

CONSENSUS DECISIONMAKING BY THE UNITED NATIONS COMMITTEE ON
THE PEACEFUL USES OF OUTER SPACE

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I. Introduction

The use of consensus as a method for decisionmaking by the United Nations Committee on the Peaceful Uses of Outer Space has proved remarkably successful in bringing about legal agreements for international space cooperation. The high degree of achievement, demonstrated in the drafting of four space treaties which have been ratified by many nations, raises the question—especially in the minds of those who seek international cooperation in other areas—of the reasons why decisions by consensus have been attainable.

II. What is Consensus?

Consensus is one method whereby a group reaches a decision. It is not the only way of coming to agreement on an issue or a course of action and, indeed, is somewhat unique as compared to various types of voting. Decisions by voting may require qualified voters to pass measures by a majority, two-thirds, three-fourths, or unanimous vote and each method may be appropriate for the situation in which it is used. The degree of required positive action depends upon advance determination by a group of those situations which range from minimum to maximum requirements for broad-based support. At one end of the scale is majority voting to decide matters which the whole group is willing to accept by that procedure; at the other end of the scale is unanimous voting which may be required in situations identified as so important that the possible non-compliance of one member can jeopardize the attainment of a goal considered essential for the whole membership. Unanimous voting can also take the form of acclamation when such favorable attitudes have been formed prior to voting that they evoke sudden decisions.

The next question concerns the difference between consensus and unanimous voting. There is no difference in the result which produces a legal document, agreement on undertaking a program, appropriating funds, etc. The difference between consensus and unanimous voting lies in the process used to achieve the end result; consensus is achieved without voting whereas voting is required for a unanimous record. The process of consensus can set in motion certain positive attitudes which carry over beyond the agreement and tend to facilitate implementation of formal agreements. This is because consensus is achieved by patient negotiation in reconciling different viewpoints until reaching a point where no member objects to the result. Although the consensus process has been successfully followed by the United Nations Committee on the Peaceful Uses

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of Outer Space, it was not explicitly defined. The "no objection procedure" is used whereby the chairman, sensing that agreement has taken substantial form, states "if there is no objection, it is so decided."

The United Nations Juridical Yearbook, 1974, includes an analysis of the "Use of the Term 'Consensus' in United Nations Practice" in connection with a meeting of the Population Commission:

The Director of the General Legal Division, Office of Legal Affairs, stated that no plenipotentiary conference under United Nations auspices had included in its rules of procedure a provision on consensus, partly due to the fact that it was somewhat difficult to arrive at an exact definition of consensus, and partly because the objective which was usually sought, namely, that every effort should be made to achieve a consensus before a vote was taken, could better be achieved by simply an understanding at the beginning of the conference. In United Nations organs, the term 'consensus' was used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record.¹

The Council of the World Population Conference, 1974, approved provisional rules of procedure and the annex on consensus recommended by the Population Commission states "that it is highly desirable for the World Population Conference, 1974, to reach decisions on the basis of consensus, which is understood to mean, according to United Nations practice, general agreement without vote, but not necessarily unanimity."²

The Director of the General Legal Division pointed out that the Third Conference on the Law of the Sea has rules on requirements for voting including a provision whereby taking a vote on a substantive question can be deferred for a period of time during which the President "shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement . . ." If "all efforts at reaching general agreement have been exhausted," the voting procedures adopted by the Conference can be followed.³

The Conference on Security and Cooperation in Europe, whose Final Act was signed in Helsinki on August 1, 1975, includes a definition of consensus in its Rules of Procedure—

¹U. N. Jurid. Yb. 163-164 (1974).

² *Id.* at 164.

³ *Ibid.*

Decisions of the Conference shall be taken by consensus. Consensus shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question.⁴

It is evident that consensus is a highly desirable way of achieving international accord because (1) the process of seeking agreement continues with patience and is not cut off suddenly by a vote which may defeat what might have come to fruition had more time been taken with the give and take process of consensus; (2) the situation may be such that a majority vote could not result in the "adoption" of a course of action, particularly if implementation of the decision, in terms of funding, personnel, and technological expertise, depended upon nations which had voted against the measure; and (3) group solidarity in decisionmaking ensures maximum compliance in establishing and maintaining an activity of general benefit. There is also a positive psychological effect when members of a group feel together with sympathy for differing viewpoints, motivated by a desire to bring about harmony in their collective judgment. If a member has not objected, a proposal can be adopted but this unspoken consent should not be interpreted as negativism; there is a positive willingness to settle the issue in question.

