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**The Decision to Act: Political, Legal, Social, and Economic Aspects**

**Legal Considerations on a Regional Security Organization for Planetary Defence**

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## **Abstract**

Under the UN-Charter system, the maintenance of international peace and security is traditionally the primary responsibility of the UN Security Council as set forth in Chapter VII. The cumbersome decision-making process of the Security Council is yet not favourable when a timely response to a threat from outer space is needed. Since the Security Council's competence for dealing with matters of international peace and security is not exclusive, other international bodies may take a role in addressing threats emanating from outer space. A regional security organization for planetary defence can be established under Article 52 UN-Charter and may provide for an alternative forum to decide upon the necessary steps for Near Earth Object (NEO)-deflection missions. The international legal personality of an international organization for planetary defence leads to the capacity of entering into treaties, the international responsibility for acts and omissions attributed to it and the enjoyment of privileges and immunities. Such organization can also declare acceptance of the UN Space Treaties.

## 1. Introduction

In a recent publication on legal aspects of planetary defence, several methods of acting in response to a threat emanating from outer space were discussed.<sup>1</sup> *Inter alia*, the role of the Security Council for the maintenance of international peace and security was identified as one potential mechanism of international cooperation to react to threats from outer space.<sup>2</sup> The critical examination particularly highlighted the character of NEOs as relevant threats to international peace and security.<sup>3</sup> Due to the rather cumbersome decision-making process of the Security Council if a permanent member casts a veto,<sup>4</sup> a detriment effect on achieving a timely response could be the consequence. Since the Security Council's competence for dealing with matters of international peace and security is not exclusive, other international bodies may take a role in addressing threats emanating from outer space. Regional arrangements as set forth in Article 52 UN-Charter could be a suitable alternative for the promotion of international cooperation on NEO-response policies.

According to Article 52 UN-Charter

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.<sup>5</sup>

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<sup>1</sup> Irmgard Marboe (ed), *Legal Aspects of Planetary Defence* (Brill, Nijhoff, 2021).

<sup>2</sup> *Ibid*, pp. 371- 398.

<sup>3</sup> *Ibid*, at pp. 226, 386.

<sup>4</sup> Rudolf Geiger, 'Ch.V The Security Council, Composition, Article 23' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary, Vol I* (3rd edn, Oxford University Press 2012), p. 753.

<sup>5</sup> Charter of the United Nations (1945) 1155 UNTS 331.

Based on Article 52 UN-Charter, States can agree on the commitment to share the risk and responsibility of planetary defence. A regional arrangement for planetary defence can play an important role in political crisis management and may provide for an effective decision-making process. The UN-Charter contains no provisions on a comprehensive system of cooperation between other UN organs and organizations with regional character.<sup>6</sup> While several documents have suggested diverse forms and mechanisms of cooperation,<sup>7</sup> so far cooperation mostly exists on ad-hoc basis. A non-permanent cooperation mechanism is particularly detrimental for dealing with threats from outer space as they require a prompt response. An international organization based on Article 52 UN-Charter creates an institutional bridge between the decision-finding process necessary to deter the NEO-threat and the enforcement of such decision.<sup>8</sup>

## **2. The Relevance of a Regional Security Organization for Planetary Defence**

The General Assembly as well as the Security Council highlight the contribution of regional mechanisms to international peace and security. The 1994 'Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security' attests to the importance of regional organization, and recognizes that regional organizations can fulfil a contributing role in preventive diplomacy and in enhancing regional and international cooperation.<sup>9</sup> Likewise, the Security Council emphasizes in the 'Resolution on Cooperation between the United Nations and Regional Organizations in Maintaining International Peace and Security' the importance of regional arrangements for the maintenance of international peace and security.<sup>10</sup>

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<sup>6</sup> Alena Douhan, "International Organizations or Institutions, Cooperation in Security Matters", in in *Max Planck Encyclopedias of Public International Law* (Oxford University Press 2019) para 7.

<sup>7</sup> Security Council Resolution 1631 (2005) paras 7–8; Statement by the President of the Security Council UN Doc S/PRST/2010/1 paras 6, 7, 9; Report of the UN Secretary-General UN Doc S/2008/18 paras 71–76.

<sup>8</sup> See for an example of a close cooperation between an international organization with the UN-system, the NATO – UN cooperation agreement, as well as the joint declarations on comprehensive partnership between ASEAN and the UN.

