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The 1967 Outer Space Treaty: A Brief Reflection

Maurice N. Andem
Professor of Private International and Comparative Law; Director, Institute of Air and Space, University of Lapland, Rovaniemi, Finland; Docent of Public International Law, University of Helsinki, Finland

Introduction

The theme of The Abuja UN/Nigeria Workshop on Space Law is "**Meeting international responsibilities and addressing domestic needs**" and the theme of Session 1 is "**International Space Law**"

In this session I have been requested to focus my comments on the 1967 Outer Space Treaty (1967 OST). However, considering that a lot has been written on the 1967 Space Treaty, I will try to be very brief in my reflection.[1]

Outer Space Treaties

International treaties are the most important sources of contemporary international law, including all its various branches. They are the most important forms of expressing the concurrent and compromising will (consent) of the subjects of international law (States and international organisations) in the course of their co-operative efforts and mutual intercourse in international relations.[2] Furthermore, they are the most effective and efficient legal instruments by which States and other subjects of international law acquire rights and enter into obligations in their mutual relations, either bilaterally or multilaterally. Thus it is the principal method or technique in the progressive development of international law and its codification.

The first international treaty of general application concerning outer space, besides the UN Charter, is the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (NTBT). It was opened for signature in Moscow on 5 August 1963 and entered into legal force on 10 October 1963.[3] The

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[1]See, for example, **Proceedings of the Fortieth Colloquium on the Law of Outer Space**, Turin (1997), pp.291-419; Zhukov, G., and Kolosov, Y., **International Space Law**, Praeger Publishers, New York (1984), pp. 33-84; Diederiks-Vereschoor, I. H. Ph., **An Introduction To Space Law**, 2nd Revised Edition, Kluwer Law Internation, The Hague (1999), pp. 26-33; Cheng, Bin, **Studies In International Space Law**, Clarendon Press, Oxford (1997), pp. 215-264; Christol, Carl Q., **The Modern International Law of Outer Space**, Pergamon Press, New York (1982), pp.20-58; Andem, Maurice N., "United Nations Institutional Functioning with respect to space activities" in **PROCEEDINGS "THIRD ECSL SUMMER COURSE ON SPACE LAW AND POLICY"**, University of Granada, Spain, September 5-September 15, 1994, pp. 29-72.

[2] Article 2, 1(a) of the 1969 Vienna Convention on the Law of Treaties (VCLT) defines a treaty as:"an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

[3] See UNTS, Vol. 480, p. 43 et seq.

NTBT attempts to demilitarise outer space, including the moon and other celestial bodies - thus making this domain of mankind´s activities a zone of peace and international co-operation. It is, moreover, encouraging to note that its provisions have further been elaborated in the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT).

Furthermore, it should be borne in mind that from 1958 to 1966, before the adoption of the 1967 Outer Space Treaty, resolutions and declarations adopted by the UN General Assembly had been the only legal instruments available in the process of progressive development and codification of this new branch of contemporary international law - the law of outer space or international space law. For example, resolutions **1721 (XVI) A** of 20 December 1961 and **1962 (XVIII) on Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space** of 13 December 1963, laid the legal framework or foundation for the preparation and elaboration of the comprehensive text of legal principles on outer space, which are now embodied in the provisions of the first international treaty on space law - the **Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.**

1967 Outer Space Treaty: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 OST)

The 1967 Outer Space Treaty is the fundamental legal instrument, the **Magna Carta** or Outer Space Code. When analysing the legal nature of the 1967 Space Treaty, it is necessary to take into consideration the international political environment and the attitudes of the state parties during the law-making process. In this regard, it would be recalled that the beginning of the space age, following the successful launching of Sputnik-1 into orbit around the Earth on 4 October 1957 by the former USSR and the Explorer-1 satellite on 31 January 1958 by the USA, coincided with the intensification of the Cold War.

The legal and political realms criss-cross at virtually every point, any separation between them must necessarily be artificial. The problems of law are in important ways the subject areas for international control; the problem of international control is in a sense the application of legal principles through international agreements.[4] Thus, the 1967 Outer Space Treaty is not only the **Magna Carta** of space law, but it is also an international legal policy code of conduct governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies. Moreover, it should be remembered that its provisions have been elaborated and consolidated in four other legal instruments, viz., 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1972 Convention on International Liability for Damage Caused by Space Objects, 1975 Convention on Registration of Objects Launched into Outer Space and 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.

