

Existing Global Space Governance and the Way Forward

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“Space as a driver for socio-economic sustainable development”

by
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Outline of my presentation:

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- ▶ Existing Global Space Governance System
- ▶ Need to expand and strengthen
- ▶ The Way Forward: Recommendations for the UNISPACE+50
- ▶ My presentation is based on the belief that an appropriate global space governance system is a pre-requisite for the achievement of the goal of sustainable use of outer space for peaceful purposes and for the benefit of all humankind.

First : who we are and what do we do?



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Institute of Air and Space Law: In brief

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- For the last 65 years, the McGill Institute of Air and Space Law (IASL) has been the world leader in the field of air & space law.
- Mission: to educate the next generation of air and space lawyers to serve the needs of the air and space community worldwide.
- The IASL offers the most advanced and extensive graduate level programs in air and space law in the world.
- Programs: (1) Graduate Certificate; (2) Master of Laws; (3) Doctor of Civil Law; (4) Post-doctoral Research.
- During the past 65 years, the Institute has produced more than 1,000 graduates from more than 120 countries.



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Institute of Air and Space Law: Research

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- The Institute has been undertaking cross-sectional advanced research on a variety of aviation and space related issues.
- Our research approach is mainly practical (applied - empirical), international and neutral
- We have a large and highly competent team for research on space governance
- Currently, we are pursuing 8 research projects.
 - A multi-year International Study on Global Space Governance (70 researchers)
 - McGill Manual on International Law Applicable to Military uses of Outer Space (MILAMOS) 40 experts



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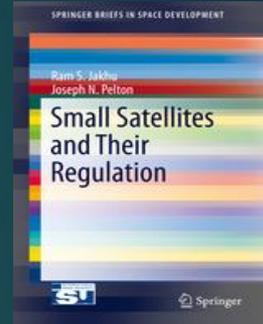


Institute of Air and Space Law: Publications

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➤ We annually publish the *Annals of Air and Space Law*, *Monographs* and *Occasional Papers*. Other publications include:

- ***Small Satellites and Their Regulation (2014)*** by Ram Jakhu, Joseph Pelton
- ***Space Mining and Its Regulation (2016)*** by Ram Jakhu, Joseph Pelton, Yaw Nyampong
- ***Routledge Handbook of Space Law (2017)*** edited by Ram Jakhu, Paul Dempsey



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Institute of Air and Space Law: Consultation & outreach activities

- The Institute and its Faculty members have often been consulted by the ICAO, the ITU, the Permanent Court of Arbitration, the World Economic Forum, several governments, airlines, and space agencies from various countries.
- Annually, we organize numerous international workshops and conferences around the world.
- 2nd Manfred Lachs International Conference on Global Space Governance in May 2014
- 5th Manfred Lachs International Conference on Global Space Governance & Sustainable Development Goals in May 2017.
- Currently, we are involved in 5 outreach activities.



Term 'Global Space Governance' Indicates:

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- ▶ (a) firstly, a collection of relevant binding norms and rules as well as non-binding principles, guidelines, standards, best practices, etc., that apply to outer space, celestial bodies and the conduct of outer space activities; and
- ▶ (b) secondly, the composition and working processes of appropriate international institutions that adopt, revise and sometimes monitor the implementation of these international norms and guidelines.



A. Existing Global Space Governance System

- ▶ The existing global space governance system comprises of several international treaties, some norms of customary international law, numerous non-binding principles & guidelines.
- ▶ The most important of the binding treaties include: the UN Charter, the Partial Test Ban Treaty, five UN space treaties, the ITU Constitution, Convention and Radio Regulations. There are several non-binding but important resolutions and guidelines that are applicable to space activities.
- ▶ The global space governance framework has essentially been adopted through several international institutions, primarily within the UN system, i.e. the UN General Assembly and its Committee on the Peaceful Uses of Outer Space (COPUOS) & the International Telecommunication Union (ITU).



Existing Global Space Governance System

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- ▶ International principles and rules contain several freedoms, some prohibitions but numerous obligations of States.
- ▶ Non-compliance with such prohibitions and obligations would incur State responsibility, even if no damage or injury results from an act or omission of the concerned State and its private companies.
- ▶ For proper understanding of the existing global space regulatory system, it is imperative that both the letter of, and the spirit behind, the provisions of space treaties must be taken into consideration.



Existing Global Space Governance System

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- ▶ There are several specific characteristics of global space regulatory system that are different from those of general international law. For example, unlike general international law, States are responsible and can be held internationally liable for the actions and omissions of their respective private entities.
- ▶ From the perspective of existing international space law, there exist no private space activities. Such activities are legally considered to be the national activities of those States that have genuine link to the entities which carry them out. For example, claims of private property rights over space natural resources, if advanced or allowed, will be considered to be those of the concerned States.



