

IISL-92-0004 - Session 1

A WAY TO COMPLEMENT, ENFORCE AND IMPROVE THE SPACE TREATY AND RELATED INTERNATIONAL INSTRUMENTS OF SPACE LAW

Prof. A.A. Cocca (Argentina)¹

The Council of Advanced International Studies

Abstract

The 1967 Space Treaty is the nucleus and the framework of the modern corpus iuris spatialis and it was lightly auspicious that this Treaty was approved by unanimity and acclamation in the most broad political body of mankind: the UNGA. The task of today's jurists is to analyze the components of the Corpus Iuris Spatialis: treaty, conventions, general agreements, executive agreements, memoranda of understanding, declaration of principles, etc. in view of harmonizing the law which by own nature is proper and common to all peoples. Some protocols are recommended to complement, to invigorate, to improve, to supplement, to complete, to fill, to enforce and to compel its strict observance. Protocols, as it is observed with the Antarctic Treaty, has the fundamental purpose to ratify the principal instrument, but not to modify nor to amended it.

Introduction

The Space Treaty and related international instruments are correctly referred to as the Corpus Iuris Spatialis. This Latin denomination is so not by the number of conventions and

agreements that constitute it, but by the harmony of principles emanating from each one, the originality of their principles common to all these texts, and because of the scientific, philosophical and human transcendence of the system.

The 1967 Space Treaty is the nucleus of this modern corpus iuris. It has had the merit of linking men in a planetary law, and of empowering mankind, as an international legal subject, for the unlimited exploration and use of the cosmos as the destinatory of all the benefits derived therefrom. In this sense, the Space Treaty, as is natural in any body, needs to develop permanently.

Development implies three aspects: to complement, to enforce and to improve.

It is natural that such an original treaty, as the 1967 Space Treaty, should need to be supplemented, completed, filled, and perfected. In addition, technical developments required for new principles and rules for the new activities of man. This supplementary task should be not only to advance together

¹. Director IISL, Trustee IAA, Vice President International Relations IAF.

with the technique, but also to anticipate law for the benefit of security in the legal order.

Enforcement means to invigorate, to compel to observe the laws and international conventions. This is the responsibility of governments, particularly of those which had subscribed the Treaty, by ratification; or by accession, if they are not signatories. In any case lawyers, jurists, scholars, scientists and non governmental organizations and entities involved in space activities can and must accelerate the procedure.

In cases of expanding a text, or proposing a protocol to the Space Treaty, the first step is to list the question, including a draft proposal, on the agenda of COPUOS Legal Sub Committee. If the approval by the General Assembly of the United Nations is attained, a very important step is accomplished. The ratification is, naturally, expected.

Consensus as a common feeling of peoples

Consensus was adopted from the early days by the Legal Sub-Committee of the UN COPUOS as a method to reach a reasonable and convinced common decision. Consensus reflects a shared compromise, by the harmonization of different points of view. It is a process more complicated than voting, because it shows the capacity, assessment, caution and wisdom of the negotiators. It is expressly affirmative, because it is the result of the addition of affirmative

attitudes, and it is fruitful in its consequences. It must be univocally expressed. It is only applicable to the negotiation of multilateral agreements, particularly to those of a global scope. In bilateral agreements it has another name: agreement or mutual consent.¹

Eilene Galloway gave six reasons for the success of the consensus method within the UN COPUOS: 1. To promote peaceful purposes and avoid hostile conflicts was an objective which unified those who were responsible for planning guidelines for the future; 2. The nature of space science and technology contributed to emphasize on peaceful uses; 3. The problems which could be identified as likely to arise in the future were multidisciplinary and involved the integrated analysis of many factors. If foresight is to result in a prudent course of action, each element of a problem must be weighed and evaluated with regard to the probable consequences of different options. 4. The chairman of the Committee as well as the chairmen of the two sub-committees, play a key role in the consensus process. Much of the successful use of the consensus procedure is due to the outstanding abilities of the chairmen. 5. Achieving agreement by consensus requires give and take in negotiations. 6. Some methods have been developed to facilitate the consensus procedure: working groups for informal discussion of perplexing matters which may set up mini-working groups for even more informal consideration of difficulties in identifying elements of

problems or the precise wording likely to produce agreement, and, preparing a text which indicates areas of agreement and set these agreeing sections in square brackets.²

Consensus reflects the will of each nation that participates in international assemblies and, therefore, the legal feeling of its own people. The sum of these wills is mankind's legal feeling. From this legal feeling arises the peoples' legal conscience which, by consensus, is universal as well.

