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REEMERGING CONCEPTS OF INTERNATIONAL SPACE LAW

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Abstract

After the Cold War era, some concepts, which regulate the space activities are reemerging. Those concepts were already established in the beginning of space age, but were frozen in the cold war structure. They are three basic principles, "common interest of all mankind", "peaceful use" and "international cooperation". Those basic concepts have been respected politely, but the contents of those have been decided de fact not by the most of the countries of the world but by two major space powers. Now the time comes to defrost those concepts and consider the space utilization for contributing to the peace and security of the world by using the adequate civil technologies according the reemerging concepts of space law.

Introduction

Development of outer space has experienced 40 years since 1957, when Sputnik1 was launched. We also have experienced 30 years' history since the Outer Space Treaty was ratified in 1967. The space law system is still progressing even now.

The general space law system, which is constructed with Outer Space Treaty as a mother treaty and some related treaties provides for basic duties and obligation regarding the national (and partly non-national) space activities. In addition, bilateral and multilateral treaties which particular space powers concluded piled up legal systems for certain activities and fields on the general space law system. Those have the status as special laws in the whole space law system. And sometimes those played the leading roles for regulating new activities which the existing laws could not cover.

However, it is true that there remained one limit in the developing space law system. That was the Cold War

structure. In fact, space development was recognized its value in the Cold War structure. Also in the development of outer space, the east led by USSR and the west led by USA have had a keen competition for occupying the superior position against the other side. The outer space was a theater to show their high technology, and to enhance their national prestige. The hard race to the Moon was the very symbol for those purposes.

The contents discussed in the UNCOPOUS were very limited during the cold war era. The military use of outer space were picked up and discussed in the Committee of Disarmament in Geneva generally, in some particular areas, USA and USSR discussed and resolved directly by bilateral talks. Other countries, which are superior in number, could not have any power about the military use of outer space.

However, there is emerging a change in this old structure in the recent 10 years. One of the backgrounds of the change is the end of Cold War structure, symbolized by the collapse of Berlin walls. The other is that in some fields civil technologies of outer space usage have caught up with military use, which were developed with unlimited human and financial resources. After the Cold War structure, many countries other than military superpowers in East and West can have opportunities to discuss the wider areas of outer space activities. And at the same time, they also can have feasibility to do by themselves. We might recognize the above-mentioned situation for reviewing the present circumstances of international space law.

We, scholars of international space law, have responsibility to understand the present situation (Sein) properly. But at the same time, have also responsibility to find and promote the proper developing direction (Sollen) of law and policy.

The Emerging Trend of International Space Law

It seems now the time when we should review the existing framework in the Cold War era, that the peaceful use meant the use of outer space in non-military fields, most of the countries could treat only this peaceful use, and two superpowers alone could discuss the military use.

In the UNCOPUOS, there seems to be a trend that some countries other than USA and Russia play a certain role for maintaining peace and security by the use of outer space.

The base for discussion is one of the main principles of international space law, common interest of all mankinds. This principle is derived from some

phrases like "for the benefit and the interests of all countries" and "the province of all mankind".[1] By connecting with other basic principles, peaceful use and international cooperation, that principle might be used for regulating whole space activities effectively.

For example, February 1997, the UN 51st General Assembly Resolution 122 stated in the 6th sentence of preamble, "Recognizing the growing scope and significance of international cooperation among States and between States and international organizations in the exploration and use of outer space for peaceful purposes."[2] In drafting this phrase, there was general recognition that peaceful use of outer space and international operation would contribute to the common interest of all mankind.

This recognition was declared clearer in the Resolution 123 of the same month as follows:

"Deeply convinced of the common interest of mankind in promoting the exploration and use of outer space for peaceful purposes and in continuing efforts to extend to all States the benefits derived therefrom, and also of the importance of international cooperation in this field (the 2nd sentence of preamble)."[3]

Further, other General Assembly Resolution 44 insisting on the prohibition of armament in the outer space said in the beginning of preamble "Recognizing the common interest of all mankind in the exploration and use of outer space for peaceful purposes".[4] Phrases of those resolutions have the same root of intention.

