

A LAWYER'S TREK TO LAW'S LAST FRONTIER



DAVID HECHLER

Jack Beard navigated a very unusual path to becoming a law school professor. It's not one that he recommends. Usually, academics don't wait long to start their careers, but Beard took a detour that lasted decades. And then, when he established himself, there was another surprise. His field of scholarship is outer space.

If it all sounds a little "out there," the man himself is very much grounded. When he explains how it happened, it all makes perfect sense. And the results will soon be available for the world to see. Beard is the editor-in-chief of a much-anticipated book on the laws of space.



Jack Beard

"The Woomera Manual on the International Law of Military Space Activities and Operations" will be published by Oxford University Press in spring 2024. The international and multidisciplinary cast of contributors has covered a lot of ground. A review volume is not yet available, but Beard said the book covers military space activities during peacetime, during times of tension and crisis, and during armed conflict. And in contrast to the way other publications of this type have analyzed sometimes amorphous rules in a new field—like cyberwar, for example—the authors sought to reach conclusions based on the words and actions of nation-states rather than the opinions of experts, Beard added. He believes this is the correct approach, since "it's states that ultimately make international law, not academics or other commentators."

TWO WORLDS BECKON

It didn't start with "Star Wars" or a childhood fascination with sci-fi. It began with the Reserve Officers' Training Corps. He needed an R.O.T.C. scholarship to pay for his college education, and he was also attracted to the military. His father and uncle had served in World War II. "So I had military in my background," he explained, "and I was also interested in military intelligence."

It was time to expand his world. He did not yet aim for the stars, but he left his hometown of Wichita, Kansas, and enrolled in Georgetown University's School of Foreign Service, where he majored in international relations. He was particularly inspired by his international law courses, he said during two long Zoom interviews. The classes sparked his interest in the law, which soon replaced military intelligence as his projected career.

But that wasn't all he did as an undergrad. His second major was Russian, and his studies weren't limited to the language. He took in the history, government, and culture. And during his junior year, he spent a semester as an exchange student at Leningrad State University in what was then the Soviet Union. He called his time in Leningrad "life-changing."

He'd always been fascinated by Russians. "I grew up in the Cold War," Beard explained. "And they were, of course, the 'great adversary.'" There was a time, he recalled, when all you had to do if you wanted to have a conversation in Russian was pay a visit to the Pentagon. "That was where Russian speakers were."

Over time, both majors would stand him in good stead. But his first move after graduation proved a smart one. He secured an educational deferral from his obligation to the Army in order to get his J.D. from the University of Michigan Law School. This allowed him to meet his four-year obligation to the Army as a government lawyer, some of it in the **Judge Advocate General's** (JAG) Corps.

After he completed his four years of active duty, his government work did not end there. He worked for the Office of the Assistant Secretary of the Army. His interest in international law made him a good fit wherever he found himself. And over the years, his work took him around the country and then around the world. There were projects in China, Pakistan, Germany, Canada, Brazil, and, yes, even Russia.

Eventually Beard worked his way up to a job at the Office of the Secretary of Defense—associate deputy general counsel for international affairs in the Office of the General Counsel. He stayed from 1990 to 2004, often working closely with the secretary of defense. One of his biggest assignments was helping to dismantle weapons of mass destruction in the former Soviet Union under the **"Nunn-Lugar" assistance program**. He was one of the international lawyers who negotiated matters related to the removal of Ukraine's WMDs and dismantlement of its nuclear infrastructure. "I became the principal lawyer in the Defense Department for the negotiation of the implementing agreements and the overall umbrella agreement with the Russians, the Kazakhs, the Ukrainians, and the Belarusians," he said. It was a heady time. And a great spot for a Russian major.

The Pentagon seemed to celebrate technological innovations as their new invincible weapons that no one else would acquire.



BACK TO THE ACADEMY

It wasn't all whirlwind travel and international diplomacy. Beard's government work included long stints in Washington, where he earned an LL.M. (master of laws degree) in International and Comparative Law at Georgetown in 1989. And during those times he had an opportunity to try teaching as an adjunct lecturer in law. He started at his alma mater, Georgetown, then at George Washington, Johns Hopkins, American, and in 2002, he taught as a full-time visiting political science professor at the U.S. Naval Academy.

He liked it. He especially enjoyed the interaction with students. And he was apparently good at it. He won a teaching award at Georgetown and another at Johns Hopkins. Was it too late to change careers? "Most adjuncts don't go that way," he said. "You usually don't start an academic career more than a couple of years out of law school." In 2005, it had been 22 years since he'd graduated. That was the year that the UCLA School of Law hired him as a full-time professorial lecturer.

Returning to law school as a career move was comfortable in some ways. The teaching he knew he could handle. But there was another facet that posed a challenge. "It was the writing part of it," he said. It was the scholarship and duties of a full-time professor. "That I wasn't familiar with."

