Autonomous Multilateral Teams & Their Impact on Custom & Practice: New Contributions to Public International Space Law

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Recent changes in the perception of terrestrial environments impact the conduct of individuals involved in outer space activities. A renewed appreciation for the state of living ecosystems is reflected in a new consciousness. Its evolution recognizes the more common human motivation to respect an international norm of cooperation.[1]

In this paper, outer space agreements are not compared to environmental laws. Rather, it emphasizes that global perceptions of and reactions to terrestrial environmental issues increasingly impact consensus-building and general contributions to space law. This leads people to re-think interpretations of original space treaties.

In "Nationality for Spacecraft?", Bin Cheng suggests that three, key factors promote the exchanges that determine group interpretations of multilateral agreements.[2] These factors help to justify the premise of this paper which identifies needs for and evolution of more interdependent thinking and action concerning space-related customs.

The three key factors are:
a) a perceived need for new rules,
b) a conducive political climate, and
c) suitably, represented 'interests'

A collective, human consciousness is strongly connected to images of Earth from space. As individuals from different countries gain a clearer understanding of how their lives are directly linked to space, these people alter their action with respect to space-related customs and practices.

Notably, outer space cooperation is stimulated by views toward and interpreted multilateral agreements. The nature of their decision-making relates to global priorities of the protection and restoration of terrestrial environments.[3] These multinational, multidisciplinary team activities also indicate a change in political climate. Countries are now represented that did not always play active roles in space-related activities. More numerous and diverse participants are now involved in decision-making. The need to consider appropriate interests includes traditional diplomats who control the agenda for space-related issues of importance to governments.

All the while, a new, broader *participatory will* is simultaneously emerging in principles evident in multilateral team roles and work.[4] More specifically, a delicate, multilateral, negotiating environment appears to guide space cooperation in part because of economic necessity, an arena conducive to change. Decisional processes at this managerial level are tricky in part because States still control the parameters of the space law framework.

This cooperation is stimulated in part by new perspectives of multilateral agreements that reflect priorities of actors and entities that seek to protect/restore terrestrial environments.[5]

It is a collective, human consciousness that is strongly connected to images of Earth from space, which impact space-related conduct and customs and practices of States. Yet, industrial state activities do not always demonstrate this human consciousness.

For example, in the case of the International Space Station (ISS) Program, stakeholders in public and private sectors do not always do business conscious of the fact that their decisions impact terrestrial environments and societies that are deteriorating and suffering. On this note, it is nonetheless encouraging that many additional actors, both State and non-State, are increasingly involved in ISS management.[6] Their contributions to decisional and advisory bodies are respected by States and space agencies, and by the informed general public.

Such space-related decision-making processes not only impact the customs and practices for ISS Program participants at state and space agency levels. It is conceivable that the approval of team decision-making fora extends beyond ISS, as precedents for future group approaches to space programs.[7]

The authors suggest that unique, multilateral team approaches to decision-making have indeed developed in ISS-related arenas. The elements of such teamwork have the potential to contribute more actively to changing perceptions and applications of public international law (PIL). They could also foster a global, human consciousness, to be demonstrated by concrete action and possibly customary practice.

For example, the signing of implementing arrangements (IA)[8] to existing ISS instruments would enable new approaches to be taken to enlarge or re-define the meaning and activities of the ISS Programs, is relevant to deteriorating terrestrial ecosystems. Individuals and societies that are not included among the original Partners could be included. The juxtaposition of changes in the perception of environmental law agreements and respect of clauses and ideas therein is comparable. If environmental laws are more respected than they used to be because people are more aware of the negative consequences, this then could influence the space environment.

Notions of acceptable human behavior that are developed as multilateral standards for the ISS Program actually transcend it and impact the way individuals and entities behave in other spheres. Space activities often have a high profile in terms of economic and human investment. Thus, as credibility and dependable reputations evolve, the same actors are likely to engage in cooperation in other projects.

