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International Cooperation Mechanisms on Space Activities: Perspectives on the Working Group of the Legal Subcommittee of COPUOS

Setsuko AOKI

Faculty of Policy Management

Keio University

aosets@sfc.keio.ac.jp

Outline

1 Introduction - purpose of this presentation

1 Work of the Legal Subcommittee of the UNCOPUOS: its evolving functions

3 Review of International Mechanisms for Cooperation in the Peaceful Exploration and Use of Outer Space

(1) Background

(2) Five Year Work Plan 2013-2017

(3) A set of Questions

4 For the future: 2017 as the 50 years anniversary of the Outer Space Treaty

1 Introduction- Purpose of the Presentation

Space activities have flourished last 50 years through international cooperation.

“The exploration and use of outer space---, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of mankind.” (Art.1, Outer Space Treaty)

To pursue a better international mechanism for space cooperation, “international cooperative mechanisms” has been studied in the UN since 2013.

(1) This presentation shows the progress of the work in the UN; and

(2) This presentation could be an introductory note for the later presentations of this session which will address various types of cooperative mechanisms.

2 Work of the Legal Subcommittee of the UNCOPUOS: its evolving functions

Committee on the Peaceful Uses of Outer Space (COPUOS)

A subsidiary organ of the UN General Assembly

Permanent organ since 1959 76 States as of today

Organization: (i) Scientific and Technical Subcommittee (STSC)

(ii) Legal Subcommittee (LSC)

(iii) Main Committee


Function of the LSC: “to study the nature of legal problems which may arise from the exploration of outer space.” (GA Res 1472 (XIV) 12 Dec. 1959, A 1. iii) b))

Consensus-based decisions since 1962 (A/AC.105/PV.2, 19 Mar. 1962)

Only three substantial agenda items in the 1993 session (A/AC.105/544, 15 April 1993)

I Questions of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space (agenda item 3);

II Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (agenda item 4);

III Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all states, taking into particular account the need of developing countries (agenda item 5)  GA Res Space Benefit Declaration in 1996.

Agenda item of the 2000 session (A/AC,105/738, 20 April 2000)

Agenda item

3 General exchange of the views;

4 Status of the international treaties governing the uses of outer space;

5 information on the activities of international organizations relating to space law

6 Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union;

7 Review and possible revision of the Principles relevant to the use of nuclear power sources in outer space;

8 review of the status of five international legal instruments governing outer space

9 **Review of the concept of the “launching State”.**

(agenda item for the next session is excluded.)

Multiyear agenda items in the 21st century

1 2000-2002 concept of the “launching State”

2004 GA Res 59/115 (10 Dec. 2004) Application of the concept of the “launching State”

2 2004-2007 Practice of States and international organizations in registering space objects

2007 GA Res 62/101 (17 Dec. 2007) Recommendation on enhancing the practice of States and international intergovernmental organizations in registering space objects

3 2008-2013 General exchange of information on national legislation relevant to the peaceful exploration and use of outer space (now it is a regular item as “national legislation relevant to the peaceful exploration and use of outer space”)

2013 GA Res 68/74 Recommendations on national legislation relevant to the peaceful exploration and use of outer space

Agenda items of the LSC 2014

- 1 General exchange of views
- 2 Information on the activities of international intergovernmental and non-governmental organizations relating to space law
- 3 Status and application of the five United Nations treaties on outer space
- 4 Matters relating to: (a) the definition and delimitation of outer space; (b) the character and utilization of the geostationary orbit
- 5 National legislation relevant to the peaceful exploration and use of outer space
- 6 Capacity-building in space law
- 7 Review and possible revision of the Principles relevant to the use of Nuclear Power Sources in Outer Space
- 8 General Exchange of information and views on legal mechanisms relating to space debris mitigation measures
- 9 General Exchange of information on non-legally binding UN space law instruments
- 10 Review of international mechanisms for cooperation in the peaceful exploration and use of outer space [5-year work plan (2013-2017)]
- 11 Proposals for new items to be considered by the LSC

3 “Review of International Mechanisms for Cooperation in the Peaceful Exploration and Use of Outer Space” (1) Background

1) 29 March 2012 proposed by the US, cosponsored by China, Ecuador, Japan, Peru and Saudi Arabia

2) Reasons of the proposal and the goal of this agenda item

*Accomplishment: international cooperation through a variety of mechanisms for the last 50 years



*1996 UNGA Principles “Space Benefit Declaration” urges COPUOS to strengthen its role as a forum for exchange of information on international space cooperation



To stock of the various mechanisms to conduct international collaboration with a view to **identifying common principles and procedures**. This information could be helpful to Member States as they choose relevant mechanisms to facilitate future cooperative endeavours.

