

What's Human Rights Got to Do with Outer Space? Everything!

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Abstract

The post-Second World War period saw the conclusion of a number of very significant legal instruments that set out to codify the fundamental rights and freedoms that underpin international human rights law. The 'twin covenants', which incorporate into treaty form the principles set out in the 1948 Universal Declaration of Human Rights, were being negotiated – sometimes quite fiercely – at the same time that the 'space race' began and the most important rules of space law were developing. Yet, these two significant evolutionary law-making processes were conducted largely in isolation from each other, particularly due to the State-centered geopolitical context of outer space at the time. Although some issues, particularly the right to information and freedom of expression, were occasionally raised in the ideological debates about the use of outer space, the intersection between international human rights principles and outer space has largely been ignored. This paper will seek to analyze the way in which the use and exploration of outer space should be considered from a human rights perspective and explain how our fundamental rights and freedoms can and should represent a very important factor in shaping the international legal regulation of outer space through both 'hard' and 'soft' law instruments

Introduction – Two Regimes from the Same Era

Those of us who are concerned with the legal regulation of outer space have come to realize that there are myriad factors associated with this regime. These are both of a 'law' (hard and 'soft') nature, as well as stemming from a range of other non-legal areas such as history, technology, science, economics, sociology *etc.* Dealing with the traditional legal aspects, the United Nations Treaties and specific space-related General Assembly Resolutions undoubtedly form an important corpus of rules and guidelines which serve to fashion our conduct in the exploration and use of outer space. The fundamental principles that these instruments set out represent important foundations upon which humankind's endeavours in outer space have traditionally been based, at least in the public debate. They have also

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been largely successful in – thus far - steering us away from cataclysmic errors of judgment in the way that we have utilized outer space.

However, it would be far too simplistic and plainly inaccurate to assume that the applicable legal regime begins and ends with these instruments. Notwithstanding their importance, there is much more to consider. The wide ranging and ever increasing number of space activities clearly demonstrates that many issues impact on this legal regime, at the same time that the regime itself impacts on a broad facet of human interactions. In this sense, outer space asserts a far greater influence upon the directions taken by humankind than one might at first instance imagine – yes, the exploration and use of outer space has been designated as the ‘province of mankind’,¹ but it is not only a place for us to venture to in order to explore and exploit, but is also a phenomena that has real impacts upon all on Earth every day of our lives.

This is, in fact, expressly recognized in the preamble of the Outer Space Treaty. Paragraphs 2 and 3 respectively confirm that, at the time these principles had been codified, the international community had:

Recogniz[ed] the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,

and

Believ[ed] that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development

In essence, the Outer Space Treaty makes clear from the outset that the international legal regulation of outer space is founded on an assumption that this (at the time) new frontier raised important issues about humanity. We hold the firm view that this is still the case, despite the realities associated with the rapid diversification of space activities to incorporate, for example, military uses, and the increasing involvement in outer space of commercial (private) enterprise, whose agendas may not match up with a spirit of sharing and community.

Given this obvious ‘human’ face to space activities both as to cause and effect, it is therefore quite surprising that the interaction and intersection between the specific international legal regime of outer space and the international legal regulation of human rights has not been the subject of greater considered scholarship in the past. Apart from a small number of

¹ See Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 610 UNTS 205 (1967) (Outer Space Treaty), article I.

interesting commentaries,² these two legal paradigms have largely been considered in isolation, even though their formal codification coincided from a temporal viewpoint, and despite the fact that the same actors were involved in the detailed conversations and negotiations that led to their finalization.