<sup>9</sup> UN GA Res 49/57 (1995).

<sup>10</sup> UN SEC Res 1631 (2005).

Regional instruments fulfil a complementary role to universal instruments and create a bridge between regionalism and multilateralism.<sup>11</sup> The enhancement of cooperation between a regional arrangement for planetary defence and the Security Council may positively contribute to reaching a decision on the prevention of NEO-threats. A regional arrangement dedicated to planetary defence incurs a deep understanding of the specific situation and potential methods of deterrence. The collaboration between such regional arrangement and the Security Council as multilateral forum creates synergy and complementarity. An additional important advantage lays in the participation and engagement of private actors, as well as in the inclusion of other institutional actors, such as inter-governmental or other international organizations. Additionally, an arrangement pursuant to Article 52 UN-Charter may either constitute a forum for political cooperation or gain organization-quality and legal personality. Members of a planetary defence arrangement thus have greater flexibility in deciding upon the institutional structure. Article 53 UN-Charter subsequently provides for an enforcement mechanism since the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.<sup>12</sup>

### **3. Legal Criteria for a Regional Organization on Planetary Defence under Article 52 UN-Charter**

Article 52 UN-Charter consists of several undefined terms, leaving a wide scope for interpretation. The UN-Charter also does not indicate the competent authority to decide upon the character of a regional arrangement. A regional security organization for planetary defence particularly requires further clarification of the terms "regional", "matters relating to international peace and security", and "arrangement or agency".

#### **3.1. A Planetary Defence Organization complies with the 'regional' Criterion**

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<sup>11</sup> Christian Walter, "Regional Arrangements and the United Nations Charter" in *Max Planck Encyclopedias of Public International Law* (Oxford University Press 2009) para.1.

<sup>12</sup> Art. 53 UN-Charter.

The absence of a legal definition on the term 'regional' is the spark of a lively debate with the result of different approaches on the determination of the exact notion.<sup>13</sup> The geographically oriented approach relates either to a geographical link between the member States or to the geographical delimitation of the area of operation.<sup>14</sup> Since Article 53 UN-Charter stipulates that, only the "matters" have to qualify for regional action but not the members of the regional arrangement or agency, Article 52 UN-Charter can be interpreted as covering all organizations with a regionally confined field of operation.<sup>15</sup> In contrast, the non-universal approach submits that the term 'regional' is not confined to geographical criteria but can be understood to include all arrangements which do not act universally.<sup>16</sup> The functional approach draws a connection between the field of operation with the status as regional arrangement.<sup>17</sup> Instead of focusing on a geographical link, extra-regional interests and functions are the core elements.<sup>18</sup>

While the geographical as well as the universal approach have been called into question, the functional approach reaches support as it allows for an open concept of 'regional'.<sup>19</sup> Closely linked with the functional approach of defining 'regional' is the purpose of such arrangement for dealing with matters relating to the maintenance of international peace and security. The functional approach most suitably accommodates the object and purpose of Chapter VIII of the UN-Charter as it relates the existence of an arrangement to its function of maintaining and preserving international peace and

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<sup>13</sup> Rodriho Tavares, *Regional Security – The Capacity of International Organizations* (Routledge 2009); Ademola Abass, *Regional Organisations and the Development of Collective Security, Studies in International law, Vol 6* (Hart Publishing 2004) 9ff.

<sup>14</sup> Louise Fawcett, *Regionalism in Historical Perspective*, p. 16. For example the Organization of American States or the Economic Community of West African States are regional organizations.

<sup>15</sup> Cot/Pellet, *La Charte des Nations Unies - Art. 52*, p. 1373.

<sup>16</sup> Critical: Christian Walter, "Regional Arrangements and the United Nations Charter" in *Max Planck Encyclopedias of Public International Law* (Oxford University Press 2009) para. 5; Andrew Hurrell, *Regionalism in Theoretical Perspective*, p.38.

<sup>17</sup> Christian Walter, "Chp. VIII Regional Arrangements, Article 52" in Bruno Simma et al (eds), *The Charter of the United Nations a Commentary, Vol II* (OUP 2012), p.1449.

<sup>18</sup> Paul Taylor, *International Organisations in the Modern World: The Regional and Global Process* (Pinter 1993), p.11.

