

Lessons from other regimes (telecommunications, aviation, maritime)

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Rationale for registration in international law

	Space law	Maritime law	Aviation law	Telecommunications law
Attribution of jurisdiction over a res	Jurisdiction and control through national registration (Art. VIII OST, REG)	Nationality through national registration (Art. 91 UNCLOS)	Nationality through national registration (Art. 17 CC)	
Rational and conflict-free use of orbit/spectrum resource				Recorded assignment as a legally protected right to use orbit/spectrum resource (No. 8.3 RR)
Transparency and public awareness	Publically accessible UN Register (Art. III REG) Notification of marks (Art. V REG)	Fly the flag of the State of nationality	Display of marks (Art. 20 CC) Reports of registration (Art. 21 CC) Aircraft Registration System (ARS) Air Operator Certificates System (AOC)	Master International Frequency Register – MIFR (No. 11 RR)

Divergence between jurisdiction and operation

Flag of convenience

“Flag of convenience” in maritime and aviation law:

→ divergence between nationality, jurisdiction and ownership

Motivation

- Tax avoidance
- Low-cost safety and labour standards

Consequences

- Safety and social dumping
- Reduced effective oversight (duty of the flag State/ State of registry to implement international obligations)
 - Aviation: Art. 12, 30, 31 and 32 a) Chicago Convention
 - Maritime law: Art. 94 UNCLOS

Divergence between jurisdiction and operation

Maritime law

‘Genuine link’ as condition for nationality:

“[...] Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.” (Art. 91 UNCLOS)

1986 UN Convention on the Conditions for the Registration of Ships

ITLOS Case No. 2: M/V “Saiga” (1999):

“the purpose of [Art. 91 UNCLOS] is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.”

→ far-reaching freedom of registration

Divergence between jurisdiction and operation

Aviation law

‘Genuine link’ as a condition for nationality disputed
→ far-reaching freedom of registration

Transfer of operation (Art. 83 *bis* Chicago Convention):

“[...] when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or [...] his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.

Divergence between jurisdiction and operation

Lessons – space law

Limited freedom of registration

- Registration contingent on launching State quality
- transfer of operation / change in supervision
 - transferee: responsible for space activity (Art. VI OST)
 - transferor: retains jurisdiction and control and remains liable as launching State (Art. VII OST)

Analogy to Art. 83 *bis* Chicago Convention

- Bilateral agreements between State of registry (transferor) and the responsible State (transferee)
- ‘shall’ retain jurisdiction and control (Art. VIII OST) as a due diligence obligation to ensure compliance with international law
- Development of model agreement in COPUOS

Rational and conflict-free use of limited resource

Telecommunications law

'Paper satellites'

- Filings without actual use
- Scarcity of orbit/spectrum resource vs. increasing demand

Ensuring actual use of filings

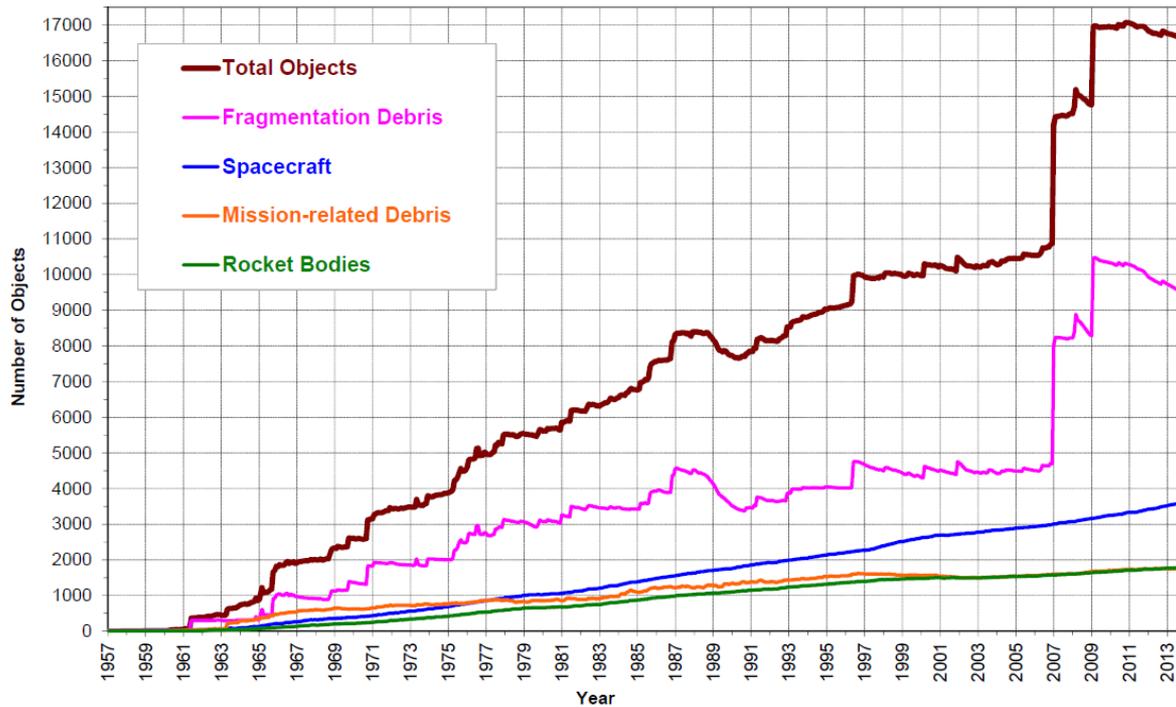
- Administrative due diligence (Resolution 49, rev. WRC-12)
- Bringing into use (No. 11.44B RR, WRC-12)
- Maintenance of MIFR by RB (No. 13.6 RR, WRC-12)