Before analyzing the reasons why the United Nations Committee on the Peaceful Uses of Outer Space has succeeded in negotiating four space treaties by consensus, it is necessary to recall the historical background of adopting this rule of procedure.

III. Adoption of Decisionmaking Procedure by the United Nations Committee on the Peaceful Uses of Outer Space

On December 12, 1959, the General Assembly adopted resolution 1472 (XIV) creating the permanent United Nations Committee on the Peaceful Uses of Outer Space which followed the Ad Hoc Committee created on Dec. 13, 1958 by resolution 1348 (XIII).⁵ Although there was general agreement among the 24-member Committee on some of the most critical issues—the common interest of mankind in the peaceful uses and exploration of outer space, the avoidance of national rivalries, and emphasis on international cooperation—nevertheless, there were three questions which were not resolved for almost two years and the Committee met only once, on November 27, 1961, when little more than a month remained in the two-year terms of the appointed members. The issues which impeded progress in the Committee's work were unanimous versus majority voting, the designation of officers of the Committee, and the

⁴Conference on Security and Cooperation in Europe. Final Act. 6. Rules of Procedure (69) 4 (August 1, 1975).

⁵A history of the Ad Hoc Committee on the Peaceful Uses of Outer Space and events leading up to the creation of the permanent Committee will be found in "International Cooperation and Organization for Outer Space" by Eilene Galloway. Staff Report Prepared for the Senate Committee on Aeronautical and Space Sciences, Doc. No. 46, 89th Cong., 1st Sess. 183-193 (1965).

international scientific conferences.⁶ It is apparent from discussions reported in United Nations documents that unanimous voting was associated with the right to veto which was objectionable to many nations, whereas achievement of agreement by consensus was a non-voting method of procedure. This difference may seem more subtle in theory than in practice. In practice, the main difference is that the process of achieving a consensus can continue so that discussion and negotiation are not ended abruptly by a vote which may produce a negative result no member really wants. Also, in the case of the uses and exploration of outer space, there were originally only two nations with advanced space technology, the United States and the USSR, and even majority voting by non-space countries could not become the deciding factor in the development of national space programs. The difficulty of working out a decisionmaking procedure was expressed by Mr. Demetropoulos of Greece who analyzed the situation as follows:

Unanimity is certainly something that one should hope for, and delegations make laudable efforts to reach unanimity by private talks, amendments, compromise, avoiding a vote on important resolutions before an acceptable formula has been found. But to require unanimity a priori would impede the work of the Committee and the possibility of any progress. The principle of unanimity goes against the principle of equality, since one State could have greater importance than all the others.⁷

After considerable discussion and negotiation, a draft resolution was sponsored by the 24 member nations on "International Cooperation in the Peaceful Uses of Outer Space"⁸ and U. S. Ambassador Adlai E. Stevenson said that the new proposal represented the best thinking on ways to achieve cooperation of benefit to all nations and that—

We look forward to constructive discussions of these proposals—and to improvement upon them. They do not represent fixed positions. We are prepared to consider constructive suggestions from any member of the committee so that the widest possible measure of common agreement may be reached.⁹

The membership of the Committee was expanded from the original 24 agreed to by the General Assembly on December 12, 1959, to 28 nations on December 20, 1961, and a compromise was reached on the issue of voting. The agreement was that the Committee would try to reach agreement by consensus, *i.e.*, without voting, but if voting is required the decision would be made by majority voting. Mr. Plimsoll of Australia summarized the situation—

⁶U. N. Doc. A/C.1/PV. 1213 at 41-42 (December 7, 1961).

⁷*Op. cit. supra* note 5 at 198.

⁸U. N. Doc. A/C.1/L.301/Rev. 1 (Dec. 11, 1961). See also Docs. A/4987; A/C.1/857 (21) on Report of the Committee on the Peaceful Uses of Outer Space.

⁹U. N. Doc. A/C.1/PV.1210 at 6 (Dec. 4, 1961). See also Dept. State Bull. 180-186 (Jan. 29, 1962).

... There were discussions over a period of 2 years between the Soviet Union and the United States, each of them from time to time consulting other countries on the Committee so that they could not be regarded as speaking only for themselves but rather each of them speaking for a number of countries. In the end the final position of the United States, before the General Assembly met, was the following one. It was a position that was adopted after consultation with many countries, including Australia. Therefore, it is the position of the Australian Government also.