<sup>19</sup> Christian Walter, "Chp. VIII Regional Arrangements, Article 52" in Bruno Simma et al (eds), *The Charter of the United Nations a Commentary, Vol II* (OUP 2012), p.1449.

security.<sup>20</sup> Even though a definition based on the peace promoting potential blurs the line between the regional character and the purpose of such arrangement, the functional approach accommodates future developments and aligns other relevant besides geography.<sup>21</sup> For the definition of the 'regional' character of an arrangement or agency based on the functional approach, *Walter* proposes that it requires "a stable and pre-existing enduring bond among its members, (...) which justifies the expectation that the organization can contribute to the maintenance of international peace and security."<sup>22</sup> A concrete example on the application of the functional approach is the Antarctic Treaty, which derives its 'regional' status from its field of operation.<sup>23</sup> The main argument in favour of classifying the Antarctic Treaty as a regional arrangement contributing to peace and security relates to the obligation not to use the Antarctic for military purposes.

An organization for planetary defence incurs regional character in the sense of Article 52 UN-Charter under the criticized geographical approach but also under the generally accepted functional approach. Interpreted in good faith in accordance with the ordinary meaning, 'regional' can be understood as covering Outer Space as 'region'.<sup>24</sup> In this regard, the activities of a planetary defence organization are geographically confined to Outer Space. In the context and in the light of the object and purpose of the UN-Charter and in particular Chapter VIII, a planetary defence organization may also be characterized as 'regional' based on its field of operation. Similar to the reasoning on the Antarctic Treaty, the organization has to restrain its members from using force against other States and not to use Outer Space for military purposes in order to contribute to international peace and security.<sup>25</sup>

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<sup>20</sup> Ibid p.1449.

<sup>21</sup> Ibid p.1449.

<sup>22</sup> Christian Walter, "Chp. VIII Regional Arrangements, Article 52" in Bruno Simma et al (eds), *The Charter of the United Nations a Commentary, Vol II* (OUP 2012), p.1450.

<sup>23</sup> JI Charney, 'The Antarctic System and Customary International Law' in F Francioni and T Scovazzi (eds), *International Law for Antarctica (Kluwer Law International (1996)*, pp.51, 64.

<sup>24</sup> Art. 31 VCLT.

<sup>25</sup> See for example NATO, which does not qualify as regional arrangement in the sense of Art. 52 UN-Charter but as collective self-defence organization as it is concerned with acting against aggressors; Ademola Abass, *Regional Organisations and the Development of Collective Security, Studies in International law, Vol 6* (Hart

### **3.2. NEO-Threats are Matters relating to the Maintenance of International Peace and Security**

With regard to the Security Council's power to determine "any threat to peace", it was expressed that due to their potentially devastating global effects, NEOs could be regarded as relevant threats to international peace and security.<sup>26</sup> The Security Council's discretion in making such determinations on 'threats to the peace' is not necessarily confined to acts of aggression and military confrontations between States and may also include the natural threat posed by asteroids.<sup>27</sup> Similarly, the impact of climate change as a natural threat to the maintenance of peace and security is a recurring issue.<sup>28</sup> A recent example is the Security Council's "Open Debate on Threats to International Peace and Security: Sea Level Rise" where the effect of climate change was deliberated as natural threat to international peace and security. An asteroid impact would affect the global environment as a whole. NEO-threats are therefore matters relating to the maintenance of international peace and security. Whether an action is 'appropriate' depends on the reasonable expectation that the arrangement or agency will be able to resolve the issue. It is in the capacity of the arrangement or agency to decide when a regional action is appropriate.<sup>29</sup> In this regard, an arrangement or agency on planetary defence may consequently also decide whether a regional action is appropriate to deter a NEO-threat.

### **3.3. Structural Flexibility provided by the 'Arrangement or Agency' Criterion**

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Publishing 2004) p.14. Also discussed by H Kelsen, 'Is the North Atlantic Treaty a Regional Arrangement?' (1951) 45 AJIL pp. 162, 163.

<sup>26</sup> Olavo de Oliveira Bittencourt Neto, 'International Bodies and Procedures for Decision-Making Regarding Planetary Defence Actions' in Irmgard Marboe (ed), *Legal Aspects of Planetary Defence* (Brill, Nijhoff, 2021), p.386.

