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Common Security in Outer Space and International Law

Detlev Wolter

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“Common Security” arose from the understanding that the nuclear powers could no longer win a war given their second-strike capabilities. This continues to hold true for America and Russia today. Both have recognized in the Outer Space Treaty that in the interest of mankind the arms race should not be carried into outer space. The peaceful use of outer space allows a “passive” military reconnaissance and monitoring of the globe. Technological development will allow in the near future the deployment of weapons in space. Thus, a decision draws closer whether the USA will start an arms race in outer space or whether an internationally- controlled system of global security can be established. This book makes interesting proposals to this extent.

Egon Bahr
Former Secretary of State, German Foreign Ministry

Dr Detlev Wolter's informative treatment of outer space issues makes clear that humanity is on the verge of an irreversible shift to active, destructive, military use of outer space, a global revolution in human security, which will almost certainly surpass in significance the introduction of nuclear weapons. Dr Wolter makes a convincing case for a treaty regime for common security in outer space, verified and administered by an international space organization. This carefully researched, very readable account of the current legal and political regime governing the use of outer space, its pending weaponization, and the remedy for that outcome, needs the widest possible readership. This book is an indispensable resource for coping with a central issue of human survival, the weaponization of space.

Jonathan Dean
Former US Ambassador for Arms Control

*The way in which we address security in outer space might very well mirror our future on Earth. Dr Wolter in *Common Security in Outer Space and International Law* has effectively set forth a practical legal route to enhancing collective security. This extremely ambitious work merits the attention of anyone interested in ensuring that reason, peace, and law guide the responsible exercise of the gifts of science and technology. Not only has he rigorously identified the legal basis for sound policies, but he makes the practical case for their implementation as well. This is a book for those with their feet on the ground and vision that gazes upwards.*

Jonathan Granoff
Director, Institute of Global Security

Common Security in Outer Space and International Law by Detlev Wolter is a seminal work pointing the way to how the major powers can cooperate to ensure that space is kept free of weapons. This highly informed work by a distinguished diplomat is aimed at protecting the legal principle of the peaceful use of outer space. It is a valuable analysis of existing law and a stimulating challenge to the international community to demand multilateral negotiations to prevent an arms race in outer space.

Hon. Douglas Roche, O.C.
Chairman, Middle Powers Initiative

Dr Detlev Wolter, an experienced diplomat, has written a brilliant book on one of the most urgent and yet neglected questions facing the global community in the 21st century. Dr Wolter has an outstanding ability to inform and at the same time inspire the reader with an understanding of why and how we need to put in place a new international legal regime for common security in outer space. If you think of yourself as a global citizen, this book is essential reading.

Pera Wells
Deputy Secretary-General,
World Federation of United Nations Associations (WFUNA)

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ABOUT THE AUTHOR

Dr Detlev Wolter studied law, political science and history at universities in Mainz, Germany; Geneva, Switzerland; and New York, United States. In 1986 he became associate professor of law at the Johannes-Gutenberg University in Mainz and in 1987 he entered the German Foreign Service. From 1998 to 1999 he served consecutively as Second Secretary, Political Section Embassy in Moscow, Deputy Ambassador to Zambia, and First Secretary, Political Section, Permanent Representation of Germany to the European Union. In 1999 he became Head of Unit, European Department at the German Foreign Ministry and in 2003 Political Counsellor at the Permanent Mission of Germany to the United Nations. Since 2004 he is Chairman of the Group of Interested States in Practical Disarmament and in 2005 he was Vice-President of the First Committee of the General Assembly of the United Nations. Dr Wolter has published extensively on topics in international law and international relations. The German edition of *Common Security in Outer Space and International Law* was awarded the prestigious Helmuth James von Moltke Prize by the German Society for Military Law and International Humanitarian Law in 2005.

FOREWORD

The principles underpinning the United Nations Charter reflect widely-shared global values of tolerance, justice and fair play; of security with, not against, others; of the fundamental importance of the rule of law both within and among states; of the primacy of human dignity and of the need for states to cooperate to these noble ends.

Nothing has happened since the drafting of the United Nations Charter to render these principles any less relevant and any less vital as guideposts for the international community. Global problems require global solutions that fairly address the legitimate needs and interests of all. This is the only basis for a sustainable future. It is the basis of the United Nations Charter—*combining* to achieve *common* aims—and it is more relevant than ever, given the complex and profoundly interdependent world in which we live.

Yet, at the very moment when a strengthening of the rules-based international system is urgently needed to confront threats as diverse as climate change, profound poverty and heightened nuclear weapons proliferation, this system is under attack from without and within; including from within the very state that was the prime architect of the international system.

What is needed is bold action to enhance and buttress the duty to cooperate that is enshrined in the United Nations Charter. Multilateral cooperation is not a luxury or an act of charity or an activity we pursue only with a chosen few. It is *the* imperative for the survival of humanity. It is instructive to recall the Outer Space Treaty of 1967, which declares the use of outer space to be the province of all mankind—thus a global commons not subject to claims of national sovereignty. Space is to be used solely for “peaceful purposes” and its exploration and use shall be for the benefit of all states, requiring an *active* duty to cooperate to this end—revolutionary principles for their time representing a promise, as yet, largely unfulfilled.

