

Outer Space and International Law

Ben Baseley-Walker,
Advisor – Security Policy and International Law, Secure World
Foundation

bbw@swfound.org

+1-202-255-2153

- Space Security: An overview
- Space and International Law in the United Nations System
 - COPUOS
 - CD
- Other Initiatives
- Food for Thought

Space Security: A Context

- Orbits are a **limited resource**
 - How best do we secure their maximum use for the long-term?
- From the **sustainability** perspective:
 - Maximize humanity's ability to continue to use space resources for development, exploration and disaster relief amongst other uses.
- From the disarmament perspective:
 - **Prevent weaponisation** of space
 - Prevention of a an arms race in space (**PAROS**)

- From a policy perspective Space Security is becoming more and more prominent.
- However key considerations need to be taken into account in the international policy arena in the formulation of cooperative space policy and security initiatives:
 - Organizational proliferation
 - Options of legal and policy models
 - International political climate
- How does one achieve a balance between the interests of those States already heavily invested in the space environment and emerging space States?

International Law and the United Nations System

- Treaties
 - Legally binding
 - Consent to be bound
- Customary International Law
 - 2 conditions :Opinio Juris (belief that something is a law); Widespread State Practice
- Soft Law
 - Guidelines etc.
 - Evidence for Custom
- Concept of Enforcement in International law
 - Enforcement is not a central part of the international legal regime
 - Not because the law is weak but because the concept doesn't really work given the nature of State sovereignty
 - Less conventional 'sticks'

- Two bodies in the United Nations system have traditionally dealt with space
 - The Conference on Disarmament
 - International Security aspects of space
 - The Committee on the Peaceful Uses of Outer Space
 - Civil applications of space
- Up to his point each body has maintained a clear division of competence
- Given the rapid in humanity's use of space, there are questions as to whether such a division can and should be maintained.
 - Space assets are in many cases intrinsically dual use.

- Sources of international law, according to Art. 38 of the Statute of the International Court of Justice (ICJ):
 - Treaties: Outer Space Treaty & subsequent treaties
 - Customary int. law
 - General Principles of International Law
 - Judicial decisions and writings

- These traditional sources of law are being expanded out to include new legal instruments – both binding and non-binding
 - Guidelines
 - Codes of conduct
 - Bi-/multilateral Agreements
 - National space legislation

The Committee on the Peaceful Uses of Outer Space

- The Committee on the Peaceful Uses of Outer Space was set up by the General Assembly in 1959 as a consensus based committee which is currently composed of 70 Member States.
- Purpose
 - to review the scope of international cooperation in peaceful uses of outer space,
 - to encourage continued research and the dissemination of information on outer space matters, and to study legal problems arising from the exploration of outer space.
- The Committee has been the originator of most major international treaties on civil space matters since its creation.

- Exploration and use of outer space & celestial bodies for the benefit and in the interests of all States
- Prohibition on the appropriation of outer space and celestial bodies
- States engender international responsibility for their actions and are consequently liable for breaches of international law
 - This includes the activities by private entities
 - For emerging space policies this is of particular relevance
- The State of registry has jurisdiction over a spacecraft
- International cooperation is a key underpinning concept of international space law

Space & The CD

- Established in 1979 as the sole disarmament negotiation body for the United Nations
- It is an consensus body and it comprised of 65 Member States
- Since 1996 the CD has been deadlocked and has not been able to agree on an agenda to discuss and thus, movement on any issue has been stopped.
- This deadlock was broken briefly in 2009, but with few results and, as the CD has to agree on a programme of work every year, in 2011 it is once again deadlocked.

- PAROS
 - Prevention of an Arms Race in Outer Space
 - Currently the only document that has been formally submitted to the CD is the Chinese-Russian Draft Treaty on the Prevention of the Placement of Weapons in Outer Space.

Other Initiatives

- General Principles
 - Commitment to make progress towards adherence and full implementation of current treaties and norms
 - Commitment to prevent space from becoming an area of conflict
 - Recognition that space is essential to national security and strategic stability
 - Development of conflict resolution processes, recognizing right of self defense

- Content
 - Collision avoidance

 - Avoidance of deliberate explosions

 - Safer traffic management

 - Data exchange and confidence building

 - Notification

 - More stringent debris mitigation by States

- Concept
 - Consortium supported by satellite operators incorporated in the Isle of Man (UK)
 - Aim to standardize orbital prediction models and reporting requirements to ease data exchange
 - Develop “Bablefish” program for “translating” from one company data model to another, (lowers barriers to cooperation)
 - Has developed a prototype system for reporting data through neutral third party (Center for Space Standards & Innovation)
 - Member data is protected and secured
 - Technical support available for close approach mitigation
 - Working on providing automatic close approach/collision warning including debris (data from US SSN)

- Russian proposal for a GGE (Group of Governmental Experts)
 - Questions of lexicon
 - Questions of common ground of major and emerging players
- Russian list of UNGA TCBMs
- The role of soft law in space security?
 - Does it undermine future binding treaty development?

Food for Thought

- **The Asia Context**

- What kind of harmonization is worth having?
- When building space laws and policies, both the international and the regional issues should be considered.
- The luxury of those currently building space policies and legal frameworks is that the recent internationalization of space, can now be effectively reflected in new frameworks
 - Many established space States do not have this option
- Asian States must decide in what form they wish to cooperate – as a region or individually as members of the wider international community.
 - No cooperation, in reality, is not a viable option as if all States do not cooperate in building an effective regime for space, the likelihood of a deterioration in the ability to use space is high.
 - Such a deterioration would most likely affect emerging space States to a greater extent than established space nations.

- **KEY CHALLENGE:**
 - Bringing together the new initiatives into a network of effective agreement that regulates human interaction in space without hindering the entry of new players into the space arena.
 - A multilateral process or a regional/bilateral network of commitments?
- Given that space is so globalised, it is imperative that ALL space actors are engaged and invested in space security initiatives
 - The apolitical nature of space safety?
 - The risk associated with a ‘rogue actor’ in orbital activities
- When building space policies and new legal regimes - other bodies of international law and other stakeholders must be considered
 - IHL, commercial sector and commercial legal frameworks amongst others

- What kind of legal agreements do we see evolving in the space sector in future?
 - Binding/Non-binding?
- The diversification of players in space is having a profound impact on how space activities and their consequent international regulation is played out.
 - Do we need different kinds of agreements and are the agreements we have really appropriate?
- Given that we have so few widespread norms of operation in space, if we do not establish treaty law, can we really rely on custom in cases of intentional or unintentional harm in space?

Many Thanks

bbw@swfound.org