As he thought about the topics that interested him, inevitably, he returned to his years at DoD. He'd had a lot of time to think about weapons—old ones he'd been working to dismantle, and new ones that the Pentagon was deploying.

THE NEW FRONTIER

He'd been struck by the exuberance with which the Pentagon greeted new technology. They weren't just weapons, they were going to be "invincible weapons," he said. The attitude was: "This is going to be the weapon that makes competing weapons obsolete." That was the first great fallacy he witnessed again and again. The second, he said, was: "No one else will ever have it."

In the late 1990s, computers were going to completely remake the military. A few years later came the drones. And hovering above them: satellites. "Space is like the ultimate technology frontier," Beard continued. "It's all about high technology, and all these wonderful, enormous, expensive satellites parked out there 22,000 miles from Earth. Protected. Safe." The idea that anyone would be able to threaten them, Beard said, "wasn't part of the package."

That was how he came to write on this subject. "A lot of my writing has been about the unintended consequences of employing a lot of these technologies," he said. "Every new weapons technology does create new capabilities," he continued, "but at the same time creates new vulnerabilities." The onslaught of cyberattacks underscored the point. Not even satellites were safe. "Space is particularly vulnerable to cyber action, because of all the information being relayed back and forth to the satellites," Beard noted. "So it was writing in this area that was particularly attractive to me."

It didn't take long for this foray to bear fruit. In 2011, Jack Beard was hired as an assistant professor at the University of Nebraska College of Law. Three years earlier the school had launched an LL.M. degree program in [Space, Cyber, and Telecommunications Law](#). With help from a NASA grant, the initiative expanded into a special concentration that J.D. students could elect as well.

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By 2020, Beard was associate professor and co-director of the program. Two years later he was director. And somewhere along the line, the program had gained international recognition.

Through articles and lectures, Beard has been clear about what he's been trying to do. He'd like to see the law bring rigor to the way nations behave in space—and the way they respond to each other on the ground. Unlike cyberwar, which is another new area that provokes international disputes, there is a treaty that covers behavior in space. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies is its unwieldy name. It was negotiated and drafted under the auspices of the United Nations. It went into force in October 1967 and all major spacefaring nations are parties to it.

The **Outer Space Treaty**, as it's commonly called, is the foundational document designed to establish rules and keep the peace. No nations are allowed to place WMDs in orbit around Earth, or station them in space, or install them on celestial bodies. More generally, the law is designed to encourage cooperation and avoid or minimize conflicts and dangerous activities. But Beard sees flaws in the way it's used—or isn't. When nation-states complain that a satellite or space vehicle created a dangerous situation, Beard said, they rarely file an official complaint that characterizes the alleged offense as a violation of international law, perhaps fearing that the same allegation could later be aimed at them.

There are numerous examples of this phenomenon, Beard said. For example, in 2018, France complained about the maneuvering of a Russian satellite, saying it was **"unfriendly."** Two years later, the United States rebuked Russia for a separate incident, **calling Russia's action "irresponsible."** In each instance, a Russian satellite allegedly ventured too close to French and American satellites, but neither country alleged a violation of international law or even used the word "illegal." "Commentators may weigh in, but that's not going to achieve much progress in actually advancing the development or application of the Outer Space Treaty," Beard said. "As a lawyer," he continued, "I'm less interested in what experts say the law should be, and intensely more interested in what states that make international law are actually saying and doing."

THE PURPOSE OF THE BOOK



"The Woomera Manual" manuscript that was distributed for the consultations at The Hague

"The Woomera Manual" aims to contribute to that effort. Four schools are collaborating on and funding work on the book: the University of Exeter in the United Kingdom, the Nebraska University College of Law, the University of Adelaide, and the University of New South Wales—Canberra, the last two in Australia. (Woomera itself is a village in South Australia from which the country launched its first satellite.)

Asked what he hopes will emerge from the project, Beard considered for a moment. "Well," he began, "we're looking for a reliable, practical guide, a collection focusing on state practice to help practitioners." He paused again. "You could argue to better extend the rule of law to space," he said, "but also to provide more predictability in space, to help prevent miscalculations and to promote a safer environment."

The hardest part was the research. It required examining the Outer Space Treaty in great detail to try to clarify or navigate ambiguities by ferreting out the negotiation history, which wasn't easy given the age of the agreement. And they needed to dig

into statements by states, and policies inscribed in documents that were sometimes buried in old files. "A lot of academics are not interested in these things," Beard observed. They are more interested

in propounding their own theories. “They want to be groundbreaking.” When there’s boring research: “Leave that to the law clerks.” But Beard and his Woomera project colleagues, who are employed primarily by universities, governments, and military services, hunkered down with their research assistants, he said.

What was often most important in this work was learning what the states decided to do and why. The work was bolstered by four workshops of the legal and technical experts, organized and funded by the universities. After the workshops concluded, the editorial board prepared the draft manuscript and submitted it to the Dutch Ministry of Foreign Affairs to circulate to states around the world, along with an invitation to review the draft and meet at The Hague to discuss it. The editorial board met with representatives from 24 nation-states, ranging from Australia to Zimbabwe, on June 1-3, 2022, to receive their comments and engage in conversation.

