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

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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

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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