



**British Institute of
International and
Comparative Law**

Report on the Seminar

International Space and Cyber Security: Is International Law (Finally) Going Extra-terrestrial?

5 December 2013



On 5 December 2013, the British Institute of International and Comparative Law hosted the event 'International Space and Cyber Security: Is International Law (Finally) Going Extra-terrestrial?', discussing the security and policy issues and international legal aspects of regulating activities in outer space. The panel was composed of chair Professor Sa'id Mosteshar (London Institute of Space Policy and Law) and discussant Wing Commander Gerry Doyle (Royal Air Force). The second discussant, Dr Jackson Maogoto (University of Manchester School of Law) was unable to attend, therefore the attendees were given a draft of his contribution entitled 'Smokeless War – Kinetic and Non-Kinetic Uses of 'Non-Sovereign' Spaces: From Scientific Fantasy to Technological Reality' that was used as a basis to encourage discussion.

Wing Commander Gerry Doyle, speaking in a personal capacity, opened the seminar by underlining the increasing effect of space capability on daily life and the growing dependency of civil society and the military and security community on activities in space for services on earth such as navigation. He also noted that since the first policy publications on going into space, dating back to the 1940s, system performance has much improved. There were long standing questions on how to ensure access and to protect activities in space. In his view, the biggest threat is posed not by rogue actors but by the consequences of legitimate activity in space and natural and manmade hazards associated with them. Yet although he recognised that space law is essential to a secure space environment, he was of the opinion that currently it would be better to clarify existing interpretations of legislation rather than formulating a new legal regime or radically extending the existing legislation. For example, referring to principles such as the peaceful use of space set out in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty, 1967, and later additions), he found examples where clarification of military principles (e.g. discrimination) as applied to activities in space, would be beneficial. Observing that there is already plenty of law, and bearing in mind the difficulties attached to treaty negotiations, he argued that these issues should not be addressed in a new treaty but rather in codes of practice, which are more fertile and conducive to instilling confidence and predictability.

Professor Mosteshar then discussed other hazards to space capabilities, the most important being space debris that require space situational awareness and legal regulations. He also emphasised the importance of ensuring access to space and preventing claims of sovereignty of (part of) the outer space. He agreed that there is a well-established legal framework and that there should be a development in interpretation of that framework, especially since in the current international and political environment a new treaty could have disastrous effects. He then highlighted that although space should be used for peaceful purposes; there is no absolute prohibition of military activities or weapons in space. The Outer Space Treaty only explicitly prohibits the use or placement of nuclear weapons and other weapons of mass destruction thereby implying that there might be other weapons that are not prohibited. Also, with regard to the legal regulation of space in general, he identified the issue of property and property rights in space and noted that the Outer Space Treaty is an instrument of public international law and therefore regulates state actions and not individual action. But in the absence of state jurisdiction to establish a legal property regime applicable to any part of space, it is difficult to determine and assert the scope or nature of any 'ownership' rights in or over outer space.

Dr Maogoto's paper is grounded in the context of the underpinning of information systems by space assets and the perception of outer space and cyberspace as the fourth and fifth domains in warfare. Dr Maogoto considered the scope of application of Article 2(4) of the United Nations Charter and whether it can be extrapolated and applied in such a way that space and cyber-attacks amount to the use of force and trigger an international response. He addressed the information revolution in military affairs and the problems posed by 21st century military technologies and concluded that 'the boundless boundaries of outer and cyber space are a legal quandary'. Namely, he argued that the changing forms, concepts and definitions of terms as sovereignty, territory and weapons lead to difficulties in the regulation of outer and cyber space. The result is that any activity that occurs in cyber space or outer space can have legal effects that do not fit into the standard legal definitions of for example the use of force and application of military force.

A lively discussion followed the panellists' presentations. Issues addressed included the interplay between the notions of imminence, international law and space for the purposes of elucidating anticipatory use of force; definitions of space and its weaponisation; ownership, the right to self-defence and intellectual property rights in space; the diversification of actors and whether this merited more inclusive regulation than the current State-centric legal framework.

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