DOI: https://www.doi.org/10.32523/2791-0954-2023-8-4-25-37

The UN contribution to the prevention of an arms race in outer space

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Abstract. When mankind gained access to the use of outer space in practice, it was decided that its international legal regime would be based on such principles as freedom of exploration and use of space, freedom for scientific research, prohibition of discrimination and a number of other principles enshrined in the 1967 Outer Space Treaty. One of the most important principles was the prohibition of launching into orbit around the Earth and placing in space any objects with nuclear weapons or any other weapons of mass destruction Moreover, from the very beginning outer space was used not only for civilian purposes and interests, but also for military purposes. These peculiarities have led to the specificity of international legal regulation of the use of outer space for peaceful purposes and in terms of disarmament issues. While in the first area there are a number of international agreements and international law-making is carried out within the framework of the UN COPUOS, in the second area there are no binding international instruments today, including due to problems in the Conference on Disarmament, the only permanent international multilateral negotiating forum for the elaboration of disarmament agreements. The UN Disarmament Commission and the UN General Assembly in general, for their part, develop only documents of a recommendatory nature.

Keywords: arms race, prevention of the militarization of space, Conference on Disarmament, security, space threats, peaceful purposes, military use.

БҰҰ ғарыш кеңістігіндегі қару-жарақ жарысының алдын алудағы үлесі

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Түйіндеме. Адамзат іс жүзінде ғарыш кеңістігін пайдалануға қол жеткізген кезде, оның халықаралық құқықтық режимі ғарышты зерттеу және пайдалану еркіндігі, ғылыми зерттеулерге еркіндік, кемсітушілікке тыйым салу және БҰҰ-ның 1967 жылғы Ғарыш бойынша шартында бекітілген басқа да бірқатар принциптерге негізделеді деп шешілді. Бұл ретте ең маңызды қағидалардың бірі жердің айналасындағы орбитаға шығаруға және ғарышта ядролық қаруы бар кез келген нысандарды немесе кез келген басқа жаппай қырып-жою қаруларын орналастыруға тыйым салу болды, бұл бір жағынан ғарышты қарудың осы түрінен сақтап қалды, бірақ екінші жағынан мемлекеттерге қарапайым қаруды пайдалану мүмкіндігін қалдырды. Сонымен қатар, ғарыш кеңістігі басынан бастап тек азаматтық мақсаттар мен мүдделер үшін ғана емес, әскери мақсатта да қолданылды. Бұл ерекшеліктер ғарышты бейбіт мақсатта және қарусыздану мәселелері тұрғысынан пайдалануды халықаралық құқықтық реттеудің ерекшелігін анықтады. Егер бірінші бағыт бойынша бірқатар халықаралық келісімдер болса және халықаралық құқықшығармашылық БҰҰ Ғарыш комитеті шеңберінде жүзеге асырылса, екінші бағыт бойынша бүгінде міндетті халықаралық құжаттар жоқ, оның ішінде қарусыздану жөніндегі конференциядағы проблемаларға байланысты, қарусыздану жөніндегі келісімдерді әзірлеу үшін тұрақты жұмыс істейтін жалғыз халықаралық көпжақты келіссөздер форумы болып табылады. БҰҰ қарусыздану жөніндегі комиссиясы және тұтастай алғанда БҰҰ Бас Ассамблеясы өз тарапынан тек ұсынымдық сипаттағы құжаттарды әзірлейді.

Негізгі сөздер: қару-жарақ жарысы, ғарышты милитаризациялаудың алдын алу, Қарусыздану бойынша конференция, қауіпсіздік, ғарыштық қауіптер, бейбіт мақсаттар, әскери пайдалану.