The two legal regimes are largely products of the post-Second World War period. From the perspective of outer space, the late 1940s saw a ratcheting up of distrust between the 'west' and 'east', giving rise to diplomatic tensions and, ultimately, the onset of the 'Cold War'. This geopolitical rivalry saw the two main protagonists, the Soviet Union and the United States, intensify their efforts to build upon the weapons-related technology that had been developed during the war period, including in the area of rocket technology. Both of these superpowers made significant strides towards developing space capabilities, and devoted significant resources towards that end. In the end, on 4 October 1957, a Soviet space object, Sputnik I, was launched and subsequently orbited the Earth over 1,400 times during the following three month period. This milestone heralded the dawn of the space age, the space race, and the legal regulation of the use and exploration of outer space. There then followed an intense period of international discussion and consideration of how best to provide for a framework of legal principles to regulate human activities in outer space, culminating in the first instance in the Outer Space Treaty, often referred to as the 'Magna Carta' of outer space.

The Second World War had also starkly illustrated the horrors that flow from a gross and systematic violation of human rights and human dignity. Up until that time, there were barely any international instruments that addressed the concept or content of the fundamental rights of the individual. Indeed, the reference in the United Nations Charter to the international community's determination:³

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small

was in more practical terms recognition of the need to codify these rights as a first step towards the promotion and protection of those ideals, in order to have any chance of avoiding such catastrophes again (sadly, subsequent history suggests that we have failed in this regard). The first stages of this human rights 'movement' saw the conclusion of a number of very significant legal instruments that set out to codify the fundamental rights and freedoms

² See Irmgard Marboe, 'Human Rights Considerations for Space Activities' in Stephan Hobe and Steven Freeland, *In Heaven as on Earth? The Interaction of Public International Law on the Legal Regulation of Outer Space* (2013), 135, and the references at footnote 1 of that chapter.

³ Charter of the United Nations, 1 UNTS 16 (1945) (UN Charter).

that underpin international human rights law. The ‘twin covenants’ of 1966,⁴ which incorporate into treaty form the principles set out in the 1948 Universal Declaration of Human Rights,⁵ were being negotiated – sometimes quite fiercely – at the same time that the space race had begun, and the most important ground-rules of space law were being developed. In both instances, the same geopolitical rivalries and ideological differences shaped the final structure of each regime. A fact not often acknowledged is that the ICCPR and ICESCR were finalized by the United Nations General Assembly and opened for signature on 16 December 1966, just a matter of a few weeks before the Outer Space Treaty (27 January 1967).

The development of these two legal regimes also coincided with a process of decolonization, largely under the stewardship of the United Nations system. Both the UN Charter and the Twin Covenants make express reference to the right of self-determination of ‘peoples’,⁶ and this galvanized a momentum that ultimately led to the establishment of a significant number of new States in the 1950s – 1970s, many of these in Asia and Africa.⁷ Most of these new States were established as a result of decolonization, and with this newly-won independence came the clear resolve of those States to be fiercely independent and to reject as much as possible the geopolitics and single-minded resource exploitation that had existed during the time of colonialism. This stance is reflected, for example, by the opening paragraph of the Outer Space Treaty, which demands that the exploration and use of outer space be ‘for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development’.

Nonetheless, this period was also characterized by an increasing divide, both in actual but also ideological terms, between what became known as ‘developed’ and ‘developing’ States – a division that formed an important,

⁴ International Covenant on Civil and Political Rights, 999 UNTS 171 (1966) (ICCPR); International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (1966) (ICESCR). Collectively these two instruments are often referred to as the ‘Twin Covenants’.

⁵ United Nations General Assembly Resolution 217A (III) (10 December 1948) on the Universal Declaration of Human Rights (UDHR). Reference should also be made to other very significant treaties finalized at that time, including the Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277 (1948); the four ‘Geneva Conventions’ of 1949; the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221 (1950) (ECHR).

⁶ See UN Charter, article 1(2); ICCPR, article 1(1); ICESCR, article 1(1).

⁷ For example, at the time of the adoption of the UDHR in 1948, the membership of the United Nations stood at 56. By 1967, when the twin Covenants and the Outer Space Treaty had been finalized, this number had more than doubled.

and sometimes controversial⁸ element in the formulation of various of the space law source documents.⁹

Moreover, the overall trusteeship of the two international legal regimes remains to a large degree (although not exclusively) within the United Nations; space law through the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) and the United Nations Office of Outer Space Affairs (UNOOSA), and human rights law through a series of Charter Bodies, including the Office of the High Commissioner for Human Rights (OHCHR), the Human Rights Council (which replaced the United Nations Commission on Human Rights in 2006) and the Economic and Social Council (ECOSOC), as well as various United Nations Treaty Bodies such as the Human Rights Committee, which was established to monitor compliance with the ICCPR.