<sup>27</sup> Jack Beard, 'Nuclear Non-Proliferation and Planetary Defence' in Irmgard Marboe (ed), *Legal Aspects of Planetary Defence* (Brill, Nijhoff, 2021), p.264.

<sup>28</sup> Security Council, Open Debate on the Maintenance of International Peace and Security: Climate and Security (76th UN General Assembly, 23. September 2021); Security Council, Open Debate on Threats to International Peace and Security: Sea Level Rise (77<sup>th</sup> UN General Assembly, 14. February 2023).

<sup>29</sup> R Pernice, *Die Sicherung des Weltfriedens durch regionale Organisationen und die Vereinten Nationen. Eine Untersuchung zur Kompetenzverteilung nach Kapitel VIII der UN-Charta* (Hansischer Gildenverlag 1972), p.80

Instead of referring to an 'international organization', Article 52 UN-Charter uses the broad and open term 'regional arrangements or agencies' which implies a different understanding. The main difference between an international organization and an 'arrangement or agency' is the internal structure. Contrary to an international organization, a regional arrangement or agency does not require a treaty for its establishment.<sup>30</sup> An arrangement or agency can also be of purely political character.<sup>31</sup> A regional agency or arrangement may formally define itself as being covered by Article 52 UN-Charter and hence decide if it is subject of the Chapter VIII rules. For example, the Organization for Security and Co-operation in Europe (OSCE) formally self-declared itself as an organization under Chapter VIII UN-Charter.<sup>32</sup> Moreover, a structural differentiation also exists between 'agency' and 'arrangement', which allows members more flexibility on deciding upon the degree of institutionalisation. The term 'agency' is usually understood as covering institutionally more elaborated structures, implying at least one organ for autonomous action.<sup>33</sup> The broader term 'arrangement', in contrast, does not require any organ expressing the will of the organization.<sup>34</sup> Any 'arrangement' still needs to be established with the expectation to contribute more permanently to the maintenance of international peace and security, and hence excludes ad-hoc groups.<sup>35</sup>

While any international regional organization can be included under Article 52 UN-Charter, not every arrangement or agency can be understood as international organization. In practice, the diversity of international organizations and their constituent instruments, such as headquarters agreements, as well as other treaty or

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<sup>30</sup> Tobias Winkler, *Die Vereinten Nationen im Gefüge der Internationalen Organisationen* (2019), p.35.

<sup>31</sup> Walters, MEPIL para 7; Jan Klabbers, *An Introduction to International Organizations Law* 4<sup>th</sup> ed. (Cambridge University Press, 2022), 12.

<sup>32</sup> See for example the Organization for Security and Co-operation in Europe (OSCE) formally self-declared itself as an organization under Chapter VIII UN Charter, Helsinki Summit Declaration of 10 July 1992 [1992] 31 ILM 1390 at para. 25.

<sup>33</sup> R Tavares, *Regional Security* (Routledge 2010) 9.

<sup>34</sup> H.G. Schermers and N.M. Blokker, *International Institutional Law: Unity within Diversity* (6<sup>th</sup> ed., 2018), pp.48, 1031.

<sup>35</sup> *Military and Paramilitary Activities in and against Nicaragua* (Judgement) [1984] ICJ Rep 440, para 107; on the Contadora Group, which was formed in the 1980s by Colombia, Mexico, Panama, and Venezuela to deal with military conflicts in El Salvador, Nicaragua, and Guatemala.



contractual arrangements, impedes a clear-cut classification. Also, the lack of a theoretical framework bedevils the discussion on the legal relationship of international organizations or as *Klabbers* put it “international actors do not (...) create an international organization following eternally valid blueprint.”<sup>36</sup> The UN-Charter uses in several other provisions the expressions “agencies” or “specialized agencies” for international organizations with specific relations to the United Nations.<sup>37</sup> Also the term “international institutions” occasionally refers to international organizations.<sup>38</sup> Any arrangement for planetary defence may qualify as international organization provided that it fulfils the necessary requirements. In contrast, the status of an international organization may become questionable if certain aspects are not given.<sup>39</sup>

It is commonly accepted that international organizations can be members of other international organizations, including also regional agencies.<sup>40</sup> The broad wording of Article 52 also allows other (partial) subjects of international law to be members, including private actors.<sup>41</sup> A combination of States, international organizations as well as private actors as members of such arrangement or agency is particularly beneficial in case of Outer Space activities. The emergence of private actors, or in the words of the Outer Space Treaty, the emergence of “non-governmental entities” in outer space activities,<sup>42</sup> shows the need to include civil society already at the decision-making stage and not only as addressee of such decisions.<sup>43</sup> These structural differences offer the

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<sup>36</sup> Jan Klabbers, *Introduction to International Organizations* (2022), p.6.