→ addressing the risks posed to the rational and conflict-free use of the orbit/spectrum resource

Rational and conflict-free use of limited resource

Lessons – space law (I)

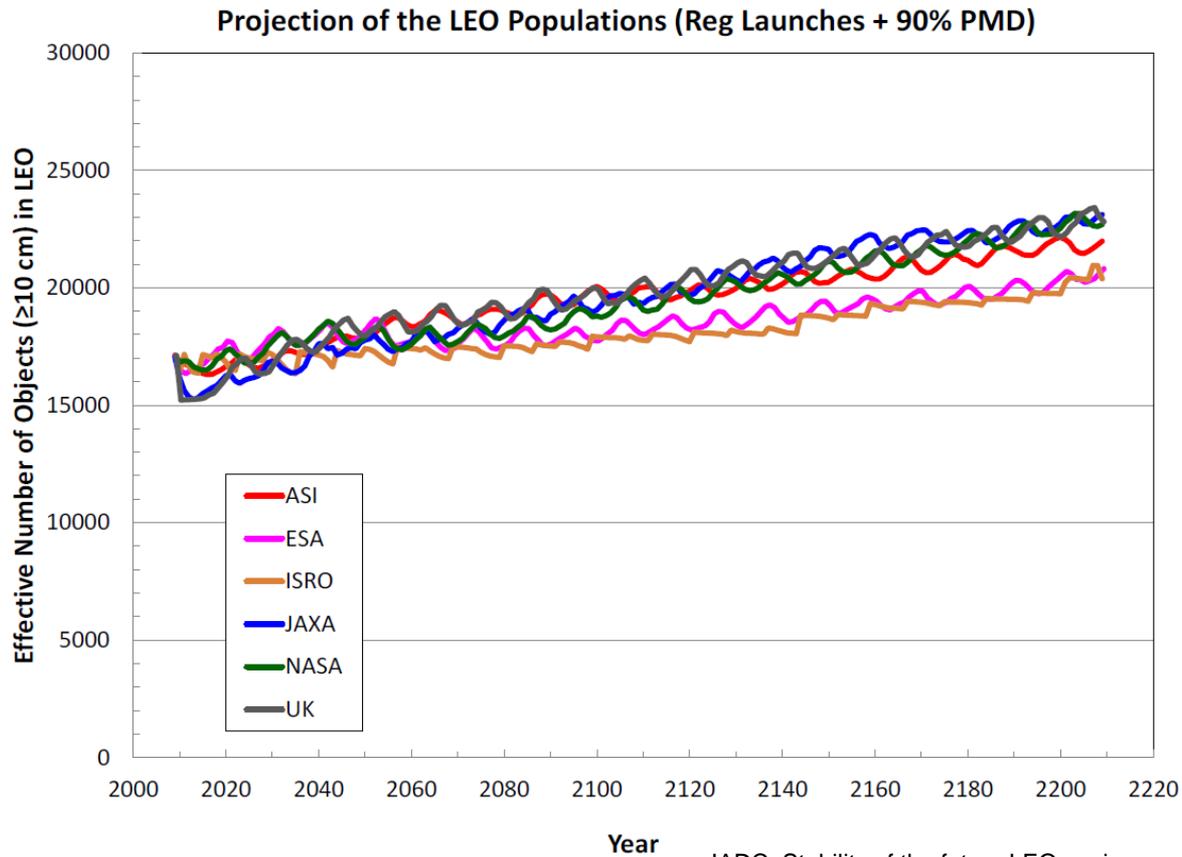
Monthly Number of Objects in Earth Orbit by Object Type