In addition to their shared historical antecedents, the lack of a coordinated analysis of these coinciding regimes is also at odds with the structure of outer space regulation itself. It is undisputed that, from a 'legal rules' perspective, the international regulation of outer space – past, present and future - is 'embedded' in international law. It is not an esoteric and separate paradigm limited solely to the *lex specialis* of space law with which we are all familiar. In a sense, this is an obvious point, particularly given the complexity of human activities in space and their impacts on all of us, but one that is worthwhile emphasizing. The space-related instruments cannot and do not purport to provide a comprehensive legal framework for every activity, nor for every contingency that may arise. It has often been noted that there are *lacunae* within these instruments with respect to the specifics of many space activities, a trend that continues to increasingly show itself as new uses of space are undertaken that would almost certainly have been outside of the contemplation of the drafters of those documents in the 1960s and 1970s. Notwithstanding the continuing applicability of the fundamental framework of space principles, in such cases, were the need to arise, it will often become

⁸ See Agreement Governing the Activities of States on the Moon and other Celestial Bodies, 1363 UNTS 3 (1979) (Moon Agreement), article 11(7)(d).

⁹ See, for example, Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, United Nations General Assembly Resolution 37/92 (10 December 1982) (Direct Broadcasting Principles), principles 2, 6, 11; Principles Relating to Remote Sensing of the Earth from Outer Space, United Nations General Assembly Resolution 41/65 (3 December 1986) (Remote Sensing Principles), principles II, IX, XII, XIII; Principles Relevant to the Use of Nuclear Power Sources in Outer Space, United Nations General Assembly Resolution 47/68 (14 December 1992), principle 7(2)(b); 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, United Nations General Assembly Resolution 51/122 (13 December 1996).

necessary to draw upon other areas of (international) law to resolve a particular dispute.

This is also a logical consequence of the wording of article III of the Outer Space Treaty, which requires that activities in the exploration and use of outer space are to be carried out 'in accordance with international law, including the Charter of the United Nations'. We have sought to highlight this point in relation to other international law contexts,¹⁰ and it remains no less relevant when it comes to the relationship between the regulation and conduct of outer space activities and the fundamental human rights of individuals on Earth.

This paper, therefore, seeks to briefly highlight some of the ways in which the use and exploration of outer space overlaps with principles viewed from a core human rights perspective. We will illustrate this intersection with a number of examples, drawing upon references from both the *lex specialis* of space law and the 'International Bill of Rights'.¹¹ In doing this, it is not our intention to describe in detail every aspect of those human rights principles that are relevant in the context of outer space activities; rather we seek to highlight these issues of convergence in the hope that it can stimulate further careful consideration and research, as well as encouraging a more 'holistic' approach to the future direction of the legal regulation of outer space.

In essence, therefore, the simple purpose of this paper is to emphasize that the fundamental concepts of space law are invariably tied in with the fundamental concepts of rights and freedoms that we all (in theory) enjoy. In this regard, accepted principles of human rights law are highly relevant for our activities in space. We recognize that this is not a 'eureka' moment – instead we believe that we are, to a certain degree, stating the obvious. However, it is also an 'obvious' that has perhaps been overlooked or cast aside as the use and exploration of outer space becomes ever more complex, and increasing emphasis is placed upon the 'congested, contested and competitive' nature of outer space,¹² rather than its elements of humanity. This has led to a skewed view of the relevance of human rights in relation to activities involving outer space.