The position was that there should be statements made at the Committee on the Peaceful Uses of Outer Space by any countries which wish to make them, including no doubt the Soviet Union and the United States, but possibly others, on the principles of voting relating to the Committee, and at the end of it the Chairman of the Committee would make the following statement, agreed in advance with all members. The Chairman of the Committee would say this: "If there is no objection, the Committee takes into account the statements which have just been made by the delegations of the United States and the Union of Soviet Socialist Republics. While there can be no question but that this Committee is governed by appropriate rules of the General Assembly, I interpret what has been said to mean that it will be the aim of the members to conduct the Committee's work in such a way that the Committee will be able to reach agreement in its work without need of voting. . . ."10

Agreement on the consensus procedure made it possible for the General Assembly to adopt by unanimous vote resolution 1721 (XVI) on December 20, 1961, a resolution which contains many of the principles which were later included in space treaties.

During the spring of 1962, the Committee on the Peaceful Uses of Outer Space began its practice of using consensus as the method for making decisions. On March 19, 1962, the Chairman, Dr. Franz Matsch (Austria) announced that—

In the first place, I should like to place on record that through informal consultations, it has been agreed among the members of the Committee that it will be the aim of all members of the Committee and its subcommittees to conduct the Committee's work in such a way that the Committee will be able to reach agreement in its work without need for voting.¹¹

IV. *Significance of Space Treaties*

Outer space was added to land, sea, and air as a fourth environment of the world. Space science and technology which brought about this development are inherently international dynamic forces applicable to a great variety of activities. Global systems of space communications and meteorology, progress in navigation and mapping, monitoring of air, land and sea pollution to improve the quality of the Earth's total environment, these are but a few of the peaceful purposes which can benefit all mankind. At the same time, there was early recognition that outer space could become

¹⁰U. N. Doc. A/C.1/PV.1211 at 26-27 (Dec. 5, 1961).

¹¹U. N. Doc. A/AC.105/OR.2. at 5 (Mar. 19, 1962). See also U. N. Doc. A/5181 at 3-4 (Sept. 27, 1962).

an arena for warfare and fear of this possibility produced the strong and universal motivation to prevent outer space from being used for armed conflict.

The method used to ensure that outer space be used for peace and not for war was the creation of international space law. Patterns of international cooperation developed in accordance with bilateral and multilateral agreements and the texts of space treaties were drafted by consensus among the members of the United Nations Committee on the Peaceful Uses of Outer Space. Instead of the two original space powers, the United States and the USSR, seeking to monopolize the development of space activities, agreement was achieved on international cooperation and participation of all nations.

The use of consensus in the United Nations negotiation of the texts of space treaties did not result in adoption of the least common denominator on which agreement could be reached; that is, on insignificant matters of low-level concern. Instead, we find that the most important issues have been decided and made a part of international law. The outstanding results of the agreements reached by consensus contradicts those who alleged that this type of unanimous support could only be achieved on minor points.

Between 1967 and 1976 four space treaties have come into force, and in each case the consensus method was used by the Legal Subcommittee of the UN Committee on the Peaceful Uses of Outer Space in formulating agreed texts and bringing about this body of space law. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies entered into force on October 10, 1967.¹² On December 3, 1968 there was entry into force of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.¹³ The Convention on International Liability for Damage Caused by Space Objects of October 9, 1973¹⁴ represents one of the most important international agreements whose detailed provisions are designed to avoid difficulties which could arise in connection with space activities. On this Convention four delegations—Canada, Iran, Japan and Sweden—reserved their positions on the substance of the text because it omitted proposals they favored for full compensation and binding decision of the Claims Commission. Their reservations did not constitute an objection to forwarding the text to the General Assembly but they reiterated their positions in the First Committee and abstained from the General

¹²Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, January 27, 1967, [1967] 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205 (effective Oct. 10, 1967).

¹³The Convention on International Liability for Damage Caused by Space Objects, March 29, 1972, [1973] 24 U.S.T. 2389, T.I.A.S. No. 7762 (effective Oct. 9, 1973).

¹⁴The Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space, April 22, 1968, entered into force for the United States on December 3, 1968; [1968] 19 U.S.T. 7570, T.I.A.S. No. 6599, 672 U.N.T.S. 119.

Assembly vote.¹⁵ Later, however, Iran ratified the Convention and accessions were deposited by Canada and Sweden.¹⁶ This episode strengthened the use of consensus as a method of international cooperation, patience and consideration being exercised rather than resort to procedures which could obstruct attainment of some desired objectives.

