International Obligations and National Regulation of Outer Space Activities in Nigeria

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Introduction

An examination of rights and duties assumed by States which remain responsible for regulating activities of nationals and/or entities subject to their jurisdiction raises questions on the relationship between international law and municipal law. In the context of this paper, this would mean the relationship between what is considered international space law and national space law. Whilst theoretical notions of this relationship exist, the practical issue to be addressed here is whether the relevant laws in force in Nigeria in relation to her international obligations adequately balance various interests in outer space and outer space activities conducted either by the State or by individuals and/or entities subject to her jurisdiction.

Commencing with an examination of the *Constitution of the Federal Republic of Nigeria (Promulgation) 1999 No. 24* [2](*Constitution* hereinafter), this article briefly addresses the "sources" of international space law, as well as, those elements of law which can be said to constitute the obligations arising from international space law. The principles and rules contained in these sources are noted and steps taken by Nigeria to comply with her international obligations are assessed alongside domestic laws in force. We conclude with some remarks on what the law as it is, ought to be if rules were developed to accord with good policy.

The Nigerian Constitution

It is trite, that national constitutions are free to determine how they choose to implement international obligations. One source of such obligations, i.e., treaties, are defined under Section 3(3) of the Nigerian *Treaties Making Procedure Etc Act*, 1993 No. 16[3] (*Treaty Making Act* hereinafter) as:

> …"instruments whereby an obligation under international law is undertaken between the Federation and any other country and includes "conventions", "Act", "general acts", "protocols", "agreements", and "*modi-vivendi*", whether they are bi-lateral or multi-lateral in nature".

However, the *Constitution* at Section 12 provides, with respect to the implementation of treaties:

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[2] CAP C.23 Laws of the Federation of Nigeria, Vol. 3, 2004.
[3] CAP T. 20 Laws of the Federation of Nigeria, Vol. 15, 2004.

(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

In addition, Section 19 of the *Constitution* states that the Foreign Policy objectives shall be *inter alia*:

(d) Respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.

A cursory examination of the constitutional provisions cited above, may lead one to the simple conclusion that treaties are not to be regarded as an automatic source of rights and obligations in Nigerian domestic law. At least not without their specific incorporation by way of an Act passed by the National Assembly. It is therefore typically, not open to the executive to alter domestic laws by means of a treaty instead of through the enactment of legislation. A process which no doubt ensures supremacy of an elected National Assembly.

That said, the *Treaties Making Act* provides, in its Section 2:

> "…without prejudice to the generality of the provisions of the Constitution….all treaties to be made between the Government of the Federation and any other country shall be classified into the categories specified in this Act and dealt with accordingly."

Section 3 (1) of the *Treaties Making Act*, classifies treaties as either:

(a) law making treaties, being agreements constituting rules which govern interstate relationship and co-operation in any area of endeavour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly;

(b) agreements which impose financial political and social obligations on Nigeria or which are of scientific or technological import;
(c) agreements which deal with mutual exchange of cultural and educational facilities.

Section 3 (2) of the *Treaties Making Act* states further that the treaties or agreements specified in: paragraph (a) of subsection 1 need to be enacted into law; paragraph (b) of subsection 1 need to be ratified; and paragraph (c) of subsection 1 may not need to be ratified. The implementation or compliance with international obligations under the Nigerian Constitution arising from Section 19 which state …"respect for international law and treaty obligations", as part of Nigeria's foreign policy objectives deserves special mention.

