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BACKGROUND AND HISTORY OF THE OUTER SPACE TREATIES

by

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The international law of outer space started emerging in the 1950's. A whole range of international instruments have been elaborated since then to regulate the exploration and use of outer space.

The crucial role in this field of law belongs to the UN Outer Space Committee with its Legal and Scientific -and-Technical Subcommittees¹.

Tribute should also be paid to a great number of lawyers from many countries who paved the way towards the successful activities of politicians and diplomats within the United Nations. I would like to mention just several names: A. Araujo, K. Böckstiegl, J. Busak, M. Bourely, A. Cocca, B. Cheng, J. Cooper, P. Chaumont, C. Christol, I. Diederiks-Verschoor, E. Fasan, F. Fiorio, D. Goedhuis, A. Gorbil, S. Gorove, E. Galloway, G. Gal, I. Herczeg, A. Haley, N. Jasentuliyana, C. Jenks, V. Kopal, E. Korovin, M. Lachs, N. Matt, M. Marcoff, E. Pépin, R. Quadri, G. Valladao, E. Vasilevskaya, V. Verestchetin, G. Zhukov and many others.

The essential role in the progressive development of the outer space law play international scientific institutions among which the International Institute of Space Law and the International Academy of Astronautics must be mentioned.

Joint efforts of scientists and diplomats brought to miraculous results. Within the years of 1959 and 1996, i.e. merely three and a half decades the COPUOS drafted and the UN General Assembly adopted five major outer space treaties and five sets of principles.

Thus, one can make several conclusions. The COPUOS has been the principal body in the process of codification and progressive development of the

international outer space law which is one of the goals of the United Nations in accordance with Article 13 (a) of its Charter.

The international outer space law has been mainly developing as a treaty law, leaving little place for customary rules of law.

The tempo of the development of the international outer space law is second to none.

On the occasion of the thirtieth anniversary of the Outer Space Treaty of 1967 and the fortieth anniversary of the launching of the first man-made object into outer space in the USSR on 4 October, 1957, it is quite opportune to recollect some facts from the background and history of the outer space treaties.

The evolution of the outer space treaties was not an easy one. To understand the issues of controversies and the emergence of the consensus one must study the UN records. The systematic analysis of the preparatory work may be found in the manual on space law compiled and edited by N. Jasentuliyana and R.S.K. Lee².

The adoption of the Outer Space Treaty in December 19, 1966, and its entry into force in October 10, 1967, was preceded by the adoption of the Declaration on Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted by the UN General Assembly in December 13, 1963³. The adoption of the Declaration was in its turn preceded by UNGA resolutions 1472 (XIV) of 12 December, 1959, and 1721 (XVI) of 20 December, 1961. They defined the competence of the COPUOS and formulated the initial basic principles of the exploration and uses of outer space.

Those initial principles were the following:

'(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".

In 1962 (UNGA Res. 1802 (XVII) of December 14) the next step was made -the applicability of international law, including the Charter of the United Nations, was extended to the exploration and use of outer space (preambular paragraph 2) (*italics added -Y.K.*).

The Declaration comprised the principles of the 1961 resolution whereas the Outer Space Treaty reflected the provisions of the Declaration.

Thus, a conclusion can be made that the history of the Outer Space Treaty began in 1961.

Among the "predecessors" of the Outer Space Treaty mention should be also made of the USA-USSR agreement on the ban of deployment of nuclear weapons or other weapons of mass destruction in the outer space which was endorsed by the UNGA resolution 1884 (XVIII) of 17 October 1963. It was reflected in Article IV of the Treaty.

The first draft treaty was submitted by the USSR in June 16, 1966. Next day the USA submitted its own version of the draft treaty, which referred only to the Moon and other celestial bodies.

The negotiations in the Legal Sub-Committee and at the XXI-st session of the UN General Assembly brought to the agreement on the text of the Outer Space Treaty in December 19, 1966⁴.

This could have been hardly possible if there was no Declaration of 1963.

The Treaty was opened for signature in 27 January 1967 simultaneously in the capitals of the three depositaries -in London, Moscow and Washington.

The day of entry into force of the Outer Space Treaty has become the birthday of the outer space law. As from this date the new stage of the development of the outer space law started. The fundamental principles of the exploration and use of outer space, including the Moon and other celestial bodies, have acquired the form of legally binding rules.

From that point further development of these principles was begun.