We here can see a new trend in UNCOPUOS. The modern trend is that the common interest of all mankind as basic principle, should be implemented through the peaceful use of outer space and international cooperation.

Looking at this trend, all the space activities including military activities will be judged legally by whether those fit the common interest of mankind or not. Not to use the outer space peacefully does not lead to the common interest of all mankind. The activities which ignores the degree of economical and technological development between the developing countries and developed ones cannot be named international cooperation and do not lead to the benefit of international society as a whole. We might say that those principles, peaceful use and international cooperation, are linked each other, and finally reach the most basic principle, the common interest of all mankind.

Feasible Activities for International Peace and Security

Here, the actual activities, which are recognized positively, can be considered. The revival of ISMA (International Satellite Monitoring Agency)[5] and its partial or regional revival are thought examples of them. This is a system construction for gathering the data from outer space, finding the situations which seem to be threats to the peace and security and alarm the related regional organizations and the United Nations timely.

And also, by the same system, we may treat the new problems to be attacked, which are thought the new threats to the international community such as drugs, pirates and terrorism. In fact, European Space Agency is supporting UN Commission on Narcotic Drugs by providing data and engineers. It is clear that those activities are more fruitful and are common interest of global society through international cooperation rather than unilateral approaches.

One of the useful technologies for those purposes is civil remote sensing. At present the highest resolution reaches 1 meter at last.[6] This high resolution seems equal to the French, Spanish and Italian military satellite Helios1. As you all know, Western European Union Satellite Centre acts for maintaining European peace and security by using the data from Helios1 and commercial remote sensing data for several years.[7] Ironically, this technology is opened to us by the release of US military technology after the end of Cold War. But on the other hand, in some countries like Japan, this technology has been developed not as a fruit of Cold War but as a fruit of purely civil technologies.[8]

As the UN resolution provided, the data is basically opened to all in civil remote sensing activities.[9] In this sense, the universality is guaranteed. We may consider that the existing or new regional/international organizations use such civil data for the peace and security. Not relying on the direct support from the military sectors of superpowers, we can now start this kind of activity.

Conclusion

It seems the time now when the main principles like peaceful use, international cooperation and common interest of mankind are reviving, though those were playing not so enough role in the space law system. Those principles have possibility that the international space activities can contribute positively for our peace and security in the future.

In the space activities, the existing national activities will continue. Nobody can reject those activities because there is no explicit legal restrictions, which prohibit non-aggressive use of outer space. However, while existing space activities will be accepted, new activities along the trend, which is found by this article may emerge in the future.

During the Cold War period, we could make discussion only from the legal viewpoint. In the present, we can add discussion from the technical viewpoint to the legal one, which is feasible and worthy for international and regional peace and security. We, as space law scholars, should evaluate this possibility positively.

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[1] Space Treaty of 1967, Article 1, Sentence 1.

[2] UN Doc. A/RES/51/122, 4 February 1997.

[3] UN Doc. A/RES/51/123, 10 February 1997.

[4] UN Doc. A/RES/51/44, 7 January 1997.

[5] UN Doc. A/S-10/AC.1/7 (1078).

[6] The resolution of IKONOS satellite launched on September 24, 1999 reaches 1 meter on the ground. http://www.spaceimaging.com/aboutus/satellites/IKONOS/ikonos.html

[7] HASHIMOTO, Yasuaki, "MULTILATERAL VERIFICATION ORGANIZATION –CASE OF WEU SATELLITE CENTRE", in PROCEEDINGS OF THE FORTIETH COLLOQUIUM ON THE LAW OF OUTER SPACE, American Institute of Aeronautics and Astronautics, 1996, pp.262-265.

[8] Japanese ALOS (Advanced Land Observing Satellite), which is planned to be launched in 2002 has the 2.5 meter resolution.

[9] UN Doc. A/RES/41/65 (1986).

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