Existing GSG System Creates a Fair Balance:

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- ▶ The existing global space governance system creates a fair balance between:
- ▶ Freedom of exploration and use **and** prohibition of appropriation;
- ▶ Interests of developed countries **and** developing countries;
- ▶ Interests of space-faring nations **and** non-space-faring nations;
- ▶ Interests of States **and** private entities;
- ▶ National interests **and** due regard for the interests of other States;
- ▶ Interests of the present generation **and** future generations;
- ▶ Peaceful purposes **and** military uses;



Existing GSG System Creates a Fair Balance:

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- ▶ National jurisdiction **and** international cooperation;
- ▶ Internationally binding treaties **and** non-binding instruments;
- ▶ International law **and** national laws;
- ▶ National security **and** international peace and security;
- ▶ Broad general principles **and** specific rules;
- ▶ Geopolitical realism **and** international visionary objectives; and
- ▶ New space-specific norms **and** traditional principles of general international law



Maintenance of a fair Balance is imperative

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- ▶ After the completion of the draft Outer Space Treaty in the COPUOS, the US delegate stated:
- ▶ *The treaty has “established a fair balance between the interests and obligations of all concerned, including the countries which had as yet undertaken no space activities...”*
- ▶ The maintenance of this “fair balance” is the most fundamental pre-require for the success of the global space governance order, and is indispensable for human progress in outer space.



Existing Global Space Governance System 14

- ▶ The existing global space governance system has so far proved to be sufficient and helpful in maintaining law and order in outer space.
- ▶ However, the question arises whether, in view of the dramatic changes that are currently occurring, such governance system would remain adequate in the future.



B. Changing Nature & Scope of Space Activities

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- ▶ Today, humanity has become so dependant on space applications that a day without satellites would have unimaginable consequences.
- ▶ Space activities are no longer limited in scope and no more being undertaken only by a handful of countries.
- ▶ The global space sector is fast becoming an important economic activity, primarily because of the increasing participation by the private sector.
- ▶ Changes in the nature and scope of space activities and in the number of space actors clearly indicate the inadequacy of the existing global space governance to address many issues related to the exploration and use of outer space.



Changing Nature & Scope of Space Activities

- ▶ Such inadequacy is fast emerging in several areas, some of which include the unsettled boundary between air space and outer space; international safety standards and operational procedures for aerospace vehicles; space situational awareness and space traffic management; active debris removal and on-orbit satellite servicing; private space stations; mining of space natural resources; NewSpace technologies and operations; the blurring of commercial and military uses of satellites; the use of force in space and weaponization of space; etc.
- ▶ Consequently, there is a serious need: firstly, to address these legal inadequacies and secondly to strengthen the international institutions for expanding global space governance.
- ▶ Innovations in space technologies and operations must be accompanied by innovations in global space governance



C. The Way Forward: Recommendations

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- ▶ In order to move forward, I submit the following suggestions:
- ▶ Firstly, all the current five UN space treaties must be ratified (and adhered to) by all States that have not yet done so.
- ▶ Secondly, it would be prudent to expand the mandate of the COPUOS and the activities of the UN Office for Outer Space Affairs (OOSA).
- ▶ In order to make the COPUOS more efficient, the decisions in the Committee should be made with more appropriate formula.



The Way Forward: Recommendations

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- Middle-space powers and emerging space-faring nations should become more active in the COPUOS.
- ▶ It is essential to maintain the fair balance between a variety of interests and objectives.
- ▶ Non-binding resolutions are not replacement for binding treaties in all situations. The choice between non-binding and binding instruments should be made on the basis of the need for, and the extent of, the regulatory certainty in each case.
- ▶ Both top-down and bottom-up approaches should be followed through active interactions between the States, civil society, academic institutions, and private entities.



The Way Forward: Recommendations

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- ▶ Private initiatives should be encouraged and facilitated in order to generate and expand space benefits. However, they ought to be carefully regulated internationally and nationally.
- ▶ Thirdly, eventually a permanent Global Space Organisation should be created. Several space related issues are becoming intertwined in terms of technology and policy. Therefore, it makes sense that a single international organisation is created to regulate space activities in holistic manner. Such Organisation should not be exclusively State-centered but should have active participation by non-State actors.
- ▶ These recommendations are not in any way exhaustive or mutually exclusive. The search for new means for an appropriate global space governance system must continue.



Conclusions

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- ▶ The existing global space governance system has not become outdated and clearly serves as a solid foundation.
- ▶ However, due to the ever-expanding range of space activities, and the increase in the number of stakeholders with divergent interests and priorities, the existing space legal order has begun to show its inadequacies.
- ▶ Expansion in space activities and actors and the global space governance system are moving in the opposite directions.



Conclusions

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- ▶ **A weak and inadequate global space governance would give rise to conflicts and possibly anarchy on Earth and in outer space.**
- ▶ **Regulatory certainty, which is imperative for the private sector and the international community, must be expanded and strengthened.**



The Way Forward: Dubai Declaration

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- ▶ It should be affirmed that space is an important global commons
- ▶ It should be affirmed that the Outer Space Treaty, as the most important foundational international agreement, must be respected by all States and stakeholders
- ▶ There is a serious need to expand and strengthen the existing global space governance system
- ▶ The mandate, role, activities and resources of the COPUOS and OOSA, as the central space-focused international institutions, should be expanded and strengthened
- ▶ Capacity-building in global space governance should be significantly expanded





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Thank you for your attention !



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