¹⁰ See, for example, Ram Jakhu and Steven Freeland, 'The Relationship between the United Nations Space Treaties and the Vienna Convention on the Law of Treaties' in *Proceedings of the International Institute of Space Law* (2012), 375; Ram Jakhu and Steven Freeland, 'The Sources of International Space Law' in *Proceedings of the International Institute of Space Law* (2013), forthcoming.

¹¹ The three instruments, the UDHR, ICCPR and ICESCR are often referred to as the 'International Bills of Rights'.

¹² See, for example, United Nations General Assembly, 'Outer Space Increasingly 'Congested, Contested and Competitive', First Committee told, as Speakers urge Legally Binding Document to prevent its Militarization', Press Release 25 October 2013, UN Doc GA/DIS/3487.

We also wish to emphasize that, of course, other areas of international law – for example international humanitarian law¹³ and international environmental law¹⁴ – are also highly relevant in this regard, and they, too, incorporate concepts relating to the fundamental rights of individuals and communities into a consideration of the broad legal framework of outer space activities. However, for the purposes of this article, we limit ourselves to indicating areas of cross-over with principles elaborated in the major human rights instruments.

We also assume in this paper an expansive viewpoint of human rights principles. Whilst there is still debate among human rights scholars about the various ‘levels’ and ‘types’ of human rights, we prefer for the purposes of this discussion to accept the principles as they are codified in the twin covenants, as well as incorporating the developing ‘generations’ of human rights, encompassing both *individual* rights (civil, political, economic, social and cultural) as well as *collective* and/or *community* rights. The traditional and restrictive view has been that human rights principles by definition extend only to individual members of a group, but *not* to the group itself.¹⁵ Some may still assert that such a hierarchical approach should be applied to a study of human rights *per se* but, at least in the context of this paper, which seeks to highlight the intersection between outer space and human rights in broader terms, we believe that all such rights should be considered as potentially applicable to the exploration and use of outer space.

With these caveats in mind, we will now touch on a number of areas of convergence stemming from the rights codified in the International Bill of Rights, which we use as our reference point:

The Right to Peace

The first paragraph of the preamble of the UDHR provides as follows (emphasis added):¹⁶

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and *peace in the world*

¹³ See, for example, Steven Freeland, ‘The Applicability of the *Jus in Bello* Rules of International Humanitarian Law to the Use of Outer Space’ in *Proceedings of the Colloquium on the Law of Outer Space* (2006), 338.

¹⁴ See, for example, Ulrike M. Bohlmann and Steven Freeland, ‘The Regulation of Space Activities and the Space Environment’ in Shawkat Alam, Md Jahid Hossain Bhuiyan, Tareq M.R. Chowdhury and Erika J. Techera (ed), *Routledge Handbook of International Environmental Law* (2013), 375.

¹⁵ Peter Bailey, *Human Rights Law* (2012), 9.

¹⁶ See also ICCPR, preamble para. 1; ICESCR, preamble para. 1.

From the outset, therefore, the UDHR emphasizes the importance of peace as a 'right' of everyone on Earth. This is not particularly surprising given that the instrument was a direct response to the war that had only very recently ended. This form of apparent collective right, as noted above, raises specific issues with human rights scholars as to whether it is truly a fundamental 'human' right. Interesting questions, which are beyond the scope of this paper, arise as to whether each person *individually* does, in fact, have a right to peace in the world, despite the broad terms of the preamble. These discussions have led to the evolution of so-called 'second' and 'third' generation rights, the latter of which encompass such collective concepts of rights.

Irrespective of the niceties of rights classification, it is undoubted that an underlying motivation of the International Bill of Rights is one of peace. The same can be said about the international space law *lex specialis*. Indeed, the immediate acceptance by community of States, including both the major space faring States of the time, that outer space was to be regarded as being similar to a *res communis omnium*¹⁷ and the subsequent codification of the so-called non-appropriation principle in the Outer Space Treaty¹⁸ were important proactive steps that were intended to cement and protect the peaceful nature of outer space.

