



# Global commons: Between cooperation and competition

by Gerald Stang

Rapid economic development and increasing international trade are leading to a more crowded international stage and raising new challenges in the 'global commons' – those domains that are not under the control or jurisdiction of any state but are open for use by countries, companies and individuals from around the world. Their management involves increasingly complex processes to accommodate and integrate the interests and responsibilities of states, international organisations and a host of non-state actors.

Shared rules regarding the usage of - and access to - the global commons encourage their peaceful and cooperative use. Over the last seven decades, the US has led in the creation of a liberal international order which has attempted to define these rules in such a way as to make it easier and more beneficial to join the order and follow the rules than it does to operate outside of (or undermine) it. With the rise of non-Western, less liberal powers - particularly China - questions must be asked regarding the durability of the existing processes for managing the global commons, along with the potential for developing effective new processes that can address new threats and challenges. The EU is uniquely positioned to play an important role in giving value to existing multilateral frameworks and in developing new ones for international cooperation in these domains. But with a multitude of competing interests among stakeholders, much work remains to be done.

## What exactly are the global commons?

Security analysts generally identify four domains as global commons: high seas, airspace, outer space and, now, cyberspace. From a security perspective, the primary concern is safeguarding 'access' to these domains for commercial and military reasons.

It is important to highlight that this language differs from the discourse on commons developed by environmental analysts: their arguments focus on damage to the 'condition' of the commons from overuse by actors who do not have to pay direct costs. They worry about the depletion of shared resources such as ocean fish stocks, or the damage to shared domains such as Antarctica or the atmosphere.

A third strand of analysis looks not at the need for 'access' to or preservation of the 'condition' of the commons, but at the capacity of the commons to provide 'global public goods'. As there is no accepted definition of a global public good (a functioning trading system, peace, clean water, electricity, the internet, and many other things are often included), it may be wiser to focus on the four global commons relevant to security analysts mentioned above.

While there are major differences between the 'access' views of security analysts and the 'condition' views of environmentalists, both are concerned about how the



rules for use of the commons are set and enforced. In today's interconnected world, any limitations on access to the commons would be highly disruptive. Militaries rely on access to the commons to pursue security goals in domains outside their sovereign control. Economic actors rely on the commons to trade and conduct business. Changes to the condition of the commons can therefore disrupt commerce and security, not to mention the status of the global environment. Each of the four commons discussed below possesses unique attributes and poses unique challenges for international cooperation and governance.

## Sea

As the primary avenue for international commerce since ancient times, norms for access to and passage on the seas have developed and evolved over many years. Only in recent decades, however, have there been agreed regulatory frameworks and institutions to manage them. The UN Convention on the Law of the Sea (UNCLOS), first initiated in 1956 though not legally in force until 1994, is the primary international treaty regarding the sea, laying out rules for territorial boundaries (22km from shore), resource management and the rights of states within their exclusive economic zones (370km from shore). The International Tribunal for the Law of the Sea (ITLOS), created by UNCLOS, has the power to resolve disputes by States Parties. Except for the US, most countries and all global powers - including the EU-27 - have signed and ratified UNCLOS. The UN International Migratory Organization (IMO), created in 1948, regulates international shipping and rulings on safety, environmental and technical cooperation issues (the EU has observer status).

As the world's only global sea power, the United States has historically seen itself as the protector of free movement on the seas. With 11 carrier groups (Russia has one, rarely used) and hundreds of naval bases and allied ports throughout the globe, the US has a naval footprint that dwarfs all its allies and competitors. While countries such as Iran and China may be uncomfortable with US capacity to deny others access to the sea, US support for the creation and respect of transparent international regulations for use of the sea (which they adhere to themselves despite not having ratified UNCLOS), has allowed for the stable management of access to the seas. Except for the disruptive (but still rare) threat of piracy, access to the seas is generally a smooth and well-regulated process. The massive and relatively effective, if ad hoc, global response to the localised piracy problem off the coast of Somalia (for which the EU launched Atalanta, its own anti-piracy mission under the CSDP) highlighted the world's impressive capacity to handle disruptions of this type.

Territorial disputes exist in places like the South China Sea, but relate to historical boundary disagreements rather than conflict over rules of sea access. Normally, no state has an interest in disrupting sea trade. Even in times of crisis, while individual states may wish to deny their opponents access to certain regions, they are unlikely to harm their own interests by disrupting traffic on the world's oceans.