This is the proactive mode and it is the basis for Detlev Wolter’s brilliant book—visionary in its scope, yet detailed and pragmatic in its prescriptions. His aim is nothing short of a *pax cosmica*—an internationally

agreed cooperative regime governing outer space that will not only prevent its weaponization but also pave the way for nuclear disarmament on Earth. It will also provide us with a concrete, working model of an international organization operating under United Nations aegis using an unabashedly *community-oriented* international law, based on a presumption of interdependence taking precedence over national sovereignty.

There is no time to lose. Since the dawning of the space age with the launching of the Soviet satellite Sputnik in 1957, states have held the line at so-called “passive” military uses of space such as satellite surveillance. Every year at the United Nations General Assembly the overwhelming majority of states—including four of the five permanent members of the United Nations Security Council—vote against the weaponization of space. But the increasing emphasis in a growing number of states on the use of military space systems in support of terrestrial military operations has begun to dangerously blur the line between “passive” uses and “active” military uses with destructive effect, undermining in turn the principle of peaceful uses. There is broad international support for the Conference on the Disarmament (CD) to negotiate a legal instrument banning weapons in space. But the CD agenda has been blocked since 1998, stymieing any meaningful progress towards an agreed, verifiable weapons ban.

The current US Administration, in its quest for the ultimate military high ground, seems determined to break the norm against weaponization and is actively contemplating a dramatic change in its space policy to provide for the deployment of offensive anti-satellite weapons and space-based weapons for attacking targets on Earth. Scientists and other international security experts warn that such a course would be ruinously expensive and entirely counterproductive, almost inevitably setting off a new arms race, and rendering all space assets—including commercial communications and broadcast satellites—more, not less, vulnerable.

Wolter does not flinch from the hardest question—can a practical system of cooperative security be elaborated for outer space without the support and active cooperation of *the* major space power? His answer is a provocative challenge to the rest of us—can we envisage a system of common security for outer space that is demonstrably in the interests of the United States by considering the possible cooperative deployment of a limited ground-based missile defence system as a multilateral hedge against nuclear break-out in a nuclear weapons-free world?

In the ferocious international debate that raged before the US-led invasion of Iraq in the spring of 2003, it seemed that two world views were in play—a belief shared by many, if not most, that the interactions of nations must be guided by international law and international institutions—and a contrary view, espoused most vocally by the single most powerful member of the international community, that national sovereignty and unilateral military measures are the only real guarantors of national security.

We are perilously close to the unilateralist, militarist vision of outer space eclipsing the cooperative model laid out so painstakingly by Detlev Wolter. Yet, despite the increasing militarization of space, all space-faring states continue to emphasize the importance of the peaceful scientific and commercial uses of outer space and of international cooperation to this end. The die is not yet cast. Let this book be both a call to action and a roadmap for getting on with the negotiation of a multilateral Treaty on Common Security in Outer Space.

Peggy Mason
Ottawa, Canada
Former Ambassador to the United Nations
for Disarmament Affairs (1989–1994)

PREFACE

The idea for developing the interdisciplinary concept laid out in this book dates back to my studies at Columbia University in New York and to two internships at the United Nations, one in the Legal Department and the other in the Department for Disarmament Affairs, in the years 1983–1985. It was sparked by the Strategic Defence Initiative (SDI) speech of US President Ronald Reagan in March 1983, which raised for the first time the spectre of a deployment of weapons in outer space. With the end of the Cold War there seemed to be no need or risk for such a development. Yet, the plans for the weaponization of outer space have returned with force. Today, international security is further aggravated by nuclear proliferation and the risk of nuclear terrorism. These risks and the horrific attacks of September 11 have convinced me that the international community has to establish a comprehensive order of common or cooperative security that will prevent the weaponization of outer space and pave the way for nuclear disarmament on Earth.

I hope that the present analysis will contribute to laying an interdisciplinary foundation for such an international order of common security in outer space.

I should like to acknowledge my indebtedness to the many individuals and institutions who have assisted me in my research. I am particularly grateful to Professor Christian Tomuschat from the Humboldt University in Berlin, Dr Götz Neuneck from the Institute for Peace Research and Security Policy at the University of Hamburg, Dr Jürgen Scheffran, now at the University of Illinois, Dr Bernd Kubbig from the Hessian Foundation for Peace Research, Dr Randy Rydell, United Nations Department for Disarmament Affairs, Senator Douglas Roche, Jonathan Granoff from the Global Security Institute and (ret.) Ambassador Peggy Mason from the Pearson Peacekeeping Centre for their critical comments and advice. I would also like to thank many colleagues of mine from the German Foreign Ministry, in particular Nikolai von Schoepff, Heiner Horsten, Dr Rüdiger Reyels, Hans-Joachim Daerr, Heinrich Haupt and Dr Thietmar Bachmann for their encouragement, advice and useful briefings. The responsibility for

the analysis as well as the views expressed in this book are, however, entirely my own.

I would like to thank UNIDIR for publishing the book. I am particularly indebted to the director, Patricia Lewis, for her encouragement and guidance and to Steve Tulliu and Kerry Maze for invaluable assistance in editing the manuscript.

The book is dedicated to my eleven-year old daughter Laura-Nastassja in the hope that her generation will be spared the costs and risks of an arms race in outer space.