Indeed, it is, of course, no coincidence that UNCOPUOS contains the important descriptor 'peaceful'. The 'peaceful purposes' doctrine is an important element of the international regulation of outer space¹⁹ although, as is well known, there have been conflicting views as to its interpretation and subsequent practical application.²⁰

The Rights to Privacy

Article 12 of the UDHR provides as follows:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

As the resolution capabilities of remote sensing satellites increase and their use by private companies grows, there arise inevitable concerns about an

¹⁷ Antonio Cassese, *International Law* (2005), 95.

¹⁸ See Outer Space Treaty, article II. For a detailed analysis of this provision, see Steven Freeland and Ram Jakhu, 'Article II' in Stephan Hobe, Bernhard Schmidt-Tedd and Kai-Uwe Schrogl (eds), *Cologne Commentary on Space Law, Volume I – Outer Space Treaty* (2009), 44.

¹⁹ See Outer Space Treaty, article IV; Moon Agreement, article 3(1).

²⁰ See Steven Freeland, 'Outer Space, Technology and Warfare' (2014) 13:1 *The Aviation & Space Journal* 35, 36.

individual's right to privacy. Threats to privacy with the use of satellites are much more pervasive than posed by terrestrial based systems. There is no specific hard or soft space law instrument that protects such privacy. Article 12 of the UDHR is considered to be applicable to space activities, but its implementation is to be carried out through respective and appropriate national laws and regulations. On the contrary, the States with strong tradition and legal regime governing freedom of information are more inclined to allow freer circulation of information obtained with the use of satellites and consequently diminishes the right to privacy. For example, it has recently been reported that the United States Government allowed a private company, Digital Globe, to 'sell images that showed features as small as 31cm' as opposed to earlier limit of 50 cm.²¹ The right to honour and reputation is protected under international that has been summed up as follows:²²

International law clearly forbids the higher officials of a state to indulge in uncomplimentary or insulting comments upon the personality of another state or its rulers ...

This rule of law applies to space operations.

The right to privacy of correspondence by electronic means is protected under the Constitution of the ITU. Member States of the ITU are obliged to ensure the secrecy of international correspondence by all means including satellites. Nevertheless, in order to ensure compliance with their national laws or their international obligations, they may communicate such correspondence to the competent authorities.²³

The Right to Freedom of Expression / Right to Receive and Impart Information

Article 19 of the UDHR provides as follows:²⁴

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This freedom of information right is also codified in article 19 of the ICCPR, and in other regional treaties on human rights.²⁵ More importantly, this right

²¹ 'US lifts restrictions on more detailed satellite images', *BBCNEWS*, 16 June 2014 <<http://www.bbc.com/news/technology-27868703>> (last accessed 7 September 2014)

²² Charles Hyde, *International Law, Chiefly as Interpreted and Applied by the United States* (1945), 709, cited in Arthur Larson, 'The Present Status of Propaganda in International law' (1966) 31 *Journal of Law and Contemporary Problems* 439, 447.

²³ ITU Constitution (2010), article 37.

²⁴ See also ICCPR, article 19(2).

is incorporated in Principle 1 of the Direct Broadcasting Principles, thus making it specifically applicable to the satellite broadcasting. However, this right has not been fully complied with in the use of satellite communications.²⁶ The international community has adopted several soft law and hard law instruments that deny or restrict the application of the right to freedom of expression 'regardless of frontiers.' For example, the 1972 UNESCO Declaration of Guiding Principles on the Use of Direct Broadcasting by Satellite recognises both the right of freedom of information and the prohibition of propaganda.²⁷ However, it lays down that it is necessary for States to:²⁸

reach or promote prior agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission.

Similarly, according to the Direct Broadcasting Principles, international direct television broadcasting satellite services must only be established after consultation between the transmitting and receiving States, on the basis of agreements and/or arrangements between the two and in conformity with the relevant instruments of the International Telecommunication Union (ITU).²⁹ These two soft law instruments attempt to incorporate both the freedom of, and restriction on information. On the contrary, the hard law international rules impose constraints on the freedom of international satellite broadcasting. These limitations are in the form of regulations adopted through the ITU. For example, of the ITU Radio Regulations oblige States to design and build their broadcasting satellites in such a way that it must:³⁰

reduce, to the maximum, the radiation over the territory of other countries unless an agreement has been previously reached with such countries.