NASA, Orbital Debris Quarterly News (18,1) 2014

Rational and conflict-free use of limited resource

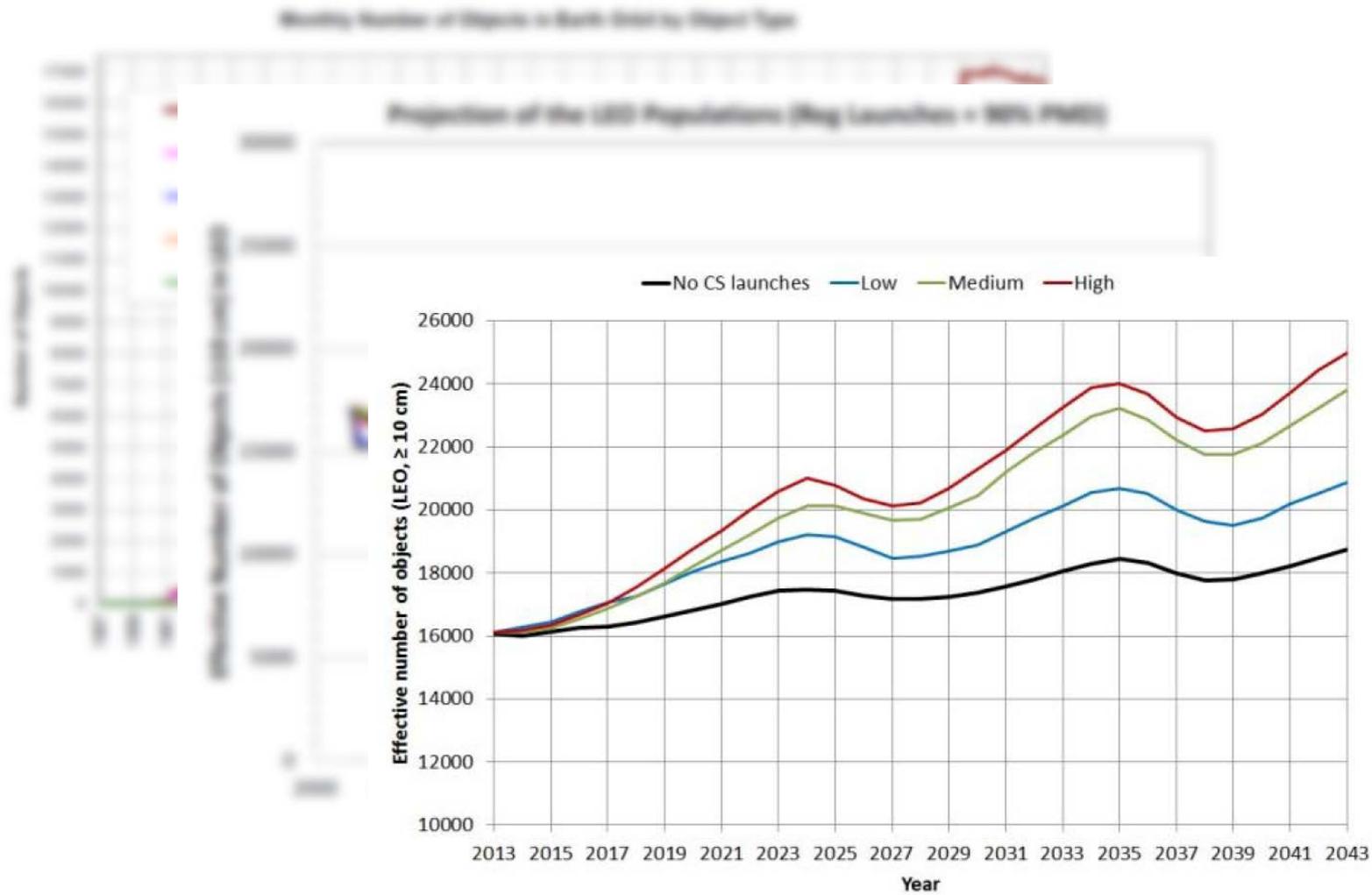
Lessons – space law (I)



IADC, Stability of the future LEO environment, 2013

Rational and conflict-free use of limited resource

Lessons – space law (I)



Lewis et al., An assessment of cubsat collision risk, 65th IAC 2014

Rational and conflict-free use of limited resource

Lessons – space law (II)

Needs

- Risk management through effective collision avoidance
- Means: SSA regime (detect & track objects, up-to-date catalogue)

Implementation

1. Change in the rationale of the current registration regime:
 - *Lex lata*: attribution of jurisdiction and control
 - *De lege ferenda*: ensuring safe space operations through data sharing
 - Amendment of the REG
2. Separate SSA regime
 - Link to existing registration regime
 - Part of a regulatory regime for STM

Thank you for your attention.