The Role of Bilateral and Multilateral Agreements in International Space Cooperation

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Introduction

- International Cooperation since the advent of space age
- International agreements: one major and effective mechanism for international space cooperation
- Necessity to examine and assess the role of international agreements, and suggesting ways to further facilitate the conclusion of international agreements

The Role of International Cooperation in Space Activities

- **1958 Ad hoc committee was set up**
- **1959 The UN Committee on the Peaceful Uses of Outer Space (UNCOPUOS)**

- —The Legal Subcommittee and
- —The Scientific and Technical Subcommittee

- **UN documents regarding international space cooperation**

- —Outer Space Treaty
- —Rescue Agreement
- —Liability Convention
- —Registration Convention
- —Moon Agreement

- **The United Nations General Assembly (UNGA) Resolutions 1721(XVI) (December 20, 1961)**

- —Specify “international cooperation” in its sub-title and emphasized the importance of strengthening international cooperation in the peaceful uses of outer space.

The Role of International Cooperation in Space Activities

- **"Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space"** UNGA Res. 1962 (XVIII) (December 13, 1963)
- —International space cooperation principle was further emphasized.

- **Outer Space Treaty**
- — Article IX: "States Parties to the Treaty shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space…"

- Detailed elaboration can be found in **"Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries"(Space Cooperation Declaration)** UNGA Res. 51/122 (December 13, 1996)
- — 2.1 Formal Requirements (possible means) for International Space Cooperation
- — 2.2 Substantive Requirements (conditions) for International Space Cooperation

Formal Requirements for International Space Cooperation

- **Flexibility in dealing with formality of international space cooperation**
- —Governmental and non-governmental cooperation;
- —Cooperation in commercial and non-commercial matters;
- —Global, multilateral, regional or bilateral cooperation.

- **International cooperation among countries at all levels of development**
- —Including the cooperation between space-faring and non-space faring nations;
- —Cooperation between developing and developed countries.

- **The non-exhaustive of list of modes of cooperation**
- —Testifies that the resolution was drafted with the sole aim of promoting international space cooperation, allowing for all forms of cooperation between and among the countries.

Substantive Requirements for International Space Cooperation

➢ **The Basic Requirement**

- —The principle of party autonomy should be respected in the first place
- The states are free to decide on the appropriateness and effectiveness of certain modes of cooperation; however, it is necessary to put down minimum standards for such cooperation to protect the rights and legitimate interests of the states.

➢ **Three Substantive Requirements**

- — Space cooperation should be carried out on a mutually acceptable basis, showing the real intention of the cooperating parties.
- — Space cooperation shall be conducted on an equitable basis. The terms and conditions for cooperation should be fair and reasonable. This requirement does not simply mean to the cooperating parties, but also to the international society as a whole.
- — Special needs of developing countries should be well taken care of in space cooperation. Cooperation needs to be mind of the reality of space capabilities of developing countries.

International Agreements and International Space Cooperation

- Four Levels of Cooperation (Zelnio)
  - Coordination: while operating separately, the states coordinate on technical and scientific matters.
  - Augmentation: other states contribute to certain part of the project of a leading state, thus augmenting the original project of that leading state.
  - Interdependence: the states contribute to the operation of the project, but still controlling their own part of the contribution.
  - Integration: full cooperation with shared resources and responsibilities.
- Parties to International Agreements on Space Cooperation
  - Governments, Space agencies, private entities (such as space research institutions and universities)

Multilateral agreements

- **(1) Binding** multilateral agreements are fundamental to the development of space activities.
  - The **UN binding** international treaties helps to prevent disorder in the space field and realize rule of law for space activities.
  - Due to the increasing number of space-faring nations and diversifying interests in space activities, **non-binding** space-related multilateral agreements is increasing in the last three decades.
  - **Non-binding** multilateral agreements (UNGA resolution, EU-led Code of Conduct)

Multilateral Agreements

➢ **The advantages of the non-binding agreements**

- —to facilitate the drafting of new rules for reference and guidance.
- —persuasive in reality
- —the members have a moral obligation not to violate these rules
- —help the development of customary rules in the space field

➢ **(2) The establishment of international and regional intergovernmental organizations for the purpose of space cooperation: constitutional basis for international organizations**

- For example,
  - —International Telecommunications Union (ITU)
  - —World Meteorological Organization (WMO)
  - —The Asia Pacific Space Cooperation Organization (APSCO)

Multilateral Agreements

- **(3) Multilateral coordination mechanisms or common fora on space issues of common interests**
- —Inter-Agency Space Debris Coordination Committee (IADC)
- —The Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters
- —The Asia-Pacific Regional Space Agency Forum (APRSAF)

- **(4) Multilateral agreements for specific space projects**
- —The Intergovernmental Agreement (IGA) for the cooperation in the International Space Station (ISS)

Bilateral Agreements

- **The existence of bilateral agreements provides evidence on the common perspective shared by the two states regarding peaceful uses of outer space and strong interests in the development of space-related technology. (Dolzer)**

- **Bilateral agreements for certain space activities**
  - —E.g. 1989 and 1995 Sino-U.S. bilateral agreements regarding annual number of satellites launching services

- **Bilateral agreements for a specific space project**
  - —E.g. The Chinese-Brazilian Earth Resources Satellites agreements (CBERS)

- **Bilateral agreements as contractual document for commercial services**
  - —E.g. The agreement for satellite launching services

Assessment of the Existing Multilateral and Bilateral Agreements

➢**Space activities covered in these agreements**

- — Earth science and monitoring, satellite operations, space exploration systems, space technology development and demonstrations, global navigation, space launch services, disaster management, environmental protection, education, training and exchange of information.