The next four treaties are the Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space; the Convention on International Liability for Damage Caused by Space Objects; the Convention on Registration of Objects Launched into Outer Space; and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. They develop the following articles of the Outer Space Treaty: Articles V and VIII (the Agreement on the Rescue of Astronauts), Article VII (the Liability Convention), several articles mentioning registration of objects, including articles V and VIII (the Registration Convention), and Articles IV, XII and others (the Moon Agreement).

The Agreement on the Rescue of Astronauts has its own background. In March 20, 1962 the Chairman of the Council of Ministers of the USSR in his message to the President of the USA suggested the elaboration of an international agreement on the assistance in search and rescue of space objects in case of emergency landing, including the rescue of astronauts⁵.

In March 9, 1964 the USSR delegation in the COPUOS submitted a draft agreement on the rescue of astronauts and space objects in case of an accident or an emergency landing.

In 1964 draft agreements on this subject were also submitted by the USA and jointly by Australia and Canada.

The UN General Assembly urged the COPUOS to continue the elaboration, inter alia, of an international agreement on the rescue of astronauts⁶.

The draft was agreed upon by the Legal Sub-Committee of the COPUOS on 15 December 1967 during the XXII-nd session of the UN General Assembly. The agreement was opened for signature in April 22, 1968, and entered into force in December 3, 1968.

The work on the draft was finalized in a relatively short period of time due to a couple of factors. There was no controversy on the issue between the two space powers. The subject matter was of a highly humanitarian value and the goal of the

agreement was a noble one. Another explanation was that the majority in the COPUOS were interested in adopting as soon as possible the convention on the international liability for damage caused by space objects. They rightly believed that finalization of the Rescue Agreement would enable expediting the adoption of the liability convention.

The Convention on International Liability for Damage Caused by Space Objects (the Liability Convention) is a unique treaty which in fact is the first and the only special international instrument dealing with the State liability.

In the process of drafting the Outer Space Treaty there was a disagreement on the right to conduct activities in outer space. The USA delegation suggested to recognize that States as well as their non-governmental agencies have the right to carry out activities in outer space. The USSR delegation suggested that States only may be the actors of space activities. The compromise was reached on the basis of the formula according to which there was no special provision on the issue of actors of space activities. Instead, in Article VI of the Outer Space Treaty in the indirect form there was a recognition of the right of non-governmental agencies to conduct outer space activities, but States as such shall bear international responsibility for any national activities in outer space. More than that, the activities of non-governmental entities in outer space require authorization and continuing supervision by appropriate States Parties to the Treaty.

It was also agreed in Article VII of the Outer Space Treaty that States will be internationally liable for damage caused by space objects or their component parts on the earth, in air or in outer space.

Therefore in the Liability Convention it is stated that "a launching State shall be absolutely liable to pay compensation for damage caused by its space object" (Article II).

Another controversial issue was the upper limit of liability. Some delegations from the developing countries insisted on establishing of a very high limit (several hundred billion dollars) which was unacceptable for launching States. In the end of lengthy deliberations no limit at all was

fixed in the Liability Convention.

The legal force of the Claims Commission established under Article XIV of the Liability Convention was still another controversial issue. In Article XIX it was agreed that the decisions of the Commission shall be final and binding on the parties to the dispute so agreed. Otherwise the Commission shall adopt a recommendation which the parties should consider in good faith.

The elaboration of the Liability Convention was conducted on the basis of several drafts submitted in 1964 by Hungary, the USA and Belgium. In 1967, India and Italy also submitted their drafts on this issue. The work started in the Legal Sub-Committee of the COPUOS in 1964. In 1971 the work was finalized and the 26th session of the UN General Assembly approved the text of the Convention⁷. It was opened for signature in March 29, 1972, in London, Moscow and Washington. It entered into force on 30 August, 1972.

It may be noted that the General Assembly adopted the Liability Convention by vote (93 in favour and 4 abstentions, no delegation voted against it).

The Convention on Registration of Objects Launched into Outer Space was adopted in 1974⁸. It entered into force in September 15, 1976.

Initially the system of the international registration of space objects was established by the UN General Assembly resolution 1721 (B) of December 20, 1961. The UN called upon launching States to furnish promptly to the COPUOS, through the Secretary-General, the information for the registration of launchings. The Secretary-General was invited to maintain a register of this information.

The actual information about launchings started coming to the UN since 1962 on a voluntary basis.

In 1968 France submitted to the Legal Sub-Committee the draft convention on registration of space objects. In 1972 it was substituted by a joint Franco-Canadian draft.