Environmental 'condition' issues in the sea commons are disconnected from 'access' issues. No single international treaty or body addresses pollution, overfishing or the various challenges in the melting Arctic. A confusing patchwork of sea basin cooperation groupings, regional fisheries management organisations and pollution monitoring agreements is in place. The integrated marine policy of the EU recognizes the need to improve governance of the seas while avoiding treaty congestion. While no unifying treaty or body to manage maritime issues is likely to appear, years of patient discussion in a variety of venues (of the type that the EU excels at) may lead to greater coherence and cooperation in managing environmental threats.

## Air

International air travel requires the use of national airspace for continuous transit and involves detailed agreements that define transit rights. The UN International Civil Aviation Organisation, established in 1947, is the leading institution for regulating air travel. All EU countries are members, while the EU has observer status.

As with piracy at sea, any potential disruption of access to the air commons is likely to come from non-state actors. While terrorist events can disrupt air traffic, however, intergovernmental cooperation between national police and security agencies is well established. Any systemic threat to the air commons appears so unlikely that some security analysts do not even include air as a one of the commons.

Also like the sea commons, issues of management of environmental 'condition' are disconnected from 'access' issues. The accumulation of greenhouse gases is a form of pollution of the atmosphere, but the alarm stems from their effects on the biosphere rather than from the risk that the atmosphere may become unbreathable or inaccessible. The EU is a global leader on climate change, with the world's most comprehensive emissions trading scheme and intense efforts to regulate and limit emissions. The Union has set the tone at the international level but has been unable to win agreement for an internal carbon tax or stronger emissions targets from external partners.



## Space

More than a thousand orbiting satellites facilitate communications in both the military and the civilian spheres, regulated by a mix of UN guidelines, bilateral Cold War agreements and industry standards. The UN International Telecommunications Union (ITU) allocates radio spectrum and satellite orbits and develops international technical standards. Established in 1869, the ITU has almost universal membership among existing states, including all EU countries - though not the EU itself.

The 1967 Outer Space Treaty, signed by all space-faring nations, provides the minimal framework for activities in space, banning weapons of mass destruction and preventing states from claims to celestial bodies. The Treaty does not establish infrastructure for coordination, and consultation among party states is *ad hoc*. Following China's destruction of one of its own satellites in 2007, there has been increasing concern about protection of satellites from attack. During the later stages of the Cold War, the US and the USSR tacitly agreed to a moratorium on testing anti-satellite weapons (ASAT) - but there are no binding rules in place.

The satellite's destruction also created a debris cloud which could have damaged other satellites or spacecraft. Unlike the sea and air domains, the problem of debris management in space indicates an overlap between 'access' and 'condition' issues. While access to space has previously been limited to a small number of states, the increasing role of new actors (including from the private sector) suggests that the creation of comprehensive and binding regulations for the space commons may become more difficult.

The EU has pushed to become a key actor in space matters, working with the European Space Agency (ESA) - an intergovernmental body - on Galileo, Europe's civilian satellite navigation system. In an effort to get ahead of the curve and manage uncertainty, the European Council approved a voluntary Code of Conduct for Outer Space Activities in late 2008 (revised in 2010) to address both space operations and space debris. It has only limited operational requirements but develops important cooperation, consultation, and notification mechanisms. To make it more palatable to the US and other states, it is not binding and has no enforcement mechanism. As with many efforts in multilateral regulation of the global commons, the US has been hesitant to agree to the Code for fear of diminishing its own freedom of manoeuvre. It may be an important step, however, in setting the groundwork for future space cooperation if the EU can follow up on the Code's development with diplomatic action by bringing other space-faring countries on board.

## Cyberspace

Cyberspace differs from the other commons because it is not a *physical* domain and because of the preponderant role of the private sector in both the infrastructure and the management of the domain. All of the physical nodes of the internet also exist within states and are subject to national law, rather than existing physically outside of national control as for the other commons.

The American and security-related roots of the internet are reflected in how technical internet standards are managed. The Internet Corporation for Assigned Names and Numbers (ICANN), a private non-profit entity under contract with the US government, has ensured the coordination of internet addresses and registries since 1998. While ICANN operations have been stable - and their inclusive governance style has won imitators for handling technical issues - many countries prefer a formal international body to manage technical internet issues.