Consider for example, how the cooperation demonstrated by multinational astronaut teams that operate the ISS can filter into political, socio-economic and other relationships that involve stakeholder countries and other communities. Related changes in attitudes involve people more exposed to interdisciplinary environments. As borders are traversed, including cultures and other traditional boundaries, attitudes concerning the importance of respecting customs and norms in space law also evolve. In some cases, there is more flexible thinking, and new approaches result concrete action to accommodate changes in mindset.

Further, one can consider the increasingly generous donations of humanitarian aid by industrial countries such as for Afghanistan orphens in view of the current world political situation. This observation is based on perceived links between globalization and its impact on developing countries in particular. The widespread desire to improve collective, multilateral responses to terrestrial challenges results where people understand that problems experienced in one part of the world resonate and are felt in other areas, due partly to interdependent economies and global media coverage. Recognizing this fact influences the way individuals perceive and carry out customs, as well as re-interpret existing laws.

In terms of effective communication among States and other decision-making entities, knowledge-sharing and the maintaining of socio-economic and political autonomy have been historical stumbling blocks in international relations.

Nation state democracies have typically focused on furthering their own interests. This translates into adopting rules or regulations that favor *domestic* advances in science and technology, skills and know-how, the domestic economy in relation to other nations and their nationals. Such a focus, while understandable, appears contrary to the notion of furthering international norms of cooperation.

There is also another interpretation. Consider for instance, that space law[9] interpretations of the *Envoy of Mankind*[10] concept indicate there is still widespread respect for the environments that characterize the *res communis.*[11] This includes respect for customs and practices when undertaking multilateral approaches to highly-complex, scientific space endeavors such as Hubble, Ulysses and ISS, all of which make a positive statement about the evolution of cooperation. Diverse, space exploration programs can actually be considered similar envoys.[12]

To continually reconcile collective goals is an obvious challenge.[13] Yet, the collective *will* to engage in consensus- building on various decision-making levels must be present. The question is, to what extent must this *collective will* exist at State and other levels, and what factors can help instill such *will* where it is absent?

Where trans-border education and more general, public awareness are discouraged, severely restricted or not prioritized, intercultural normative exchanges do not benefit as much as they might if they were encouraged in *soft law*[14] frameworks such as some of the instruments listed in footnotes 1,3, and 4. In the ISS Program, situation-specific compliance strategies evolve according to membership of ISS working groups.

For instance, the Multilateral Medical Operations Panel (MMOP) has established guidelines for exchanges that help to improve medical treatment and monitoring of astronaut health. Experiences are discussed and incorporated into strategies. The attitudes that accompany the evolution in codes and policies are influenced by how customs and practices are perceived and carried out or respected (and in some cases, vice-versa).

Changes in political climates are thus conducive for changes in perception of customs. Various professional organizations have addressed the value of harmonization by including diverse state participation that, in turn, abide by technical and other standards to which they contribute input.[15]

Consider that multilateral astronaut team activity in space, as well as ISS decision-making done on Earth, can also increase human sensitivity to and diversify perceptions of customs and practices. Competing parties are not always confrontational. ISS multinational team members are currently restricted to nationals from ISS Partner States.[16] There is still a limited contribution of diverse views to impact the evolution of customs and practice.

This decision-making role for ISS managers has restrictions for its participants also. For example, the individuals concerned do not have the traditional, diplomatic immunities[17] and protection of state representatives.[18] The power dynamics and competing interest that can complicate the respect and execution of customs also evolve in management team spheres much like they do at the State level. Where increased numbers of people have input into creating standards, this does not necessarily mean that more people will necessarily respect them in practice.

On the one hand then, some people might favor the increased inclusion of states and entities into the processes that lead to the development of space customs and PIL. On the other hand, as more countries with diverse interests become involved, this could also complicate the practice of the resulting customs to which they contribute. The root problem may relate more to underlying principles that guide the implemented, customary practice.

