

Common Security in Outer Space and International Law:

Book Abstract

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The legal status of outer space as determined in the Outer Space Treaty (OST) of 1967 requires that the use and exploration of space have to be in the "interest of all states" and "for the benefit of all mankind" (Article I OST). And thus emerges an implication, indeed an obligation of all states, to embrace "common" or "cooperative security" as the only option for truly guaranteeing the peaceful use of space. Such a cooperative regime finds its legal basis established in the mankind clause in Article I OST and the principle of cooperation and due account of the interests of all states in Articles IX and X OST, which are the principle elements attributing the status of outer space as a "common heritage of mankind".

However, in view of the risks of transgressing the line between the current passive military uses of space and the envisaged active military uses of a destructive nature in outer space ("weaponization of space") the substantive and procedural institutionalisation of the mankind clause, the cooperation principle and of the peaceful purpose clause as expressed in Articles I and IX OST becomes increasingly pressing.

These clauses were introduced in outer space law at the onset of the space age in 1957 by a joint draft UN General Assembly Resolution of the United States, France and Great Britain. These states had the same prime objective as the international community to ensure that outer space would not be monopolized by the security interest of one or a group of states but rather for the benefit of all states and for mankind as a whole. The peaceful purpose standard as well as the mankind-clause were then codified in the 1967 Outer Space Treaty. However, a controversy still continuing until today arose over the interpretation of the peaceful-purpose clause. The unproductive dichotomy when interpreting the peaceful purpose clause either through the "maximalist" school, according to which any military use of outer space is prohibited, or the "minimalist" approach viewing the term "peaceful" as only a confirmation of the prohibition of the use of force in outer space needs to be overcome. The solution lies in interpreting the term "peaceful purpose" in light of both the mankind clause of the common heritage of mankind principle and the cooperation principle as applied to the security field as well as by developing legal standards of peaceful use of outer space in the interests of the international community as a whole.

State practice, including the annual resolutions by the UN General Assembly on preventing an arms race in outer space since 1981, bears evidence that the international community has so far only accepted passive military uses of outer space by *reconnaissance*, navigation and communication satellites but rejects the unilateral transgression towards active military uses with destructive effect in the common space.

Steps to deploy a multilayered missile defence with space-based interceptors would violate the peaceful purpose standard and the mankind clause if pursued unilaterally and without the consent of the international community. The objective of space-based Missile Defence which, according to the *US National Missile Defense Act* of 1997 is to protect against

unauthorized nuclear attacks and against limited nuclear attacks of the so called 'rogue states', need to be implemented in the framework of a cooperative security regime for outer space. Otherwise, they will cause an arms race in space and stimulate nuclear proliferation on Earth.

In its advisory opinion of 1996 on the *Legality of Nuclear Weapons* the International Court of Justice concluded that the obligation of the nuclear weapons powers to achieve complete nuclear disarmament according to Article VI of the Nuclear Non-Proliferation Treaty (NPT) is an obligation to conclude, and not only to negotiate, a nuclear disarmament and non-proliferation agreement. The UN General Assembly has expressly stated that the obligations of the NPT apply to outer space as well. The unilateral pursuit of a space-based missile defence, with the risk of the weaponization of space, would run counter to the disarmament obligations of the nuclear powers. The bilateral Anti-Ballistic Missile (ABM) Treaty that prohibits the development and deployment of space-based ABM systems implemented the multilateral peaceful purpose standard which has effect *erga omnes*. Therefore, after its renunciation, the ABM Treaty has to be replaced by new cooperative security arrangements safeguarding the security interests of the international community in the use of outer space for the benefit of all mankind.

In the face of the changing character of security threats, "common security" is the new strategic imperative of the post-Cold War era. Even though general international law contains on several accounts the foundation for "common security", it cannot yet be regarded as a mandatory legal principle. However, the enhanced "common interest" obligations of the Outer Space Treaty render the pursuit of cooperative/common security in outer space a legal obligation in the implementation of the peaceful purpose standard in the use of the common space in the interest of all states and mankind as a whole. The Joint US-Russian Declaration adopted at the American-Russian summit of 23rd/24th May 2002, according to which both sides agreed to a far-reaching cooperation to meet *common security* challenges, in particular with regard to questions related to the national missile defense issue, opens the prospect that the former rivalling powers are willing to embark on a cooperative *strategic transition* towards *common security*. Without such a cooperative approach and without an adequate multilateral framework safeguarding the security interests of the international community with regard to the use of outer space, the legal principle of the peaceful use of outer space risks losing its practical relevance as a limitation of military uses of extraterrestrial space in view of developments *de facto*.

The negotiation of a multilateral "Treaty on Common Security in Outer Space" (CSO-Treaty) as proposed in this book would be an appropriate institutionalisation of the peaceful purpose standard and the mankind clause as manifested in the Outer Space Treaty. Such a treaty would additionally lay the groundwork for a cooperative strategic transition towards rendering nuclear deterrence obsolete, thus replacing "Mutual Assured Destruction" by "Mutual Assured Security". Further adoption of "strategic reassurance measures", as stipulated in such a treaty, would keep outer space free of weapons and allow for an active non-proliferation policy of the international community.

The main elements of such a CSO Treaty can be categorized as follows:

1. Principles of cooperative security in outer space
 - Transparency and confidence-building
 - Defensive force configuration
 - Non-proliferation and disarmament

- Protection against unauthorized and accidental missile attacks and attacks in violation of non-proliferation regimes
- 2. Prohibition of active military uses of a destructive effect in outer space
- 3. Destruction of existing ASAT systems
- 4. Confidence-building measures
- 5. Protective regime for civil space objects and passive military uses of a non-destructive nature in outer space
- 6. Implementation: monitoring und verification by an International Satellite Monitoring Agency
- 7. Codification of further legal standards of peaceful use of outer space.

The international community should not fall behind the peaceful purpose standards in the use of outer space that were respected by both major space powers even at the height of the Cold War era. The Outer Space Treaty, with its mankind clause and the peaceful purpose standard, has in a far-sighted manner laid the foundation for the establishment of a regime of common security in outer space in order to prevent the transgression towards active military uses of a destructive nature in outer space and to secure a peaceful future in the common space.

Publications by the author on the topic:

“Common Security in Outer Space and International Law” (2006) by *Detlev Wolter*, UNIDIR, Geneva. An extensive study of the concept by the author was published in Germany by Duncker&Humblot:

Detlev Wolter, Grundlagen “Gemeinsamer Sicherheit” im Weltraum nach universellem Völkerrecht, Berlin, Juni 2003, 578 pages

About the Author

Dr. Detlev Wolter, Head of European Policy and Law Division, State Chancellery, Brandenburg, was Political Counsellor at the German Mission to the United Nations in New York (2003-2005), and served as Vice-Chairman of the First Committee of the 60th UN General Assembly. He was also Chairman of the Group of Interested States in Practical Disarmament Measures and Co-Chairman of the Group of Like-Minded States on Conflict Prevention. He has a Master of International Affairs, Columbia University, New York and a PhD in international law and arms control from Humboldt University, Berlin.

The author presents his personal views.