



## Viewpoint

# Overcoming the danger of a single story of space actors: Introducing the Cosmopolitan Approaches to International Law (CAIL) Lens to Analyze Global Space Governance



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## ARTICLE INFO

## Article history:

Received 17 June 2015

Accepted 14 December 2015

Available online 30 December 2015

## Keywords:

Space governance

Space law

Developing countries

Benefit sharing

New approaches

## ABSTRACT

Third World Approaches to International Law or TWAIL is a useful starting point to assess space governance issues from the perspective of emerging or aspirant space actors and users because it helps to highlight imbalances and asymmetry around the “legal right” to space benefit under Article I(1) of the Outer Space Treaty. However, a new analytical lens focused on Cosmopolitan Approaches to International Law or CAIL is proposed that can deconstruct the existing agenda in light of it obscuring the idea of shared benefits without attributing blame, scepticism or negativity. In the quest to ensure fairness to all, including aspirant emerging space actors, largely from developing States, this paper asks what does one learn from the space law context that prompts us to reorient the frame of analysis that Third World Approaches to International Law (TWAIL) perspective brings to bear and focus on a CAILian perspective? Primarily that a TWAILian approach is too one sided and polarized. A CAILian approach however acknowledges reciprocal responsibilities. In conclusion, I am not making a claim here that my CAILian concept has never been articulated before. However, the way I link the concept of Cosmopolitanism with a school of thought that I am sympathetic to (TWAIL) is where this paper provides a novel idea. My specific version of Cosmopolitanism bears in mind the importance of collective ideas. While CAIL will not be free from power asymmetry’s because there will always be polarity; it still chooses to focus on the middle ground and not to focus on extremes.

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*The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.*

*Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.*

*There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.*

*Article I Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies [1].*

## 1. Introduction

Article I of the Outer Space Treaty (OST) is understood as the clause granting the four freedoms of Outer Space, namely: the freedom of *exploration*, freedom of *use* (scientific and commercial activities), the freedom of *access* to outer space and the freedom of *scientific investigation*. In exercising these freedoms, Article I states that exploration and use “must be carried out for the benefit and interests of all countries”, that freedom exists “without discrimination of any kind”, “on the basis of equality”, “in accordance with international law” and that “States shall facilitate and encourage international cooperation” in scientific investigation.

The fundamental provision here is “benefit and interest of all countries,” the objective of which was to ensure that all would

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benefit from space activities. However, debates surrounding the freedoms of Outer Space and space benefit sharing have been largely ideological, and therefore it is apparent that there is no neutral analysis, and the history of the debates is all there is. As such, the importance of narratives in framing law and approaches to law cannot be underestimated because dominant narratives where powerful feed into and influence similar dominant representation in the law, obscuring legal reality. Cover [2] argues that the codes that relate our normative system to our social constructions of reality and to our visions of what the world may be are narrative. His concept of the *nomos* (a present world constituted by a system of tension between reality and vision) is but the process of human interaction stretched between vision and reality. With this idea of narratives, I am reminded of my favorite author.

When she began to write at the age of seven, she wrote exactly the kinds of stories she was reading. All her characters were white and blue-eyed. They played in the snow and ate apples. They talked a lot about the weather, how lovely it was that the sun had come out. All this despite that Chimana Ngozi Adiche lived in Nigeria and had never been outside Nigeria. There was no snow, she ate mangoes and they never talked about the weather because there was no need to. What this demonstrates, she argues, is how impressionable and vulnerable we are in the face of a story. And therein lays the danger of a single story [3].

In 2013, global government spending for space was estimated at \$72.2 billion. Out of over 80 countries engaged in space programs or who had indicated an interest in space engagement, the U.S. national budget for space was an estimated \$38.7 billion; that is \$28 billion more than Russia's \$11 billion investment and \$34 billion more than China, the number three country in terms of space spending [4]. Despite that no other country comes close to the U.S. or Russia in terms of investment, Space is not just about NASA, the Department of Defense (DoD) and remnants of cold war tensions. But, if that proposition is true, then why the lack of awareness and understanding of the space programs and development objectives of new "space capable" countries such as Laos, Chile, Ghana and Azerbaijan? This is because, as I argue, there is a single story about who can engage in space exploration.

