



Environmental, Extremist, Economic:
New Challenges to International Security

5 – 10 August 2018

Disarmament and International Security
Committee

Official Study Guide

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Words of welcome

Honorable Delegates,

We are more than happy to welcome you to the 7th Edition of the Berlin International Model United Nations happening from August 5 to 10, 2018 in Berlin, Germany. This committee will simulate the First Committee of the United Nations General Assembly, the Disarmament and International Security Committee (DISEC).

This year's BerlinMUN edition is brought to you under the theme *Environmental, Extremist, Economic: New Challenges to International Security*. According to this theme we have decided to provide a debate on two challenges to international security and the DISCE committee:

A: Demilitarization of Outer Space

B: The Use of Private Military and Security Companies by the UN

Both topics deal largely with the newly born ambition of private companies to provide services traditionally provided by nation states. This leads to a new and unique dynamic in international relations as UN member states have to react to these new companies. When it comes to outer space, the member states need to revisit the 1967 Outer Space treaty and might find it does not hold up to current standards. On the topic of private military companies, the international community has to ask itself how far the privatization of our security architecture should be allowed to go.

We are very much looking forward to the discussion on both of these topics. This study guide shall give you a brief overview of the topics and shall be used as a starting point for your individual research. As another part of your preparation for the conference, we would like to ask you to familiarize yourself with the Rules of Procedure. Again, we are very much looking forward to getting to know you and to a fantastic week full of fruitful debates, fun nights and a fantastic BerlinMUN experience!

Best regards,

Chiara & Hanne

Committee Overview



History

The Disarmament and International Security Committee (DISEC), also known as the First Committee of the General Assembly of the United Nations, is one of the six main committees of the General Assembly.

The General Assembly was established through the signing of the Charter of the United Nations in 1945. Among the six principal organs it is the only broad-based organ that recognizes the equality of all UN Member States without paying attention to their population, size, military or economic power. Its role is to provide a forum for multilateral discussions of the full spectrum of international issues covered by the UN Charter as well as to guide in setting standards and in the codification of international law. As all 193 member states of the UN are automatically members, there is no specific procedure foreseen for its membership.

The functions and powers of the General Assembly are set out in the articles 10 through 22 of the UN Charter. According to article 10, the General Assembly discusses any question or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter. As it can discuss a large variety of issues, it is made up of six main committees to debate the different topics more effectively and more detailed: the Disarmament & International Security Committee (DISEC), the Economic & Financial Committee (ECOFIN), the Social, Humanitarian & Cultural Committee (SOCHUM), the Special Political & Decolonization Committee (SPECPOL), the Administrative & Budgetary Committee and the Legal Committee.

DISEC's first resolution was passed in 1946 after Hiroshima and Nagasaki to establish a "Commission to Deal with the Problems Raised by the Discovery of Atomic Energy".¹ Since then, DISEC has been passing several resolutions every year.

Each Member State has one vote, based on a structure founded on the equal recognition of all states. This forum enables each state to express their position on related matters and promotes common understandings. However, there has been a drive to achieve consensus on issues in recent years, rather than deciding by a formal vote. This had been criticized by the former UN Secretary General Kofi Annan as it "prompts the Assembly to retreat into generalities, abandoning any serious effort to take action"².

Others criticize the stalemate of DISEC, as there are widely varying perceptions on global situations, which are not being mutually recognized. Some states persist on their positions and will not compromise to vote in favor of some resolutions. This results in largely static annual resolutions, representing only the common understanding of most. There have been multiple attempts to review and improve the working methods of the General Assembly. In its 42nd session, the General Assembly passed a resolution with recommendations to ensure a more effective approach concerning the work of the First Committee.³

Mandate

The Committee deals with disarmament, global challenges and threats to global peace within the scope of the United Nations Charter. DISEC is namely charged with tackling nuclear proliferation, weapons of mass destruction and combating the illicit production of conventional weapons.

¹ UN General Assembly RES 1/1946.

² UN General Assembly, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General, 2005, p. 40.

³ UN General Assembly RES 42/42, *Rationalization of the Work of the First Committee*, 1987.

As both DISEC and the Security Council tackle international security issues, it is important to distinguish their mandates carefully. The main difference to the Security Council is that DISEC is rather active in the promotion of peace than in crisis management. The Security Council, composed only of 15 Member States, however, is the only UN body that can impose force upon Member States. This includes not only the use of military force, but also blockades, sanctions, etc. The First Committee as the voice of all 193 Members States can make recommendations to the Security Council in those matters where international peace is at stake. Through the Security Council's responses to those recommendations, DISEC resolutions often have more normative power than other deliberative UN bodies. DISEC also works closely together with the UN Disarmament Commission and the Conference of Disarmament.