²⁵ For example, ECHR, article 10; American Convention on Human Rights 'Pact of San José, Costa Rica' (1978), article 13; African Charter on Human and Peoples Rights (1986), article 9.

²⁶ See Ram S. Jakhu, 'Direct Broadcasting Via Satellite And A New Information Order' (1980) 8:2 *Syracuse Journal of International Law and Commerce* 375.

²⁷ See United Nations General Assembly Resolution 110(II) (3 November 1947) on Measures to be Taken against Propaganda and the Inciters of a New War.

²⁸ UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange (15 November 1972), principle IX.

²⁹ Direct Broadcasting Principles, principles 13 and 14. United Nations General Assembly resolution 37/92, adopted on 10 December 1982.

³⁰ ITU Radio Regulations (2012), article 23.13 (4).

In other words, it is illegal to operate a broadcasting satellite that broadcasts its programmes into the territory of foreign States unless there is an appropriate agreement between the transmitting and receiving States, or such spill-over of satellite signals cannot be technically feasible to avoid. It is interesting to note that some States are by-passing this requirement by using radio frequencies that are allocated for Fixed Satellite Service (FSS), in order to provide satellite direct broadcasting service (DBS, also known as Broadcasting Satellite Services, BSS under the ITU Radio Regulations). They are avoiding compliance with the requirement of seeking prior consent from the receiving State, but are in violation of the ITU Radio Regulations that oblige ITU Member States not assign to their radio stations (including satellites) any radio frequency in derogation of provisions of the Regulations.³¹ Since satellites that use FSS radio frequencies to carry on broadcasting services are not in compliance with the ITU Radio Regulations, they may not be entitled to a right of protection against harmful interference.³²

The ITU Radio Regulations allow the use of 12 GHz band of radio frequencies for direct satellite broadcasting service for national coverage only.³³ Such frequencies can be legally used for international services only on the basis of prior agreement between the transmitting and receiving States, and only after following procedures for the modification of relevant ITU Frequency Allotment Plans for this service. Therefore, the receiving State is legally entitled, if it chooses, to object to any unwanted Direct Broadcasting by Satellite transmissions from other States, and may impose restrictions on the right of freedom of information.

The right of freedom of information also played an important role in the use of remote sensing satellites. In the 1970s and 1980s, UNCOPUOS discussed the adoption of specific legal regime governing the acquisition and distribution of satellite remote sensing imagery.³⁴ Based on the right of freedom of information, some States advocated the freedom of acquisition and distribution of satellite remote sensing imagery without seeking the consent of the sensed States. Other States insisted on the requirement of prior consent, based on the right of sovereignty of their natural resources.³⁵ Finally, a compromise was adopted in the form of the Remote Sensing Principles. In the conduct of remote sensing activities, these principles require 'respect for the principle of full and permanent sovereignty of all States and peoples over

³¹ *Ibid*, article 4.4.

³² See Ram Jakhu, 'Regulatory Process for Communications Satellite Frequency Allocations' in J. Pelton, S. Madry and Lara S. Camacho (eds), *Handbook of Satellite Applications* (2013), 272, 279.

³³ ITU Radio Regulations (2012), Appendixes 30, 30A.

³⁴ See Ram Jakhu, 'International Law Governing the Acquisition and Dissemination of Satellite Imagery' (2003) 29 *Journal of Space Law* 65 *et seq.*

³⁵ United Nations General Assembly Resolution 1803 (XVII) (14 December 1962) on the Declaration on Permanent Sovereignty over Natural Resources.

their own wealth and natural resources'. They also entitle the sensed States to have access to the satellite imagery (basic data and analysed information) concerning their territories 'on a non-discriminatory basis and on reasonable cost terms.' This is in accordance with the right to seek information. However, contrary to these principles, 'several States have started making such access subject to their national security concerns, foreign policy interests or international obligations.'³⁶

Thus, even though the right freedom of information is applicable to space activities, its proper implementation has not been fully respected.