The process of international cooperation was furthered by the Convention on Registration of Objects Launched into Outer Space which entered into force on September 15, 1976.¹⁷

These treaties are not the only component parts of international space law which also includes international law, the United Nations Charter, the Nuclear Test Ban Treaty of October 10, 1963 and innumerable bilateral and multilateral agreements made by the National Aeronautics and Space Administration in accordance with the National Aeronautics and Space Act of 1958. Space law also includes agreements by the European Space Agency, applicable rules and regulations of the International Telecommunication Union (ITU), legal agreements establishing the International Telecommunications Satellite Organization (INTELSAT), INTERSPUTNIK, etc.

Although the use of consensus as a decisionmaking mechanism is advantageous and has proved successful when applied to several complicated subjects, it cannot be expected that this method, in and of itself alone, will automatically produce conclusive results in all cases.

V. Reasons for Difficulty in Attaining a Consensus

It takes time to reconcile differing viewpoints expressed on issues involved in any problem. The amount of time depends upon a variety of factors: the urgency for decision generated by perceived dangers which must be avoided at all costs; political and economic factors which may be linked to other problems and thus cause delays; irreconcilable elements combined with a sense that the subject has not ripened for final disposition; the frequency with which decisionmaking bodies meet; and the lack of an institutional structure with authority to make final decisions.

For some years there have been several subjects pending before the Legal Subcommittee. Lack of agreement has caused these items to be put forward on the agenda for each successive year, and this was true even before the Committee's

¹⁵ *Ibid.*, U. N. Gen. Ass. 26th Sess., Supp. 20, Doc. A/8420/1971, para. 35. Report of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. Doc. A/AC.105/94, para. 24 (July 8, 1971).

¹⁶ Space Law: Selected Basic Documents, Sen. Comm. on Commerce, Science, and Transportation, 95th Cong. 2nd Session 67-68 (2nd ed., 1978)

¹⁷ The Convention on Registration of Objects Launched into Outer Space, was signed on January 14, 1975 and entered into force on September 15, 1976; T.I.A.S. No. 8480.

membership was increased from 37 to 47 beginning with 1978 sessions. Admittedly, it is more difficult to get agreement from a larger than a smaller group, but the Moon Treaty text had been discussed for seven years prior to the enlargement of the Committee on the Peaceful Uses of Outer Space. Generally speaking, each item on the agenda of the Legal Subcommittee has become a problem with such basically divergent elements that the task of reconciling the differences is difficult and time-consuming. Nevertheless, in each case there are areas of agreement which provide momentum for continuing discussion.

The formulation of four international legal instruments, by direction of the General Assembly, has occupied the attention of the Legal Subcommittee for some years without resulting in a consensus.

First, the text of the draft treaty on the Moon and other celestial bodies comprises many points of agreement but the major unresolved issue concerns the use and exploitation of the Moon's natural resources. Is the Moon to be declared the common heritage of all mankind and, if so, what type of international regime should apply? And exactly what specifically is meant by "regime"?

Second, the direct television broadcasting by satellite is another item assigned as a high priority by the General Assembly and the proposed principles to govern this activity include some issues which have thus far proved irreconcilable. Although there are agreed provisions, the main undecided questions are whether or not a broadcasting nation must obtain the consent of other nations prior to broadcasting; and whether or not each receiving nation shall exercise control over the content of programs.

Third, the Legal Subcommittee is also required by the General Assembly to give high priority to the legal implications of remote sensing of the Earth from outer space in order to formulate draft principles. The result thus far has been a draft text with numerous square brackets around disagreed points. The major issue is whether or not a sensed State's prior consent must be obtained by a State which conducts remote sensing. Furthermore, there are States which wish to control the dissemination of data and information about their resources, particularly before such information is given to third parties.

Fourth, agreement is being sought on the definition and/or delimitation of outer space and outer space activities including questions relating to the geostationary orbit. Although the distinction between airspace and outer space has been of interest to several nations, and fascinating to individuals, since the beginning of the space age, it has not been discussed as fully as the three problems previously mentioned because the Legal Subcommittee lacked time. Further, lack of a definition has not impeded progress in space science and technology and its applications to beneficial uses, particularly communications and meteorology. In the last two years, however, increased interest has developed concerning a definition of outer space, but a move toward attaining a consensus is not in the same advanced stage of development as in the cases of draft texts relating to the Moon, direct television broadcast satellites, and remote sensing of the

Earth from outer space. The definition of outer space has been discussed sufficiently, however, so that at least one irreconcilable element has been identified: the claim by equatorial countries that the segment of the geostationary orbit over their territory is subject to their sovereignty rather than being in outer space as provided in the 1967 Treaty on Outer Space.