Recommended reading

UN Website, General Assembly of the United Nations, *About the General Assembly*.

<https://www.un.org/en/ga/about/>

Reaching Critical Will, *UN General Assembly First Committee*.

<http://www.reachingcriticalwill.org/disarmament-fora/unga>

Council on Foreign Relations, *The Role of the UN General Assembly*, 2017.

<https://www.cfr.org/background/role-un-general-assembly>

Topic A: The Use of Private Military & Security Companies by the United Nations

Introduction

States are calling for a more market-oriented United Nations (UN) to increase efficiency of UN operations.⁴ Among the many Private-Public Partnerships (PPPs) the UN undertakes⁵ are services of Private Military and Security Companies (PMSCs). It is a well-known fact that these companies are contracted by various actors in conflict zones around the globe in the last decades, but a lesser known fact is that PMSCs have operated with the UN since the 1990s.

These companies are employed in various ways. Mostly they are used to secure UN facilities in conflict zones and provide logistical support or security training. In some cases, they were also employed in situations that might better be handled by UN peace building troops. But as nations are less willing to support the UN with providing military services, the UN has little choice but to turn towards the private sector for support of undertakings with this nature.

However, outsourcing key security competences impacts the political and legal accountability of the client and more often than not abuses by PMSC employees are not pursued. This problem applies to the use of PMSCs in general as well as when contracted by the UN. As legal restrictions on their use are already hard to navigate, an added layer is to distinguish contracting of PMSC from mercenaries, which is already banned by the "International Convention against the Recruitment, Use, Financing and Training of Mercenaries" established in 2001.

⁴ Ostensen, page 1

⁵ For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has an entire policy for PPPs, especially in the context of "Education for all".

<http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/partners/public-private/>

There has been little discussion in public about the nature of PMSC services for UN institutions and there are no comprehensive official reports by the UN about their activities. Due to the controversial nature of the topic, there is no coherent UN policy on the employment of security services. Nonetheless, exactly because of the controversial nature of the topic there appears to be a need for such a policy to guide UN organizations.

Definition

There are various definitions for this kind of companies and many labels one can give them ranging from “private military companies” to “risk mitigating companies”. The companies try to give themselves a variety of harmless labels, either for specifying or disguising their services with varying degrees of success. Taking this into account, the *Montreux document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (Montreux Document)* an intergovernmental document resulting of a process promoting humanitarian law in conflict zones started by the Swiss government and the International Committee of the Red Cross (ICRC) in 2008 defines PMCs as “irrespective of how they describe themselves”. PMSCs “are private business entities that provide military and/or security services. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security staff personnel.”⁶

Another important document is the *International Code of Conduct for Private Security Service Providers (ICoC)* which was written in a forum started by the Swiss government in the aftermath of the creation of the Montreux document in 2010. Currently, the ICoC is signed by 7 governments (Australia, Canada, Norway, Sweden, Switzerland, the UK

⁶ Montreux Document

and the United States of America), 95 Private Security organizations and 26 civil society organizations.⁷ According to the ICoC, the term private security companies and private security service providers (collectively, PSCs) means: “any Company (as defined in this Code) whose business activities include the provision of Security Services either on its own behalf or on behalf of another, irrespective of how such a Company describes itself.” These security services include “guarding and protection of persons and objects, such as convoys, facilities, designated sites, property or other places (whether armed or unarmed), or any other activity for which the Personnel of Companies are required to carry or operate a weapon in the performance of their duties.”⁸

The UN does require private companies to be a member in the ICoC as a mandatory requirement to be hired by UN agencies.⁹

It is important to note that in their own documents, the UN never names their contractors PMSCs, only PSCs or Private Security Companies. For comprehension and simplification this study guide will continue to call these companies Private Military and Security Companies (PMSCs).

Procurement of PMSCs by the UN

Reasons for PMSC procurement

The most important reason for contracting a PMSC is their claim to operate more cost-effective than regular army troops and at the same time being more rapidly available. A state avoids needing to fund a large standing army and does not need to deal with training or long-term costs such as retirement benefits for soldiers. This became especially important after the end of the Cold War when countries became less willing to spend money on large defense projects.