It must be borne in mind that the United Nations Charter begins by recognizing a legal entitlement to peoples: "We the peoples...". In the international level, besides governments, the non governmental organizations and individuals also express the will of the peoples they represent.

Unanimity and acclamation.

It was highly auspicious that the Space Treaty was approved in spite the political and ideological situation in 1966 by unanimity and acclamation in the most broad political body of mankind: the General Assembly of the United Nations. On the other hand, it is unique from the legal point of view and it must be permanently improved rather than changed. The Outer Space Treaty principles are and shall be the support of any further progress because of their purely legal nature alien to any economical, political, social or technological development.

The Space Treaty the touch stone of the *Corpus Juris*

Spatialis is the first legal body imposing peace as a natural consequence of cooperation; and Mankind, is the legal subject, at the conclusion of a process of cooperation, freedom, and enjoyment of the common heritage. All this system retrieves the human condition continuously, and gives increasing value to human rights, starting by man (including all members of the human family), peoples and mankind.

Reiterated unanimity and acclamation indicate that all peoples considered of great benefit the conventions which followed the Space Treaty. This is not a glory of the past, is a duty of the present to continue the elaboration of new rules reaffirming the principles that guarantee the harmony and unity of the Corpus Iuris Spatialis.

Vth Centenary of the advanced creation of Legal Sciences.

International law, or rather, the Law of Peoples (according to Francisco de Vitoria and his followers from the Spanish International School of Peace); the progression of the Ius peregrinandi and the search for extra terrestrial communication, the roots of the humanitarian law of war, the human rights of Las Casas, and the five centuries of the Gutenberg press are not glories of the past either. It is, indeed, time to develop them, because among other reasons it does not refer to the relations between the Old and New World but between mankind

and the cosmos.

From the legal point of view these five centuries have meant the extension of the traditional rights to the rights of mankind.

The XII Tables on the Rights of Mankind.

The task of jurists in international, as well as in regional and domestic levels, is to analyze the components of the Corpus Iuris Spatialis treaties, conventions, general agreements, executive agreements, memoranda of understanding, declarations of principles, etc. in a view to harmonizing a law which, by nature, is proper and common to all peoples.

The XII Tables on the Rights of Mankind was adopted at the Xth Congress of International Law, on the occasion of the Bicentenary of the Declaration of the Rights of Man and the Citizen, in Buenos Aires on 11 November 1989.

According to this Declaration, mankind as the biologic-social organ of the human race emanating from human nature and, therefore, founded essentially on the natural and moral order of the world, has the civil, political, cultural, social, economic and other related freedoms and rights that have been recognized and to be recognized to human beings in an autonomous, interdependent and indivisible way. Consequently, as there are common rights based on the legal order, freely adopted by universal consensus and with a

common conscience of the dignity and respect for the human condition, they come under the category of non transferable non-renounceable rights of mankind, are summarized in the XII Tables as follows:

- I. Common heritage of mankind.
- II. Access to the knowledge and technological use of cultural property.
- III. Sufficient resources and quality of life.
- IV. Harmonious progress of mankind.
- V. The right to communicate.
- VI. Ethics.
- VII. Survival.
- VIII. Benefits arising from the exploration and use of the new worlds.
- IX. Living in the cosmos.
- X. Peace.
- XI. Solidarity and integrity.
- XII. Conscience of race unity.

Enrichment of Space Law.

There are many ways to enrich the knowledge on Space Law:

a. The teaching.

After the three symposia devoted to the teaching of Space Law, organized by Eugene Pépin, then President of the International Institute of Space Law (IISL), universities began to extend their programs of study including Space Law, as it is reflected in Gorove's book, published in 1986.³

The European Centre of Space Law provides regularly a number of thesis examined in universities of this continent. Space Law scholars are requested from different parts

of the world to offer references on bibliography, documentation, and particularly their own point of view on the different proposed thesis.