Much like in space-related spheres, broader exchanges in environmental spheres help people refine their interpretations and interests. This leads to a greater consensus concerning the harmonization of the results. For instance, autonomous environmental groups, together with their internally-applicable arrangements and related negotiating processes, have comparable impacts on actors concerned with terrestrial environments. Yet, the public relations associated with the mandates and work of non-governmental entities (NGEs) that deal with environmental issues, tends to be more informative and recruit more general public participation and feedback with respect to such issues.

These exchanges arguably have a significant impact on the breadth and understanding of both specialized and non-specialized information pertaining to the environment. Thus, the impact of and respect for customs and practice in such exchanges differs from that which is associated with space law, such as the ISS Program. The nature and greater breadth of interdisciplinary and intercultural exchanges impact customs.

Nonetheless, ISS multinational teams have a degree of decision-making power that arguably impacts more far-reaching human behavior with regard to (and external to) the parameters of the ISS Program. .ISS team exchanges, although at times difficult, evolve and become more trans-national, interdisciplinary and multilingual, albeit with very limited industrial State membership of the ISS. Common patterns of non-binding (bilateral as well as multilateral) agreements have become a trend.

Memoranda of understanding (MOUs)[19] and codes of conduct[20] are now a means to establish mutual respect and compliance (albeit not legally enforceable at international law) through continuing efforts to reinforce consensus-building. Similarly, autonomous institutional arrangements in multilateral environmental agreements[21] also provide evidence that a new consciousness of the dire need to

close the increasing gap between advanced and developing societies.

This, in turn, can serve as precedent for the thinking processes of ISS management teams. If they so choose, they may seek advice and possibly also work with other individuals to clarify issues left unresolved in the Intergovernmental Agreement (IGA) and MOUs. The expectation might be that any resulting non-legally-binding instruments and coinciding education will be more effective in helping to shape human behavior and influence individual perspectives. The evolving, global interdependence of societies and their peoples requires new approaches to grasp the parameters of international space-related cooperation. How to convince decision-makers to pose their questions in a manner that takes into account the needs of others remains a challenge, given the traditional focus on state and personal interests.

Human rights must not be matters left solely to signatories to conventions on human rights. Ethics are meant to be internalized and respect for them externalized in concrete action on varied levels. In Europe, the EU is legally-obligated to 'respect fundamental rights', including those guaranteed by the European Convention on Human Rights.[22]

The sharing of responsibility among European entities and individual states is reflected in decision-making fora such as the European Space Agency (ESA). These fora include those in which legal issues are discussed and where agreements are drafted according to precedents and with the goal of consensus-building.

Increased international attention over the years to the definition of "refugee"[23] reflects a growing interest in how elements of the definition are applied both within and among different domestic jurisdictions. In this regard, it is important to recognize that industrial nations are the most active in outer space activities. These same States contribute knowledge to and influence the roles of the ISS multilateral decision-making teams. They evolve customs and practices and more global inter-cultural ethics. Establishing and adhering to these may be hard. Aside from the time required to reach consensus, the resolution by consensus of other issues are indicative of how multinational teams are making new contributions to PIL. As relations among countries and societies are more inter-connected, a decision concerning medicine or law often has repercussions on business, in academia, politics and other disciplines that are not initially easily foreseen. This is especially the case where decisions are made in the confines of a narrow group.

For instance, the key actors in the ISS Program include countries that either were, or believe they were. the collective target of the terrorist attacks in New York and Washington on September 11, 2001. It could be interpreted that certain contemporary approaches to influencing the evolution of customs and practice in space activities require stakeholders to re-evaluate their collective interests. Action with regard to new interpretations of, or elaboration on, existing institutional frameworks should reflect a deeper understanding of the realities faced by a large number of overlooked (or ignored) societies.

Many of these societies are interested in contributing to the peaceful exploration and use of outer space.