Вклад ООН в предотвращение гонки вооружений в космическом пространстве

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Аннотация. Когда человечество на практике получило доступ к использованию космического пространства, было решено, что его международно-правовой режим будет основываться на таких принципах, как свобода исследования и использования космоса, свобода для научных исследований, запрете дискриминации и ряде других принципов, нашедших закрепление в Договоре ООН по космосу 1967 г. При этом одним из наиболее важных принципов стал запрет вывода на орбиту вокруг Земли и размещения в космосе любых объектов с ядерным оружием или любыми другими видами оружия массового уничтожения, что, с одной стороны, сохранило космос от такого вида оружия, но, с другой стороны, оставило возможность государствам использования в нём обычного оружия. Более того, космическое пространство с самого начала использовалось не только в гражданских целях и интересах, но и в военных. Данные особенности обусловили специфику международно-правового регулирования использования космоса в мирных целях и с точки зрения вопросов разоружения. Если по первому направлению имеется целый ряд международных соглашений и международное правотворчество осуществляется в рамках Комитета ООН по космосу, то по второму направлению сегодня отсутствуют обязательные международные документы, в том числе в связи с проблемами в Конференции по разоружению, единственным постоянно действующим международным многосторонним переговорным форумом для выработки соглашений по разоружению. Комиссия ООН по разоружению и в целом Генеральная Ассамблея ООН, со своей стороны разрабатывают лишь документы рекомендательного характера.

Ключевые слова: гонка вооружений, предотвращение милитаризации космоса, Конференция по разоружению, безопасность, космические угрозы, мирные цели, военное использование.

Introduction

The military use of space by people started in the 30s-40s of the twentieth century, when scientists invented jet fuel, that became a rocket fuel, allowing to expand their military use, including for the delivery of weapons of mass destruction, for example, by launching intercontinental ballistic missiles. The exploration and use of outer space for peaceful purposes became possible later, in the second half of the 20th century, with the launch into space in 1957 of the first artificial satellite, Sputnik-1. Space activities started to develop in two directions: in the military and civilian spheres, which led to differences in international legal regulation of both of these spheres. However, these two directions are closely overlapping: it is impossible to make peaceful use of outer space if its use for military purposes prevails. That is why the issue of international legal regulation of prevention of an arms race in outer space has arisen in practice in order to preserve the possibility of its use for the benefit of present and future generations, including security issues, for example, by means of Earth remote sensing satellites. The international legal regulation of the use of outer space is based on the United Nations. Thus, in order to assess its contribution to the issue of preventing an arms race in outer space, an international legal analysis is necessary, which is the purpose of this paper.

Materials and methods

To conduct an international legal analysis of the UN contribution to the prevention of an arms race in outer space, general scientific and special research methods were used. The general scientific methods include analysis and synthesis, which were applied in the 'Discussion' and 'Results and conclusions' parts. Private-scientific legal methods were used in the article to conduct comparative legal analysis of the activities of UN bodies and documents adopted by them. The method of historical-legal analysis was used to interpret the 1967 Outer Space Treaty. International legal documents adopted by the UN on the prevention of an arms race in outer space (disarmament issues) and the peaceful use of outer space were used in the article.

Discussion

The exploration and use of outer space for peaceful purposes is currently regulated by five major international treaties [32, 1, 2, 6, 7] which were drafted by the UN Committee on the Peaceful Uses of Outer Space (A subsidiary body of the UN General Assembly) and adopted in the 1960s and 1970s. Military use of outer space is primarily regulated through bilateral agreements. Such international agreements include the Treaty between the Russian Federation and the United States of America on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, START III. Military space is discussed mainly within the framework of the

Conference on Disarmament and the First Committee of the UN General Assembly dealing with disarmament and international security issues.

Since outer space is partially demilitarized under Article II of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereinafter referred to as the 1967 Outer Space Treaty), States may use conventional weapons in space. Dual-use satellites, such as those performing earth remote sensing activities, can also be used for military purposes.

Thus, at the early part of the present century, direct human activity in outer space is characterized not only by an increase in the number of participants in space activities, but also by the danger of space becoming militarized. This danger is becoming real. To confirm this, on June 18, 2018 the US President Donald Trump instructed the US military department, the Pentagon, to create a US space forces "to carry out operations in the space sphere" [19], including the conduct of 'space operations', conducting "offensive operations in outer space against potential adversaries [13]."