The ITU has been suggested as a neutral management body, but this idea has been resisted by most Western states. Interestingly, non-Western states are pushing for international management of the internet within a framework that provides individual countries with rights and roles, rather than leaving it to the non-profit sector to decide how the internet works. All EU-27 countries are members of the ITU and, following a European Parliament deliberation, voted as a bloc against the measures granting more power to the ITU, concerned over states wishing to regulate, control, and limit internet use. The UN Internet Governance Forum (IGF) has become the leading multi-stakeholder platform for states and other actors to debate internet governance.

Regardless of the ICANN/ITU issue, states can filter and censor within their territories, and for the time being, efforts to protect against cyber attacks remain within the national sphere. Cyberspace allows for the spread of information, creating pressures for transparency in both democratic and non-democratic states. Discussions on the management of cyberspace, therefore, have become connected with those on the power of states to control information.

Finally, although there is no environmental constituency for cyberspace, there are constituencies of users and providers - private and public - who play a similar role in pushing for the protection of certain conditions in cyberspace. Unlike for sea and air domains, therefore, there is overlap between 'access' and 'condition' discussants.

With worries about Cold War-style espionage and cyber conflict between states, cyber security problems



are expected to grow worse and are unlikely to be addressed through multilateral fora. Problems with hackers of various types make problems of attribution, response and coordination of policing very difficult. Cyber conflict involving states will ebb and flow along with the quality of the relationship between those states and competing states will continue to test each other's cyber defences.

## What room for multilateral cooperation?

Effective commons management works best if there are binding treaties, institutionalised management bodies, and real enforcement mechanisms. For those challenges which are not addressed by legal UN frameworks - such as air and sea pollution - an increasingly complex set of stakeholders will struggle to develop rules and mechanisms for protecting the global commons. This struggle is not necessarily due to any disruptive effects from emerging powers planning to upset the norms of global governance. No rising power, including China, has the capacity or declared interest to upset the existing approaches to commons management (however successful they may be) within the current liberal international order. However, the multiple and competing interests of a widening array of stakeholders, reluctant to pay the costs associated with protecting the commons, will continue to impact on management efforts.

The effectiveness of different management mechanisms will depend on whether it is a period of crisis or not. The legally binding frameworks of ratified UN treaties, while difficult to construct, provide respected rules that can allow the world to manage crises and prevent conflict. *Ad hoc* and voluntary systems of regulation, however, will be more easily rejected in times of crisis. Ensuring access to the global commons in normal circumstances has become relatively smooth, with near-universal cooperation on agreed international frameworks. For the sea and air commons, UN organisations are already mature and respected for handling issues of access. Efforts at managing access to space and cyberspace commons are less developed, but the idea of wide stakeholder involvement in finding cooperative solutions seems well entrenched.

Protecting access in times of conflict, however, becomes an issue for states or coalitions of states to manage on their own. Ensuring the continued flow of trade through the Persian Gulf or the Malacca Straits in a potential conflict situation will require enforcement actions that rest only in the hands of states. Problems associated with crime and disruptive non-state actors (sea pirates, cyber pirates, terrorists) can be addressed with cooperative policing, but problems associated with conflict between states over access or use of the commons will require political solutions.

Protecting the 'condition' of the commons will be the most difficult challenge. Addressing these issues, especially for sea and air, will require complex, long-term negotiations in multiple fora. In this field, involving the slow, behind the scenes work to push norms and regulations, the EU can play an important role. Failures, such as with the attempted Copenhagen Accord on greenhouse gas emissions, are to be expected as stakeholders come to grips with the collective costs associated with degradation of the global commons.

Despite its positive role in creating today's multilateral institutions in these domains (ITLOS, ICAO, ITU), as long as the United States sees itself as an independent and morally unique protector of the commons, the country will be reluctant to relinquish power to international cooperative arrangements. Thus, any future multilateral agreements in the management of carbon emissions, sea pollution and space debris entailing financial costs and limitations of freedom to manoeuvre may well likely require both European initiative and third parties' involvement.

The EU retains the power to convene and connect, and to provide impetus in building institutions and pursuing normative and non-binding advances - as with the Code of Conduct for Outer Space Activities and efforts to streamline maritime cooperation - that can lead to the redefining of goals and interests by other stakeholders. As other regions gain strength, however, it will be a challenge to ensure they join and contribute to a rules-based order. The EU has limited leverage to push China in various issues, but can help develop international institutions in such a way that limit the appeal of any attempt to disrupt existing cooperative arrangements. This will increasingly involve both the language of 'responsibilities' - often used by Western countries to pressure developing states to change their approaches to multilateral issues - and the language of 'rights', which will stress the entitlements of states and individuals to access and protection.

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