However, without being permitted to participate in cooperative space programs they are unable to make such contributions. A nation's need to establish effective economic and security strategies for the protection of its territory and inhabitants should not translate into the consideration of purely domestic issues. Trans-border issues such as terrorism, illness or disease, environmental changes, black market trade and displaced people (refugees), are the partial result of an imbalance of power, knowledge and resource-sharing between the industrial and developing countries.

Likewise, the increased global interdependence of the multilateral, ISS decision-making teams, means that such teams must understand those principles of PIL that form the foundation of the ISS Program. It is insufficient merely to re-evaluate existing space agreements and codes of conduct that characterize acceptable human behavior in this closed group of a few industrial nations.

A closer examination is needed as to the basic relationships and accepted norms of co-operation among peoples and societies on a more global level. It is the large gaps in knowledge, skills and resources that can cause unforeseen difficulties among ISS stakeholders and other nations. To instill the desire in others to self-evaluate personal behavior is also critical. The operational phase of the ISS Program is a good place to begin such an examination because actors do not characteristically include the majority of terrestrial societies.

Endnotes

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[1] See evidence of the human will to define such collective consciousness in historical, human rights-related, multilateral agreements : i.e.: Universal Declaration of Human Rights (10 December, 1948); Convention Concerning Freedom of Association (Entry into force: 4 July, 1950); Convention on the Prevention and Punishment of Genocide (9 December, 1948); Geneva Convention (I) (Entry into force: 21 Oct 1950); Geneva Convention (II) (Entry into Force, 21 October 1950) ; Geneva Convention (III) (Entry into force: 21 October, 1950); Geneva Convention (IV) (Entry into force: 12 August, 1949); Convention for the Suppression of the Traffic in Persons (25 July, 1951); European Convention on Human Rights (4 November 1950 as well as 5 subsequent protocols); Convention to Suppress the Slave Trade and Slavery (7 December, 1953); Convention on the Political Rights of Women (Entry into force: 7 July, 1954); Supplementary Convention on the Abolition of Slavery (7 September, 1956) ; Convention Concerning the Abolition of Forced Labor (Entry into force: 17 January, 1959); International Convention on the Elimination of All Forms of Racial Discrimination (7 March, 1966); International Covenant on Economic Social and Cultural Rights (19 December, 1966); International Covenant on Civil and Political Rights (19 December, 1966); American Convention on Human Rights (Entry into force: 18 July, 1978); Convention Concerning Minimum Age for Admission to Employment (Entry into force: 19 June, 1976); Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (February 4 and March 15, 1985); Convention on the Rights of the Child (20 November, 1989); International Convention on the Protection of the Rights of all Migrant

Workers and Members of their Families (A/RES/45/158 (30 ILM 1517); Draft Declaration of Principles on Human Rights and the Environment (16 May, 1994); Convention on Jurisdiction Applicable Law Recognition Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; Council of Europe Convention on Human Rights and Biomedicine (4 April, 1997); see also www.hg.org/human.html (accessed 24-09-01)

[2] Cheng, *Studies in International Space Law* (1992,205-211); first published in T.L. Masson-Zwann and P.M.J. Mendes de Leon (eds), *Air & Space Law: De Lege Ferenda-Essays in honour of Henri A. Wassenbergh* (1992), pp. 202-217.

[3] See for instance, the Declaration of the United Nations on the Human Environment, adopted at Stockholm (16 June 1972); Convention on Long-Range Trans-boundary Air Pollution (1979), Entered into force: 16 March 1983; Rio Declaration on the Environment & Development (14 June, 1992); Convention on Biological Diversity; Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (29 December, 1972); Convention on International Trade in Endangered Species (CITES) (Entry into force: 1 July, 1975); Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal (Entry into force: May 5, 1992); United Nations Convention on Law of the Sea (UNCLOS) ; 10 December 1982 (28 Jul 1994):A/RES/48/263 (33 ILM 1309); the Vienna Convention for the Protection of the Ozone Layer (1985); Montreal Protocol on Substances that Deplete the Ozone Layer (1987-as adjusted and amended on 29 June 1990); United Nations Framework Convention on Climate Change.