The establishment of organic courses in three levels (introductory; ordinary; and specialized courses) was proposed and approved by the Space Conference of the Americas (San José, Costa Rica, 1990), and ratified by the Consultative Meeting of Experts of the same conference in 1991. All these courses are going to be given in the four languages of the Americas: English, French, Portuguese and Spanish.

In 1988 the University of Buenos Aires (Faculty of Law and Social Sciences), began with a new course on Prospective of the Legal Science: Advanced Studies on Space Law. This post graduate course is devoted annually to a different matter according to the subjects chosen by the IISL and the Social Sciences Section of the International Academy of Astronautics. In 1988 another new course began: Right of Communications, and in 1990 yet another course on The rights of Mankind in relation with Environment, that is to say, the University of Buenos Aires started the organic teaching of courses that not only represent an advancement in the prospective of the legal science, but also the recognition of mankind as an autonomous subject of law.

b. Research.

The increasing number of theses and the interest shown by young generations on Space

Law indicates the need to create a research institute on the matter. In this sense, the above mentioned Conference of the Americas of 1990, approved the establishment of an Interamerican Center on Space Law Research on the basis of an already existing institute, viz., the Institute of Legal and Social Space Research of Buenos Aires.

First Protocols.

a. Common Heritage of Mankind.

Among the five space treaties elaborated within the United Nations, the Agreement Governing the Activities of States on the Moon and other Celestial Bodies, is the one that has provoked more misunderstandings and controversies on the interpretation of some of its principles.

The common heritage of mankind principle was conceived as a doctrine to be analyzed in the national and international academical fora with a view to creating a *communis opinio*. The analysis of this doctrine began with the etymological and conceptual origins of the expression *patrimonium* expression and its development up to our days. This intellectual and spiritual process had as an end to incorporate the doctrine as legal principle for the benefit of all peoples; it included peace, interdependence, integration and solidarity among all peoples who, by virtue of the Space Treaty, were united already in a new and omnicomprehensive right of mankind (*ius humanitatis*).

My position is close to Dr. Frederick Turner's, Professor at Texas University in Dallas, in his study on the design of a new academy (Harper's Magazine, September 1986). He designs a pyramid that implies a fundamental change in the nature and functions of the university studies. The pyramid's base is Mathematics, on it Physics, Chemistry, Biology, Anthropology, Arts and Humanities are laid down and, at the summit, Theology.

In his opinion arts and humanities constitute a very advanced area of study. Yet, it is less basic than Physics. He understands that professors on sciences must be poets and that poets must be scientists. He defines technology as one of the interpretative arts.

I would like to call the attention on the development of the doctrine of the common heritage of mankind as an ideal of Prince David. In the Bible, Prince David is the poet and represents the good. Besides being a fine musician, David composed beautiful hymns and he is the reputed writer of the Psalms for feast days.

In the whole process of elaboration of the principle of the common heritage of mankind, the ideal was respected and during the debates in spite of showing different positions scientific level was observed. Very far from the feeling of the representatives of COPUOS, was the presence and meaning of the symbol of Goliath.

The principle of the common heritage of mankind,

shall be unrelenting as, no doubt the other ideals incorporated as principles in the Corpus Iuris Spatialis.

b. Space environment.

Another protocol to the Space Treaty, may be related to space environment issues, including space debris. Contamination from outer space claims for the same urgent measures that any other contamination affecting the planet may require. What we already know on space pollution and contamination, is sufficient to give all our attention to this matter and to elaborate an international binding instrument, preferably a protocol, enlarging the provisions existing in different parts of the Corpus Iuris Spatialis.

c. Settlement of space law disputes

Circumstances seem to be ideal to undertake the task of producing an international convention which could be the best way to settle disputes. In this Institute there have been several studies and proposals. The International Law Association has gone further: it has elaborated a draft international convention, due to the efforts and permanent dedication of Prof. Karl Heinz Böckstiegel, which represents today the best text reached in so delicate matter. It has to be recognized that such advancement has been attained because of the decision to face the solutions even in moments when everything seemed difficult, and the effort could be barren.

