

SPACE LAW AT UNISPACE III (1999) AND BEYOND

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Abstract

At its 1997 session, the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) adopted the agenda of the third UN space conference (UNISPACE III), which will take place in 1999 at Vienna. Space law is explicitly mentioned as a point of discussion under the agenda item „Promotion of international cooperation“. This paper introduces the concept of UNISPACE III, analyses the agenda in view of identifying subjects relevant to space law and proposes ways to take up these subjects in order to prepare, in the most efficient way, the future development of space law, which will have to be accomplished in the Legal Subcommittee (LSC) of UNCOUOS.

1. The concept of UNISPACE III

When, in 1993, India came up with the idea to hold a third UNISPACE after 1968 and 1982, nobody imagined that such an event would take place already before the end of the decade. It was then fiercely discussed if such a conference would make sense or if it would be politicised. Also it was unclear if India was simply aiming for the opportunity to take again the chairmanship (as it was the case in the two conferences before) or if Austria simply wanted to host a big event in Vienna (as it also was the case in the two conferences before). The debate, however, quickly got more rational and delegations in UNCOUOS got more and more convinced that there had considerable

substance emerged in the field of space activities since UNISPACE II, which could be discussed on a global level.

In that spirit, the UN General Assembly decided in 1996 to hold UNISPACE III as a UNCOUOS meeting open to all States Members of the UN (and not only the 61 member States of UNCOUOS).¹ Since this will mean that the Chairman of UNCOUOS will also chair UNISPACE - currently the renowned Indian expert U.R. Rao - and since the location of the conference will, for cost-saving reasons, be at the place, where the UN Office for Outer Space Affairs is located - since 1994 at Vienna - a satisfactory solution for all interests could be found. UNCOUOS is now acting as Preparatory Committee and ist Scientific and Technical Subcommittee (STSC) as Advisory Committee for UNISPACE III. In that capacity, the agenda of UNISPACE III was prepared at the 1997 session of the STSC in February and adopted at UNCOUOS in June of that year.² The primary objectives of UNISPACE III will be „(a) to promote effective means of using space technology to assist in the solution of problems of regional or global significance and (b) to strengthen the capabilities of Member States, in particular developing countries,

¹ UNGA Res. 51/123 of 13 December 1996, para. 28.

² Report of the Scientific and Technical Subcommittee on the work of its thirty-fourth session, UN Doc. A/AC.105/672 of 10 March 1997, Annex II. The following quotation are taken from that Annex and are indicated in the text by their respective number of paragraph.

to use the applications of space research for economic, social and cultural development.“ (para. 18). By that, UNISPACE should give a strong impetus for more intensive use of space technologies in the Member States and also promote these technologies in the UN system as well.³

This stress on concrete applications and distinctive refusal to discuss abstract problems of political nature is also reflected in the agenda, which consists of five „substantive items:

- (a) Status of the scientific knowledge of Earth and its environment;
- (b) Status and applications of space science and technology;
- (c) Information needs and the global approach;
- (d) Promotion of international cooperation;
- (e) Economic and societal benefits.“ (para. 21).

Although (d) and (e) seem to have a great weight in the agenda, they are in fact marginalized, when it is taken into account that (a) to (c) cover almost 30 neatly described topics and that (d) only is described in two short subparagraphs. The first deals with a review of existing and new mechanisms for international cooperation in space (para. 22), the second (still para. 22) reads: *„There would be a review of the current status of law of outer space, including ways and means of promoting wider adherence to the existing international space treaties and principles.“*

2. Agenda items relevant to space law

Therefore, the „substantive item“: „Promotion of international cooperation“

³ Numerous UN bodies are involved in the use of space technologies. They coordinate in the „Inter-agency meeting on outer space affairs“. The report of the last meeting, which took place in May 1997 is contained in UN Doc. A/AC.105/676 of 2 June 1997. The programme of work for 1997 and 1998 of the relevant bodies is contained in UN Doc. A/AC.105/675 of 12 May 1997.