[4] Note that the New Zealand representative to the UN General Assembly's Special Political Committee has said: "the set of principles must have the support of all Member States, particularly the technologically advanced States, in order to be of real value." [A/SPC/37/SR.34 (22.11.82)], p.13; see also Cheng (1992, 211) as well as sections II.A.4 and IV in same ch.17

[5] See for instance, the Declaration of the United Nations on the Human Environment, adopted at Stockholm (16 June 1972); Convention on Long-Range Trans-boundary Air Pollution (1979), Entered into force: 16 March 1983; Rio Declaration on the Environment & Development (14 June, 1992); Convention on Biological Diversity; Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (29 December, 1972); Convention on International Trade in Endangered Species (CITES) (Entry into force: 1 July, 1975); Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal (Entry into force: May 5, 1992); United Nations Convention on Law of the Sea (UNCLOS) ; 10 December 1982 (28 Jul 1994):A/RES/48/263 (33 ILM 1309); the Vienna Convention for the Protection of the Ozone Layer (1985); Montreal Protocol on Substances that Deplete the Ozone Layer (1987-as adjusted and amended on 29 June 1990); United Nations Framework Convention on Climate Change.

[6] http://www.boeing.com/defense-space/space/spacestation/ (accessed 24-09-01); http://www.esa.int (last accessed 24-09-01); http://www.space.gc.ca (last accessed 24-09-01); Ms Covert has performed doctoral research on this subject in 20 countries since 1999.

[7] Article 38 of the I.C.J. considers international custom "as evidence of a general practice accepted as law."; Customary law is comprised of two elements: (1) a general convergence in the practice of states from which one can extract a norm (standard of conduct), and (2) *opinio juris* – the belief by states that the norm is legally binding on them., see Aust (2000,10) ; M. Shaw, *International Law* (4th Ed, 1998), p.54-77.

[8] Multilateral teams elaborate on the ISS IGA clauses in the form of bilateral and multilateral IAs to implement the provisions set forth broadly in the ISS IGA

[9] Consider especially the five U.N. Space Treaties

[10] Refer to the Outer Space Treaty (OST) Art. 5

[11] a) High Seas, b) Antarctica and c) Outer Space

[12] Consider a variety of space science programs that result in multi-layered agreements

[13] Consider the March 1999 changes in U.S. export control regulations which have complicated exchanges of technical information in the ISS Program.

[14] Aust (2000,44). Although there is no agreement as to what 'soft law' is or whether it exists as a distinct source of law, it is generally described as "international instruments which their makers recognize are not treaties,...but have as their purpose the promulgation of norms (albeit not legally binding) of general or universal application." For example, MOUs, guidelines, principles, codes of practice. Furthermore, a non-binding accord might start the process of forming State practice which, when accompanied by *opinio juris*, would make a custom. Bederman (2001, 27).

[15] International Standards Organization (ISO)

[16] Canada, Europe, Japan, Russia and the United States of America are the 5 original ISS Partners.

[17] Brownlie (1998, 359-66)
[18] Ibid, (406-407)
[19] "If a state does not carry out its commitments, the sanction is political; another state cannot take the matter to an international court or tribunal or impose countermeasures it might be entitled to in the case of breach of treaty.", Aust (2000,45)
[20] For example, the ISS Crew Code of Conduct is official in the U.S. 14 CFR Part 1200
[21] See Churchill and Ulfstein, AJIL October 2000 or www.asil.org/ajil/ulfstein.htm (74pgs)
[22] Alston (1999, 926)
[23] The 1951 Convention Relating to the Status of Refugees defines a refugee as someone who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such a fear is unwilling to avail himself of the protection of that country..."