Wide range of cooperative mechanisms suggested in the Space Benefit Declaration

International cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned:

- governmental and non-governmental;
- commercial and non-commercial;
- global, multilateral, regional and bilateral. (para.4)
- UN Programme on a space applications and other initiatives (para.8)

Space Benefit Declaration as a useful tool to consider the conditions of cooperation

- particular account should be taken of the needs of developing countries (para.1)
- on an equitable and mutually acceptable basis; (paras.2 & 3)
- contractual terms should be fair and reasonable (e.g., intellectual property rights) (para.2)

(2) Five-year work plan 2013-2017

Year 1 (2013)

- **Exchange of information** on the range of existing international space cooperation mechanisms. Member States and permanent observers were invited to provide information prior to the session of the Legal Subcommittee.
- They were also invited to make **special presentations** on the range of bilateral and multilateral mechanisms they utilize for space cooperation.

Year 2 (2014)

- Member States and permanent observers Continued the **exchange of information**.
- LSC Established a working group.
- Request the Secretariat **to prepare a report categorizing the range of mechanisms for international cooperation** based upon submissions by Member States as well as additional research, to be distributed to Member States in advance of the session of the 2015 LSC.

Year 3 (2015 LSC Session)

Exchange of additional or supplemental information on existing international space cooperation mechanisms, taking into account the report by the Secretariat.

-Examination in the WG that report in order to **develop an understanding of the range of collaborative mechanisms employed by States and international organizations, and the circumstances in which certain classes of mechanisms are favoured by States over other mechanisms.**

-Request the Secretariat to prepare a report identifying the legal issues commonly addressed in the existing cooperative mechanisms based upon submissions by Member States, additional research, and consultation with Member States.

-This report should be distributed to Member States in advance of the 2016 LSC.

Year 4 and 5 (2016, 2017)

Year 4

The task of the WG:

- reviews the report by the Secretariat
- continues to examine responses received from Member States,
- begins drafting its report.

Year 5

- WG finalizes its report to the Subcommittee, including conclusions.

(3) Information provided to the COPUOS/LSC

2013

Australia, Kazakhstan and Portugal
(A/AC.105/C.2/102);

Austria, China and Germany
(A/AC.105/C.2/2013/CRP.14);

United States
(A/AC.105/C.2/2013/CRP.17); and

Intergovernmental Agreement on
the International Space Station
(ISS)
(A/AC.105/C.2/2013/CRP.24)

2014

Algeria, Germany, Kenya (A/AC.105/C.2/105)

Argentina (A/AC.105/C.2/105/Add,1)

International Law Association
(A/AC.105/C.2/105/Add.2)

Russia (A/AC.105/C.2/2014/CRP.23)

Japan (A/AC.105/C.2/2014/CRP.24)

Canada (A/AC.105/C.2/2014/CRP.25)

Turkey (A/AC.105/C.2/2014/CRP.26)

ESA (A/AC.105/C.2/2014/CRP.28)

Criteria of international cooperation (general)①

1 legally-binding ; non-legally binding

2 universal (global), multilateral, bilateral

3 through international organizations either (IGO or NGO)

4 through international fora, etc.

Criteria of international cooperation: some examples ②

USA

- A. Multilateral and Bilateral Legally Binding Agreements
- B. Legally Non-Binding Principles and Technical Guidelines
- C. Multilateral Coordination Mechanisms
- D. International Fora

Canada

- I. Multilateral and Bilateral Legally Binding Agreements
- II. Non-Binding Instruments
- III. Legally-Non-Binding Principles and Technical Guidelines
- IV. Multilateral Cooperation Mechanisms
- V. International Fora

USA examples of international cooperation ③

A. Multilateral and Bilateral Legally Binding Agreements

- * ISS Intergovernmental Agreement, Memoranda of Understanding, and subsidiary agreements (“Implementing Agreements”)
- * Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite-Based Navigation Systems and Related Applications
- * Bilateral Framework Agreements for Civil Space Cooperation (with Argentina, Brazil, Canada, France, India, Israel, Japan, Norway, Russia, Sweden, Ukraine, etc.)

B. Legally Non-Binding Principles and Technical Guidelines

- * UN Principles;

C. Multilateral Coordination Mechanisms

- * The Committee on Earth Observation Satellites (CEOS);
- * International Charter on Space and Major Disasters
- * International Space Exploration Coordination Group (ISECG)

D. International Fora

- * International Astronautical Federation (IAF), etc.

European Space Agency (ESA) ④

Three types of cooperation mechanisms

1 ESA as a mechanism of international cooperation

- between member states of the ESA

2 ESA as an actor of international cooperation

- ESA cooperating with non-member States

- ESA cooperating with international organizations

European Space Agency (ESA) ⑤

Among ESA

- The ESA Convention

ESA International legal personality with treaty-making power

-The Organs of ESA: the Council; the Director General

* Mandatory activities and optional activities as central element of the cooperation mechanism

Several forms of legal instruments used by ESA

- a) Cooperation agreements;
- b) Other international agreements;
- c) Implementing arrangements (usually under a high-level agreement)
- d) Memoranda of Understanding (with legal obligations)
- e) Exchange of Letters (with legal obligations)

Russia ⑥

1 **Multilateral Cooperative Projects** are enumerated.