A due clarification of principles and a good system of settlement of disputes are the key to the success of future development of space law.

Proposed activities.

Some texts of declarations, as the one elaborated by the SETI Committee of the AIAA were endorsed by the Academy and the Institute. This means a progress in the construction of principles, and said practice should be extended endorsing texts elaborated by other academical institutions and universities, and research centers devoted to the Law of Outer Space.

The Institute could return to the practice of adopting conclusions which evidence the common feeling or consensus of all who participated in the discussion of a matter on the agenda. Moreover, it would be very useful in the present circumstances, to elaborate of international conventions that, once approved by its members, could be discussed in other similar institutions, and, finally, be submitted to the COPUOS to be analyzed by those who have the decision-making power.

The V Centenary of the Human, peoples, nations and Mankind Rights.

The greatest benefit that the Discovery of America and the relationship with the New World has left us is law. This law was related to man, peoples and nations and, finally, to Mankind. Montesinos, Las Casas,

Vitoria, and Veracruz, set the pillars of these new laws in the XVI century. They did not exclude Space Law, nor inter-human relationship, that is to say, the human gender established in different celestial bodies. The task of Vitoria and his followers of the Salamanca Spanish School of International Law, is rightly called Spanish School of Peace, and is well known in this Institute, where Manfred Lachs, Andrew G. Haley, Martin Menter, Gyula G l, Ernst Fasan and many other have referred to it.

The lapse of grandeur of cultured nations has left a legal opus: Rome took its civil law to the most distant places of the Earth; the French Empire left it's Napoleon Code; Spain, international law, and more properly, the rights of man, peoples and mankind. The legal thought of Vitoria left us the bases for an inter-human relationship which shall reach the stars.

The International Space Year, the great event to commemorate the 500 years of America may be the starting point of a trascendental task in the legal field. This Congress shall be remembered if it represents the beginning of a new renaissance of the legal science, if it introduces the emerging humanism of space law by means of new principles and new international instruments which develop and guarantee their benefits, effectiveness and due observance.

CONCLUSIONS

The enforcement of the

principles that with such much faith and hope were adopted by the peoples when voting the space treaties, is a duty of the present generation of jurists so as to assure their benefits and clear up doubts relating to their proper application. This task must begin by the Moon Agreement, not only because its date of revision is near but also because there are doubts in connection with some of its most important provisions. The protocol to the Space Treaty procedure seems to be the most recommendable. It must be followed by the protocols on the Environment and on the Settlement of Disputes.

These protocols, far of introducing some amendments to the Space Treaty, have as fundamental purpose to revitalize it, to supplement it and complete and fulfill, to enforce and to compel its strict observance avoiding to drop in wrong interpretations.

To fulfill this, it is necessary to adopt conclusions, and resolutions on the matter on the basis of the Institute's academical consensus. There must be an elaboration of new international instruments, and their texts should be shaped in cooperation with other non governmental academical institutions, with a view to submission to the COPUOS for consideration.

Besides a renewal of the procedure, there is also necessary to privilege the treatment of the human condition and of the rights of man and peoples, to allow mankind subject itself of its own rights to follow the

exploration and use of outer space for the benefit of all peoples, in peace, inter-relationship and solidarity.

FOOTNOTES

¹ .COCCA, Aldo Armando, Contribución del consenso al desarrollo progresivo del derecho internacional en las Naciones Unidas, Desarrollo progresivo del derecho internacional, Consejo de Estudios Internacionales Avanzados, Buenos Aires, 1991, p. 47-62.

².GALLOWAY, Eilene, Consensus as a basis for international space cooperation, Proceedings of the 20th Colloquium of the Law of Outer Space (Prague, 1977), University of California School of Law, Davies CA, 1968, p. 110 111.

³.Stephen GOROVE, The Teaching of Space Law around the World, L.Q.C. LAMAR Society of International Law, University of Mississippi Law Center, 1986.

⁴. The explanation of this process was made in my dissertation "Common Heritage of Mankind: the Apple of Discord. A way to Concord", given in Washington, on 28 October, 1989, on the occasion of my incorporation to the Inter American Academy of International and Comparative Law.