordance with principles contained in Article I of Outer Space Treaty; on the basis of respect for the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources, and with due regard to the rights and interests of other States and entities; remote sensing "shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed State" (Principle IV); promoting international cooperation in remote sensing field (Principle V); maximizing the availability of remote sensing benefits (Principle VI); providing technical assistance (Principle VII); promoting international cooperation by the UN and relevant UN agencies (Principle VIII); informing the UN Secretary-General and States of remote sensing activities (Principle IX); protection of Earth's natural environment (Principle X); protection of mankind from natural disasters (Principle XI); access of the sensed State to remote sensing data and information concerning its territory (Principle XII); consultations (Principle XIII); international responsibility (Principle XIV); and settlement of disputes (Principle XV).

The RS Principles have been serving, already for a decade, as general guidelines for activities in the field of remote sensing from outer space. While not binding, they are respected by those conducting outer space activities. This author is not aware of any disputes among States

concerning the application of the RS Principles which fact proves that the document is a balanced one and, so far, has adequately met the expectations and served the interests of both sensing and sensed States.

Professor Christol remarked that "the principal customary rule found in the [RS] Principles is the right of States, international intergovernmental organizations and non-governmental entities to engage in such sensing activities".²⁹

4. Principles Relevant to the Use of Nuclear Power Sources in Outer Space

On 14 December 1992, the General Assembly adopted, without a vote, resolution 47/68 "Principles Relevant to the Use of Nuclear Power Sources in Outer Space" (the NPS Principles).³⁰ COPUOS and its two subcommittees worked on this subject since the late 70s after the "COSMOS-954" incident.³¹

The NPS Principles consist of a preambular section and the following eleven principles: "Applicability of international law", "Use of terms", "Guidelines and criteria for safe use" (which has a brief opening part and three sections: "General goals for radiation protection and nuclear safety", "Nuclear reactors" and "Radioisotope generators"), "Safety assessment", "Notification of re-entry", "Consultations", "Assistance to States", "Responsibility", "Liability and compensation", "Settlement of disputes" and "Review and revision".

The NPS Principles contain rather detailed guidelines on a very complex subject of the use of nuclear power sources in outer space. While not binding, the document carries a heavy moral and political weight, in particular because it relates to the use of nuclear energy - a sensitive public subject in many countries.

States, including those actively involved in launching space objects, appear to follow the recommendations contained in the NPS Principles. In November 1996, the Russian Federation, acting "in accordance with the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", dispatched a communication to the Secretary-General of the United Nations informing him of the planned launching "Mars-96" probe carrying "radionuclide heat source based on plutonium-238".³² Subsequently, when the mission malfunctioned, Russia sent another notification to the UN.³³

The General Assembly played an important role in the elaboration of the NPS Principles not only because the Assembly had instructed COPUOS to consider this problem and the Principles were eventually adopted as GA resolution, but also because certain NPS guidelines were first approved by the Assembly even before the NPS Principles as a whole were finalized.

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November 1978, in operative paragraph 9, requested "launching States to inform States concerned in the event that a space object with nuclear power sources on board is malfunctioning with a risk of re-entry of radio-active materials to the earth". Subsequently this provision has been further developed and specified, and eventually became Principle 5, Notification of re-entry, of the NPS Principles.

General Assembly resolution 42/68 of 2 December 1987, in operative paragraph 11, endorsed "the agreements reached in the Scientific and Technical Sub-Committee with respect to the use of nuclear power sources in outer space". Those agreements³⁴ were the recommendations formulated by the technical experts with the view to ensuring safe use of NPS in outer space, which recommendations had been subsequently reflected in the NPS Principles.

Thus, Member States used General Assembly resolutions as a mechanism for putting into effect certain recommendations concerning the use of NPS in outer space before the conclusion of the elaboration of the NPS Principles. These actions were explained perhaps by the importance which the international community attached to the need for attaining safety in this area of human activities in outer space.

5. Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries

On 13 December 1996 General Assembly adopted, without a vote, resolution 51/123 "Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries" (the OSB³⁵ Declaration). This subject has been considered in COPUOS and its Legal Subcommittee since 1989.³⁶

The OSB Declaration consists of eight paragraphs envisaging that: (1) international cooperation in outer space field shall be conducted in accordance with international law, for the benefit and in the interest of all States, it shall be the province of all mankind, and particular account should be taken of the needs of developing countries; (2) States are free to determine all aspects of their participation in such cooperation, and contractual terms in space cooperative ventures should be fair and reasonable; (3) all States should contribute to promoting space cooperation giving particular attention to the benefit and the interests of developing countries; (4) cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned; (5) cooperation should aim, *inter alia*, at the

goals of promoting the development of space science and technology and of its applications, fostering the development of space capabilities in interested States, and facilitating the exchange of expertise and technology among States; (6) national and international agencies, institutions, organizations and countries should consider the appropriate use of space applications and the potential of international cooperation for development goals; (7) COPUOS role in the exchange of information on international space cooperation should be strengthened; and (8) all States should be encouraged to contribute to the UN Space Applications Programme and to other initiatives in outer space field.

Too little time has elapsed to attempt to make conclusions as to how States are following the recommendations contained in the OSB Declaration. However, the fact that the Declaration has been elaborated in COPUOS on the basis of consensus and adopted by the Assembly without a vote permits the expectation that the Declaration will indeed be taken into account by States, and will make a contribution in the further development of international cooperation in the exploration and peaceful uses of outer space.

6. References to existing law in outer space declarations

All outer space declarations adopted by the General Assembly, except the 1963 one, contain references to existing law.

For example, Principle IX of the RS Principles envisages that "a State carrying out a programme of remote sensing shall inform the Secretary-General of the United Nations... in accordance with article IV of the [Registration Convention] and article XI of the [Outer Space Treaty]". Principles 8 and 9 respectively of the NPS Principles stipulate that "States shall bear international responsibility for national activities involving the use of nuclear power sources in outer space" and "shall be internationally liable for damage caused" by space object carrying an NPS on board "in accordance with article VI" and "in accordance with article VII" of the Outer Space Treaty. The OSB Declaration states that "international cooperation in the exploration and use of outer space for peaceful purposes... shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the [Outer Space] Treaty".

As stated by Erik Suy, the former Legal Counsel of the UN,

"The General Assembly's authority is limited to the adoption of resolutions. These are mere recommendations having no legally binding force for member states. Solemn declarations adopted either unanimously or by consensus have

no different status, although their moral and political impact will be an important factor in guiding national policies. Declarations frequently contain references to existing rules of international law. They do not create, but merely restate and endorse them. Other principles contained in such declarations may appear to be new statements of legal rules. But the mere fact that they are adopted does not confer on them any specific or automatic authority". (Emphasis added)³⁷

Whether or not all relevant actions recommended by the above outer space declarations are indeed obligations established by the agreements to which those Declarations refer, is an interesting legal subject. It appears that, for example, Principle 8, Responsibility, of the NPS Principles envisions something that is not required by Article VI of the Outer Space Treaty although this Principle 8 opens with "In accordance with article VI" of that Treaty.³⁸ Generally, it appears that this subject merits additional study.

7. "Shall/should" issue in outer space declarations

At certain stage of elaborating practically all existing outer space declaration a question was discussed as to whether the document would use "shall" or "should" as its grammatical construction.

In this respect the view was expressed that usually "shall" is used in treaties which contain legally binding provisions, while "should" is more appropriate for non-binding documents like GA resolutions. Often until the very last moment the negotiating text of a declaration either contained both expressions in square brackets or had an asterisk indicating that the choice of "shall" or "should" will be made later.

As far as final texts of those declarations are concerned, the 1963 Declaration solemnly declared that in the exploration and use of outer space States "should" be guided by the principles contained in the Declaration. However, the principles themselves use not "should", but rather "shall" or simply the present tense.

The DTBS Principles use mostly "should" with occasional "shall" and a couple of present tenses.

Both the RS and the NPS Principles use "shall".

The OSB Declaration uses mostly "should" with a couple of "shall"s and one present tense.

The eventual selection of "shall" or "should" by the drafters of the above documents did not, however, affect their legal character - they are still recommendations. Moreover, the fact that, for example, the RS Principles contain "shall" and the OSB Declaration uses mostly "should" is not perceived as an indication that the former makes stronger recommendations than the

latter. In view of the foregoing, it appears that the "shall/should" controversy has basically lost its relevance at least as far as outer space declarations are concerned.³⁹

8. Declaration *versus* treaty

After reviewing specific General Assembly declarations on outer space, and certain other related issues, one may ask a question as to why space law-making in the United Nations has resulted in both treaties and resolutions. In other words and given the fact that, notwithstanding all the existing differences of opinion concerning the legal force of GA resolutions, it is indisputable that treaties establish unequivocally binding obligations for parties, and, from this perspective, it may have seem preferable to establish in treaties, rather than in GA resolutions, all guidelines for activities in outer space.

