Introduction to Space Law

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• Historical Context
• Sources of Space Law
• Outer Space Treaty
• Lawmaking
Historical Context
What is this?
Space Age and the Cold War

• Sputnik
  – 1957
  – First Soviet Satellite

• New technology was destabilizing
  – Why?

• Instant Customary Law> Overflight
  – “Sir, they did us a good turn.”
  – Aviation v. Space Law
  – Why no protests?
UN General Assembly Principles

- Declaration of the Legal Principles Governing the Activities of the States in the Exploration and Use of Outer Space (1963)
  - Groundwork for the Treaty Regime
  - Instant Customary Law?
UN General Assembly Principles

• Non-Appropriation
• Exploration in accordance with international law
• International responsibility
• International cooperation
• Registration = Jurisdiction
• International liability
• Envoys of mankind
Sources of Space Law
• International Law
  - Treaties
  - Resolutions
  - General International Law
  - Law Making Institutions
• Domestic Law
• Soft Law
Treaties

• 5 Core Space Treaties
  – Outer Space Treaty (1967)
  – Liability Convention (1972)
  – Registration Convention (1976)
  – Moon Agreement (1979)

• Other Treaties
  – Limited Test Ban Treaty
  – ITU Convention & Constitution
  – Cape Town Convention
Resolutions

- UNGA Principles
  - Direct Broadcasting Principles
  - Nuclear Power Sources Principles
  - Remote Sensing Principles
  - Benefits Declaration
  - Among Others!
International Law

• General International Law
  – UN Charter

• Other Lex Specialis
  – International Humanitarian Law
  – Human Rights Law
  – Environmental Law

• Customary International Law
  – Opinio Juris
  – State Practice
International Law

• Other Regimes
  – Law of the Sea
    • Customary Law (Grotius - *Mare Liberum* – 1609)
  – Air Law – Chicago Convention (1944)
  – Antarctica – Antarctic Treaty (1959)
Lawmaking Institutions

• UN General Assembly – annual resolutions
  – 1st Comm. – Disarmament & Security
• UN Security Council – Work on ballistic missiles proliferation
• UN Committee on the Peaceful Uses of Outer Space (UNCOPUOS)
• Conference on Disarmament (CD) - PAROS
• International Telecommunication Union (ITU)
Lawmaking Institutions

- IADC
- COSPAR
- SDA
- ASEAN
- Disasters Charter
- APSCO
- Etc., Etc., Etc.
Domestic Law

- Domestic Law
  - 41 States included in UN Repository

- Typology
  - Establishing Space Agencies
  - Authorization of Space Activities
  - Access to radiofrequency spectrum
• Soft Law – Mechanisms and Instruments with Normative Content
  – UNGA Resolutions
  – Policy (Int’l or national)
  – Guidelines
  – Standards
  – Industry Good Practices
  – Etc.
Outer Space Treaty
The Outer Space Treaty

• 1967
• Constitution for Space?
• Product of the Cold War
  – Need for both the U.S. and the U.S.S.R. to sign the treaty
  – Focus on international peace and security
• Broad Principles
The Outer Space Treaty

- Types of Clauses
  - Purpose & Scope - Preamble
  - Minimal Restrictions – I-V
  - Accountability – VI-VIII
  - Transparency – IX-XII
The Outer Space Treaty

• Purpose & Scope
  – “common interest of all mankind in the progress of the exploration and use of space for peaceful purposes”
  – “desiring to contribute to broad international cooperation in . . . the legal aspects of the exploration and use of outer space for peaceful purposes”
  – “Strengthening of friendly relations between states”
• Article I – Free Access
  – Exploration for interests of all countries “irrespective of their degree of economic or scientific development”
  – Access by all states: equality and in accordance with international law; free access to all areas of celestial bodies
  – International cooperation in scientific investigation
The Outer Space Treaty

- Article II – Non-Appropriation
  - “Outer Space, including the Moon and other celestial bodies, is not subject to national appropriation or claim of sovereignty, by means of use or occupation, or by any other means.”
  - More on this in the next lecture!
The Outer Space Treaty

• Art. III – IL Applies
  – Exploration in accordance with international Law
    • Specifically, the Charter of the U.N.
  – Maintaining international peace and security
  – Promoting international cooperation
The Outer Space Treaty

• Art. IV - Weaponization
  – Nukes and WMDS
    • Not in orbit
    • Not stationed in Outer Space
    • Not stationed on celestial bodies
  – Moon and other celestial bodies
    • Peaceful purposes
    • No weapons or military bases
    • No military maneuvers
    • BUT: Military for science
  – WHAT’S LEGAL? WHERE?
The Outer Space Treaty
The Outer Space Treaty

• Art. V - Astronauts
  – Envoys of Mankind
  – All possible assistance> safely and promptly returned
  – Reporting of Phenomena
  – Elaborated on in R&R Agreement
The Outer Space Treaty

• Article VI – Responsibility for nongovernmental actors
  – International Responsibility for national activities
    • Government or nongovernment
    • National Activity?
  – Non-governmental actors
    • Authorization
    • Continuing supervision
    • Licensing law!
  – Responsibility to both international organizations as well as State parties to those organizations
  – International Responsibility?
    • Culpability 1. when there has been a breach of international law that is 2. attributable to the state
The Outer Space Treaty

• Art. VII - Liability
  – Launching State has International Liability
    • Launches
    • Procures launch
    • Territory of launch
    • Facility of launch
  – Liability – when there has been a wrongful act (but not necessarily a breach of law)
  – Expanded on in Liability Convention
    • Two tiers of Liability
    • Claims Commission
The Outer Space Treaty

- Art. VIII – Registration & Jurisdiction
  - State of Registry – “shall retain jurisdiction and control” over the object and personnel
    - National Register
  - Ownership not affected by presence in outer space
  - Return of space object to register
  - Expanded on in Registration Convention
    - Established UN registry
• Article IX – The Kitchen Sink
  – Principles of cooperation and mutual assistance
  – Conduct all activities “with due regard to the corresponding states interests”
  – Avoid
    • harmful contamination of space
    • Adverse effects to Earth
  – Consultations for experiments that may interfere with other State’s usage of space
    • State conducting the experiment
    • State who feels it may be interfered with
The Outer Space Treaty

• Art. X – Launch Transparency
  – “consider on the basis of equality” request to observe space flights
  – Details to be determined by a future agreement

• Art. XI – Activities Transparency
  – Reporting of nature, conduct, location, and results of activities
  – “to the greatest extent feasible”

• Art. XII – Facilities Transparency
  – Stations, installations, vehicles, equipment
  – Open on the basis of reciprocity
  – Advance notice
Outer Space Treaty

• Is the Outer Space Treaty still useful?

• Is it out of date?
  • Written in the 1960s
  • Massive technological changes
  • Does not fully anticipate commercial development

• Or does it allow for innovation?
  • Technologically neutral
  • Broad principles
  • Has led to increased stability

• What is at the heart of this discourse?
  • Property
Lawmaking?
Lawmaking

- Domestic Lawmaking
  - Fulfills duty found in Art. VI
  - Facilitates commercial activity
    - Space resource laws
  - Addresses responsibility & liability issues
    - Insurance
    - Indemnity
    - Liability Caps
  - Holistic v. fragmented approaches
• Top Down v. Bottom up lawmaking
  – Top Down: EX: OST Art. VI
  – Bottom up: EX Space Traffic Management
• Do we need more treaties?
  – Where and how does normative content emerge?
  – Move to Standardization
    • Space Debris
    • Nuclear Power Sources
Conclusion

Thanks!

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