⁷ <https://www.icoca.ch/en/membership> , consulted on July, 12th 2018.

⁸ International Code of Conduct

⁹ UN Guidelines on the Use of Armed Security Services from Private Security Companies, clause 25

Furthermore, in most states governments are able to hire PMSCs without involving their parliaments or informing the public. Hence procurement of PMSCs is a convenient way to mitigate the potential political fallout of unpopular military interventions. This is also due to the fact that casualties among PMSCs are not widely published and do not count into the official statistics of fallen soldiers in armed conflicts.

Various ways of PMSC procurement

There are a number of ways a PMSCs is contracted by an international organisation such as the UN. Noting additionally that there are a large number of UN organisations with a variety of organisational structures. A PMSC can be contracted by any UN organisation directly and some UN organisations do have a history and set standards, while others may do the procurement *ad hoc*. Currently most procurement of security services is authorized or performed by the *UN Department of Safety and Security (DSS)* established in 2005.

Another way a PMSC can get into the service of the international community is via member states which employ PMSCs either with knowledge or without knowledge of the UN. Their procurement can be an addition to already existing forces a member state is sending to an international mission. As there is no systematic way of reporting use of private contractors, nations are not forced to document their use of PMSCs.¹⁰

When contracted the PMSCs can be categorized either in international or national missions. Either of those have mission specific benefits. For international, which are mostly US or European based, speaks their expertise and superior equipment the UN or member states cannot meet itself. For national security companies speaks their knowledge of the local environment and that they might be easier acceptable for the local population.

¹⁰ Ostensen, page 11

Examples of PMSC procurement by the UN

It is important to acknowledge that currently, within the UN, PMSCs are not used for frontline peacekeeping although companies have suggested they could expand their services towards this direction. Generally, PMSCs perform various task other than only static security guarding. They provide, among other services, training, logistical support, management services and even demining. In one case, DynCorp, as an US based PMSC, provided satellite communication and helicopter transport to the international mission in East Timor and Pacific Architects and Engineers (PAE), another US based company, organized general logistics for UN missions in Sierra Leone in 2001 and 2003 as well as to the mission in the Democratic Republic of Congo in 2001.

Companies are also able to provide support for hostage situations, but the UN is currently forbidden by the General Assembly¹¹ to contract private actors in these cases. Private actors, i.e. shipping companies, however do contract PMSCs for hostage negotiations and extractions. Often it appears that logistical support is combined with various other security services, mostly of intelligence gathering nature. Another highly demanded service is training of local forces which also implies distribution of military equipment. In the future, the services of PMSCs might expand as companies are trying to move into sectors such as judicial system or police reforms.¹²

Problems with PMSCs

Critics are calling out the use of PMSC by the UN mainly because of the dubious track record some of the companies have and the opaque business structures that come with it.

The UN appears not to have established a coherent procurement policy that filters out companies with a negative record. One example is DynCorp which is frequently

¹¹ Ostensen, page 12.

¹² Ostensen, page 13 ff.

contracted for international missions and got poor ratings by the US state department for services. In one incident because of their sub-contractors falsifying documents in Pakistan and DynCorp's poor cooperation with Pakistani law enforcement.¹³

This example raises another issue: The topic of sub-contracting by PMSCs hired by the UN. To increase their service portfolio, many international companies employ local sub-contractors and the UN does not necessarily learn about them. In Afghanistan, this led to the situation of a PMSC contracted by the US for UN missions sub-contracting Afghan warlords linked to bribery, kidnapping and murder.¹⁴

As the private contracts are often company secrets, there is no way of knowing how much the services actually cost. The UN does not publish all contracts and sometimes PMSCs even raise their cost after a contract had been signed. When it comes to services procured by states the issue of opaque contracts becomes even more complicated. One example is a non-bid contract awarded to PAE for which the UN General Assembly called for an investigation in 2008. This investigation however never led to any official report.¹⁵

In addition, as private contractors become easily available, the UN staff tends to be secured in very well guarded compounds with little connection to the local populations. This increasing trend was criticised in the UN report from 2008: "What some call the "UN fortress" approach – a model of protection perceived as being based on over-reliance on physical security tools like "T" walls¹⁶ and heavily armed military escorts – associates the Organization with military powers, and potentially distances it from the public it was founded to serve. This physical profile, in the eyes of many, has a direct negative impact on UN image." In turn, a negative public image of the UN puts