The simple answer to this question is of course that Member States have decided that certain guidelines for outer space activities must be obligatory and, accordingly, must take the legal form of binding agreements, and that certain other guidelines for such activities must not be obligatory and, accordingly, must take the form of non-binding resolutions. However, which reasons guide States in making the choice is a complex question,⁴⁰ especially because at least some of those reasons may be not necessarily always stated openly.

There may be several explanations of the fact that space law-making in the United Nations has produced both binding treaties and non-binding declarations. First, outer space activities are a relatively new domain, and some States perhaps feel that it is premature to establish certain rules in this area immediately in mandatory manner - in treaties - while no sufficient experience has been accumulated. "The form of United Nations principles is particularly convenient when not all members of the international community are convinced about the usefulness and viability of immediate treaty regulation".⁴¹

Second, and even more important, is perhaps the fact that space science and technology are rapidly developing, and there may be a certain degree of reluctance to adopt mandatory treaty rules for new evolving areas of human activities in outer space, taking into account that, once established in a treaty, such obligations are rather difficult to change: amending a treaty may take a long time and require consent of other parties.

Third, an advantage of a General Assembly declaration is that, although non-binding, it is addressed to all States, while a treaty commits only its parties.

Finally, "one of the reasons for preparing non-binding normative instruments is that it is much easier to do so than to formulate, adopt, and bring into force

agreements that are intended to have binding effect".⁴²

Naturally each particular State may have additional specific reasons for preferring to have rules for certain outer space activities established in the form of a non-binding document rather than in a mandatory treaty.

C. Annual General Assembly resolutions on outer space

Since the late 50s, each regular session the General Assembly considers an agenda item entitled "International cooperation in the peaceful use of outer space".⁴³ Under this item, the Assembly reviews the work of COPUOS and its two subcommittees, and determines their programme of work for the future. Detailed examination of all aspects of those resolutions goes beyond the scope of this paper. The following aspects, however, appears to be of interest in connection with the subject under review.

The above annual resolutions on outer space (sometimes they are referred to as "omnibus" resolutions) are recommendations. Their provisions, such as, for example, a traditional invitation to States to become parties to outer space treaties, are not binding.

However, a major part of each of those resolutions determines agenda items to be considered at the following year's sessions of COPUOS and its Scientific and Technical, and Legal Subcommittees. Thus, as far as legal topics are concerned, it is the General Assembly who decides the perspective of the UN work in the field of progressive development and codification of outer space law.

It is well established in the practice of the United Nations that a request by a principal or parent body to its subsidiary organ that an item be placed on the latter's agenda is considered to be a directive to be followed by the subsidiary body concerned.⁴⁴ Accordingly, a decision of the General Assembly to the effect that COPUOS or its subsidiary bodies should consider a given subject is binding. This does not of course mean that such a decision by the Assembly obliges delegations to take a certain defined position on the **substance** of the subject assigned by the Assembly to COPUOS or its Legal Subcommittee. A decision that a given topic should be considered merely means that it must be included in the agenda of the relevant organ, and, by implication, that States should implement Assembly's decision by making *bona fide* efforts to examine the subject.

Some of the formulations of items on the agenda of the Legal Subcommittee, both in the past and currently, do not directly envisage the elaboration of a treaty or a declaration of principles.⁴⁵ Whether a legal document should be elaborated under such agenda items or the work on such item should be limited to the exchange of views only, has been a perennial matter of disagreement among

various delegation. It would appear that no such obligation exists, although nothing prevents the Subcommittee to initiate such a process of elaboration if it believes that action appropriate.

In addition to adopting a programme of work on legal subjects, annual resolutions are sometimes used as a mechanism for putting into effect certain specific recommendations concerning activities in outer space (see section on the NPS Principles above).

D. General Assembly resolutions concerning outer space agreements

1. Resolutions commending outer space agreements

COPUOS has successfully elaborated five international agreements.⁴⁶ The final action in the process of elaborating each of those instruments was the adoption of General Assembly resolution commending the agreement and requesting either Depository Governments (in case of the Outer Space Treaty and the Rescue Agreement) or the Secretary-General of the UN (in case of the Liability Convention, the Registration Convention and the Moon Agreement) to open the instrument for signature.

