

Soft Law Approaches to Space Security

Space Security 2016: Sustaining the Momentum
SWF – UNIDIR – Simons Foundation

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Space security

- International peace and security
 - Space technology contributes to arms control verification, humanitarian relief, climate change...
- National security
 - Space technology can help protect against outside threats
- Security in outer space
 - Need to avoid crowding, interference, debris, competing claims to space resources...

Space security: 'hard law'

- International law: Art. 38 Statute ICJ
 - International conventions
 - International custom, as evidence of a general practice accepted as law
 - General principles of law recognized by civilized nations
 - Judicial decisions and teachings of the most highly qualified publicists as subsidiary means
- Also:
 - Bi-/multilateral agreements
 - National legislation

Supplemented by ‘soft law’

- Guidelines
 - Debris, LTSSA
- Codes of conduct
 - Int. Code of Conduct, if adopted
- UN resolutions
 - Recommendations on registration, national law...
- Also, contributions to (soft) law-making by
 - Recommendations, statements, position papers
 - GGE on TCBMs in space activities
 - SWF, IISL, SGAC, IAA etc.

Space treaty law: principles

- Exploration & use of outer space & celestial bodies are 'free'
 - For the benefit / in the interest of all states
 - 'Province of all Mankind'
- Appropriation of outer space and celestial bodies is forbidden
 - No sovereignty in space!
- International law/UN Charter apply

Principles (2)

- International responsibility & liability of States
 - Also for activities by private entities
- Jurisdiction /control for State of Registry
- International cooperation / no harmful interference
- Partial demilitarization of space
 - No nuclear weapons/WMD anywhere in space
 - Celestial bodies ‘exclusively for peaceful purposes’
 - i.e.: Space per se may be used for military purposes, including use of non-nuclear/WMD weapons, as long as ‘peaceful’ and compliant with UN Charter

Space security: reality check

- States are highly dependent on satellite technology for national security & civil use
- Space technology = dual use capability
- Space is contested, congested, competitive
- Global need to protect/ preserve space/assets
- Weaponization leads to arms race in space

- Need for clear rules, transparency, confidence
- Can **hard law** provide that, can **soft law** help?

Solutions: hard law

- Amending OST to clarify/reinforce concepts?
- Adoption of PPWT?
- Advantage: binding on parties
- Disadvantage: success not likely in current climate, time-consuming, binds only parties, implementation depends on political will of sovereign states, verification not easy

Solutions: soft law

- Code of Conduct?
- Guidelines?

- Advantage: can be fast, higher probability of adoption, can be amended smoothly, can have global legitimacy without need for adoption by each state, can evolve into (binding) customary law
- Disadvantage: not binding; this may be an issue in such a critical field as security

Example: space resources

- ‘Gold rush’ for asteroids, moon resources
- Can lead to conflict, destabilize
- In absence of clear international hard law, states start to adopt national legislation
- It would be desirable to reach international agreement on governance of space resources

Hard law or soft law?

- Hard law
 - Outer Space Treaty does not give clear answer on ownership of resources
 - Moon Agreement requires international regime but has only 16 parties
- On the road to a solution?
 - IISL BoD Statement & The Hague Space Resources Governance Working Group
 - Efforts to clarify the law and to further international dialogue on future governance; need is recognized by all stakeholders
- Step-wise approach to a long-term solution?

Conclusions

- Treaties & laws set the general framework
- But also leave gaps, and new needs emerge
- New hard law takes time, political will
- Soft law can help fill gaps, clarify terms in flexible and time-efficient manner
- It is a legal obligation to use space for peaceful purposes, for the benefit of mankind
- Soft law may be an acceptable way to ensure space security at all levels

Thank you

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