¹³ https://www.huffingtonpost.com/david-isenberg/the-state-department-tell_b_1285366.html , accessed on June 11, 2018

¹⁴ UN Senate Report 2010

¹⁵ Pingeot, page 34

¹⁶ Also known as "Bremer walls"

staffers into risk of local attacks and hence leads to a spiral of increasing 'need' for security service.¹⁷

Continuous contracting of private companies might even lead to conflicts of interest within UN offices. Interestingly, a report by the UN Office of Internal Oversight Services (OIOS) revealed that the structure of the UN Department of Safety and Security (DSS) was largely proposed by a private security company. The DSS was created in 2005 and is supposed to be responsible for all policies related to contracting armed or unarmed private security personnel. The fact that this Department has been partially "constructed" by a private security company may raise questions regarding the thin line of conflicts of interest¹⁸

Case studies of PMSC use

PMSCs in Bosnia

One of the most extensive missions in which PMSCs were contracted was the UN Protection Force (UNPROFOR) in Bosnia. The mission contracted at least 4 PMSCs from 1992 until 1996; among them were DSL and DynCorp, both US based security companies. The whole mission involved approximately 2,000 civilians that were not bound by the 6 months terms for regular soldiers. Many civilians stayed for the whole year making them deeply involved into the missions' structure. Their tasks involved logistical support, close guarding, crime prevention and boarder control security.

During the four years the responsibilities of the PMSCs grew steadily. It involved hardware equipment support, such as providing armoured vehicles and drivers, as African and Asian peacekeeping forces could not provide either. DSL was even tasked to construct part of the bases for the mission's mobility. Eventually DSL personnel even

¹⁷ Towards a Culture of Security and Accountability, Page 72

¹⁸ Pingeot, page 35

wore UN uniforms with UN badges and UN papers and were fully integrated into the mission's structure and were even briefed on classified details.

The mission was eventually taken over by NATO in 1996 and the contracts expired. This may serve as an example how heavily a UN mission can rely on private services.¹⁹

PAE in the Democratic Republic of Congo

In June 2004, the public rage over the UN mission's failure to prevent human right abuses in the province of Ituri of the Democratic Republic of Congo turned into violence against UN personnel. Employees of the security firm contracted for their protection, PAE, were also subject to attacks by locals. After several UN buildings and dozens of vehicles were burned, the UN withdrew their troops and personnel. The spontaneous emergency evacuation of 300 UN staffers was solely organized by the PAE whose employees stayed behind to fulfil their objectives. This serves as an example that sometimes even private security employees are in great danger without having the same protection and benefits as official UN personnel.²⁰

DynCorp in Somalia

In 2007, DynCorp got a large contract by the US State Department to support the UN and African Union peacekeeping affords in Somalia. The support was mostly of logistical nature, establishing supply chains and equipment maintenance.²¹ In addition, military training of AU soldiers was largely conducted by private companies in Somalia. This was partly necessary due to the policy of the US to reduce official casualties in African conflict zones. Hence, contracting the PMSCs in Somalia can be understood as outsourcing the US support of the UN / AU mission.²²

¹⁹ Ostensen, page 17

²⁰ Ostensen, page 18

²¹ <http://www.dyn-intl.com/what-we-do/case-studies/training/supporting-peacekeeping-efforts-in-africa/>, accessed on June 11, 2018

²² Pedro Barge Cunha: Somalia as market for PMSCs

Conclusion & outlook

The use of PMSCs by the UN is currently rather opaque. However, good points can be made for the current use or even an increased use of PMSCs. Especially when it comes to rapid availability of specialized services, few countries can provide what certain companies can. At the same time this raises the question whether the UN should even engage in activities it cannot manage itself or with the help of member states. The international community demands more and more from the UN and peacebuilding and peacekeeping missions did increase significantly since the end of the Cold War. Increased international public-private partnerships might just be what the UN needs to satisfy these expectations.

Nonetheless, many problems arise when private actors are introduced into security frameworks traditionally a domain of nation states. Some of these problems this study guide tried to highlight.

At BerlinMUN the committee has the chance to address this issue. Because of the opaque framework within which PMSCs act, this is not an easy topic to discuss. Extensive and comprehensive research is necessary for delegates to perform a productive debate.

One way to approach the topic might be to introduce specific regulations on the UN's use of PMSCs that go far beyond the current ones. In this case it might be necessary to not only address the UN's procurement of PMSCs but additionally the procurement of PMSCs by member states for the purpose of supporting a UN mission.