Thus, those General Assembly resolutions play the role of a final "seal of approval" of outer space agreements. Besides, in some cases those resolutions contained provisions which put the action (commending the agreement) in a specific historic perspective, and gave concrete guidance to COPUOS concerning its future work. For example, resolution 2222(XXI) of 19 December 1966 not only commended the Outer Space Treaty, but also instructed COPUOS to continue its work on agreements concerning space liability and assistance to astronauts, as well as to begin the study of questions relative to the definition of outer space.

Finally, General Assembly resolutions commending outer space agreements may, in some cases, serve as an additional means of interpretation of certain provisions of those agreements.

2. Review and revision clause of outer space agreements: General Assembly role

Three of the five outer space agreements elaborated in COPUOS (the Liability Convention, the Registration Convention and the Moon Agreement) contain identical provisions envisaging that:

"Ten years after the entry into force of this Convention [Agreement], the question of the review of this Convention [Agreement] shall be included in the provisional agenda of the United Nations General Assembly in order to consider,

in the light of past application of the Convention [Agreement], whether it requires revision".⁴⁷

At its sessions in 1982, 1986 and 1994 respectively, the General Assembly reviewed the three above agreements and reflected the results of those reviews in its resolutions.⁴⁸ In all three cases the Assembly did not come to the conclusion that revision of each of the three instruments was necessary. However, the fact itself that drafters of the three agreements had assigned to the Assembly such an important role is noteworthy and raises a few interesting legal questions.

For example, what the next step should be in a hypothetical situation whereby the General Assembly would adopt a resolution to the effect that a revision of an outer space agreement is necessary, and this resolution is adopted by a majority vote with States Parties to that agreement voting against.⁴⁹

Whatever is the answer to that question, it is clear that the General Assembly had been assigned an important role in "deciding the fate" of the above space agreements.

3. General Assembly's "promotion" of outer space agreements

Over the years a more or less established structure or pattern of General Assembly resolutions adopted under the above-mentioned agenda item has developed, and some of their provisions are reproduced every year without any changes.

For example, for many years the second operative paragraph of annual GA resolutions contains basically identical provision inviting States that have not yet become parties to the international treaties governing the uses of outer space to give consideration to ratifying or acceding to those treaties⁵⁰. With a very few exceptions, those resolutions have been adopted without a vote, and when voting did take place, disagreements which necessitated it had nothing to do with the paragraph in question.

One may ask a question whether as result of this many years of reiterating this invitation, which obviously has become an established practice in General Assembly work on outer space, this provision has become a binding one in the sense that States are obligated by it to consider acceding to outer space agreements⁵¹.

In the opinion of this author, the above provision is not intended to acquire and, therefore, has not acquired any binding character, and, therefore, continues to serve merely as a reminder to States to consider acceding to the five outer space treaties. In this respect, General Assembly resolutions play the role of a mechanism "promoting" outer space treaties and thus consolidating the rule of law in the exploration and use of outer space.

Concluding remarks

Most of the above-described types of General Assembly resolutions on outer space matters are recommendations. While some of the provisions contained in some declarations are obligatory, they are/became binding not because they were adopted by the Assembly, but rather because they reflect already existing (by the time of the adoption of the declaration) either conventional norms of international law or customary norms (such as, for example, the right to conduct remote sensing of foreign territories). On the other hand, declarations help in the process of establishment of such customary rules and also help to interpret those rules.

The 1963 Declaration of Legal Principles Governing the Activities of States on the Exploration and Use of Outer Space was not binding at the time of its adoption.⁵² However, its unanimous adoption and other factors described above, including subsequent State practice, allows to view the provisions of that declaration as currently reflecting customary rules of international law.

Other resolutions, even if they are recommendations and are not binding, should not, however, be discarded as having no significance. Those resolutions guide States in situations where specific treaty norms have not yet been adopted or are too general, and, thus, contribute to ensuring orderly and dispute-free interaction of States in various areas of human activities in outer space. Besides, sometimes those resolutions "prepare the soil" for subsequent elaboration of outer space agreements.

One of the important functions of the General Assembly is the determination of the programme of legal work of COPUOS and its Legal Subcommittee.