For this purpose, the U.S. Space Command was reconstituted (the U.S. military Space Command existed from 1985 to 2002), and started its operation on August 29, 2019 [34]. On December 20, 2019, the space forces started its operations.

Moreover, at the London Summit in the end of 2019, dedicated to the 70th anniversary of the establishment of NATO, it was decided to recognize outer space "as a separate sphere of warfare" on a par with land, airspace and cyberspace. We should also add the following to the fact mentioned above: since 2016, NATO members have increased their expenditures by 130 billion US dollars, and by 2024 it is envisaged to increase this indicator by 400 billion US dollars.

The possibility of space militarization has been brought to the attention of research centers that develop various 'guidelines' to be applied in the conditions of military use of outer space. In particular, since 2016, McGill University (Canada) has been developing the Manual on International Law Applicable to Military Uses of Outer Space (MILAMOS), which focuses on "the limitations imposed by international law on the threat or use of force in outer space" [17]. For this purpose, the document clarifies which space equipment is considered authorized and which is completely prohibited in the event of a military conflict in outer space. The Manual was finalized in 2022.

The present situation is generally recognized that an arms race in outer space is a real threat to the maintenance of international peace and security.

This is also confirmed by the fact that ICRC discussed the possibility of applying international humanitarian law in outer space and adopted the report "Potential Human Cost of the Use of Weapons in Outer Space and IHL Protection [20]."

In 2010, the UN General Assembly resolution 65/68 on "Transparency and Confidence-Building Measures in Outer Space Activities" mandated the establishment of a Group of Governmental Experts on Transparency and Confidence-

Building Measures in Outer Space. This Group of Governmental Experts submitted a report in 2013 in which, as recommendations, States were invited to undertake transparency and confidence-building measures in outer space activities on a voluntary basis [21].

Thus, the preamble provision of the basic 1967 Outer Space Treaty, the "common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes", remains relevant. The authors of this treaty could not ignore the fact that outer space was initially already being used for military purposes, for example, by launching dual-use satellites into orbit. It is against this background that it is still understandable that there is still disagreement among States and specialists as to the meaning of "peaceful exploration and use of outer space". The Cologne Commentary on Space Law (hereafter Cologne Commentary) argues that this discrepancy could be avoided if outer space were fully demilitarized and the word 'peaceful' was understood by all to mean 'non-military' use, enshrined in Article III of the 1967 Outer Space Treaty as follows: "The States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations" [12, p. 88].

In this context, it is useful to recall the statement by Professor G.P. Zhukov, a well-known scientist and one of the founders of the Russian science of international space law, that "the concept of 'peaceful use' of outer space excludes any activities of a military nature and means conducting exclusively scientific research in the upper atmosphere of the Earth and in outer space ..." [36, p. 28].

The focus on the issue of preserving outer space as a space for peaceful exploration and use is highlighted by the fact that the United Nations General Assembly, which is responsible for the progressive development and codification of international law, including international space law, adopts almost annual resolutions entitled "International cooperation in the peaceful uses of outer space", which, on the one hand, identify previous and new challenges and threats to activities in outer space, on the other hand, and on the other hand, the General Assembly adopts resolutions on "international cooperation in the peaceful uses of outer space". It should be noted, however, that resolution A/78/72, adopted on December 7, 2023 [27], already includes the statement "for peaceful purposes" in the context of countering an arms race in outer space and as a prerequisite for the development of international cooperation [27, para. 18]. The resolution stresses that "consideration of ways and means of maintaining outer space for peaceful purposes" should be given priority in the United Nations Committee on Outer Space, including "consideration of the broader perspective of space security and associated matters that would be instrumental in ensuring the safe and responsible conduct of space activities [27, para. 19]."

For this aim, the Resolution requests the Committee on Disarmament and International Security (First Committee) and the Special Political and Decolonization Committee (Fourth Committee) to cooperate with each other [27, para. 20].