<sup>37</sup> See Article 57 UN Charter and 63 UN Charter.

<sup>38</sup> H.G. Schermers and N.M. Blokker, *International Institutional Law: Unity Within Diversity* 6<sup>th</sup> ed. (Nijhoff, 2018); K. Schmalenbach, ‘International Organizations or Institutions, General Aspects’ in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* Vol. V (Oxford University Press, 2012), p. 1126.

<sup>39</sup> See, for instance, the discussion on the legal personality of the OSCE. Steinbrück Platise, Moser, Peters (eds.) *The Legal Framework of the OSCE* (Cambridge University Press, 2019); H. Tichy and C. Quidenus, ‘Consolidating the International Legal Personality of the OSCE’, 14 *International Organizations Law Review* (2017), pp. 403-413.

<sup>40</sup> See H.G. Schermers, ‘International Organizations as Members of Other International Organizations’, in R. Bernhardt, W.K. Geck, G. Jaenicke, H. Steinberger (eds.), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte – Festschrift für Hermann Mosler* (1983), pp. 823-837. Also Article 2(a) DARIO ###

<sup>41</sup> Christian Walter, ‘Regional Arrangements and the United Nations Charter’ in *Max Planck Encyclopedias of Public International Law* (Oxford University Press, 2009), para. 25.

<sup>42</sup> Article VI Outer Space Treaty.

<sup>43</sup> Stephanie Stipsits, ‘The European New Space – Spaceports provided by Private Actors’ in Anette Fröhlich (ed.), *Spaceports in Europe* (Springer, 2022), p.39.

members of any entity on planetary defence the choice on the exact institutional structure. The range goes from a mere forum for political discussions such as in the case of an "arrangement" to an "agency" with institutional structures that may also qualify it as "international organization". The concept of an international organization is highly fluid but some core elements can be identified.

#### **4. The Creation of a Regional Security Organization for Planetary Defence**

While no generally accepted definition of international organizations exists, certain elements need to be fulfilled in order to qualify as international organization.<sup>44</sup> An international organization is an entity usually created by States, by any type of instrument governed by international law, with its own organs able to express the organization's "own will" and aimed to achieve specific tasks.<sup>45</sup> A planetary defence regional arrangement or agency in the sense of Article 52 UN-Charter which complies with these four elements may hence be qualified as international organization with the effect of incurring legal personality. Direct consequences of the legal personality of international organizations are the capacity of entering into treaties,<sup>46</sup> the international responsibility for acts and omissions attributed<sup>47</sup> to the international organization,<sup>47</sup> and the enjoyment of privileges and immunities.<sup>48</sup>

In practice, intergovernmental organizations and national space agencies are influencing actors for the development and performance of outer space activities.<sup>49</sup>

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<sup>44</sup> Jan Klabbbers, *An Introduction to International Organizations Law*, 4<sup>th</sup> ed. (Cambridge University Press, 2022), pp.6-13.

<sup>45</sup> D. Akande, 'International Organizations', in M.D. Evans (ed.) *International Law*, 5<sup>th</sup> ed. (Oxford University Press, 2018), pp. 228-229; J. E. Alvarez, *International Organizations as Law-Makers* (OUP 2005), p. 6; A. Golia and A. Peters, 'The Concept of International Organization', in J. Klabbbers (ed), *The Cambridge Companion to International Organizations Law* (Cambridge University Press 2022), 25, at 28; A. H.G. Schermers and N.M. Blokker, *International Institutional Law: Unity Within Diversity*, 6<sup>th</sup> ed. (Nijhoff, 2018), p. 41; Ph. Sands and P. Klein, *Bowett's Law of International Institutions*, 6<sup>th</sup> ed. (2009), pp.15-16; K. Schmalenbach, 'International Organizations or Institutions, General Aspects', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* Vol. V (Oxford University Press 2012) p.1126, at 1128;

<sup>46</sup> Hangdah Chiu, *The Capacity of International Organizations to Conclude Treaties and the Special Legal Aspects of the Treaties Concluded* (Martinus Nijhoff, 1966)

<sup>47</sup> Johannes Antonius and Maria Klabbbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act' 28 *European Journal of International Law* (2017), p.1133.

