Is Customary Law a Source of Space Law?

Luboš Perek
Learned Society of the Czech Republic
perek@ig.cas.cz
Delimitation of OS at the UN

• **Scientific and Technical Subcommittee of COPUOS:**
  – Start of discussions: 1959
  – End of discussions: 1967
    • “It is not possible to identify scientific and technical criteria which would permit a precise and lasting delimitation of Outer Space”

• **Legal Subcommittee:**
  – Discussions: for about 40 years up to 2011
  – No consensus reached
  – 2010 decision: Questionnaire to Governements of Member States
Recent Technological Changes 1

• **Space Debris at the UN:**
  – First explicit information on Space Debris in 1979, study by OSAD on Mutual Relations of Space Missions,
  – Space Debris on the agenda of the S&T Subcommittee in 1994,
  – In 2007 Space Debris Mitigation Guidelines.
  – Space Debris constitute 95% of objects in space
  – Re-entry of space debris is independent of the adoption of OS delimitation and vice versa.
Recent Technological Changes 2

• **Space Traffic Rules**
  – First paper on Traffic Rules in Outer Space appeared in 1983,
  – Cosmic Study on Space Traffic Management (p. 39):
    “Missing delimitation can become a problem when the re-entry of reusable vehicles is concerned” ... “A space traffic system has to answer the question of where innocent passage of reusable vehicles starts”.

Recent Technological Changes 3

- **Wide use of navigation systems:**
  - Three independent navigation systems: GPS, GLONASS, GALILEO, implies coverage of all objects
  - Improvement in precision of position determination

- **Basic attributes of space flight have not been changed by recent technological changes**
Role of science and technology

• Precise limits or boundaries are rather exceptions than rules in science,
• Properties of the atmosphere change gradually with altitude, some vary with a daily or yearly period or with the period of solar activity (11 years),
• Science may indicate a region where a delimitation is compatible with physical facts,
• A precise boundary is needed for application of law.
Altitudes above 100 km

• Population:
  – about 1000 active satellites,
  – some 20,000 larger space debris,
  – very large number of small debris.

• Launchings into Outer Space announced to the GS of the UN

• Announcements submitted for more than 50 years, for a large majority of space objects.

• No protests or opposition to innumerable orbital flights over territories of sovereign states.
Customary Law

• Manfred Lachs in 1972: The conclusion seems to be warranted that an unwritten **rule of law** has gradually come into being.

• At present, 40 years later, no protests against overflights, functioning practice of announcements of launchings into Outer Space.

• Conclusion: Outer Space is at least the region populated by space objects.

• **Space Law applies in Outer Space**, i.e. above 100 km.

• 100 km is a rounded off value, + or – 10 or 20 km.

• An explicit statement by COPUOS welcome, not essential
Altitudes below 100 km

• **Population:**
  – natural objects – meteorites,
  – Space Objects launched into, or returning from, Outer Space,
  – Re-entering space debris.
• **Status** not defined, traffic density low.
• Coordination with **air traffic** necessary at altitudes of **air traffic**
• Coordination case by case or an **international system** (ICAO ?)
Conclusion

- The practice of considering launches of orbiting space objects as successful and the absence of protests against flights over territories of sovereign States has become, in fact, a customary law in the sense that satellite orbits are in outer space.
- Space Law has to be applied in events occurring in orbits, i.e. above 100km altitude.
- Below 100 km space law may be applied if respective delimitation is internationally agreed upon.
- Proclamation of sovereignty higher than 100 km is not consistent with customary law.