As far as disarmament issues in outer space are concerned, the Conference on Disarmament [3], which has been dealing with this issue in the United Nations since 1978, has played a primary role in this regard, but has been suspended since 1998 due to the lack of a programme of work providing for the manner, structure and mandate for the consideration of specific aspects of this field [5]. The Russia-China joint Draft Treaty on the Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force Against Outer Space Objects, presented in 2008 [16] and revised in 2014 [4], has become very useful and is of a great demand.

In addition to the Russian-Chinese draft treaty, the Conference on Disarmament has also received various proposals submitted by individual States or groups of States in the framework of the Conference on Disarmament that address the peaceful exploration and use of outer space.

As an example, in 2019 32 States (grouped under the so-called 'Group of 21' and includes Algeria, Bangladesh, Brazil, Cameroon, Chile, Colombia, Cuba, Congo, Democratic Republic of Korea, Ecuador, Egypt, Ethiopia, India, Indonesia, Iran, Kenya, Malaysia, Mexico, Mongolia, Morocco, Myanmar, Nigeria, Pakistan, Peru, Senegal, South Africa, Sri Lanka, Syria, Tunisia, Venezuela, Vietnam, Zimbabwe) presented a joint "Statement on the Prevention of an Arms Race in Outer Space (PAROS)" [29, para. 3]. This joint statement expressed concern about "the growing threat of the weaponization of outer space, including the negative consequences of the development and deployment of missile defense systems and the implementation of advanced military technologies that could be deployed in outer space..." [29, para. 5]. The opinion expressed in the Statement "that the legal regime applicable to outer space does not, in and of itself, guarantee the prevention of an arms race in outer space" confirms the position of the Cologne Commentary that the term "for peaceful purposes" does not imply the non-military use of outer space [12, p. 88].

In this context, bilateral initiatives should also be mentioned. In particular, the joint letter of June 3, 2019 from the Permanent Mission of the Russian Federation and the Permanent Mission of the Islamic Republic of Pakistan addressed to the Secretary-General of the Conference on Disarmament, elaborated on the basis of the Joint Statement of the Russian Federation and the Islamic Republic of Pakistan on first non-piloting of weapons of any kind in outer space of May 22, 2019, contains an assurance by the Russian Federation and Pakistan that they "will not be the first to place weapons of any kind in outer space" [14].

The international community's concerns about the militarization of outer space are also reflected in the outcomes of informal events supported by the Conference on Disarmament. For example, following a conference held at Wilton Park since March 31 to April 2, 2019 on the subject of "Activities in outer space: towards protocols on norms of conduct" [18], the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland submitted a "Note Verbale of June 27, 2019 to the Office for Disarmament Affairs, as the secretariat of the Conference on Disarmament", in which it is stated that "Most of the problems associated with the use of outer space require global solutions as well as responsible behaviour by public

and private actors who must fully understand the benefits of and challenges to safe and responsible space activities" [18, p.3] .

In a similar context, the UN General Assembly agenda item entitled "Prevention of an arms race in outer space" [33] with 4 tracks, namely:

- "No first placement of weapons in outer space" [23];
- "Further Practical Measures for the Prevention of an Arms Race in Outer Space" [22];
- "Prevention of an arms race in outer space" [24];
- "Reducing space threats by adopting norms, rules and principles of responsible behavior" [25].

All sub-items are adopted by means of voting on relevant UN General Assembly resolutions, the first two of them are initiated by and through the efforts of the Russian Federation; the third on the initiative of Egypt and Sri Lanka; and the last on the initiative of the United Kingdom. Each of these resolutions requires a separate international legal analysis, being documents of 'soft law' [35].

In addition to these initiatives, but under another agenda item entitled "General and complete disarmament", a resolution entitled "Transparency and confidence-building measures in outer space activities" is also being adopted [26].