The above report demonstrates that the General Assembly of the United Nations plays a significant role in the progressive development and codification of outer space law, as well as in guiding activities in the "sixth ocean"

NOTES

1. See Vereshchetin, V.S. and Danilenko, G.M., "Custom as a Source of International Law of Outer Space", *Journal of Space Law*, Volume 13, Number 1, 1985, pages 22-35.
2. As N.C. Goldman noted, "In international space law, the United Nations has been a dominant force". (Goldman, N.C., "American Space Law: International and Domestic", 2nd edition, 1996, page 23).
3. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 27 January 1967, 18 U.S.T. 2410, T.I.A.S. 6347, 610 U.N.T.S. 205 (entered into force: 10 October 1967).

4. Szasz, P., "General Law-making Processes", in "United Nations Legal Order", edited by O. Schachter and C.C. Joyner, 1995, page 38.
5. "Dictionary of international law", Editor-in-Chief: B.M. Klimenko, Moscow, 1986, page 234 (in Russian).
6. Judge Schwebel noted that "the views of states are profoundly divided on the issues of the impact of General Assembly resolutions on the content of international law" (Schwebel, S.M., "The Effects of Resolutions of the U.N. General Assembly on Customary International Law", *American Society of International Law, Proceedings of the 73rd Annual Meeting* (1979), page 307).
7. Sloan, B., "General Assembly resolutions revisited (forty years later)", *The British Year Book of International Law* (1987), Volume 58, pages 39-150 (bibliography is given on pages 142-150). Professor Sloan's bibliography list contains only one (although very important) reference to the works of former Soviet scholars - that of Gregory I. Tunkin. For more information on this subject, see Osakwe, C., "Contemporary Soviet Doctrine on the Sources of General International Law", *Proceedings of the American Society of International Law, 73rd Annual Meeting* (1979), pages 310-324.
8. Kopal, V., "The Role of United Nations Declarations of Principles in the Progressive Development of Space Law", *Journal of Space Law*, Volume 16, Number 1, 1988, page 19.
9. Paul Szasz indicated that "the term 'soft law', in the context currently in use, is meant to refer to norms that states actually do follow or at least subscribe to". (Op. cit., supra note 4, page 39, see also pages 45-47). On this subject, also see Ferrazzani, M., "Soft Law in Space Activities", in "Outlook on Space Law over the Next 30 Years. Essays published for the 30th Anniversary of the Outer Space Treaty", Editor-in-Chief: Gabriel Lafferranderie, 1997, pages 429-447.
10. UN doc. E/CN.4/L.610 of 2 April 1962, cited in Schwebel, S.M., "The Effect of Resolutions of the U.N. General Assembly in Customary International Law", *American Society of International Law, Proceedings of the 73rd Annual Meeting* (1979), page 304.
11. United Nations Juridical Yearbook 1981, page 149.
12. Cheng, B., "United Nations Resolutions on Outer Space": 'Instant' International Customary Law", *5 Indian Journal Of International Law* 23 (1965), reproduced in "International Law: Teaching and Practice", Edited by Bin Cheng, London, 1982, page 40.
13. General Assembly resolution 1721(XVI)A of 20 December 1961 "commend[ed] to States for their guidance in the exploration and use of outer space the following principles:
 - (a) International law, including the Charter of the United Nations, applies to outer space and celestial bodies;
 - (b) 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".
14. The provided enumeration of principles is not the exact quotation, but rather conveys their basic contents.
15. Lachs, M., "The Law of Outer Space. An Experience in Contemporary Law-Making", *Sithoff Leiden* 1972, page 138.
16. As C. Wilfred Jenks observed back in 1965, "The authority of the Declaration of Legal Principles may be expected to grow with the passage of years. While it is somewhat less than a treaty it must already be regarded as rather more than a

statement of custom. It represents the Twelve Tables of the Law of Space..." (**Jenks, C.W.**, "Space Law", 1965, page 186).

17. See "International Law", Edited by **Y.M. Kolosov** and **V.I. Kuznetsov**, Moscow, 1994, page 537 (in Russian).

18. The United Nations and Disarmament, 1945-1970. United Nations, New York, page 177.

19. A third General Assembly resolution referred to in the Preamble of the Outer Space Treaty is resolution 110(II) of 3 November 1947 condemning war propaganda.

20. For analysis of some of the statements at the adoption of the 1963 Declaration, see **Cheng, B.**, supra note 12, pages 35-36.

21. "Dictionary of International Space Law", Editor-in-Chief: **V.S. Vereshchetin**, Moscow, 1992, page 32 (in Russian).

