On-Orbit Servicing and “Tacit” Consent under International Law

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Dextre

- Also known as the Special Purpose Dexterous Manipulator (SPDM)
- Canada’s contribution to the ISS
- “Two-armed robot”
- Part of the RRM experiment
On-Orbit Servicing to Space Objects with Non-Cooperative Interfaces

- The target is unknown.
- The target can have any orientation or position at the time of the rendez-vous.
- For refueling, maintenance and/or repair to be possible, cooperative interfaces are to be given to the space object during the manufacturing stage.
- Dextre is an exception to the above.
The Principle of Non-Intervention under the ICJ Nicaragua Case

- Customary nature
- Article 2 (7) of the UN Charter
- It is defined as the conduct of internal affairs without outside interference.
- The wrongfulness of intervention is determined by the use of means of coercion.
Applicability of the Principle of Non-Intervention in Space

- Does it apply to space objects?
  - Article III OST
  - Article VIII OST (sentence 1)

- Does it apply to space debris?
  - Controversy on whether they legally constitute space objects
  - Article VIII OST (sentence 1 & 2)
Consent in International Law and under the ARSIWA* regime

- Article 20: consent as a condition precluding the wrongfulness of an act
- Crucial elements:
  - Validity of consent
  - Respect of the limits of the consent given
- Tacit Consent as in the context of the creation of custom
- Prior knowledge required

*Articles on Responsibility of States for Internationally Wrongful Acts
Erga Omnes Obligations in International and Space Law

- Obligations protecting a collective interest, such as “the international community as a whole”
- Interrelation between the protection of the environment and human rights
- "Intra-generational equity"
- Preremptory norm?
Does it infringe the State’s right to decide freely on sovereign matters?

- Yes

Are there means of coercion used?

- Yes

Has the State given expressly its consent?

- Yes

Cooperative Interfaces

- Tacit Consent

- NOT WRONGFUL INTERVENTION

Non-Cooperative Interfaces

- NOT WRONGFUL INTERVENTION

Unless it falls under the *erga omnes* obligation to protect the space environment or other conditions precluding the wrongfulness of the act (f.e. necessity or distress), WRONGFUL INTERVENTION
Thank you!

For questions or comments:
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Questions/Talking points

1. Incidents of on-orbit servicing to space objects with non-cooperative interfaces
2. Environmental obligations as peremptory norms in outer space