Another way might be to change the way the UN plans to handle security conflicts in general and to re-think the UN's use of armed personnel. An option might be to introduce a regulation that forbids member states from the procurement of PMSCs for international missions. This in turn will lead to a higher demand for regular blue helmets, a demand member states might not be able to meet. A possible alternative might be a reduced UN with less demanding missions.

A completely different course of action might be a deregulation of PMSCs. For years, especially ambitious companies have suggested their services for frontline peacekeeping activities currently not undertaken by private actors. Whether this is in the interest of the international community or only in the business interest of a few companies, is for the delegates to debate in August.

Questions a resolution should answer

- In what capacities should the UN employ PMSCs?
- How should the UN define PMSCs?
- Who shall be accountable for abuses by PMSC personnel employed by the UN?
- What UN institutions should be allowed to employ PMSCs? Which institutions should be prohibited from engaging with them?
- Can the UN continue its humanitarian and peacebuilding missions without the use of PMSCs or should it rely more on them?
- Should the international community welcome a privatization of a part of the international security infrastructure?
- How should the UN deal with member states that recruit PMSCs for UN missions?

Recommended reading

Åse Gilje Østensen, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2011: UN Use of Private Military and Security Companies: Practices and Policies

Pingeot Lou, "Dangerous Partnership, Private military & Security Companies and the UN"

UN Department of Safety and Security (DSS), "Security Policy Manual of the UN Security Management System" (Chapter 4 is especially insightful when it comes to armed and unarmed private security companies)

UN Guidelines on the Use of Armed Security Services from Private Security Companies
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/GuidelinesUseArmedSecurityServices.pdf>

The Montreux Document on Private Military and Security Companies: <https://shop.icrc.org/document-de-montreux-sur-les-entreprises-militaires-et-de-securite-privees-2629.html>

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Åse Gilje Østensen, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2011: UN Use of Private Military and Security Companies: Practices and Policies

UN Department of Safety and Security (DSS), "Security Policy Manual of the UN Security Management System"

https://www.un.org/undss/sites/www.un.org.undss/files/docs/security_policy_manual_spm_e-book_as_of_29_nov_2017_0.pdf

(Chapter 4 is especially insightful when it comes to armed and unarmed private security companies)

UN Guidelines on the Use of Armed Security Services from Private Security Companies
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/GuidelinesUseArmedSecurityServices.pdf>

International Code of Conduct for Private Security Service Providers
https://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf

The Montreux Document on Private Military and Security Companies: <https://shop.icrc.org/document-de-montreux-sur-les-entreprises-militaires-et-de-securite-privees-2629.html>

International Convention against the Recruitment, Use, Financing and Training of Mercenaries

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/530?OpenDocument>

Pedro Barge Cunha : "SOMALIA AS A MARKET FOR PRIVATE MILITARY AND SECURITY COMPANIES: DEFINITIONS, AGENTS AND SERVICES", 2013: https://repositorio.iscte-iul.pt/bitstream/10071/5107/1/6Pedro_Cunha_Somalia.pdf

US Senate Report 2010: "INQUIRY INTO THE ROLE AND OVERSIGHT OF PRIVATE SECURITY CONTRACTORS IN AFGHANISTAN",

<https://info.publicintelligence.net/SASC-PSC-Report.pdf>

"Towards a Culture of Security and Accountability", The Report of the Independent Panel on Safety and Security of UN Personnel and Premises Worldwide, 2008, <http://www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf>

TOPIC B: Demilitarization of Outer Space

Introduction

The use and exploration of outer space has symbolized human curiosity for decades. All of us benefit from space exploration every day through satellites, which provide us with telecommunications, weather forecasting and navigation. These peaceful uses of outer space are only possible through international cooperation and trust. A war in space would probably reset current efforts and achievements so far back to zero, from the International Space Station to all other common space exploration projects. But are those allegedly peaceful uses actually purely peaceful, when even communication satellites are used by militaries all over the world for their operations?

