



Outer space treaty of 1967: Having loopholes?

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Abstract

There is no doubt that Outer Space Treaty of 1967 is the milestone for the protection of space and celestial bodies for all countries equally, and for providing regulations for guiding against damnable use of space-faring countries. Whereas, the disputes and questions are not being solved thereby on several activities of space-roaming states, further for some mystical speeches of OST expose loopholes which are not pulling the debate on space and celestial bodies rather creating more complexity. By this paper, I have tried to analyze the OST to see whether there are loopholes or not; by the studying of OST, I have noticed that there are the lack and ambiguity in the speech of the OST's some articles which is almost obsolete at this modern era, when space-faring states are more willing on asteroids and military-tactics by centralizing space, almost in all articles the importance of the co-operation among the states have been reflected. In contrast, any space-roaming country can avoid mutual association by showing the national security excuse under domestic law. It is the time to re-think about this treaty in present tricky perspective.

Keywords: OST, ambiguity, loopholes, having, debate

1. Introduction

The expedition to space was started officially on 4 October, 1957 by launching Sputnik 1 that was successfully entered into the Earth's orbit; after that, first animal- a dog named as Laika had been sent by Sputnik II on 3rd November, 1957; then in 1969 the Apollo 11 was the first spacecraft for astronauts on the Moon. However, USA and Soviet Union (Russia) started the journey to the space, and the space-roaming of some nations was being the reason of annoying about the protection of space and celestial bodies, for that before the journey to the moon of Apollo 11, the Treaty on Principles Governing the Activities of states in the exploration and Use of Outer Space, including Moon and Other Celestial Bodies; treated as Outer Space Treaty had been made by the signature of 90 states (now its 107), though the number of the ratifying states of this treaty have been increased, but some planning of few countries on space are really creating concern newly to re-consider of this treaty in the light of recent time.

Though this treaty had been made for avoiding all kind of armed activities and discouraging all testing on space and celestial bodies that can be the cause for any harm on space, but recently USA has been planned for asteroid mining, that could be simply harmful for space or celestial bodies; according to the treaty any country included into the treaty has to inform about their activities or planning on space, surprisingly no country is cordial on this ground, that are being visible by the position of the space-roaming countries. In this case, it seems that there are loopholes against those attitudes of ratified members of the treaty, because as a part of international law, this treaty could not take practical steps thereby; its effectiveness depends on the free-will obeying of the member states. Since, most of the articles of this treaty did not clarify whether those are obligatory or directory, but sometimes some speeches of the article seems like directory, normally member states push that for their

own interest. That's why at this era, the debates on using space and the celestial bodies are not being paused, almost all space-roaming states are trying to use space to establish their vision, though few states are really responsible for this disputable situation, but treaty is being treated as backdated and its loopholes are being appeared.

2. Background of Outer Space treaty

When Soviet Union successfully executed their first synthetic satellite in orbit of Earth, and they started exposing their capability on inter-continental missile that was targeting the canton of USA; as a result, USA raised an ejection against all kind of inter-continental missile examining, but Soviet Union re-acted on that action of USA; in that instable situation, the discussion on the necessity of an agreement for peaceful use of space was started in United Nations. ^[1] In 1958 by the proposal of USA, United Nations focused for making a committee to look after the legal issues related with space, and it had been composed as United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) under the General Assembly of United Nations, it had been the main organ for enactment of OST. ^[2]

As the first countries on space, United States of America and Soviet Union had made draft on peaceful using of space in June of 1966, then it had been submitted to United Nations, in UN it had been unified by legal sub-committee; after that it was authorized in General Assembly on 19 December of 1966 and brought to light for signature on 27

¹ "The Outer Space Treaty and other agreements", *Bonn International Centre For Conversion*, available at, <http://www.bpb.de/>, accessed on 22 February, 2020

² Johnson, Christopher D., "the Outer Space Treaty", *Planetary Science*, January, 2018, available at, <https://oxfordre.com/planetaryscience/view/10.1093/acrefore/9780190647926.001.0001>, accessed on 22 February, 2020.