Sovereign Right to Natural Resources

Article 1(2) of both the ICCPR and ICESCR provides in part as follows:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

This legal principle of sovereign right to natural resources has also been included in a landmark United Nations General Assembly Resolution.³⁷ This principle, which is considered to have become a part of *jus cogens* applicable to all States,³⁸ played an important role, as noted above, during the negotiations of the Remote Sensing Principles and has been included in those Principles. However, it should be recognised that this right is limited to the natural resources of the Earth and would have limited, if any, application to the natural resources of outer space and celestial bodies.³⁹

Prohibition of Propaganda for War / Hate Speech / Incitement

Article 20 of the ICCPR provides as follows:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

³⁶ See Ram Jakhu, 'International Law Governing the Acquisition and Dissemination of Satellite Imagery' (2003) 29 *Journal of Space Law* 65, 90.

³⁷ United Nations General Assembly Resolution 1803 (XVII) (14 December 1962) on the Declaration on Permanent Sovereignty over Natural Resources.

³⁸ See Ian Brownie, *Principles of Public International Law* (1998), 515.

³⁹ See, for example, Moon Agreement, article 11(1).

This prohibition is based on the UN General Assembly Resolution 110 (II) referred to above, which is applicable to outer space activities. The last paragraph of the preamble to the Outer Space Treaty states that:

United Nations General Assembly resolution 110 (II) of 3 November 1947 ... condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, and ... that the aforementioned resolution is applicable to outer space.

Although, as a United Nations General Assembly Resolution,⁴⁰ Resolution 110 (II) is not legally binding, its inclusion in the preamble to the Outer Space Treaty enhances its value as a tool for the proper interpretation of the provisions of that instrument.⁴¹ Since article III of the Treaty obligates States Parties to carry on space activities in the interest of maintaining international peace and security and promoting international co-operation and understanding they must not use communication satellites for broadcasting the prohibited propaganda. Moreover, the Direct Broadcasting Principles make the prohibition of propaganda specifically applicable to international direct broadcasting via satellites.

In addition, the 1936 Convention on Broadcasting,⁴² prohibits broadcasting which constitutes, or is likely to lead to, an incitement to war against another Contracting State and the States Parties to the Convention are obliged to undertake to prohibit and, if occasion arises, to stop without delay the broadcasting within their respective territories of any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party.

Although this treaty predates the ICCPR and the Outer Space Treaty, it is regarded as applicable to the outer space activities of the States Parties to the Convention, because its scope and objective are broad enough to cover the prohibition of propaganda by satellites. However, the Convention is applicable to only about 60 States; the United States never became party and the United Kingdom denounced it on 24 July 1985.

⁴⁰ See also Ram Jakhu and Steven Freeland, 'The Sources of International Space Law' forthcoming in *Proceedings of the International Institute of Space Law* (2013).

⁴¹ 1969 Vienna Convention on the Law of Treaties, 1155 UNTS 331, article 31. See also Ram Jakhu and Steven Freeland, 'The Relationship between the United Nations Space Treaties and the Vienna Convention on the Law of Treaties' in *Proceedings of the International Institute of Space Law* (2012), 375.

⁴² 1936 International Convention Concerning the Use of Broadcasting in the Cause of Peace, 186 LNTS 301, articles 1 and 2.

States Parties to the ICCPR are under an obligation to prohibit through their respective national laws and regulations applicable to their satellite communications:⁴³

[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

In addition, EU Council Directive on ‘Television without Frontiers’ and the European Convention on Transfrontier Television, which are both applicable to satellite broadcasting, impose an obligation not to broadcast anything that is indecent and in particular contain pornography and/or ‘give undue prominence to violence or [is] likely to incite to racial hatred.’⁴⁴

The human rights of freedom of information and prohibition of propaganda are applicable to space activities, like satellite communications, however their role/value in space law appears to have been limited because they are inconsistent with one another. This may raise the issue of hierarchy of legal norms and the challenge in their application in practice when a State uses satellites for imparting information through satellite broadcasting programmes that, at the same time, also constitute propaganda as prohibited by article 20 of the ICCPR.