Until now, there have officially not been any weapons placed into orbit. But even though space has not been weaponized yet, it has been militarized²³ since the Cold War when satellites were first launched to detect enemy missiles. The Disarmament and International Security Committee needs to look at different aspects of the spectrum. The use of outer space is not concerning only a small circle of powerful countries, since the Outer Space Treaty (OST) of 1967 defined outer space as the province of all mankind. This can lead to tensions between wealthy and economically weak states which simply cannot afford a space program and thus cannot practice the right to space exploration. The Committee must decide if and how to tackle such discrimination to avoid tensions. Additionally, already existing political disputes between states might be carried into space in the future, if the international community ceases to prevent licit possibilities to space warfare. Consequently, the Committee must look at current legislation such as the OST to determine whether it is

²³ The definition of space militarization is broad. It includes every "use of space in support of ground, sea and air-based military operations" (Tripathi, p. 193).

an adequate measure to achieve demilitarization in space today; or if this is not the case, how it would need to be adapted to be more effective. Delegates must further decide if there are exclusively peaceful uses of outer space, or how implicit military uses could be limited.

Historical Background and Main Actors

Development of Space Militarization until the end of the Cold War

It seems reasonable to think the idea of using space for military purposes first came up within the last half of the 20th century. However, a Scottish scientist invented a theoretical “sun gun” back in 1596, which would serve as a giant mirror in the orbit to redirect sun rays to a particular point on earth²⁴. The Nazis took up this idea to destroy enemy cities or boil parts of an ocean, but luckily recognized their own (or anyone’s) incapability to build one at that time.²⁵ However, they did succeed in building a number of military rockets, including the *Vergeltungswaffe 2* (V2), which would eventually become the first man-made object to enter space.²⁶

During the Cold War, the USA and the Soviet Union used outer space as a showcase. Rapidly progressing space flight capabilities and launches on both sides served as a demonstration of their asserted superiority over another. Although this space race led to massive financial contributions into space development and research, some projects got dangerously close to an uncontrolled and full arms race in space.²⁷ The military space technology that was developed in the Cold War era established a whole new branch of weaponry, ranging from anti-satellite weapons, direct-energy weapons and spy satellites to, most importantly, Intercontinental Ballistic Missiles (ICBM). The

²⁴ Gary Seath, *Beyond Logarithms & Bones – A short history of John Napier and his legacy*, 2017, p. 21.

²⁵ Life Magazine, *The German Space Mirror*, 1945, pp. 30, 78.

²⁶ Ulli Kulke (Die Welt), *Geschichte der Vergeltungswaffe 2*, 2011.

²⁷ For instance, the NASA project A119 planned to detonate a nuclear bomb on the surface of the moon to show the military capabilities of the USA. Fortunately, it was realized that placing the American flag on the moon serves just as well as a demonstration of their technological dominance and, more importantly, might promote a better public image than an atomic explosion seen in space.

expansion of the battlefield into space and the rapid progress in military capacities on both sides contributed to rising fears for a war carried out in space.

Development of an International Legal Framework

Responding to those fears right after the launch of the Sputnik satellite in 1957, international efforts were taken to set up “Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space” in 1962²⁸. Based on those principles, the Committee on the Peaceful Uses of Outer Space (COPUOS), together with the UN General Assembly, established the main framework for international space law with the **Outer Space Treaty** (OST)²⁹ which entered into force in 1967. The OST remains until today the most important legal framework concerning space law. It sets the exploration and use of outer space as province of all mankind and constitutes a right to “free access” of outer space by all states without discrimination. Thus, the OST stresses the equality between states and the obligation to share the benefits of space exploration with *all* countries. It further prohibits carrying and installing nuclear weapons and other weapons of mass destruction (WMD) in outer space, rules that no celestial body can be subject to national appropriation and limits its states parties to peacefully carry out space exploration in regard to celestial bodies.

But what exactly is considered peaceful? In contrast to initial appearances, it is now widely interpreted as non-aggressive rather than non-military. This would constitute a mostly licit militarization of outer space under international law. Looking at it the other way around, if a “non-aggressive” behavior is not enough to meet the provisions of a solely peaceful use, space militarization would be illicit. The Committee could request the International Court of Justice for an advisory opinion if already existing military uses of outer space are in compliance with the demand of a purely peaceful use. In

²⁸ UN General Assembly RES 18/1962, Declaration of Legal Principles Governing the Activities of States on the Exploration and Use of Outer Space, 1962.

²⁹ Official name: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies.

over fifty years since its entry into force, the OST has not been amended. Critics express concern that it does not cover the use of outer space that is possible with today's technology, as we still have the same legislation referring to space exploring capabilities from the 1960's, when humanity just started to launch objects into space. Also, it has been criticized for neither defining outer space, nor including conventional weaponry in its content.