In investigating this question, I sought to find a theoretical or conceptual school of thought to understand the nature and features of the debates. A Third World Approaches to Law (TWAIL) methodology emerged as one way to assess this scenario because of its focus of "centering the rest, not the west"! However in my encounter with TWAIL, I could not get past the resistance it engendered and concluded that it actually marginalizes further those it seeks to speak for. This paper therefore attempts to move beyond the apparent pessimism of classic TWAILIAN thought. A new framing of Cosmopolitan Approaches to International Law (CAIL) is proposed in this paper which moves beyond global citizenship and sovereignty issues of Cosmopolitanism and is in line with the faction of TWAIL that questions how to transform international law to be more sensitive to the concerns of all, without having a false notion of Third World innocence and first world guilt or dominance. Khosla [5] has proposed the emergence of a new phase to TWAIL discourse, possibly a TWAIL III. While in agreement that a new phase of TWAIL could be emerging, I am re-framing this phase as a new school that I call CAIL to take into consideration the realities that I do not think current framing devices account for.

This paper begins with the story of new entrants to the "space game", highlighting that in recent years there has been an increase in the number of countries investing in space activities. However there is an untold story in this growth, whereby barriers continue to exist for later entrants. The paper questions if this has been as a result of structural biases in the international legal and policy regime that acts against the interests of the emerging (mostly

developing) States. The Third World Approaches to International Law (TWAIL) is presented as a theoretical lens in which to determine the role of developing States in the development of the international space law regime and to highlight how the law could act to the disadvantage of those expecting to access the benefits of space exploration, if the correct lens is not used to interpret the obligations. It is also argued that there is a justice outcome expected from the existence of international space law even in the face of its indeterminacy and TWAIL is limited in its ability to expose that justice outcome. Finally CAIL is presented as the new phase of TWAIL. While this paper is just introducing CAILian thinking, requiring further exploration, it presents the foundational ideas behind CAIL and particularly its application to International Space Law issues.

## 2. The Story of New Entrants

As stated by Adiche, It is impossible to talk about the single story without talking about power. Are we all equally vulnerable in the face of all stories? Does it depend on the ideational/ideological power of the story-teller? According to space power theory, which is derived from the realist school of thought, "the proliferation of space technology is a foe rather than a friend, because it contributes to military and economic competition; and, above all, it empowers the exercise of the threat of force in, through and from Outer Space" [6]. The rivalry for leadership between the U.S. and the USSR at the dawn of the space age was not based on their desire to increase their knowledge of Outer Space but their common aim to gain power-political advantages.

The great maritime powers of the past used specific means and instruments to achieve and maintain their power position and in the same way major space powers use a wide range of instruments in order to maintain dominant position in Outer Space. Von Welck [7] highlights that the most important means of political space power is information and knowledge of Outer Space, autonomous space transportation systems, human presence in space and the self-determination and willingness to use Outer Space for the maintenance and extension of a country's status as a world power. When the U.S. had a monopoly on the market for space technology, it used its monopoly in the area of space transportation systems to hamper the entry of other States into the market for communications and remote-sensing satellites and services. Von Welck [8] details several examples of this policy including the conditions NASA attached to the launch of the Franco-German communications satellites *Symphonie 1* and *2* in the 70's whereby NASA only agreed to launch the satellites on the condition that France and Germany undertook not to use the satellites for commercial purposes. What emerges from the examples is a profile far from that of any of today's developing States such that it explains why the dominant narrative suggests that only super powers can be spacefaring nations.

Throughout the 1990 and 2000's there was an unprecedented increase in the number of spacefaring nations, largely stimulated by the emerging commercial and national space programmes in regions like the Middle East, Africa and Asia. According to Burzykowska [9] "the success of new technology partnerships and the availability of commercial off-the-shelf equipment has already proved that the cold war habit of attempting to deny cooperation... may be elusive, if not counterproductive". Even then, little attention was focused on the space programmes of developing States; however in recent years, analysis and scholarship on these programs have emerged, with a focus on the role of International cooperation and small satellites [10]. Burzykowska attributes the success of new technology partnerships in space exploration and activities and the existence of commercial off-the-shelf equipment related to these, to the "openness of the economic system". However new and aspirant entrants continue to

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