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Australian professor elected to UN working group on Outer Space

On 4 October 1957, the first artificial Earth satellite, Sputnik 1, was launched by the USSR into an elliptical Earth orbit. It produced an immediate anxiety in many western countries that Outer Space might become an unregulated competitive area of nation states, most of them then embroiled in the Cold War. This led quite speedily to negotiations that ultimately produced the 1967 *Outer Space Treaty*. A United Nations Committee on the Peaceful Uses of Outer Space ('UNCOPUOS') had already been established in 1959 to develop relevant international law so as to give effect to new principles of multi-national co-operation and to uphold the confinement of Outer Space to peaceful purposes, as subsequently emphasised in the 1967 Treaty.

In the result, four additional space treaties were eventually developed and opened for ratification, together with other instruments. These are intended to establish a framework of principles, expressed by international law, to guide humanity towards responsible behaviour in Outer Space. Australia is a party to all five treaties. They have informed and shaped the development of national space law in about 30 countries, including in Australia, initially through the *Space Activities Act* 1998 (Cth). That legislation has since been reformed and renamed as the *Space (Launches and Returns) Act* 2018 (Cth). Also in 2018, the Australian Space Agency was established by the Commonwealth. Amongst its purposes is the development of an Australian "space economy", predicted to be worth \$AUD12 billion by 2030.

The overall objective of these international initiatives is thus to provide a legal framework for Space. So far, this framework has been addressed to issues of liability potentially arising from presence in Space of a large and growing number of instances of so-called “Space debris”. Access to the ubiquitous, continuous area of space and unrestricted access to functioning satellites placed in Space constitutes an objective of great importance to virtually every country on Earth. Preserving and safeguarding such access and regulating and providing for incidents and risks of return to Earth of space debris, preoccupied the establishment of the 1972 Liability Convention. It was intended to provide for identifiable legal liability for damage caused by space objects, imposed on ‘launching States’. In 1979, a 77 tonne US space station, Skylab, disintegrated ultimately over Western Australia. This development scattered fragments in an area near Esperance, WA. In 2007, pieces of debris from a Russian satellite narrowly missed a Chilean passenger airliner flying between Santiago in Chile and Auckland, New Zealand. In May 2021, a spent Chinese rocket caused the uncontrolled re-entry of large pieces of debris that landed in the Indian Ocean near the Maldives.¹

In July 2021, two billionaires, Sir Richard Branson (UK) and Mr Jeff Bezos (USA) were locked in a competition that only billionaires could afford over the possibility of transporting paying passengers into Space. Branson stole a march over his competitor by helping himself to pilot his “spaceship” *Virgin*

¹ S. Freeland, “Space Debris: A challenge to our way of life on earth”, *Law Society Journal (NSW)*, August 2021, 79.

Galactic before Bezos, much wealthier, had left *terra firma*.² Bezos immediately took a legal point that Branson had not actually made it to “Space”, as defined by reference to Earth’s atmosphere. Clearly lawyers are going to have work to do in Outer Space, hopefully on issues more significant than high flying egos.

Responding to the larger need, UNCOPUOS, which currently boasts 99 UN member states and 40 observer agencies, has established two sub-committees to work on Outer Space issues. One is the sub-committee on scientific and technical issues (STSC). The other is the sub-committee on legal issues (LSC). These 2 sub-committees, along with the committee of UNCOPUOS itself in plenary, meet regularly in Vienna, Austria, at the United Nations Centre there. They are served by the United Nations Office for Outer Space Affairs (UNOOSA) also created in Vienna.

Australia has been a member of UNCOPUOS since it was established in 1959. Since 2016, the Legal Sub-committee (LSC) has been addressing an agenda item described as “General exchange of views on potential legal models for activities in exploration, exploitation and utilisation of space resources”. In June 2021, the LSC established working group, with a 5 year mandate, on “potential legal models” in relation to such activities. An Australian, Professor Steven Freeland,³ was elected Vice-Chair of this working group. Given that legal regimes until now have generally been profoundly affected by the terrestrial nature of Earth and the consequent

² “Space tourism, the finite frontier”, *The Economist* (July 17, 2021, 53).

³ Emeritus Professor of Law (and past Dean) at Western Sydney University and Professorial Fellow at Bond University Faculty of Law.

concept of “jurisdiction” commonly connected with that feature of earthly existence, the challenge to reconceptualise the law to apply potentially in the endless regions of Outer Space is great indeed. The immediate subjects of this legal development being Earth-bound nations, organisations, corporations and individuals on Earth it is unsurprising that the working group has considered regulation in terms of traditional language. However, the area of application of such law is not so easily classified or regulated.

The appointment of an Australian lawyer to such an important role by the LSC of UNCOPUOS is a significant development for international law in Australia, as for Professor Freeland.

V.I. Lenin once declared that the individual who drafted the minutes of a political organisation would end up directing the organisation. Because the General Secretary of the Communist Party of the Soviet Union was Joseph Stalin, Lenin had reason to appreciate this aphorism. Lenin also warned that the blank page was the enemy to action. Recent proof of that truism is provided by the history of several recent developments that need to be kept in mind as we watch the work of UNCOPUOS and its several sub-committees.

A precedent can be found in the Australian privacy legislation. In 1978-80, the OECD, an inter-governmental body of countries with advanced economies including Australia, established an expert group to develop international principles on privacy protection. It borrowed initial core concepts reflected in treaties earlier adopted by the Council of Europe. These, in turn, had been influenced by the early privacy legislation of

member countries of the Council of Europe in Scandinavia. That, in turn, had been influenced by principles earlier adopted by the Nordic Council. This progeny influenced the design of the *OECD Guidelines on Privacy*.⁴ The report of the *Australian Law Reform Commission* in 1984 proposed “*Privacy Principles*”, based on the OECD Guidelines.⁵ These, in turn, were later substantially reflected in the *Privacy Act 1988* (Cth), containing 13 “Australian Privacy Principles”. Those principles, in turn, rely significantly on the OECD Guidelines, which were adopted by the Council of the OECD in 1980. Those Guidelines were later adopted by the OECD members states, including Australia.

Although the OECD Guidelines have been reconsidered in recent years in light of new technological developments, no consensus has yet been reached in the international community to endorse changes to the original OECD guidelines of 1980. The development of legal guidelines and principles in the United Nations and in other international agencies is normally a very slow process. In the context of binding legal rules to govern States, agencies, corporations and individuals, the work of bodies such as UNCOPUOS, its sub-committees and working groups are therefore potentially very important and highly influential. All of this makes the election of Professor Freeland as Vice-Chair of the Working Group on Potential Legal Models for activities in exploration, exploitation and utilisation of space resources important for Australia and the wider world.⁶

⁴ Organisation for Economic Co-operation and Development (OECD), *Principles on the Protection of Privacy and Transborder Data Flows*, Paris, 1980.

⁵ ALRC, 1984, (2 vols).

⁶ See

https://www.unoosa.org/res/oosadoc/data/documents/2021/aac_105c_21/aac_105c_21_314add_8_0_html/AC105_C2_L314Add08E.pdf.

Under the avalanche of news, including international news, concerning the COVID-19 pandemic; international climate change; nuclear disarmament and its control and non-proliferation, Professor Freeland's appointment is prone to be overlooked.

However, the record of earlier developments suggests that Australian lawyers must now be kept aware of developments of multilateral lawmaking, including those relevant to Outer Space. Professor Freeland is to be praised on his election and service. Those who help draft such foundational documents tend to enjoy great influence that is long lasting.

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