AGC / CIL / OSTIN, Singapore
Outer Space and International Law
21 January 2021

The Context and Framework of International Space Law

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Legal ‘Status’ of Outer Space

- What is Outer Space?
- Sputnik 1 (1957) – ‘instant’ customary law?
  - Beyond National Jurisdiction
  - Implications for Regulation
  - Definition? / Delimitation?

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The ‘Phases’ of International Space ‘Law-Making’

- Outer space is not a ‘lawless’ frontier ….

- Customary International Law 1957-1967

- UNGA Resolutions 1960s
  - => major points reflected in a series of United Nations Treaties

- Treaties – through auspices of UNCOPUOS
  - **Outer Space Treaty** (1967)
  - **Rescue Agreement** (1968)
  - **Liability Convention** (1972)
  - **Registration Convention** (1975)
  - **Moon Agreement** (1979)
    - coexisting with negotiations for UNCLOS (1982)
    - in context of decolonisation process
    - both treaties ‘rejected’ by major industrialised powers
    - => inability to agree on further treaties

The ‘Phases’ of International Space ‘Law-Making’

(continued)

- 1980s =>
  - **UNGA Principles**
  - Increasingly complemented by ‘hard’ and **‘soft’ law guidelines** – including debris mitigation guidelines and long-term sustainability guidelines
  - emergence of **national law** (approximately 30-40 States and counting …)
  - ‘new’ customary international law on an ongoing basis?

Applicability of International Law to Space Activities

- Outer Space Treaty Article III
  - activities carried out ‘in accordance with international law, including the [UN Charter]’
  - ‘in the interest of maintaining international peace and security and promoting international cooperation and understanding’

- Does /Can *all* international law apply *automatically*?

The Multi-Faceted Legal Matrix of Space

- Other relevant areas of international law (may) include …
  - International Air law
  - International Environmental law
  - International Human Rights law
  - International Humanitarian law
  - International Trade law
  - International Security law
  - International (Tele)Communications law
  - others

- But *how* to apply to unique characteristics of space (law)

Space is highly ‘Political’

- 4 October 1957 => not only immediate legal issues

- Geopolitical context – Cold War
- Rapid development of technology
    - based on military / missile technology

- Early recognition of strategic ‘value’ of space
- Space used for military purposes right from the beginning

- ‘Demarcation’ of responsibility for
  - Peaceful (non-security) uses of outer space - ‘law-making’ => UN COPUOS
  - Weapons in space / space security– ‘diplomacy / politics’ => UN CD
  - Distinction blurring (particularly due to ‘dual-use’ nature of space activities)

But Space is also …..
Commercial and Increasingly 'Democratised'

- Originally (considered) purely a State activity … but … legal possibility for non-governmental entities engage in space activities

- Fast forward to 2020:
  - States => Civil / Commercial activities
    - originally only a small number of (industrialised) States
    - now 80+ active space-faring States
  - State Militaries / non-State military actors
  - IGOs
  - Commercial Entities (increasingly providing 'dual use' services)
  - Research Institutions / Universities
  - Not-for Profits
  - Individuals / Entrepreneurs etc

- 2019 – Global 'Space Economy' approximately US$415 billion, with >75% involving commercial space activities
- Projected to grow to US$1 trillion by 2030 and up to US$3 trillion by 2040

Space is also …

- Scientific
- Exploratory
- Civil
- Cooperative
- Collaborative
- Communal
- Cultural
- Religious

- => inextricably linked to human rights and the future of humanity

Future Challenges for International Space Law: Regulation Now and into the Future

- Understanding the ‘questions’ that space technology pose
  - => Avoiding ‘band-aid’ solutions => adopting enabling and ‘future-proofing’ regulatory frameworks
  - involve all aspects of the ‘space-sector’

- Long-term sustainability of space / space debris mitigation and remediation measures
- Militarization / Weaponization of space
- Small satellite technology / mega/large constellations
- Space traffic management
- Human (aero)space flight
- Commercial exploitation of natural resources
- High Altitude Platforms / Drones etc
  - (not space law but …)

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Principles for the Future Development of International Space Law

- Overarching Principles:
  - Recognition of ‘common interests’
  - Restoring / retaining the ‘humanity’ of space
  - ‘Stewardship’ of the planet and of outer space