January of 1967. Finally, it had been come onto action on 10 October of 1967; before that, 90 countries were ratified this treaty.^[3]

In that time, all states were accepted on not using of nuclear-weapons in orbit on space and other celestial bodies, and for the damage caused by object launching on space by any states or organizations under its territory, that country would be liable. Further, all activities on space would not be secretly.^[4] The preamble of OST is “common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes”. However, OST shows embargo to all countries or individual organizations to claim the property rights on space and ethereal bodies.^[5]

3. OST and Its Continuation

After enactment of OST, it has been more than 50 years and it is still being considered as key regulation on space-issues. The signing in OST was started by the Soviet Union and USA then almost 105 states already signed up in this treaty within these years, from 1967 to 2020. Christopher D. Johnson, a space law researcher, has been mentioned in his article-the Outer Space Treaty at 50-“Many expert in international law believe that the fundamental provisions of treaty are so well-observed and respected that they exist as an entirely different set of legal rules, outside of the textual treaty, as customary international law. And, as customary international law, the Outer Space Treaty reflects rules that bind even those states who are not formal parties to the treaty itself.” In a cold war situation, it had been enacted but it also been succeeded for alleviating the claiming of space sovereignty by any nation in the previous decades. The OST is being treated as the *Magna Carta* in the space law arena.^[6] By 17 articles, OST is continuing its importance and value in the sector of space-issues, though it’s not so elaborated and comprehensive, but it has been worked as the supreme standard of space law, but in this decade and further decades it could not exist as same condition for ensuring the actual peaceful uses of the outer space, including the Moon and other celestial bodies.

4. Speeches of OST

The OST is the inevitable framework for the international space law, the unavoidable base of this treaty is to prohibit the destructive use of the space and celestial bodies by the object launching or installing nuclear-weapons, and ensuring the common right for all nations on space, not establishment of sovereignty or property rights by any space-faring nation; further assuring safety of astronauts by all nations as the consul of human society.^[7] The OST did

not avoid the previous conventions regarding space related activities, in the preamble it has been mentioned:

Recalling resolution 1962 (XVIII), entitled “Declaration of Legal Principles Governing the Activities of States in the exploration and Use of Outer Space,” which was adopted unanimously by the United Nations General Assembly on 13 December 1963,

Recalling resolution 1884 (XVIII), calling upon States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction or from installing such weapons on celestial bodies, which was adopted unanimously by the United Nations General Assembly on 17 October 1963,

Taking account of United Nations General Assembly resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, and considering that the aforementioned resolution is applicable to outer space.

However, to analyze the all articles of OST, it could be divided into three phases (Article I to IV-A Phase, Article V to XI-B Phase, Article XII to XVII-C Phase) for exploring the loopholes or lack of the OST in this missile-competition era, when states are showing their military capability by launching missiles or secretly launching nuclear-weapons on space.

A. First Phase

In article I to II it has been said that outer space including the Moon and other celestial bodies is for all mankind, and any scientific research shall be for the benefit of all nations according to their degree of economical and scientific development, further there is no chance of demanding idiosyncratically ownership of space by any states. Though only the super-energetic states are doing scientific research on space, but for other developing countries that might be the competitor of any powerful country is getting equal opportunities or are not they getting threat by other specific countries? When Iran try to take any step on space, then this state is being boycott by USA in the excuse that Iran is the threat for the mankind by their launching of missile on space, whereas when USA do same is there any boycott? Yes, USA is correct by this treaty under international law, but all activities of USA on space are lucrative for all countries?

Article I also say, “there shall be freedom of scientific investigation in outer space, including the Moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.” By this speech any space-faring country can do any investigation as their wish, even military research by hiding, though it is totally prohibited.

Article III does not bear any loophole, in this era too. Though in some portions of article IV having ambiguity and loopholes in this nuclear revolutionary era; because it says, “The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.” In this case, what does it mean by

³ Editorial, “Outer Space Treaty 1967”, *Encyclopaedia Britannica*, published by Encyclopaedia Britannica, inc., 13 March, 2019, available at <https://www.britannica.com/event/Outer-Space-Treaty> , accessed on 22 February, 2020

⁴ Ibid.

⁵ Zimmerman, Robert, “China, the Moon and Outer Space Treaty”, *Behind the Black*, 25 May, 2018, available at <https://behindtheblack.com/tag/outer-space-treaty/> , accessed on 22 February, 2020.

⁶ Johnson, Christopher D., “The Outer Space Treaty”, *Planetary Science*, January 2018, available at <https://oxfordre.com/planetaryscience/view/10.1093/acrefore/9780190647926.001.0001/acrefore-9780190647926-e-43> , accessed on 22 February, 2020

⁷ “Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies”, *United Nations Office for Outer Space Affairs*

(*UNOOSA*), available at, <http://www.unoosa.org/oosa/index.html> , accessed on 22 February, 2020

military personnel? By using this word few countries could be able to misuse of the chance on space, for example few states are so interested about asteroid mining as the part of enlarging capability of military power in scientific research.