Another important step towards the demilitarization of space was made with the "Convention on Registration of Objects Launched into Outer Space" (**Registration Convention**), which entered into force in 1976.³⁰ State parties are required to report information on all space objects to the Secretary General, who then includes them in the United Nations Register of Objects Launched into Outer Space³¹. The "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies" (**Moon Treaty**), adopted in 1979, provides that all celestial bodies are together with their natural resources, the common heritage of mankind and not subject to national appropriation by any claim of sovereignty. These provisions remain however theoretical, as only 13 states have ratified the treaty, none of which are capable of conducting space flight. This evidently lacking interest of the international community is extenuated through the binding Art. II of the OST, which regulates that outer space and all celestial bodies cannot be subject to national jurisdiction.

Apart from multilateral treaties, there have been multiple resolutions concluded by UN General Assembly calling for a peaceful use of space, for example with the "Principles Relevant to the Use of Nuclear Power Sources in Outer Space"³² and the "Space

³⁰ UN General Assembly, *Convention on Registration of Objects Launched into Outer Space*, Annex of UN General Assembly RES 3235, 1974.

³¹ UNOOSA, *United Nations Register of Objects Launched into Outer Space*.

³² UN General Assembly RES 47/68.

Benefits Declaration”³³. These resolutions demonstrate the will of the international community against a weaponization of space, although they do not serve as legally binding documents.

Main Actors



- Countries with space launch capability
- ESA (without France)

There are currently 72 governmental space agencies, but only 14 of them can launch into space. Furthermore, only those of China, India, Japan, the USA, the European Union (European Space Agency) and Russia have full launch capabilities. The U.S. president Donald Trump has announced his intentions to establish a “space force” as an additional branch of the U.S. Armed Forces,³⁴ which has raised international concerns. The Committee must clearly appraise possible hostile intentions by those states that are objectively capable of launching weapons into orbit.

³³ UN General Assembly RES 51/122, *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*.

³⁴ Zachary Cohen, CNN, *Trump pushes idea of adding ‘Space Force’ to US military*, 2018.

Key Concepts

But why do nations want to place weapons into orbit? The main reasons are rather easy to grasp. They are on one side similar to those for the use of nuclear weapons, as they serve as a method for deterrence³⁵ and as a demonstration of a nation's power and superiority. On the other hand, the motivation lies in the desire to create a technologically more advanced warfare, as space weapons are able to strike more precisely.

Definition of Outer Space

The Legal Subcommittee of the COPUOS has worked on the definition of outer space since 1967,³⁶ but unfortunately has not found one until today. However, space law and national law seem to converge that outer space begins at the point where aeronautical flight becomes impossible³⁷ - a point called the van Kármán line which lies 100 km above Earth's surface.³⁸ But neither the OST nor other space treaties adopt this line in their texts. Finding a commonly accepted boundary is imperative as it determines the exact point where an arm would be considered as a space weapon³⁹.

Space weapons

The military use of outer space can be split into three categories. The current use, which includes anti-satellite technology (ASAT) as well as Anti-Ballistic Missiles (ABM), can be categorized under **Earth-to-Space** weaponry.⁴⁰ The main problem here is the common dual use technology of satellites, meaning that they can be originally meant

³⁵ A military strategy intended to prevent an opponent from taking an action by the mere presence of military weaponry, often referred to in the context of nuclear weapons.

³⁶ UN COPUOS, Legal Subcommittee, 41st session, *Historical summary on the consideration of the question on the definition and delimitation of outer space, Report of the Secretariat*, 2002.

³⁷ Pedrazzi, International Institute of Space Law/European CSL Space Law Symposium, *Are there indications for upper and lower limits for air space and outer space in air law, space law and national legislation?*, 2011.

³⁸ O'Leary, *Handbook of Space Engineering, Archaeology, and Heritage*, 2009, p.84.

³⁹ Those weapons which are used in space warfare (combat taking place in outer space).

⁴⁰ Marboe, *Militarization of outer space: present and future challenges from the international legal perspective*, 2010, p. 2.

for peaceful functions but have potential military applications at the same time.⁴¹ The second category of space weapons, **Space-to-Earth** weapons, such as orbital weaponry or kinetic bombardment, would be directly targeted onto a point on Earth and not constitute a peaceful use.⁴² **Space-to-space** weapons were planned under the U.S. presidency of 1983. The Strategic Defense Initiative (SDI) was established to build a space-based missile defense program that destroys incoming hostile missiles automatically.⁴³ The initiative, also known as “Star Wars”, was never realized though, as the breakup of the Soviet Union made the implementation less urgent.