ISS, Inter-Agency Space Debris Coordination Committee (IADC);

GEO and GEOSS 10 year implementation Plan;

International Committee on Global Navigation Satellite Systems (GNSS);

International Satellite System for Search and Rescue (COSPAS-SARSAT);

UNISPACE III related projects, etc.

2 **Commercial services** are also specified as a type of international mechanism for cooperation

* Since 2005, Russia has been the market leader for launch services.

China ⑦

1 Bilateral cooperation

*bilateral governmental agreements

space agencies competent bodies to implement the agreement
→formulate **a joint committee** →identify key areas of cooperation

68 agreements with 24 nations and international bodies

*assist the developing countries through in-orbit delivery of telecommunications satellites (e.g., Venezuela, Pakistan);

2 Multilateral cooperation

*relevant international organizations as the main platforms

UNCOPUOS, IADC, Disaster Charter, etc.

2014 Work of the Working Group

2014 working group (WG) established

WG adopted a questionnaire consisting of 12 questions → The WG encouraged States members of the Committee and permanent observers to refer to the set of questions, **as appropriate and on a voluntary basis**, for guidance on their contributions to the work of the WG.



“Request the Secretariat to prepare a report categorizing the range of mechanisms for international cooperation--- based upon submissions by Member States as well as additional research, to be distributed to Member States in advance of the session of the Legal Subcommittee.”

(3) A set of questions ①

1 What is the main area of your cooperation (e.g., space exploration, scientific research, testing, education and personnel training, global navigation, disaster management through remote sensing, commercial launch services, etc.)?

2 Is this multilateral or bilateral cooperation (e.g., intergovernmental cooperation, inter-agency cooperation, cooperation between non-governmental entities, mixed cooperation, etc.)?

②

- 3 What is the duration of cooperation?
- 4 Does a national space agency play a key role in the cooperation?
- 5 Does a national authority or institution other than a space agency play an important role in the cooperation (e.g., a scientific institution, meteorological agency, development or financial assistance authority, etc.)?
- 6 Are private companies or industries directly involved in the cooperation?

③

7. Is the cooperation conducted within the framework of:

- (a) The United Nations and its specialized agencies;
- (b) Independent intergovernmental organizations;
- (c) Regional or interregional space cooperation organizations or mechanisms;
- (d) Non-governmental organizations;
- (e) Other types of forums?

④

8 Is the cooperative mechanism multilateral or bilateral?

9 Is the cooperative mechanism:

(a) A legally binding agreement;

(b) A non-legally binding arrangement (if so, what kind of arrangement);

(c) A combination of both?

10 Is the cooperative mechanism constituted by a framework agreement, either multilateral and bilateral, and is it accompanied by an implementing agreement or arrangements and/or a memorandum of understanding for technical cooperation and coordination within the cooperation?

⑤

11 What kind of provisions do the legally binding agreement and/or non-legally binding arrangement contain? The following types of provisions serve as examples and may be referred to, as appropriate:

- (a) Best effort clauses;
- (b) Jurisdiction clauses;
- (c) Financial arrangements or non exchange of funds;
- (d) Exchange of technical data and goods;
- (e) Provisions which pursue international responsibility and liability;
- (f) Cross waiver of liability;
- (g) Rules on intellectual property rights and ownership;
- (h) Peaceful settlement of disputes clause;
- (i) Other types of provision?

⑥

12 Is it clearly provided for in the legally binding agreement or non-legally binding arrangement that the operation of the project shall be conducted in accordance with the United Nations treaties on outer space and in consideration of principles on outer space and related General Assembly resolutions (resolutions on the concept of the launching State, registration practice, national legislation, etc.)?

An example of bilateral non-binding mechanism between space agency and non-space agency

Agreement between JAXA and the Ramsar Secretariat regarding cooperation on global wetlands survey by use of Japanese ALOS images



The Convention on Wetlands of International Importance especially as Waterfowl Habitat
(entered into force in 1975)

Key provisions of the Agreement

Art. 3 Financial Arrangements

Cooperation is subject to availability of funds

No cost incurred by one party will be assumed by the other party

Each of the JAXA and the Ramsar Secretariat **will use its utmost efforts to** implement its contributions (Arts.4 & 5)

In case for technical reasons ALOS terminate its operations, JAXA will inform Ramsar Secretariat accordingly (Art. 6)

Each Party shall be entitled to terminate this agreement unilaterally in writing (art. 7)

.

(continued)

* Offer from JAXA to the Ramsar Secretariat is **based on good will**– (Annex)

*The Ramsar Secretariat agrees that ALOS images are made available without any assurance or warranty that images, products and information derived meet the intended needs of the Ramsar Secretariat.
(Annex)

* **Intellectual Property Rights** of ALOS images shall belong to JAXA (Annex)

4 Concluding remarks: for the Future 2017 as the 50th Anniversary of the Outer Space Treaty

Replies from States members and permanent observers of the COPUOS are encouraged to be submitted by no later than 21 Nov. 2014.



Information + additional research by the Secretariat



A report categorizing the range of mechanisms for international cooperation prepared by the 2015 LSC of the COPUOS



For a useful result celebrating the 50th anniversary of the Outer Space Treaty