22. Professor **Sloan** noted that "norms once formulated in a resolution may be taken over in a convention, and resolutions in tandem with conventions may also facilitate the transmission of treaty norms into customary law... The interplay between the two may assist in the generation of customary norms of both general application and certain effect". (**Sloan, B.**, Op. cit., page 67).

23. DTBS (direct television broadcasting satellites) - this abbreviation was used by negotiators in COPUOS.

24. See **Christol, C.Q.**, "The Modern International Law of Outer Space", 1982, pages 605-719.

25. The resolution was adopted by 107 votes to 13, with 13 abstentions. (UN doc. A/37/PV.100 of 17 December 1982, pages 36-37).

26. UN doc. A/SPC/37/SR.34 of 26 November 1982, page 11.

27. **Galloway, E.**, "Expanding Space Law into the 21st Century", 35th Proc., Washington, D.C., AIAA, 1993, page 53.

28. For a review of the RS Principles see **Christol, C.Q.**, "Remote Sensing and International Space Law", Journal of Space Law, Volume 16, Nos. 1 @ 2, 1988, pages 21-44; **Kopal, V.**, "Principles Relating to Remote Sensing of the Earth from Outer Space: a Significant Outcome of International Co-operation in the Progressive Development of Space Law", Proceedings of the 30th Colloquium on the Law of Outer Space (hereafter - {Colloquium number} Proc.), Brighton, AIAA, 1988, pages 322-329.

29. **Christol, C.Q.**, "Remote Sensing and International Space Law", Journal of Space Law, Volume 16, Nos. 1 @ 2, 1988, page 40.

30. For history of the NPS negotiations and evaluation of the declaration, see **Jasentuliyana, N.**, "Multilateral Negotiations on the Use of NPS in Outer Space", Annals of Air and Space Law, Volume XIV, 1989, pages 297-337; **Kopal, V.**, "The Use of Nuclear Power Sources in Outer Space: A New Set of United Nations Principles?", 34th Proc., Montreal, AIAA, 1992, pages 124-131; **Jasentuliyana, N.**, "An Assessment of the United Nations Principles on the Use of Nuclear Power Sources in Outer Space", 36th Proc., Graz, AIAA, 1994, pages 312-321; **Terekhov, A.D.**, "Review and Revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", 36th Proc., Graz, AIAA, 1994, pages 336-348.

31. The Soviet satellite COSMOS-954, equipped with a small nuclear reactor, was launched on 18 January 1977. As reported in the press, on 6 January 1978, "sudden depressurization" of the satellite occurred as a result of which it

began to "descend uncontrollably". On 24 January 1978, COSMOS-954 re-entered the atmosphere over Canada and scattered radioactive debris on its northern territories. Fortunately, the area of impact was scarcely populated and nobody was hurt. Canada, assisted by the United States, has conducted successful search, recovery and clean-up operations. As a result of the incident, Canada presented to the Soviet Union a claim for compensation for damage and subsequently received 3 million Canadian dollars "in full and final settlement". (See 20 I.L.M. 689 (1981), see also **Terekhov A.D.**, "International Liability for Damage Caused by Space Objects with Nuclear Power Sources on Board", 35th Proc., Washington, D.C., AIAA, 1993, pages 151-162). Besides, Canada, supported by other States, initiated the elaboration of NPS Principles in COPUOS (see **Jasentuliyana, N.**, "Multilateral Negotiations on the Use of Nuclear Power Sources in Outer Space", McGill Annals of Air and Space Law, Volume XIV, 1989, pages 297-337).

32. UN doc. A/AC.105/647 of 20 November 1996.

33. See UN doc. A/AC.105/648 of 21 November 1996.

34. See UN doc. A/AC.105/386 of 3 March 1987, paragraphs 55-63.

35. OSB (outer space benefits) - this abbreviation was used by negotiators in COPUOS.

36. See **Jasentuliyana, N.**, "Article I of the Outer Space Treaty Revisited", Journal of Space Law, Volume 17, 1989, pages 129-144; **Jasentuliyana, N.**, "Ensuring Equal Access to the Benefits of Space Technologies for all Countries", Space Policy, Volume 10, 1994, pages 7-18; **Benkö, M.**, **Schrogl K.-U.**, "The 1996 UN Declaration on 'Space Benefits' Ending the North-South Debate on Space Cooperation", 39th Proc., Beijing, AIAA, 1997, pages 183-186.