During the upcoming debate delegates should bear in mind that any allegedly peaceful satellite could be transformed into a space-to-space weapon if used accordingly. Delegates could consider the establishment of a sanctioning institution for a possible misuse of outer space as a counter measure.

Current Challenges

The presented issue is facing an urgent demand for action. We find ourselves uncertain about promises and intentions of powerful states, as national secrecy makes access to data concerning space abilities difficult to conduct. Moreover, economical differences and limited capabilities to space militarization lead to a disproportion between states. The fact that only few states can launch into space results in a threat for those who simply could not afford to strike back.

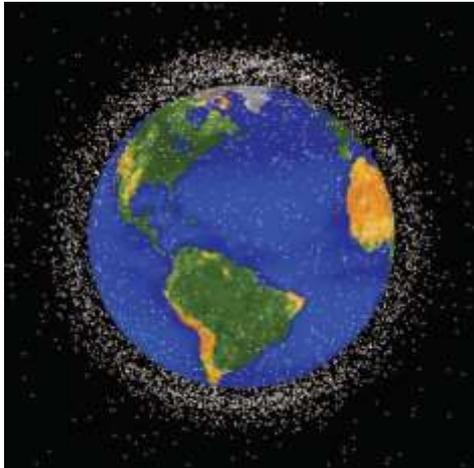
⁴¹ Axe, Reuters.com, *When it comes to war in space, U.S. has the edge*, 2015.

⁴² Marboe, p. 3.

⁴³ U.S. Department of State Archive, *Strategic Defense Initiative (SDI)*, 1983.

Environmental Concerns about Space Debris

*Objects in low earth orbit that are currently being tracked; about 5% are functional satellites, the rest is debris.*⁴⁴



Space Debris is “any human-made object in orbit that no longer serves a useful purpose”⁴⁵. It is only produced through accidental breakup of satellites in routine space activity or through the testing or use of ASAT weapons. The Chinese ASAT test in January 2007 alone created over 2 million pieces of orbiting debris. In total, there is an estimated number of 170 million pieces smaller than 1 cm, 670,000 as big as 1-10 cm and 29,000 larger than 10 cm in all altitudes. For the destruction of a satellite, any piece larger than 1 cm is enough, as debris in low Earth orbit (LEO) travels extremely fast. At the time of writing (May 2018), there exists no technology to reduce debris, only multiple theoretical ideas.⁴⁶ Thus, the cost of future ASAT testing could be the possibility to end up with so little “debris-free” space in LEO, that not even commercial satellite launches could be possible in the future.

Recent Action on a global scale

In October 2016, the Conference on Disarmament, which has been dealing with the “Prevention of an Arms Race in Outer Space” (PAROS) since 1986, adopted a resolution about a “no first placement of weapons in outer space”.⁴⁷ The Draft Resolution was introduced by the Russian Federation, the Democratic People’s Republic of Korea and China amongst others, while the USA voted against.

⁴⁴ Image courtesy of NASA Orbital Debris Office.

⁴⁵ Wright, p. 1.

⁴⁶ European Space Agency (ESA), *ESA’s Active Debris Removal Mission: E.Deorbit*, 2016 - Watch (2:44 min).

⁴⁷ UN General Assembly, RES 71/32.

In June 2018, two widely attended UN sessions will take place. The UNISPACE+50 Symposium will discuss and decide on the future of COPUOS, while COPUOS itself will gather roughly at the same time in Vienna for its 61st session.

Questions an Outcome Document should answer

- Would an entirely new legislation concerning the military use of outer space be more efficient than previous legal action? Or should the Outer Space Treaty prevail and be amended? If so, what should a supplementary protocol to the OST include?
- What is and what is not the “peaceful” use of outer space?
- From what point on are weapons considered space weapons? Would a clear definition of outer space facilitate demilitarization efforts?
- Can the right to space exploration by each state be limited?
- How can already existing institutions and frameworks be optimized to follow the rapidly advancing space technology?

Recommended Reading

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Helpful for research on national policies :

European Center for Space Law (ECSL), *Space Policy Documents and Useful Readings on Regional and National Space Legislations*. Available via:

[http://www.esa.int/About Us/ECSL European Centre for Space Law/Space policy documents and useful readings on regional and national space legislations.](http://www.esa.int/About_Us/ECSL_European_Centre_for_Space_Law/Space_policy_documents_and_useful_readings_on_regional_and_national_space_legislations)

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