<sup>48</sup> August Reinisch, 'The immunity of international organizations and the jurisdiction of their Administrative Tribunals' 7 *Chinese Journal of International Law* (2008) pp. 286-288.

<sup>49</sup> Roger Bonnet and Vittori Manno, *International Cooperation in Space: The Example of the European Space Agency* (Harvard University Press, 1994); W. D Kay, *Defining NASA – The Historical Debate over the Agency's*

However, while national space agencies are created under national law and are subjects to national law, international organizations for planetary defence need to be created under international law and be subject to international law in order to obtain international legal personality. With regard to intergovernmental organizations, member States may transfer their powers to the organization, including treaty-making powers, relevant to their cooperation in organizations of a broader scope.<sup>50</sup> The legal personality of an international organization enables it to enter into legal relationships with third parties, including also private parties. As regards planetary defence, private actors may perform parts of NEO-deflection missions and it is also not excluded that they implement such mission in its entirety.<sup>51</sup> It is therefore beneficial for a planetary defence organization to incur legal personality and hence be able to engage with private actors in various relationships.

While international organizations are traditionally created by at least two States,<sup>52</sup> international organizations have increasingly acceded to or even been founding members of international organizations.<sup>53</sup> The European Space Agency (ESA) as intergovernmental agency, for example, may thus also accede or even act as founding member of a planetary defence organization.<sup>54</sup> International organizations perform important normative functions in some areas of international law, such as the International Maritime Organization (IMO) for the law of the sea, or the International Civil Aviation Organization (ICAO) for international air law. There is also a substantial

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*Mission* (2005 State University of New York Press:Albania); Benjamin Adams, 'Cooperation in space: An international comparison for the benefit of emerging space agencies' 162 *Acts Astronautica* (2019) pp.409-416.

<sup>50</sup> Similar, Article 1 Annex IX to UNCLOS ("international organization" means an intergovernmental organization constituted by States to which its member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of those matters.").

<sup>51</sup> Peter Stubbe, 'The Involvement of Private Actors in Planetary Defence Missions' in Irmgard Marboe (ed), *Legal Aspects of Planetary Defence* (Brill, Nijhoff, 2021), p.370.

<sup>52</sup> That only two States are needed to create an international organization confirmed the ICJ in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, [2010] ICJ Reports 14, para. 89 (holding that the principle of speciality "also applies of course to organizations, which like CARU [Administrative Commission of the River Uruguay], only have two member States.").

<sup>53</sup> See H.G. Schermers, 'International Organizations as Members of Other International Organizations', in R. Bernhardt, W.K. Geck, G. Jaenicke, H. Steinberger (eds.), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte – Festschrift für Hermann Mosler* (1983), pp. 823-837. See also Article 2(a) DARIO ("International organizations may include as members, in addition to States, other entities.").

<sup>54</sup> Gabriel Lafferranderie, *Jurisdiction and Control of Space Objects and the Case of an International Intergovernmental Organization (ESA)* 54 *ZLW* (2005).

number of cases where international organizations developed substantive law necessary for space activities, including ITU and also ICAO.<sup>55</sup> For the regime of space law, however, there is no construct of an international space organization.<sup>56</sup> UNCOPUOS serves as an important forum for the discussion and deliberation of all space-related cooperative programs and of technical and legal issues and acts as subsidiary organ of the UN General Assembly.<sup>57</sup> While the idea of creating an international space organization was discussed within the United Nations, it eventually did not find support.<sup>58</sup> Although not part of this contribution, it could still be argued that UNCOPUOS might indeed have incurred the status of an international organization with specific relations to the United Nations.

An international organization for planetary defence would have a narrower scope of actions limited to the coordination and decision-making necessary to deflect NEO-threats. Such organization could be a technical organization instead of a political one and created with the competency to realize direct operational activities in space. The characteristic of a technical organization with legal or institutional tasks goes beyond a mere political forum and requires the creation of an international organization instead of an "arrangement" in the sense of Article 52 UN-Charter.