The conclusions which may be drawn from experience with negotiations on unresolved issues before the Legal Subcommittee are that (1) issues require different amounts of time to resolve; (2) when positions are taken on the basis of different political systems, the conflicting assumptions are more difficult to reconcile in an agreed text; (3) while it is more difficult to get agreement in a large committee, a difficulty that increases with size, the increase in the Committee's membership from 37 to 47 is not the basic cause of lack of consensus on the pending issues; (4) when divergent views are rooted in different political and cultural philosophies, lack of agreement cannot be blamed on the *method* of reaching that agreement whether it is by unanimous voting, majority voting, or consensus. It is the *substance* of the goal that is at stake and not the parliamentary mechanism by which the destination is to be reached.¹⁸

VI. *Reasons for Success of the Consensus Method by the United Nations Committee on the Peaceful Uses of Outer Space*

The Committee on the Peaceful Uses of Outer Space was the first United Nations body to decide to use consensus as the procedure for its work. An analysis of the reasons why the Committee, its Legal Subcommittee and the Scientific and Technical Subcommittee, have been successful in using this method to formulate four space treaties, now ratified by many States, should prove helpful to other United Nations organizations working on complicated subjects. The analysis should also sustain the Committee in the wisdom of its choice.

First, there was at the beginning of the space age a strong and prevailing motivation for international cooperation and agreement because of the realization that space science and technology could be used for peace and war. To promote peaceful purposes and avoid hostile conflicts was an objective which unified those who were responsible for planning guidelines for the future. So strong was the motive to use outer space for the benefit of all mankind that claims of sovereignty, the most critical of issues, could be prohibited by treaty.

Second, the nature of space science and technology contributed to emphasis on peaceful uses, not only because of the wide variety of space applications but also because satellites encircled the Earth every 90 minutes in orbits which disregarded national boundaries and emphasized the necessity for international space cooperation.

¹⁸Report of the Committee on the Peaceful Uses of Outer Space. General Assembly, 32nd session, supplement No. 20, Doc. A/32/20 (1977). See also the Committee's report for the 33rd session, supplement No. 20, Doc. A/33/20 (1978) and Reports of the Legal Subcommittee: Docs. A/AC.105/196 (April 11, 1977) and A/AC.105/218 (April 13, 1978).

Third, the problems which could be identified as likely to arise in the future were multidisciplinary and involved the integrated analysis of many factors: scientific, technological political, economic, legal and cultural. It takes time to figure out how best to handle such problems and the process of consensus is attuned to time-consuming analysis. 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. Sometimes technical or economic factors are weightiest in settling an issue; in other circumstances, political or legal factors may become paramount. Even though all the considerations which go into making a decision are time-consuming, it is noteworthy that the Committee on the Peaceful Uses of Outer Space negotiated by consensus four complicated space treaties which came into force in less than ten years.

Fourth, the chairman of the Committee, as well as the chairmen of the two subcommittees, play a key role in the consensus process. The chairman must be sensitive to the group psychology in sensing when a subject is ripe for agreement, feeling that there is not likely to be an objection, and at exactly the right moment being able to say "If there is no objection, it is so decided." The chairman must not be dictatorial in forcing his own position on the group, but must gain the respect of all Members in recognizing his objectivity in perceiving varying viewpoints. The Committee on the Peaceful Uses of Outer Space has been outstandingly successful in the chairmen who have presided over the full Committee, the Legal Subcommittee and the Scientific and Technical Subcommittee. Much of the successful use of the consensus procedure is due to the outstanding abilities of the distinguished chairmen.

Fifth, for the longest period of its history, the Committee's membership has been small enough to be viable and facilitate personal contacts and negotiation. There is a point beyond which expansion of membership would undoubtedly delay the process of achieving agreement and could even be completely counter-productive.

Sixth, achieving agreement by consensus requires give and take in negotiations. When issues are presented with sufficient margins to allow for developing a common ground, the time of negotiation is shortened. Irreconcilable elements which are sharply drawn can result in unyielding positions which frustrate the achievement of collective group judgment. There are many examples in the history of the Committee on the Peaceful Uses of Outer Space of proposals which were originally far apart but, gradually, differences were narrowed so that ultimately the group could make a collective judgment.

Seventh, some methods have been developed to facilitate the consensus procedure. The Committee, as well as its subcommittees, establish working groups for informal discussions of perplexing matters. The working groups 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. The practice of preparing a text which indicates areas of agreement, and sets disagreeing sections in square brackets, is valuable to all Members who then know exactly what remains to be done before the whole question is decided. Such texts also project into the future the assignment of a

continuing task which will be considered until a satisfactory conclusion is reached. A certain sense of momentum is created in the group whose members seem psychologically headed toward making a contribution to international cooperation in the peaceful uses of outer space.