37. **Suy, E.**, "Innovations in International Law-Making Processes", in "The International Law and Policy of Human Welfare", edited by Macdonald, Johnston and Morris, 1978, page 190.

38. On this subject see **Terekhov, A.D.**, "International Responsibility for Using Nuclear Power Sources in Outer Space - Reflections on the Text Adopted by COPUOS", 34th Proc., Montreal, AIAA, 1992, pages 147-149.

39. However, some commentators believe that at least one of the declarations - the NPS Principles - should be revised, and that, in particular, the word "shall" should be replaced with the word "should". (See **Bennett, G.L.**, "A Technical Review of the U.N. Principles on the Use of Nuclear Power Sources in Outer Space", 38th Proc., Oslo, AIAA, 1996, pages 274-284; **Bennett, G.L.**, "Summary of the US Ad Hoc Working Group Meeting on Revising the U.N. Principles on the Use of Nuclear Power Sources in Outer Space", 39th Proc., Beijing, AIAA, 1997, pages 246-256).

40. Some of the reasons, provided by States, for choosing a non-binding declaration over a binding treaty in the case of the 1963 Declaration were examined by **Bin Cheng**, see supra note 12, pages 29-35.

41. **Kopal, V.**, Op. cit., supra note 8, page 20.

42. **Szasz, P.**, supra note 4, page 96.

43. For the list of resolutions adopted by the General Assembly under this and certain related items up to 1991, see "Space Activities of the United Nations and International Organizations", United Nations, New York, 1992 (UN doc. A/AC.105/521), Annex II, pages 281-286.

44. This practice was specifically reaffirmed, for example, at the session of the UN Disarmament Commission in 1986 when a proposal was made not to include in the agenda of that body an item recommended by the General Assembly. (See UN doc. A/CN.10/PV.102 of 10 May 1986).

45. For example, currently the formulation of one of the agenda items of the Legal Subcommittee reads as follows: "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union".

46. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, of 27 January 1967, 18 U.S.T. 2410, T.I.A.S. 6347, 610 U.N.T.S. 205 (entered into force: 10 October 1967); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, of 22 April 1968, 19 U.S.T. 2389, T.I.A.S. 6599, 672 U.N.T.S. 119 (entered into force: 3 December 1968); Convention on International Liability for Damage Caused by Space Objects, of 29 March 1972, 24 U.S.T. 2389, T.I.A.S. 7762, 961 U.N.T.S. 187 (entered into force on 1 September 1972); Convention on Registration of Objects Launched into Outer Space, of 14 January 1975, 28 U.S.T. 695, T.I.A.S. 8480, 1023 U.N.T.S. 15 (entered into force on 15 September 1976); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, of 18 December 1979, UN General Assembly resolution 34/68 of 5 December 1979, annex, 18 I.L.M. 1434 (entered into force on 11 July 1984).

47. See Article XXVI of the Liability Convention, Article X of the Registration Convention and Article 18 of the Moon Agreement.

48. See General Assembly resolutions 37/91 of 10 December 1982, 41/66 of 3 December 1986 and 49/34 of 9 December 1994.

49. On this subject see Terekhov, A.D., "Review Clause of Outer Space Treaties: Reflections on the Forthcoming Review of the Moon Agreement", 33rd Proc., Dresden, AIAA, 1991, pages 356-361.

50. Currently the five outer space agreements in question have the following status: the 1967 Outer Space Treaty - 93 ratifications and 27 signatures; the 1968 Rescue Agreement - 83 and 25; the 1972 Liability Convention - 76 and 25; the 1975 Registration Convention - 39 and 4; 1979 Moon Agreement - 9 and 5 (see UN doc. A/AC.105/C.2/1996/CRP.2, this data is also cited in UN doc. A/AC.105/639 of 11 April 1996, Annex III.G.)

51. On the repetition of provisions in resolutions as a factor relevant to their weight and effect, see Sloan, B., *op.cit.*, pages 132-133.

52. It is pertinent to recall in this context that Professor Bin Cheng, in his often cited article "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?", did not suggest that the 1963 Declaration was an "instant international custom". He generally concluded that "international customary law requires only one single constitutive element, namely the *opinio juris* of States" which may "grow overnight", but observed that the 1963 Declaration was not a "law-finding" resolution and was "not legally binding on any Member State of the United Nations *qua* Assembly resolution[s]". (See *supra* note 12, section "Conclusions").