An organization for planetary defence, consequently, needs to be established by a treaty or any other instrument governed by international law.<sup>59</sup> The terminology of the constitutive act, such charter, statute or constitution, is not decisive. The relevant criterion is that the constituent act is governed by international law.<sup>60</sup> Article 57 UN - Charter, for example, particularly refers to specialized agencies "established by

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<sup>55</sup> Frans von der Dunk, 'International Organisations as Creators of Space Law – A Few General Remarks' in Proceedings of the 3rd ECSL Colloquium (1999), p. 337-339.

<sup>56</sup> Armel Kerrest, 'International Organisations as Active Subjects of International Law of Outer Space' in Harris (ed), International Organisations and Space Law, Proceedings of the Third ECSL Colloquium (1999) p.257.

<sup>57</sup> Sergio Marchisio, 'The Evolutionary Stages of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space' 31 Journal of Space La (2005) stating at p.220.

<sup>58</sup> Ibid p.221.

<sup>59</sup> Article 2(a) DARIO, Draft articles on the responsibility of international organizations, with commentaries, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two, p. 46, p. 49.

<sup>60</sup> P. Daillier, M. Forteau, A. Miron, N. Quoc Dinh, A. Pellet, *Droit international public* 9<sup>th</sup> edn (LGDJ 2022), p. 811.

intergovernmental agreements". Even where the entity labelled itself as "study group" or "working group", it may still display all the characteristics of an international organization.<sup>61</sup> Decisive is the ability of the organization's organ to express its own will.<sup>62</sup> The independent legal personality of an international organization is intrinsically tied to the capability to form a separate legal will from its members.<sup>63</sup> The establishment of an organ enables the organization to achieve a certain goal or task.<sup>64</sup> In contrast, forums of cooperation of States without an institutional structure able to express a will and achieve a common goal do not qualify as international organization. The Space Mission Planning Advisory Group (SMPAG) for example, performs as a forum in which space agencies, governmental or intergovernmental entities convene to prepare for an international response to a NEO-impact threat,<sup>65</sup> but does not possess a separate will. SMPAG's organizational structure consists of a plenary group of delegates nominated by its Members, guided by a Steering Committee with a rotating Chair.<sup>66</sup> Moreover, according to its statement of purpose, SMPAG will neither conduct any NEO-response mission nor decide upon the conduct of such mission.<sup>67</sup> Rather, SMPAG's role is to prepare for a response to NEO-threats through information exchange, research option development, and planning activities.<sup>68</sup> International organizations may be set up through decisions of existing international organizations and even though SMPAG was set up in 2014 by the United Nations,<sup>69</sup> its status as an international organization is questionable due to the lack of an organ expressing its will. An international organization for planetary defence may fill this gap and take the responsibility to decide upon the legal and technical details necessary to conduct a

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<sup>61</sup> Klabbers, *An Introduction to International Organizations Law* 4<sup>th</sup> ed. (Cambridge: Cambridge University Press, 2022), p.8.

<sup>62</sup> *Ibid.* 12.

<sup>63</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ Rep. 1996, 66, at 35

<sup>64</sup> *Ibid.*

<sup>65</sup> Line Drube, 'The SMPAG Ad-hoc Working Group on Legal Issues' in Irmgard Marboe (ed), *Legal Aspects of Planetary Defence* (Brill, Nijhoff, 2021), p.139.

<sup>66</sup> SMPAG, Terms of References, v.2, .at: [https://www.cosmos.esa.int/web/smpag/terms\\_of\\_reference\\_v2](https://www.cosmos.esa.int/web/smpag/terms_of_reference_v2) .

<sup>67</sup> Alan Harris, Line Drube and Lindley Johnson, 'SMPAG- Roadmap to relevant Research for Planetary Defense' (SMPAG/ESA Workplan Document 2019) 3–34.

<sup>68</sup> *Ibid.*

<sup>69</sup> Romana Kofler and others, 'International Coordination on Planetary Defence: The Work of the IAWN and the SMPAG' (2019) 156 *Acta Astronautica* 409.

NEO-deflection mission. It may expressly stipulate its character as an international organization possessing legal personality while also maintaining a forum-like character of intergovernmental decision-making on the basis of consensus.<sup>70</sup> If such organization declares itself as regional security organization in the sense of Article 52 UN-Charter, a direct link is created with the powers of the Security Council to decide upon an enforcement action. Pursuant to Article 53 UN-Charter, the Security Council shall utilize such regional arrangements or agencies for enforcement action under its authority. Even though an enforcement action by the planetary defence organization would require the authorization of the Security Council, it would still speed up the decision-making process. Instead of the Security Council needing to deliberate the details of such mission, a regional security organization for planetary defence may prepare such mission well in advance so that the Security Council may base its decision on the substantial information presented.

