universität wien

Space Law Treaties and Soft Law Development

United Nations/China /APSCO Workshop on Space Law

Beijing, China, 17 to 20 November 2014

Prof. Dr. Irmgard Marboe
University of Vienna, School of Law

universität wien

Outline

I) Space Law Treaties

II) UN General Assembly Resolutions on Principles in the Exploration and Use of Outer Space

III) Recent UN General Assembly Resolutions Responding to Privatization and Commercialization

IV) Other Recent Soft Law Instruments

I) Space Law Treaties

Five UN Space Treaties

- **Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies** 1967 (103/25) – "Outer Space Treaty"
- **Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space** 1968 (94/24) – "Rescue Agreement"
- **Convention on International Liability for Damage Caused by Space Objects** 1972 (91/22) – "Liability Convention"
- **Convention on Registration of Objects Launched into Outer Space** 1975 (60/4) – "Registration Convention"
- **Agreement Governing the Activities of States on the Moon and Other Celestial Bodies** 1979 (15/4) – "Moon Agreement"

(Ratifications and signatures as of 1 January 2014)

universität wien

Outer Space Treaty: The main legal principles

Article I: Exploration and use of outer space for the **benefit and in the interest of all mankind**, “province of all mankind”

Article II: Principle of **non-appropriation** by States

Article III: Use **in accordance with international** law, including the UN Charter

Article IV: No placement of **weapons of mass destruction** in orbit or on celestial bodies

Article V: **Astronauts** are considered as “envoys of mankind” and shall be assisted and protected

universität wien

The Outer Space Treaty (cont‘d)

Article VI: **International responsibility** for activities in outer space by governmental and **non-governmental (!)** entities

Article VII: International **liability** for damage

Article VIII: **Jurisdiction** over space objects by State of registry

Article IX: **“Due regard”** to corresponding interests of all other parties; **protection of the environment** of the Earth and outer space Article XI: Information to Secretary General of activities

Article XII: Stations, installations etc. on the celestial bodies **open to State parties representatives** on basis of reciprocity

universität wien

Rescue Agreement

Article 1:	**Notification** about accidents involving **personnel of a spacecraft** to launching authority and SG
Articles 2,3:	Obligation to take all possible steps to **rescue** and render **assistance**
Article 4:	Obligation to **return**
Article 5 (1):	**Notification** about accident involving a **space object** to launching authority and SG
Article 5(2,3):	Obligation to recover and to return
Article 5 (5):	**Expenses for recovery of space objects borne** by launching authority

Liability Convention

Article I c: **Definition of "launching state"**
Article I d: **Definition of "space object"**

Article II: **Absolute** liability

Article III: **Fault** liability

Article IX-XIII: Compensation claims

XIV-XX: Procedure at the **Claims Commission**

universität wien

Registration Convention

Article II: **National registration** required

Article III: **International registration** required (UN)

Article IV: **Information to be submitted**:

- name of launching state or states
- appropriate designator of the space object or its registration number
- date and territory of location or launch
- basic orbital parameters, including nodal period, inclination, apogee and perigee
- general function of the space object

universität wien

Moon Agreement

Article 11: **Common Heritage of Mankind**

1. The moon and its natural resources **are the common heritage of mankind**, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article.

5. States Parties to this Agreement hereby undertake to establish **an international regime**, including appropriate procedures, to **govern the exploitation of the natural resources** of the moon as such exploitation is about to become feasible. This provision shall be implemented in accordance with article 18 [regarding a review conference after 5/10 years] of this Agreement.

I) Space Law Treaties (cont'd)

Other Treaties

- **Constitution and Convention of the International Telecommunication Union as amended by the 2010 Plenipotentiary Conference** (193 State parties, more than 700 private sector members)
  "ITU Constitution and Convention"

- **Convention on International Interests in Mobile Equipment 2001** (in force since 2006, 62 State parties)
  "Cape Town Convention"

- **Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets 2012** (not yet in force, 4 signatories)
  "Space Assets Protocol 2012"

II) UN GA Resolutions on Principles

- **Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space,** Res 1962(XVIII) of 13 December 1963
- **Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting,** Res 37/92 of 10 December 1982
- **Principles Relating to Remote Sensing of the Earth from Outer Space,** Res 41/65 of 3 December 1986
- **Principles Relevant to the Use of Nuclear Power Sources in Outer Space,** Res 47/68 of 14 December 1992
- **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,** Res 51/122 of 13 December 1996

II) Recent UN GA Res Responding to Privatization and Commercialization

- **Application of the concept of the "launching State",** Res 59/115 of 10 December 2004
- **Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects,** Res 62/101 of 17 December 2007
- **Recommendations on national legislation relevant to the peaceful exploration and use of outer space,** Res 68/74 of 11 December 2013

II) Other Recent Soft Law Instruments

Addressing Space Debris, Safety and Long-term Sustainability:

- **Space Debris Mitigation Guidelines of UNCOPUOS,** endorsed by GA Res 62/217 of 22 December 2007
- **IADC Space Debris Mitigation Guidelines,** approved by the 20th IADC Meeting in April 2002, http://www.iadc-online.org/Documents/IADC
- **The STSC/IAEA Safety Framework for Space Nuclear Power Source Applications,** UN Doc.A/AC105/934 of 19 May 2009
- **Long-term Sustainability of Outer Space Activities (LTSSA),** agenda item of STSC of UNCOPUOS since 2009, envisaged guidelines elaborated by Working Group, within four Experts Group, to be submitted to UN General Assembly in 2016

II) Other Recent Soft Law Instruments

Addressing Safety and Security, Transparency and Confidence-building Measures and Long-term Sustainability

- **Group of Governmental Experts (GGE) Report on Transparency and Confidence-building Measures (TCBMs) in Outer Space Activities,** UN Doc. A/64/189 of 29 July 2013
- **International Code of Conduct for Space Activities,** initiated by EU, currently under consideration

universität wien

Hard Law vs. Soft Law

Treaties	GA Resolutions, Guidelines, Codes of Conduct, Declarations, Programmes, …
Binding upon States	Not binding upon States
Violation is unlawful and triggers State responsibility	Violation not unlawful, but could be contrary to “best practice”
Not binding upon private actors	Can be directed towards both States and private actors
Enforcement difficult (“de-centralized” system of int’l law)	If accepted as “best practice” enforcement by peer pressure
Could become binding upon private actors by inclusion in national space law	Could become binding upon private actors by inclusion in national space law

universität wien

Conclusion

- In the first decades of the space age, international treaties were elaborated to regulate outer space activities on an international level
- The UN Space Treaties and the ITU Constitution and Convention still represent the most important international legal bases for space activities
- Due to privatization and commercialization non-governmental space activities became widespread and needed appropriate regulation
- More space faring nations entered the scene
- Soft law instruments have become the preferred form of defining and refining norms for space activities
- Soft law has many advantages, is quicker, can address also private entities, is easier to adapt, and is also very effective through peer pressure and inclusion in national space legislation
- However, it is also disputed whether soft law is efficient and effective enough for some of today's most urgent challenges, e.g. space debris and military uses

universität wien

Thank you for your attention!

Prof. Dr. Irmgard Marboe
Department of European, International and Comparative Law
University of Vienna
1010 Vienna, Schottenbastei 10-16
Tel. ++43/1/4277/35311, Fax. /9353
e-mail: irmgard.marboe@univie.ac.at
http://intlaw.univie.ac.at/