A separate UN activity is that of the UN Disarmament Commission, another subsidiary body of the General Assembly, to consider and make recommendations on various aspects of disarmament and to monitor the implementation of the relevant decisions and recommendations of the special session. The Commission delivers the results to the General Assembly annually in the form of a report. A special characteristic of the Commission's work is the consideration of only two items during the year, one of which is always devoted to nuclear disarmament. In 2022, this item was "Preparation of recommendations to promote the practical implementation of transparency and confidence-building measures in outer space activities with the goal of preventing an arms race in outer space, in accordance with the recommendations contained in the report of the Group of Governmental Experts on Transparency and Confidence-building Measures in Outer Space Activities" [8].

Results and conclusions

Within the Commission itself, various open-ended groups of governmental experts or working groups have been established and special conferences have been held.

Such groups have functioned at various times in the history of the Commission's activities on the issue of preventing the placement of weapons in outer space:

Group of governmental experts on further practical measures for the prevention of an arms race in outer space (1979) [31]; Group of governmental experts on the application of confidence-building measures in outer space (1991-1993) [30]; Group of governmental experts on transparency and confidence-building measures in outer space activities (2012-2013) [11] и Group of governmental experts on further practical measures for the prevention of an arms race in outer space (2019 [10],

2023). The 2023 Group was established by Resolution A/RES/77/250 for a period of two years to "consider and make recommendations on the substantive elements of an international legally binding instrument for the prevention of an arms race in outer space, including, in particular, the prevention of the placement of weapons in outer space." This decision was due, on the one hand, to the fact that the Conference on Disarmament had been deadlocked for many years [22, p. 4]. But, on the other hand, on the grounds that "all States have a historic responsibility to ensure that the exploration of outer space is carried out only for peaceful purposes for the benefit of mankind" [22, p. 1] and "the exclusion of outer space from the arms race and its preservation for peaceful purposes should become an indispensable norm of State policy and a universally recognized international obligation" [22, p. 2].

It is worth mentioning among the working groups the one under the agenda item "Reducing space threats through norms, rules and principles of responsible behavior", established in 2021 under the title "Open-ended working group on reducing space threats through norms, rules and principles of responsible behavior". However, the work of this working group has been criticized because of the wide range of issues addressed, some of which fall squarely within the competence of the UN Committee on Outer Space, such as threats to the safe operation of space objects (e.g. the problem of space debris), rather than directly addressing the prevention of an arms race in outer space. As A.I. Belousov, deputy head of the Russian delegation, pointed out in his address to the First Committee of the 78th session of the UN, "The main focus is on something else entirely, namely on various aspects of increasing the sustainability and safety of space operations and combating space debris. We again remind you that the UN Committee on Space (COPUOS) has been successfully addressing these issues for a long time" [28].

In terms of immediate initiatives, February 29 to March 1 2024 is scheduled for Open-ended consultative meeting of the Group of governmental experts on further practical measures for the prevention of an arms race in outer space, "so that all Member States can engage in interactive discussions and share their views on the basis of a report on the work of the Group to be provided by the Chair in their own capacity" [9].

These groups definitely play an important role in the development of practical measures to prevent an arms race and the non-deployment of weapons in outer space, including national mechanisms, transparency and confidence-building measures in outer space, to which all States are voluntarily called upon to adhere to the fullest extent possible and practicable and consistent with the national interests of Member States. However, as can be observed from the preceding analysis, the threat of an arms race in outer space is growing from year to year, which could significantly limit or even halt the peaceful exploration and use of outer space and create insurmountable obstacles for States in the future in international cooperation in this area. That is why calls for the adoption of a legally binding instrument within the UN system to prevent an arms race in outer space have been voiced and emphasized even more frequently. In these circumstances, the following statements by Professor

Y.M. Kolosov, a well-known scientist who made a significant contribution to the formation of the Russian science of space law, remain relevant: “space law is being formed in the era of the objective historical regularity of the peaceful coexistence of States of different social systems and the transformation of international law into the law of peace, where the demilitarization and neutralization of outer space is an inevitable result” [15, p. 56].

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