## **5. The Application of Space Law on a Security Organization for Planetary Defence**

While international organizations cannot be parties to the five UN Space Treaties, a regional security organization with international legal personality may still declare its acceptance of the treaties governing outer space activities.<sup>71</sup> A similar step has been undertaken by the intergovernmental European Space Agency by accepting the rights and obligations provided in the UN space treaties.<sup>72</sup> This acceptance, however, can only be declared as regards the Liability Convention, the Registration Convention, the Rescue and Return Agreement and the Moon Agreement.<sup>73</sup> As a consequence of the voluntary acceptance, these UN Space Treaties set the legal framework for a regional

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<sup>70</sup> Similar, Art. 3 ASEAN, United Nations, *Treaty Series*, vol. 2624, p. 223.

<sup>71</sup> Frans von der Dunk, 'International Organisations as Creators of Space Law – A Few General Remarks' in *Proceedings of the 3rd ECSL Colloquium (1999)*, p. 336.

<sup>72</sup> Jenni Tapio and Alexander Soucek, 'The European Space Agency's Contribution to National Space Law' in *International Actors and the Formation of Laws (Springer, 2022)*, p.113-134; ESA Declaration of Acceptance of the Astronauts Agreement, the Liability Convention and the Registration Convention (adopted by the ESA Council on 12 December 1978, deposited on 2 January 1979); [https://www.esa.int/About\\_Us/ECSL - European Centre for Space Law/About space law](https://www.esa.int/About_Us/ECSL_-_European_Centre_for_Space_Law/About_space_law).

<sup>73</sup> Frans von der Dunk, 'International Organisations as Creators of Space Law – A Few General Remarks' in *Proceedings of the 3rd ECSL Colloquium (1999)*, p. 336.

security organization to conduct NEO-deflection missions. The acceptance of these four space treaties would put the organization in the position of being subjected more directly to rights and obligations provided therein. While most of these provisions are dedicated to the conduct of States, either as launching State or State of registry, an international organization may conclude an agreement with the launching State on the consequences of the organization's liability in the event that the execution of its NEO-deflection mission or space activities causes damage. A role model could be again the European Space Agency which has defined the principles applicable where the legal liability of the Agency, of a Member State, or of a State participating in one of its programmes is involved, as well as the modalities for the distribution of the financial burden.<sup>74</sup> While an international organization may not accept the provisions of the Outer Space Treaty, it still provides for the indirect application on intergovernmental organizations in Article VI and XIII. In this regard, State Parties to the treaty may also bear international responsibility for a regional security organization. A regional security organization can therefore be placed within the framework of outer space law, thereby diminishing the risk of the organization to act excessively or to negatively impact other States' space activities

## **6. Conclusion - A closer Collaboration between the UN and a Regional Organization for Planetary Defence**

The United Nations' core mission is to promote peace and security on a global level. A stronger cooperation between regional security organizations and the United Nations may foster and strengthen regional preventive strategies. NEO-threats and the potential devastating effects of an NEO-impact affect the international community as a whole. An effective partnership between a regional organization for planetary defence and the United Nations brings about synergies and increases the efficiency in the maintenance of international peace and security. This could be achieved by conducting regular high-level meetings convened by the United Nations bringing

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<sup>74</sup> Resolution of the Council of the European Space Agency on the Agency's Legal Liability (ESA/C/XXII/Res.3, 13 December 1977).

together leaders of international and regional organizations actively engaged in outer space activities. A regional security organization for planetary defence may foster innovative approaches and brings significant contribution to international peace and security. It not only provides for the technical details necessary to conduct a NEO-deflection mission but also enables dialogue and solution-finding on planetary defence. The status as international organization and its international legal personality helps to achieve these goals as it enables the organization to enter into treaties but also leads to international responsibility. Moreover, privileges and immunities are linked to the existence of international legal personality and are an essential factor in ensuring that the international organization promotes the common interests of all member States. The legal personality of an international organization for planetary defence strengthens its authority and leads to a positive effect for international peace and security.