B. Second Phase

In article V, a portion, “In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties.” It raises question at this time, such as if any astronaut thinks that if he tries to assist another party’s astronaut then there is risk of exposing his privacy of activities, then he easily can avoid assisting to another by showing the excuse that giving assistance is not possible, since it has mentioned all possible assistance.

Article VI is also bearing problems in this time, it says, “The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty. When activities are carried on in outer space, including the Moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization.” when private organizations are more intended to do their activities on space, such as mining because of their huge profit. Whereas is the state party of the treaty knows about the contract or the activities of the non-governmental (private) organizations? And what is the international responsibility or obligations of the state on the activities of private organizations? It should be clarified at this time, because the space-related business is being extended and competition are increasing worldwide as well, so at this time it is hard to identify the international responsibility of state party on commercialization. In USA, the companies got license on launching under the authorization of state party of treaty, but there are no specific appointments as the part of authorization and supervision.^[8] Article VII have said about the responsibility of the launching state and the state from whose territory or facility an object is launched. Article VIII says about the continuing of the ownership and jurisdiction of the registered state over launched object on space or if some parts return to the earth.

In article IX, “it has been mentioned, In the exploration and use of outer space, including the Moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including the Moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty.” In here. In case of “principle of co-operation and mutual assistance” it should be more detailed and clarified in this competitive situation about space among countries. In article X, it says about the accepting of request by launching state from another state on base of equality for an opportunity to observe the space-flight of an object. In article XI, “In order to promote international co-operation in the peaceful exploration and use of outer space, States

Parties to the Treaty conducting activities in outer space, including the Moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively”, but it is not a mandatory provision, whereas it should have been an obligatory provision for ensuring the relevancy of that activity in outer space, including the Moon and other celestial bodies.

C. Third Phase

In article XII, about the opening of the stations, installations, and equipment on mutual basis to the agent of the other states-parties, but it is quite hard to think in this modern period. In article XIII, “Any practical questions arising in connection with activities carried on by international intergovernmental organizations in the exploration and use of outer space, including the Moon and other celestial bodies, shall be resolved by the States Parties to the Treaty either with the appropriate international organization or with one or more States members of that international organization, which are Parties to this Treaty”, in here in case of appropriate international organization, it should be mentioned specifically and this provision also should be clarified to eradicate the complications. Article XIV, XV, XVI, XVII are the formal discussion about treaty.

Conclusion

When the outer space treaty had been enacted, in that time there were cold-war about the uses of outer space and there was no commercialization of space like this modern era. For more than 50 years, this treaty has been existed as unchanged; even still now it’s the fundamental structure of international space law, but the situation and thinking of the states on space-analyzing have been altered, the private organizations are starting to see their profit on space, so at this tricky stage OST are exposing the loopholes that increasing the insecurity of the outer space. Since the space-fairing states are increasing their competition and the number of the interested countries on outer space, including the Moon and other celestial bodies are being extended, Such as Brazil and India are showing their effective interest on space. India also executed missile testing on space, it also sent its space-craft on the Moon. So many countries launched their satellite, Such as China is just over-coming the USA in case of launching object on outer space. Nowadays, USA is taking initiative on asteroid-mining, and it is giving the alarm to the world that the OST is being outdated to keep outer space as more peaceful, the technologies and commerce are opening new door about investigation and scientific research on outer space, that was unknown when the OST had been passed in General Assembly of United Nations. Sometimes private organizations are more desired on their personal benefit, they do not have time to think about the all nations and safety of the space, and there is no specific mechanism in OST for controlling the activities of non-governmental organizations by the state; in case of supervision, state only giving the license to companies for launching object, but the state does not confirmed about the structure to control the companies. However, for making the outer space as

⁸ Foust, Jeff, “Companies, Lawyers Argue Against Changing Outer Space Treaty”, Space.com, 2017, available at <https://www.space.com/37065-companies-lawyers-argue-against-changing-outer-space-treaty.html>, accessed on 22 February, 2020.

peaceful by alleviating all kind of disputes and indiscipline or competition, the OST should be re-considered to come out from the loopholes at this daunting time.

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