While obligations to be respected may derive from international law or treaties, in the absence of Acts by the National Assembly and judicial decisions interpreting same, use of the words "respect for international law" therein can be said to imply a respect for international law and the obligations which may be derived from a number of "sources". Albeit stressing, particularly with respect to customary international law, that the actual conduct of States in their relations with other nations is only a subsidiary means whereby the rules which guide the conduct of States are ascertained. The firm statement by the State of what it considers to be the rule is far better evidence of its position than what can be pieced together from the actions of a country at different times and in a variety of contexts.[4]

"Sources" and "Obligations" of "international space law"

On the sources of international space law, it is widely acknowledged that the legal system which has been most directly concerned with international space law is public international law. We will recall, the rules of international law are primarily those which govern the relations between States, the sources of which are generally understood to include: International Treaties; Customary International Law; General Principles of Law; Declarations, Resolutions and Decisions of International Intergovernmental Organizations; Judicial Decisions of International Courts and Tribunals; and doctrines of legal specialists in international law. Thus, the principal instruments applicable to space activities, are set forth in five[5] multilateral treaties developed under the auspices of the United Nations, which incorporated and developed concepts contained in a Declaration of Legal Principles. The records show that the United Nations also facilitated the adoption of

[4] R. Baxter, *Multilateral Treaties as Evidence of Customary International Law,* (1965) British Year Book of International Law 41, pp. 298-300.
[5]United Nations Office for Outer Space Affairs: *United Nations Treaties and Principles on Outer Space and Other Related General Assembly Resolutions*, 2005, ISBN 92-1-100985-5.

various Principles in the form of Resolutions relating to outer space. However, International space law cannot be said to consist solely of United Nations made law, considering that numerous international instruments have been executed between States and/or through their respective agencies, intended to govern a variety of space activities. For instance, Nigeria through the National Space Research and Development Agency, a Para-statal of the Federal Ministry of Science & Technology, is party to a number of bilateral agreements, contracts and Memoranda of Understanding with various entities in other countries. Be that as it may, with respect to the multi-lateral[6] international space law agreements, in addition to the *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space*, *including the Moon and Other Celestial Bodies* as well as the *Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space*, Nigeria, recently became Party to the *Convention on International Liability for Damage Caused by Space Objects*. Steps have been taken to accede to the *Convention on Registration of Objects Launched into Outer Space*.

The provisions set forth in the abovementioned multilateral treaties, create a number of obligations, such as the imperative to comply with international law, including the Charter of the United Nations, the necessity of utilizing space for peaceful purposes, the obligation to assist and rescue astronauts, the international responsibility and/or liability for all national space activities, and the obligation to register space objects. These rules exist alongside principles not only recognizing outer space including the Moon and other celestial bodies as *res communis,* but also addressing the freedom of exploration and of non-appropriation, the demilitarization of space, and the legal status of the Moon declared to be the common heritage of mankind. A further examination of the four additional United Nations Resolutions reveals the existence of principles designed to address and possibly regulate special categories of space activities, including, the use by States of artificial satellites for International direct broadcasting, remote sensing of the earth from outer space, use of nuclear power sources in outer space and international cooperation in the exploration and use of outer space.

[6] Nigeria acceded to the Agreement and Operating Agreement relating to the International Telecommunications Satellite Organization Washington, (1971) 10 ILM 1909; the Convention and Operating Agreement on the International Maritime Organization with Operating Agreement, London, (1976) 15 ILM 1051-75; the *International Telecommunication Union Constitution* and *Convention of the International Telecommunication Union,* Decisions, Resolutions and Recommendations, Final Acts of the Plenipotentiary Conference of the International Telecommunication Union (Kyoto, 1994), Instruments amending the Constitution and Convention of the International Telecommunication Union (Geneva, 1992) ITU, Geneva, 1995, ISBN 92-61005521-4; and was one of the founding Signatories to the 2002 *Hague Code of Conduct Against Ballistic Missile Proliferation.*

It is also pertinent to note that whilst the aforementioned treaty based obligations no doubt remain applicable to States including Nigeria, party to a particular treaty, a crucial question remains as to what rules may now be considered customary or general in the context of international space law.

Domestic Statutes

Considering the foregoing assessment of obligations arising from international space law, an attempt to investigate the relationship between that body of law and the domestic laws applicable to space activities in Nigeria, will show that, though at the present time there are no specific normative act implementing Nigeria's international obligations, a number of Nigerian domestic statutes and/policy documents are of relevance.