Beard remembered it well and seemed to relish the back and forth. They were operating under so-called Chatham House Rules, so no comments were attributed to specific individuals or nations. That made for lively discussion, and some of the “most robust” exchanges centered on Beard’s observation that states were not willing to call out bad behavior. “Look,” Beard recalled telling them, “if none of you countries invoke any of these provisions that the Outer Space Treaty provides, it would appear that more and more bad behavior seems to be getting legitimized. Any layman would look at that and say, ‘Well, if you’re not invoking it, the threshold must be really increasing.’”

“Oh the backlash!” Beard recalled with a smile. There was a flurry of rejoinders: “No, no, no, you don’t understand! There are many factors that may influence a diplomat to not publicly say those things. A diplomat may be protecting classified information, a diplomat may want to raise it in another context, or a diplomat may have other policy concerns.”

Finally: “We don’t want to set a precedent.” Beard smiled again. “Of course, by not responding, you’re setting a precedent. It’s a funny thing, the silence of states.” Beard expressed his gratitude for the contributions of all the representatives. The not-so-silent consultations resulted in a revised draft, as the editors incorporated the views of these states into the manuscript.

NORMS AND SOFT LAW

Why should this treaty be so important when it was drafted well before it was clear what the reality of spacefaring would be—and adopted just a decade after Russia launched that first **Sputnik** satellite in 1957? The short answer is that nothing has replaced it. It has been modestly enhanced by only four minor treaties, the last of which (the “Moon Treaty”) was adopted in 1979 and only 18 parties ratified it.

Which is not to say that no one has tried since. But the efforts have met with enough resistance that a new approach has been adopted. Beard described it in a 2017 **law review article**: “In place of legally



Jack Beard, front row center, with fellow Woomera editorial board members Prof. Dale Stephens (on his left) and Prof. David Koplow (right), posing with representatives of states participating in the consultations at The Hague

binding agreements, a wide variety of non-binding 'soft law' instruments have been developed for space activities, variously described as 'non-binding principles, norms, standards or other statements of expected behavior in the form of recommendations, charters, terms of reference, guidelines, codes of conduct, etc.'" A prime example is what is now called the [International Code of Conduct for Outer Space Activities](#) (it was once known as the European Code).

If Beard sounded pained by the states' flaccid use of the Outer Space Treaty, those comments were pleasantries compared to what he had to say about negotiators' use of norms and soft law. "I hate the word *norm*," he said. "Because *norm* is sometimes used by jurists to mean a legally binding obligation." But in his view, the word is often used by advocates and commentators in a confusing way to describe concepts or rules that are not law—any more than soft laws are laws. They're not articulating what a law is, but "what the law *should be*," he said. "For a lawyer, it's a treacherous ground where you mistake objectives, goals, and responsible behavior for law. When codes of conduct are signed by nations, they can become the worst kind of 'gentlemen's agreements'. They give the appearance of being legal and binding, when in fact they are neither," he added.

There is one soft model that is not a binding arrangement that Beard heartily endorses. In 2022, the United States declared a moratorium on destructive anti-satellite (ASAT) weapons tests, which leave in their wake dangerous space debris. This wasn't an agreement negotiated with anyone else. It was an announcement, Beard said. A commitment to responsible behavior. It was: "We're just not going to do it, and we invite others not to do it."

A funny thing happened. The initiative caught on. Other countries joined the United States in imposing a moratorium on such destructive tests. And a resolution sponsored by the U.S. and other states was brought to the U.N. General Assembly. The vote wasn't binding. A few countries didn't support it, including Russia and China. But it passed overwhelmingly and demonstrated strong support for the idea that such ASAT tests do not show due regard for the interests of other states. It may also clarify terms in the Outer Space Treaty and lay a foundation for future legal agreements. And to Beard, it was infinitely preferable to confusing multilateral soft law arrangements, which often pose as something they are not.

LOOKING AHEAD

Beard believes the book will make a meaningful contribution and will be well received when it comes out next year. The sessions in The Hague left him hopeful. "It was very clear that countries had studied the manuscript carefully and were thus able to contribute extensive oral and written comments," he said. Countries also had different views on some issues, and those opinions are reflected in the Manual. "There was great disagreement on some issues," he remembered, "for example, on what exactly the term 'free use of outer space' means in Article I of the treaty. And whether or not that includes exploitation of space resources." He paused. "You can make good arguments either way." We'll have to wait to see how it comes out.

The book may be months away, but the buzz has already begun. Eric Jensen, a law professor at Brigham Young University, who has known Beard since his days in the JAG Corps, and has established his own expertise in international law, particularly on cyberwar, had this to say: "Jack's work as the editor-in-chief of the "Woomera Manual" is indicative of his expertise in this area. I have no doubt that the Manual will quickly become THE resource on space law."

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