➢**Space operation and our daily life**

- — Such as the application of mobile phones, digital broadcasting, and food safety.

➢**Space cooperation and space activities** not only are meaningful to the exploration of outer space, but also can exert strong influence on social, economic and cultural aspect of our daily life.

Assessment of the Existing Multilateral and Bilateral Agreements

➢**These agreements normally include the following provisions**

- — (1) The application of the four UN space treaties and international law
- — (2) Cross-waiver of liability
- — (3) Exchange and transfer of goods and technical data
- — (4) Protection of intellectual property rights
- — (5) Cooperation accession procedure (membership)
- — (6) Dispute resolution

Facilitating the Use of International Agreements in Future

- **The various forms of international agreements in the field of space cooperation**
- —Government-to-Government Framework Agreements
- —Intergovernmental Agreements
- —Agency-to-Agency Memoranda of Understanding
- —Implementing Arrangements
- —Letters of Agreements
- —Statements of Intent

Multilateral Agreements

- **Take a more flexible approach regarding multilateral cooperative framework**
- —The important role of non-binding multilateral agreements

- **A pragmatic approach should be adopted to tackle space-related legal issues**

- **An appropriate mechanism for multilateral cooperation**
- —For example, a multilateral agreement for setting up an organization will need to touch on the following issues: （1）membership, （2）coordination system, （3）internal operation structure (including secretariat), （4）finance, （5）decision-making process, （6）dispute resolution process, （7）flexibility for possible future development.

Multilateral Agreements

➢**General principles should be taken when making agreements**

- —create a trustful cooperation atmosphere and search for the compatible or common objectives between/among the states
- —remind the states of conducting space cooperation in an open and flexible manner, and carry out relevant activities in good faith.
- —some rules would be well prepared and followed in concluding the agreements, such as resolving disputes by consultation or negotiation and decision-making through consensus.

Bilateral Agreements

➢ **The importance of regional and bilateral agreements**

- — E.g. WTO recognizes the legal effect of regional arrangements and believes that regional arrangements will contribute to economic globalization in the long run. This shall similarly apply to the space field.

- —The US has drafted bilateral framework agreements to facilitate bilateral negotiation and conclusion of bilateral agreement. A similar model bilateral framework agreement could be drafted for the space cooperation.

➢ **The possible space model agreement provisions（Besides these listed above)**

- The term and conditions for space cooperation in a wide range of space activities
  - (1) Export controls
  - (2) Custom clearance of space commodities
  - (3) Financial arrangements
  - (4) exchange of personnel

Observations

- The UN documents only call for the space cooperation in principle; the detailed cooperative activities, scope, methods and styles are totally left to the states themselves.
- While it is true that it is the states that are responsible for negotiation and implementation, some guidance at the international level would help to facilitate the negotiation and implementation of space projects. This would be particularly important to the less-developed (and less-experienced) states.
- **We need to note two dimensions of cooperation**

- —Vertical aspect of space cooperation: a state has the obligation under the space treaties to carry out space cooperation, which should be included in its national space law.
- —Horizontal aspect of space cooperation: the conclusion of bilateral and multilateral agreements to establish, strengthen and further expand space cooperation with other states. This can help to build trust and confidence among states.

Observations

- Bilateral and multilateral agreements could set up specific framework or mechanism for space cooperation.
- Such cooperative practice can further enrich space practice and contribute further development of space law and realization of rule of law in the space field.
- Some guidance, such as a model agreement or provision, could help to deal with technical and practical issues in the negotiation, and more importantly, serve as best practice in carrying out space cooperation and other principles in the space treaties.

Conclusion

- **International cooperation** in space activities has been an important principle from the very beginning of space age.
- **The UNCOPUOS** plays an important role in overseeing space cooperation at the international level.
- **The states** have initiated various programs through the conclusion of multilateral and bilateral agreements, these agreements form the **legal basis** for space cooperation.
- In order facilitate further and wider use of international space cooperation through agreements, **a model agreement /provision** could be drafted under the auspices of the UNCOPUOS (or possibly ILA?) to assist the states in negotiating their cooperative agreements.
- Wider and more frequent use of international agreements in space cooperation would in the end help to realize the **ultimate goal of peaceful uses of outer space**.

- THANK YOU!