For instance, the provisions of the Nigerian *Insurance Act*[7] could be read to the effect that re-insurance pertaining to assets such as commercial satellites, underwritten by foreign insurance companies, be placed with Nigerian underwriters. Similarly, the Nigerian Communications Commission which serves as an independent telecommunications regulatory body, by administering the provisions of the *Communications Act*, has the sole and exclusive power to manage and administer the radio frequency spectrum for the communications sector and in that regard to grant licences for and regulate the use of the said radio frequency spectrum without which communications to and from earth orbiting satellites cannot be conducted. On the protection of remotely sensed data, one must take into account, the *Copyright Act*[8], and the 2003 *National Geoinformation Policy* both of which contain provisions and policy statements respectively, intended to protect intellectual property, arising from the enhancement and dissemination of remotely sensed data. Furthermore, the *Fire Arms Act*[9] regulates amongst other items, the use, import and export of artillery and rocket weapons (which would encompass space launch vehicles).

Concluding Remarks

In the light of the foregoing, can it be argued that the obligations arising under the multi-lateral space treaties have been adequately dealt with by domestic legislation in force in Nigeria? For instance, the international space law treaties create a requirement for authorization and continuing supervision of non-governmental entities by the appropriate State Party to the Treaty alongside the assumption of responsibility and/or liability for damage caused by objects launched into outer space. Likewise, Launching States which

[7] CAP I.17, Laws of the Federation of Nigeria, Vol. 7, 2004.
[8] CAP C.28, Laws of the Federation of Nigeria, Vol. 4, 2004.
[9] CAP F.28, Laws of the Federation of Nigeria, Vol. 7, 2004.

are defined to include States which procure the launching of a space object are obliged to register[10] space objects by means of an entry in appropriate registry which they shall maintain for that purpose. In this respect, one can state that though the current framework is not entirely appropriate, considering perceived gaps, there are domestic rules under which space activities can be conducted. Therefore and without prejudice to the fact that the current absence of national laws implementing the international space law treaties, does not affect the bindingness of the said treaties on Nigeria as well entities subject to her jurisdiction, the coming years will witness in Nigeria, promulgation of appropriate domestic legislation. More so because as the national interest in space activities continues to grow, a specific domestic regulatory framework to regulate, especially those activities of private entities, will become necessary, in order to enable Nigeria fulfill her obligations under the relevant multi-lateral treaties as well as protect her national interests.

In this regard, it is contended[11] that the best way for States to exercise legal control over the activities of private entities would be through the establishment of a licensing system as part of a national space law, providing for the necessary controls and safeguards. This is stated alongside the fact that it should be left to the international level to define the parameters and scope within which such control of private space activities should take place.[12] Consequently, whilst appropriate measures must no doubt be taken at the national level, to strengthen domestic legal frameworks, it is pertinent to note that at the 49th Session of the United Nations Committee on the Peaceful Uses of Outer Space convened in June 2006, the delegate of Nigeria stated:

> "….in as much as my delegation is in support of the idea of a universal, comprehensive convention on space law, we recognize that in order to strengthen the legal framework for global space activities, member states should commit themselves to the ratification and the scrupulous implementation of the existing legal instruments…..although the United Nations Treaties and Resolutions on international space law provide a minimum framework for the conduct of space activities, my delegation is convinced that advances in technology necessitate the need to expand our understanding of the scope, content and application of space law rules."

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[10] In accordance with United Nations General Assembly Resolution 1721 B (XVI) of 20 December 1961, Nigeria voluntarily provided registration information on the micro earth observation satellite Nigeriasat-1 in August 2004.

[11] See Frans G. Von der Dunk, *Public Space and Private Enterprise – The Fitness of International Space Law Instruments for Private Space Activities*, 1999 Proceedings of the Project 2001 – Workshop on Legal Issues of Privatizing Space Activities, at page 37.

[12] Id.