



SIRIUS  
SPACE, BUSINESS  
& LAW

# **BUILDING BRIDGES ON GLOBAL GOVERNANCE ISSUES : CYBERSPACE SHAPING OUTERSPACE ?**

**Professor Lucien Rapp**

*University of Toulouse (France) & HEC, Paris (France)*

*Scientific Coordinator of SIRIUS*

*(Space Institute for Researches on Innovative Usages of Satellites)*

*Montreal (Canada), 29 May 2014*

# Many Points in Common

- **Infrastructure (satellite systems v. network of networks)**
- **« Hybridization » (made of different segments)**
- **An American invention and a product derived from a military infrastructure**
- **Comparable transformations along the last past years (military, civilian, commercial activities)**

# Experiencing both a crisis in their global governance ...

- Facing highly running tensions (see following slide)
- A powerful industry lying outside (concentration of powers, democratic concerns)
- Voices calling for new forms of global governance (social injustice)
- Complete reworking of the legal texts or practices

# March/April 2014

- **Dilma Rousseff (Brazil) and Angela Merkel (Germany) requesting a radical change in Internet governance (*Ms. Merkel, in particular, threatened the United States with the creation of a “European Internet”*)**
- **Space experts pointing out a "*conceptual confusion*" with regard to the current form for the governance of Space activities, designed at the time of the Cold War.**

# A Comparative Study

- **Current governance modes for Space and the Internet and their shortcomings (1)**
- **Net Neutrality v. Space Neutrality (2)**
- **New forms of global governance (3)**
- **So-called "*Multi-Stakeholder Approach*" (4)**
- **Whether this method can be transposed to the global governance of Space (5)**

# Inverse Global Governance

## « Top Down » (States)

- UN General Assembly
- Committees n°1 et n°4
- COPUOS (2 subcommittees + working groups)
- Office of Outspace Affairs (OOSA)
- Treaties (*OuterSpace Treaty, 1967 ; Rescue Agreement, 1967 ; Liability Convention, 1972 ; Registration Convention, 1974 ; Moon Treaty, 1979*)
- ITU (frequencies and orbital positions) + IADC (space debris)

## « Bottom Up » (Private Companies)

- Peering Agreements (levels 1, 2, 3)
- Interconnected infrastructure
- Intermediaries (hosts, search engines)
- Private companies and NGO
- Internet control points
- ICANN (assigned names and numbers)
- International organizations ?

# Net Neutrality v. Space Neutralization

## Net Neutrality

- *"For a public information network to be as useful as possible, it must tend to treat all contents, sites and platforms in the same way. The Internet isn't perfect but its original architecture tends towards that goal. Its decentralized and essentially neutral nature is the reason of its success, both economic and social". (Tim Wu, 2004)*
- *The neutrality of the Internet postulates an "Open Internet", a foundational principle of the Internet and which is generally interpreted to be "the ability of users to access and put online content and information of their choosing, to use and develop services and applications, and to connect whatever devices they wish to the network". (absence of discrimination in access to the network both in its use or even its exploration)*

## Space Neutralization

- *Exploration and use must be carried out "for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development (...) without discrimination of any kind, on a basis of equality and in accordance with international law (...)" (Space Treaty, Art. I). Space "is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means" (Space Treaty, Art. II).*
- *Objective of maintaining "international peace" and "security" and the search for "international cooperation" and "understanding" (Art. III);*
- *Refusal of "any objects carrying nuclear weapons" or "other kinds of weapons of mass destruction" and the use of Space "exclusively for peaceful purposes" (Art. IV);*
- *Astronauts are "envoys of Mankind" which gives them the obligation to render "all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas distress, or emergency landing on the territory of another State Party or on the high seas." (Art. V)*

# The Tragedy of the Commons ...

## Space Neutrali/ty

- Experience has shown that the proclamation of neutrality of Space by internationalizing its status and its neutralization for uniquely peaceful purposes had meaning only in the context of the Cold War.
- But today, although this confrontation has disappeared at the same time as the last elements of the Berlin wall were taken down, this principle of Neutrality in Outer Space and the neutralization scheme contained therein have lost their meaning and even their scope
- Their common destiny might be the one that is acknowledged today on the High Seas. Declared to be Mankind's common heritage, it is the scene of unprecedented exploitation with regard to fishing and mining resources, benefiting the few countries which possess the technical capacities and even a few private groups, who care little for the general interest and the conservation of its resources, which they are exhausting in the name of their sole profit. The principal cause of this situation lies in the shortcomings of the global governance system in place, under the aegis of the United Nations, particularly marked by the multiplication of international organizations lacking powers or international treaties without actual consistency among them. (Governing the High Seas – In Deep Water, The Economist 22 February, 2014, p.47)

## Net Neutrali/zation

- In almost all States, Net neutrality in effect lies within a legal framework with fuzzy borders and an uncertain scope. Here a *Policy Statement*, adopted in December 2010, by the American Federal Communications Commission (FCC); very timid *recommendations* adopted by its Canadian counterpart, the CRTC (Canadian Radio-television and Telecommunications Commission) in its *Review of the Internet traffic management practices of Internet service providers* from the month of October 2009; elsewhere very evasive *guidelines* proposed by the Norwegian regulator NPT (Norwegian Post and Telecommunications Authority)
- In the absence of legal recognition, the principle of Net neutrality winds up depending on the manner in which operators interpret it and implement it. This is precisely the meaning given in the formula provided by Laura de Nardis (The Global War for Internet Governance, 2014): "*The Non Neutrality of Net Neutrality*".
- FCC to issue new Net Neutrality Rules (2014)

# Megatrends in Global Governance

- *A multi-polar world (cooperation, competition or confrontation between poles)*
- *A multi-level governance on the rise ...*
- *A multi-player system (representative systems under stress)*
- *A multi-tech accelerator (Internet)*

# Multi-Stakeholder Approach

## *(Sao Paulo Summit, 23-24 April 2014)*

- Based on an upstream collaborative work relying on more than 180 contributions, which themselves focused on two sets of considerations: Internet Governance Principles and Roadmap for the Future of the Internet Governance.
- The *Internet Governance Principles* aim at the implementation of a global governance which
  - includes all stakeholders (governments, private sector, civil society, technical community, academia and users),
  - should be considered legitimate in light of democratic principles, and,
  - would allow its evolution over time.
- This global governance is based on the statement of fundamental rights which results from the essential rights and values reflected by the international texts, beginning with the Universal Declaration of Human Rights.

# Looking forward ...

- The definition of a new global governance for Space thus reveals similarities and differences with respect to that of the Internet. It is different because it is still the concern of States; but the difficulties that it currently encounters in many respects recall the ones involving global governance of the Internet: a dangerous concentration of powers, served by an organization built during the time of the Cold War and, consequently, poorly suited today for the new context arising from the previously described phenomenon of globalization.
- These two characteristics combine in the shortcomings of the current organization for exploitation of Outer Space. The status of Outer Space as a "shared asset" suggests a common property scheme and, consequently, a logic of solidarity among nations and their nationals.
- However, such a logic does not exist. It should exclude any and all state sovereignty, while Space governance is today the opposite: it is more than ever dominated by sovereignties and, consequently, State egos.