After the adoption of the Registration Convention the submission of such information became mandatory.

As at 31 December 1995 there were only 39 States Parties to this convention, but

such launching States as the USA, Russia, China and France are among them. The European Space Agency declared acceptance of the rights and obligations of the Convention in accordance with its Article VII.

In 1966 the USSR submitted a draft treaty governing the exploration of the Moon and other celestial bodies.

1969 American astronauts landed on the Moon.

In 1969 Poland and Argentina proposed in the Legal Sub-Committee their drafts of rules relating to man's activities on the surface of the Moon and other celestial bodies. Later, Argentina, France and Poland prepared a joint text on this issue.

In 1970 Argentina proposed a draft agreement on the principles governing activities in the use of natural resources of the Moon and other celestial bodies.

In 1972 the Soviet Union submitted to the Committee on the Peaceful Uses of Outer Space a draft treaty relating to the Moon. There were some doubts expressed as to the need of such a treaty since the Outer Space Treaty of 1967 contained specific provisions relating to the legal regime of the Moon. In the process of drafting the agreement some innovations were added. The most important one dealt with the natural resources of the Moon.

One of the issues under discussion was whether a moratorium should be placed on the exploitation of the natural resources of the Moon. The agreement was achieved through the adoption of the formula according to which "the Moon and its natural resources are the common heritage of mankind" (Article 11 (para. 1) of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies).

This formula means the non-appropriation of the Moon, any part of it or its natural resources, the equality of all States Parties for the purposes of exploration and use of the Moon, the establishment of a special international regime governing the exploitation of the natural resources of the Moon when such exploitation is about to become feasible.

Sometimes the discussion acquired doctrinal dimensions. For example, there was

an interesting exchange of opinions between the delegations of the USSR and Argentina on the meaning of the notion "common heritage of all mankind"⁹. The difficult compromise became possible due to arduous work of the delegation of Austria.

Another problem related to the right to use certain orbits and trajectories.

In December 5, 1979, the UN General Assembly adopted the final Agreement¹⁰. In December 18, 1979, it was opened for signature.

The delegations of the USA and the USSR in the COPUOS were among the very last to support the consensus on the final text of the Agreement. Neither the USA nor the USSR signed this Agreement¹¹. It took four and a half years for the Agreement to enter into force on July 11, 1984, after it received five ratifications. As at 31 December 1995 there were only nine States Parties to the Agreement and five more Signatories.

In 1980 Dr. Ernst Fasan mentioned that the Moon Agreement left some unsolved problems and concluded that "legal development may not stop here but ought to go ahead in a pace reasonably in accordance with further scientific development"¹².

At this moment I would like to wish all the success to the Legal Sub-Committee and to the COPUOS on the way of further progressive development of the outer space law.

Today one can definitely speak about the existence of a new branch of international law.

The five outer space treaties are the foundation of this branch. They serve as a basis of international cooperation in the exploration and use of outer space, one of the global provinces of mankind.

ENDNOTES

1. The Committee on the Peaceful Uses of Outer Space was established on 12 December, 1959, by the UN General Assembly resolution 1472 (XIV). The two Sub-Committees were instituted in 1962.
2. Manual on Space Law. Volumes I-IV.

Compiled and Edited by N. Jasentuliyana and R.S.K. Lee. 1979-1981. Oceana Publications, Inc./Dobbs Ferry, New York.

3. United Nations General Assembly Resolution 1962 (XVIII), 13 Dec., 1963.
4. United Nations General Assembly Resolution 2222 (XXI), 19 Dec., 1966.
5. Newspaper "Pravda", 22 March, 1962.
6. United Nations General Assembly Resolution. 2130 (XX), 21 Dec., 1965.
7. United Nations General Assembly Resolution 2777 (XXVI), 29 Nov., 1971.
8. United Nations General Assembly Resolution 3235 (XXIX), 12 Nov., 1974.
9. See United Nations Doc. A/AC.105/101, 28 March, 1973 and 17 April 1973.
10. United Nations General Assembly Resolution 34/68, 5 December, 1979.
11. See the analysis of the Moon Treaty in "Agreement governing the Activities of States on the Moon and Other Celestial Bodies. 96th Congress, 2nd Session, Committee Print, US Senate, May 1980.
12. E. Fasan. Some legal problems regarding the Moon. "Proceedings of the 23rd Colloquium on the Law of Outer Space". International Institute of Space Law of the International Astronautical Federation. September 21-28, 1980, Tokyo, p. 10.