

The Role of International Law in improving Space Security

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COPUOS – CD

- ⊕ Traditionally each has its own competence, little interaction, till now
- ⊕ Civil-military are blending, same in aviation
- ⊕ Space assets: dual use!
 - ⊕ Civil assets can be used in military way
 - ⊕ Military assets can be used in civil way
- ⊕ COPUOS/CD to communicate

Legal framework for activities in outer space

- ⊕ Sources of int. law, according to Art. 38 Statute ICJ:
- ⊕ Treaties: Outer Space Treaty & subsequent treaties
- ⊕ Customary int. law
- ⊕ GPIL
- ⊕ Judicial decisions and writings

Supplemented by

- ⊕ Guidelines (e.g. debris)
- ⊕ Codes of conduct (e.g. ISS crew CoC, European CoC if adopted)
- ⊕ Bi-/multilateral Agreements (e.g. IGA for the ISS)
- ⊕ National space legislation

Defining space

- ⊕ Delimitation air-space: discussion 40 yrs
 - ⊕ Air space: sovereignty (air law)
 - ⊕ Outer space: freedom of use
- ⊕ 2 approaches :
 - ⊕ Function of activity determines regime
 - ⊕ Place of activity determines regime
- ⊕ Some: arbitrary boundary, 100 km
(PPWT: 'approximately' 100 km)

Why space law

- ⊕ Post-cold war
 - ⊕ Fear of weapons race in space
- ⊕ Collisions, accidents
 - ⊕ Liability, compensation



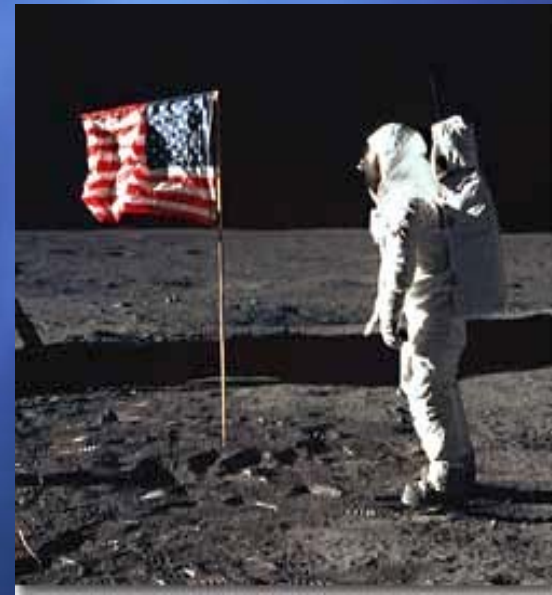
Why space law (2)

- ⊕ Space debris
- ⊕ Signal interference
- ⊕ International cooperation
- ⊕ One day.... Living on the Moon?....



Main principles

- ✦ Exploration and use of outer space & celestial bodies is 'free'
 - ✦ For the benefit and in the interests of all states
 - ✦ 'Province of all Mankind'
- ✦ Appropriation of outer space and celestial bodies is forbidden
 - ✦ No sovereignty in space!
- ✦ Int. law & UN Charter



Main principles (2)

- ⊕ International responsibility and liability attached to States
 - ⊕ Also for activities by private entities
- ⊕ Jurisdiction /control for State of Registry
- ⊕ International cooperation / respect for interests of other states
 - ⊕ Specifically developing countries

'Military' use of space: Art. IV OST

- ⊕ Outer space is partially demilitarized
 - ⊕ Nuclear weapons and other weapons of mass destruction are prohibited, always & everywhere
 - ⊕ In orbit, on a celestial body, in any other way
 - ⊕ Celestial bodies must be used 'exclusively for peaceful purposes' (non-military/non-aggressive?)
 - ⊕ No mil. bases or manoeuvres, no weapons tests
 - ⊕ Military personnel / equipment may be used for peaceful exploration
 - ⊕ UN Charter applies

Meaning:

- ⊕ Outer space itself (not the celestial bodies) may be used for military purposes, as long as it is in accordance with the principle of peaceful uses and the UN Charter
- ⊕ Use or testing of weapons not explicitly prohibited...but if they are in violation of the UN Charter, they are forbidden

Reminder UN Charter

- ⊕ Article 2.4: prohibition on the threat or use of force, however
- ⊕ Article 51: inherent right of individual or collective self-defense if an armed attack occurs, until the SC has taken measures to maintain int. peace & security

Other provisions

- # Moon Agreement: few ratifications
- # Partial Test Ban Treaty 1963
 - ⊕ Prohibits nuclear weapons tests in space
 - ⊕ >100, not France, China, withdrawal: 3 months
- # Comprehensive Nuclear-Test-Ban Treaty
 - ⊕ All nuclear explosions prohibited, not yet in force, US signed in '99, senate rejected ratif.
- # ABM Treaty 1972
 - ⊕ US withdrew in '02

Reality

- ⊕ Every State highly dependent on satellite technology for
 - ⊕ Security interests
 - ⊕ Non-military uses
 - ⊕ Raising standard of living
- ⊕ Global need to protect space assets
- ⊕ Need for specific standards
 - ⊕ Definitions – ‘space’ / ‘peaceful purposes’ / ‘military uses’

Reality (2)

- ⊕ Most satellites are military, or are (also) used for military purposes
 - ⊕ Surveillance contributes to peace/ stability
- ⊕ Space technology used in warfare (GPS, telecom, remote sensing)
- ⊕ Weaponization will lead to a chain reaction → arms race in space
- ⊕ Political climate: changing

Solutions?

⊕ Amending the OST: No

- ⊕ Supplementing it through best practices, guidelines, codes of conduct: Yes → custom
- ⊕ Need to ban non-peaceful uses of space

⊕ PPWT: ?

- ⊕ Lack of verification means, but still TCBM,...
- ⊕ Problem: it goes further than OST!

⊕ Code of Conduct: ?

- ⊕ Non-binding, does not mean no legal force
- ⊕ Compromise between ban/nothing?

Would a new treaty be best?

- ⊕ Even though it is possibly the best solution
- ⊕ It may be difficult to reach a new international treaty
- ⊕ Remember also that the implementation of treaties depends on the political will of states
- ⊕ States are sovereign entities!
- ⊕ And till now there are no weapons in space

Conclusions

- ⊕ Obligation to preserve space for peaceful uses, for the benefit of all Mankind
- ⊕ Let us not forget the experience of the Sputnik era, relevant again today :
 - ⊕ Our common goal is to change fear of war into hope for peace
 - ⊕ Eilene Galloway (1906-2009)



Thank you!

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