will be the main focus for the discussion of space law. The scope of the subject is phrased as broadly as possible, so that an imaginative debate is to be expected. Space law development will, however, not only turn around itself. It will also be of relevance in other fields, in particular substantive items (b) and (c) where telecommunications, navigation and earth observation are discussed, where environmental law will meet space law, and where intellectual property rights get into the spotlight in various fields. In addition to that, it was decided that UNISPACE III will have „additional components“. This means that Workshops and Seminars (some of them open to the public) could be held before or during that intergovernmental conference. The field of space law is explicitly mentioned and the International Institute of Space Law (IISL) is named as the international organization which could act as the organizer of such an event.

3. The political setting for discussing space law at UNISPACE III

UNISPACE I and II, which took place in 1968 and 1982 respectively, were overlayed by political conflicts between East and West and North and South. These systemic and distributive conflicts made it difficult to focus on the benefits of space activities. Instead, the promotion of space activities could not develop as intensive as it was possible due to competing ideas of how to organize cooperation. In particular the conflict between North and South about the distribution of resources (natural resources like the Geostationary Satellite Orbit as well as technologies and funds) made it difficult to find modes of cooperation, which were of mutual benefit to all parties involved. Since the beginning of the 90s a new approach on global cooperation including new ways and means for development cooperation (demand pull with own investments instead of technology push without sustained foundation) emerged. This was also facilitated by the fact that a number of developing countries

have become space powers themselves and that important conflicts over resources have been solved to the satisfaction of the developing countries (in particular the use of the Geostationary Satellite Orbit through the 1985/88 WARC-ORB of the International Telecommunication Union).

In UNCOPUOS this new trend found its manifestation in the unanimous adoption of the „Space Benefits Declaration“ in 1996⁴, which stresses the freedom of cooperation and the need for effectiveness in international cooperation, denouncing at the same time forced cooperation and dirigist approaches for reaching redistribution. Space law purists might have been disappointed by the „Space Benefits Declaration“ in that it is less a legal text dealing with a specific legal problem (like, for example, the use of nuclear power sources, NPS) but more a political text. But in view of UNISPACE III, the Declaration came exactly at the right time, in order to make clear that no distributive or systemic conflict in the field of space applications and cooperation is alive. To the contrary, all States share the high expectations in a liberal system based on mutual responsibility and effectiveness. UNISPACE III will therefore be saved from „politicised“ discussions and can concentrate on finding the best way of letting all people benefit from space applications.

The substantive preparation of UNISPACE III has already begun. STSC and UNCOPUOS will concentrate from 1998 on preparing the report of UNISPACE III. This report will be composed of numerous pieces drafted in different fora and circles. For example, the subject of Basic Space Science (astronomy and planetary exploration) has been dealt with in that way, by discussing a draft text for the UNISPACE III report already at the 7th

⁴ UNGA Res. 51/122 of 13 December 1997. See *Marietta Benkő/Kai-Uwe Schrogl*, History and impact of the 1996 UN Declaration on „Space Benefits“, in: *Space Policy* (13,2) 1997, 139-143 (presented before as IISL-96-IISL.3.12).

UN/ESA Workshop on Basic Space Science, which took place at Honduras in June 1997.⁵ In the field of space law, the LSC of UNCOPUOS will certainly take the lead. Non-governmental fora like IISL can, however, have an impact as well.