International Co-Operation

Article 11(1) of the ICESCR provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

This very general and broad right seems to have influenced the formation of the foundation of space law, particularly as specified in the preamble and article I(1) of the Outer Space Treaty as well as other United Nations space treaties and resolutions. The necessity and importance of international co-operation have resulted in various agreements and soft law mechanisms that

⁴³ ICCPR, article 20.

⁴⁴ European Union Council Directive of 3 October 1989 (as amended in 1997) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC), article 22a; European Convention on Transfrontier Television, 5 May 1989 (as amended in 2002), article 7. The text of the Convention at <<http://conventions.coe.int/Treaty/en/Treaties/Html/132.htm>>.

attempt to facilitate many types of space activities that give effect to the right of everyone to have better quality of life.

Pursuant to the United Nations General Assembly Resolution 1721 (D) of 1961, which specified that satellite telecommunication services should be made available on a global and non-discriminatory basis, INTELSAT was created in 1971 as a permanent intergovernmental organisation to provide international public telecommunications services of high quality and reliability to be available on a non-discriminatory basis to all areas of the world and all users paying non-discriminatory charges for its services.⁴⁵ This organization, although now a privatized company, for the first time in the history of humankind revolutionized global communications connecting people in all corners and remote areas of the world.

There are also several other institutions and/or arrangements that provide humanitarian services with the use of satellites; for example, COSPAS-SARSAT for search and rescue services,⁴⁶ and international arrangement for disaster management,⁴⁷ which is a unique international co-operative effort for global humanitarian purposes to use space facilities for the management of natural and technological disasters. Currently there are hundreds of such multilateral/bilateral co-operative agreements/arrangements among numerous countries, their space agencies and private companies. These seek to develop space technologies and applications in various forms, to improve the living conditions of individuals. Space co-operation has thus become indispensable for practical uses of space applications. However, it must be kept in mind that space co-operation has been pursued not as an international obligation, but as a political expediency and economic necessity among the co-operating countries

Concluding Remarks

The use, exploration and exploitation of outer space has developed exponentially since Sputnik I took that fateful journey in October 1957. No-one could imagine then how space technology has changed and shaped the lives of everyone on Earth. The same remains the case today – it is impossible for us to contemplate what might/will be possible over the next 50 years, particularly given the diversity of actors engaged in outer space activities, with the differing agendas. One constant, however, remains - the ‘humanity’

⁴⁵ 1971 Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), 10 ILM 1909.

⁴⁶ For a text of the Agreement and International Cospas-Sarsat Programme Privileges and Immunities Order, see Canada, SOR/2005-112, 5 August 2014.

⁴⁷ International Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters <<http://www.disasterscharter.org/web/charter/charter>> (last accessed 8 September 2014).

PROCEEDINGS OF THE INTERNATIONAL INSTITUTE OF SPACE LAW 2014

of outer space and its unerring relationship with the possibilities open to individuals, groups and communities to freely 'express' themselves (in a broad sense of that word) and conduct their activities in a dignified and peaceful manner. In this regard, we believe that it is only by recognizing that the legal regimes of outer space and human rights are inextricably linked, and that space activities must be developed only after careful consideration of ways to maintain and respect those rights, that humankind will be in a position to utilize the full positive potential that outer space offers.

Our fundamental rights and freedoms already do and should therefore continue to represent very important factors in shaping the international legal regulation of outer space of the future through both 'hard' and 'soft' law instruments. We therefore hope that this brief overview will stimulate further discussion of ways in which humanity's interests will be at the forefront of our future adventures in outer space. The risks associated with not doing so are too grave to contemplate.