The Most Exciting Field of International Law

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Outer space has received a new high of attention over the last couple of years. Pop-culture, businesses and states have turned their gaze (back) up to the stars. Of course, international lawyers have followed suit. So, is the new attention for space law just a short-lived hype in an increasingly news-chasing international legal discourse? A loud no is my answer in this article. In fact, I will make the case that international outer space law will be the most exciting field of international law for years to come. For everyone considering getting into space law research, I point out some of the most promising research methods for advancing the discourse.

Three Reasons for Excitement

What makes outer space law so promising for international lawyers? Three main aspects do.

The first one is rather obvious: Space exploration is downright fascinating, but it also promises invaluable real-world benefits of economic, scientific, and societal nature. Industry and states agree, so needless to say that the law regulating space exploration will only gain more and more relevance with every technological advancement. Space law is growing fast, and you could be growing with it.

Beyond its growing practical relevance, space law's academic potential is a reason for excitement, too. For the longest time, space law has existed in a bit of a niche (Lachs, Introduction). Compared to fields like human rights, IHL or investment law, only a handful of scholars devoted their careers to outer space law. So naturally, as fewer hands can only do so much work, there is still a lot of ground to cover when it comes to some fundamental questions of space law. For example, a lot of definitions (Cheng, p. 492 ff.) are still lacking, and many principles require further clarification. Like in outer space itself – with no disrespect to earlier space law scholarship – there are still a lot of discoveries (and agreements) to be made. At the same time, many interesting questions arise from the increasing space exploration and utilization that the drafters of the space treaties did not regulate (debris, mega-constellations, commercial activities). Solutions here require creativity coupled with robust doctrinal reasoning. So, if you are intrigued by the possibility of making a (legal) discovery or enjoy creative, yet sound legal reasoning, space law has a lot to offer.

The third aspect is that space law is finally about to come out of its niche. Space law will undergo a change of shift over the next couple of years. Many of the "Who's Who" of space law have reached emeritus status or are about to do so over the course of the next five to ten years. Between them and most of the numerically larger next generation of space lawyers lies a considerable age gap. This is reason to believe that the new generation of space lawyers will bring about an abundance of

fresh perspectives. Judging from the conversations I had with students and young professionals across the board, the awareness for the interconnection of space law and other fields of law is celebrating a comeback. This awareness promises an exciting win-win situation: For space law, it means that arguments and discourses from the rest of international law will feature more prominently as a backdrop for discussions and with that will come some much-needed development in space law. For example, space debris discussions can learn from environmental law and IHL can inform space law's struggle with dual use issues. For the rest of international law, a whole new field will be effectively unlocked, which has great relevance for many general discourses. One of the biggest implications might be the role of non-state actors in international law (see e.g. Durkee, pp. 465-470). Consider for example that in 2022 SpaceX was responsible for a third of all launches (Table 3) which equated to over half of all satellites (see here). Private actors strongly shape the reality of equitable access to and use of space and are at the forefront of commercial space exploration. How space law deals with their impact should have big implications for related discourses like business and human rights or the role of non-state armed groups for the development of IHL.

Making the Most of Space Law's Potential: Methods and Perspectives

To realize space law's potential, and to make it live up to the responsibility that comes with its practical relevance, it is important that the future generation of space lawyers does not get stuck in the same deadlocks that space law suffers from today. If space law discourses are to be advanced in a meaningful way, the research topic and more so the methods applied to it matter greatly.

Unresolved issues in space law can be grouped into perennial problems and more modern ones. Among the old guard are the issues of the military uses of outer space and the treatment of dual-use objects, alongside questions about the legality of commercial uses like mining. Newer issues arise mostly out of increasing space utilization and involve space debris, private actors and mega-constellations, as well as problems of space traffic management. Despite their comparative novelty, even the newer issues of space law are by now on everyone's radar. The real innovation in space law research lies thus not in the choice of topics, but in the choice of new methods and perspectives for approaching them. In the final part of this article, I will thus make some suggestions for what I consider to be the most impactful ones.

The first suggestion is less of a method and more of a mindset. This mindset is about engaging critically with conventional wisdoms of space law. One remnant of the niche era is the degree of self-referentialism in space law. Certain arguments within the discourse are taken as given, although they are highly questionable upon closer inspection. Take for example the argument that space law is *lex specialis* to "general international law" (e.g. von der Dunk, p. 214). What sounds reasonable at first quickly gives way to serious doubts. It is a well-established requirement of applying the collision norm *lex specialis* that two provisions collide, meaning that they are simultaneously applicable to the same case, but lead to different results (Koskenniemi, Conclusion 5, p. 8). While individual norm collisions can be resolved through *lex specialis*, whole fields of international law do not just push each other aside. Such a sweeping understanding of *lex specialis* is also clearly not what the

ICJ employed in relation to IHL and human rights (Nuclear Weapons Advisory, para. 25). For space law specifically, the lack of definitions and unambiguous principles leave many provisions in a state of relative legal uncertainty. This makes it difficult to claim that they contain the more specialized rule. Last but not least, Art. III of the Outer Space Treaty explicitly calls for the observance of international law in space, rather than barring it. Blindly reproducing narratives like “space law = *lex specialis*” can be technically incorrect and even detrimental to necessary synergies between space law and other fields. See here for a related critique about the understanding of “national activities” in the current discourse.

A more technical recommendation concerns realizing synergies with the rest of international law. Space lawyers can add perspectives e.g. on the role of private actors in terms of attribution or on the conditions for jurisdiction over very far-removed objects and activities. Therefore, meaningful space law research does not have to be reduced to isolated pure space law questions but can be auxiliary in nature as well. In return, the legal uncertainty in space law can be reduced by learning from other fields of (international) law – far beyond the law of the sea (cf. this attempt by a next generation space law scholar). Comparative work is paramount to realize synergies. A doctrinal basis for this can be found in a combination of ordinary meaning interpretation and systemic interpretation under Art. 31(3)(c) VCLT. Space treaties and agreements from other areas of international law could be perceived as the context in which the respective other must be understood. Although Art. 31(3)(c) appears to only relate to specific “rules” of international law as valid factors for treaty interpretation, the ICJ has also pointed out that “an international instrument has to be interpreted and applied within the framework of the *entire legal system* prevailing at the time of the interpretation” (Namibia Advisory Opinion, para. 53, emphasis added). It thus appears reasonable to consider the ways in which the international legal system understands certain terms and concepts for the interpretation of space law and vice versa (e.g. Lachs, p. 6). General understandings of legal concepts and terms can at the same time characterize their ordinary meaning.

Two final recommendations are to go interdisciplinary (like Sönnichsen et al. or Byers & Boley) and to keep an eye out for the increasing practice of space exploration (for Art. 31(3)(b) VCLT). Although they may not make space law *lex specialis* by and large, the unique physical characteristics of outer space need to be considered. For example, the legal evaluation of space debris strongly depends on whether the science behind the famous Kessler syndrome is still state of the art after 55 years of its first inception, and the severity of dual-use problems depends strongly on how viable it really is to make put space objects on collision-course with others. Regarding practice, state driven space exploration is of course very relevant, but even more relevant might be the practice of states *in relation to* private actors under their jurisdiction for the purposes of space law.

Synopsis

Space law’s academic potential and practical relevance are on a steep trajectory, especially with the next generation of space lawyers and their understanding of space law’s role in international law in mind. With the right methods and

perspectives, space law and its experts can and hopefully will make quite a splash in international law discourses in the future.

The “Bofaxe” series appears as part of a collaboration between the IFHV and Völkerrechtsblog.