4. The chance to reinvigorate the debate in the Legal Subcommittee of UNCOPUOS

The current agenda of the LSC is in a deplorable state. The item on delimitation and GSO has been treated for decades without any result. Even the most benevolent approach with regard to the GSO was doomed by the intransigence of the sponsors of outdated concepts.⁶ The agenda item on the question of review and possible revision of the NPS principles is suspended, and „Space benefits“ has disappeared after the adoption of the Declaration in 1996 by the UN General Assembly. Nothing else had been left, if the LSC had not put its act together and agreed on a new agenda item. Upon an initiative by Mexico⁷, the LSC will begin to discuss „Review of the status of the five international treaties governing outer space“ from 1998 on („Review item“). This agenda item will be structured along a three-year workplan - an immense organizational improvement, in order to avoid remnants of agenda item like delimitation/GSO. The main focus will be to improve the state of ratification of the treaties. The General Secretary of the UN has already asked the member States to

⁵ See the paper presented at that workshop by *Kai-Uwe Schrogl*, Basic space science at UNISPACE III 1999. It can soon be found on the Web Site of this series of workshops at: <http://ecf.hq.eso.org/~ralbrech/un/un-homepage.html>

⁶ See the Working-paper presented by Germany at the 1997 session of the LSC with a draft resolution „Request to the International Telecommunication Union and its member States: Ensuring equitable access to the geostationary satellite orbit/radio frequency spectrum resources“, UN Doc. A/AC.105/C.2/L.207/Rev.2 of 7 April 1997.

⁷ See the Working-paper presented by Mexico at the 1997 session of the LSC, UN Doc. A/AC.105/C.2/L.206/Rev.1 of 4 April 1997.

report on their views regarding the status of the treaties.⁸

This agenda item exactly prepares one of the main thrusts of discussion on space law at UNISPACE III as quoted above: „...including ways and means of promoting wider adherence to the existing international space treaties and principles.“ It would, however, be a less imaginative debate, if only the sheer facts of the status of ratifications would be discussed in the LSC. In order to create more orientation, States will certainly take the chance to describe, where room for improvement in the treaties lies - without negating the treaties themselves. By that, all the currently open questions could be discussed in relation to possible shortcomings of the existing body of space law. Among them are:⁹

- strengthening of the provisions of the Registration Convention thus providing the States and the general public with more relevant information on space activities,
- improving the notification of NPS and possibly transferring the Principles into treaty law,
- finding a way to incorporate further provisions on space debris mitigation in the already existing body of space law.

While the three-year work-plan of the „Review item“ will certainly not lead to any concrete measure in the context of filling a legal vacuum, the main task will be to identify subjects which can in the future be dealt with under a work-plan of their own in the LSC. UNISPACE III will have an important task to act as a clearing-house for such subjects. There, all the problems can be discussed not only on a theoretical level; it will be possible to reflect them on the spot with the technological reality in that the close interaction with the technical discussions under the other agenda items have to be sought. It will then be an

important and difficult task to select the most pressing problems and focus them in such a way that discussing them in the LSC should reach tangible results. The LSC will not be able to deal with all subjects at one time. Political or technological priorities of the States will also determine the selection of items for further consideration. All this will act as the background for the discussion of space law at UNISPACE III.

5. Summary

Space Law is integrated into the agenda of UNISPACE III 1999. This provides for the possibility to discuss all relevant matters concerning the current state and future development of space law at this conference, which might have great impact on space activities during the next decade. The positive political setting for discussing space law without the straight-jackets of ideological conflicts has been reached by the end of the Cold War and in particular by the „Space Benefits Declaration“ of 1996. The debate at UNISPACE will be prepared by the deliberations on the „Review item“ in the LSC of UNCOPUOS but might also get impetus through initiatives by non-governmental organizations like the IISL. UNISPACE will have the task, not to discuss as many legal problems as possible, but to select legal problems, check them with the technological reality presented at UNISPACE, and pre-structure them for focused discussions based on work-plans in the LSC. In that way, UNISPACE III can give direction to the fruitful further development of space law.

⁸ OOSA/97/004, CU97/149 of 14 July 1997.

⁹ An excellent overview presents the book edited by *Gabriel Lafferranderie/Daphné Crowther*, *Outlook on Space Law over the Next 30 Years*, The Hague/London/Boston (Kluwer) 1997.