Bearing in mind the foregoing, let me continue with my reflection on some of the provisions of the 1967 Outer Space Treaty.

The 1967 Outer Space Treaty was adopted by the UN General Assembly under resolution **2222 (XXI)** of 19 December 1966 and opened for signature on 27 January 1967 in London, Moscow and Washington, D.C. It entered into force on 27 October 1967. It consists of a Preamble and 17 Articles. As of 1 January 2005, 98 States have ratified and an additional 27 have signed the 1967 Outer Space Treaty.

It is interesting to note that the Preamble of the 1967 Space Treaty reaffirms the provisions of the preambles of earlier resolutions adopted by the General Assembly, namely, resolutions 1962 (XVIII) of 13 December 1963,

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[4] Bloomfield, Lincoln P., "The Quest for Law and Order", in **OUTER SPACE Prospect for Man and Society**, Revised Edition, edited by Lincoln P. Bloomfield, Frederick A. Praeger Publishers, New York (1962), p. 115.

1884 (XVIII) of 17 October 1963 and 110 (II) of 3 November 1947. It is important to emphasise that the provisions of resolution 110 (II) of 3 November 1947, which was adopted by the General Assembly immediately after the World War II, are applicable in outer space. In this resolution, the General Assembly condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression.

The 1967 Outer Space Treaty confirmed the legal status and regime of outer space, including the moon and other celestial bodies, prior to the landing of the first man on the moon 36 years ago, on 20 July 1969. It embodies in its provisions nine (9) fundamental principles, which are mandatory for all States in all their activities in outer space, including the moon and other celestial bodies.

The legal status and regime of the new domain of humankind´s activities are clearly stipulated in the provisions of Articles I and II. Article I, for example, provides as follows:

"The exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

There shall be freedom of scientific investigation in outer space, including the Moon and other celestial bodies, and States shall facilitate and encourage international cooperation in such investigation."

The scientific and technological developments and advances made in the exploration and use of outer space, including the moon and other celestial bodies, have provided the human race with more information about its earthly environment and beyond. Nevertheless, it should be emphasised that the freedoms embodied in the Article I are not absolute or unlimited.

Therefore, States that are actively carrying out activities in the new domain, which is now designated as the province of mankind, are obliged: (i) to ensure that those activities are for the benefit and common interests of all countries; (ii) to respect the rights and interests of other States and their peoples; (iii) to share the products and results of all scientific and technological advances and developments with other States, on the basis of equality and in accordance with international law.

Moreover, it should be borne in mind that the new domain, pursuant the provisions of the above Article, is construed to be a zone of peace, solidarity and international cooperation between States and peoples of the world. Thus, the conduct of military activities in outer space, including the moon and other celestial bodies, is illegal and gross violation of the legal status and regime of the new domain.

Article II further consolidates the provisions of Article I. According to this Article, outer space, the moon and other celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

The first two Articles of the 1967 Outer Space Treaty, as the core of the legal status and regime of outer space, the moon and other celestial bodies, have been elaborated and consolidated in the provisions of Articles 4, 5. 6 and 11 of the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979 Moon Agreement). Article 4 (1), for example, provides that, the exploration and use of the Moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.

Furthermore, Article 11, paragraphs (1) and (2), provides that: (i) the moon and its natural resources as the common heritage of mankind (CHM) and (ii) the moon is not subject to national appropriation by claim of sovereignty, by means of occupation, or by any other means. It should be emphasised, at this juncture, that mankind or humanity comprising of all races and peoples of the world, should be the principal beneficiary of fruits derived from the peaceful exploration and uses of outer space, the moon and other celestial bodies.
The principles enshrined in the provisions of Articles I and II of the 1967 Outer Space Treaty, 4-6 and 11 of the 1979 Moon Agreement are mandatory and binding on all States, including their nationals. Therefore, the sale of plots of land on the Moon by certain companies is an international fraud and those involved should be punished by the authorities of the States of their domicile or nationality. For example, in the local paper published in Finland on 21 October 2005, it was reported that a US company called Lunar Embassy was selling plots of land on the Moon to Chinese nationals.[5] Similar observations on the appropriation of outer space was made by the Working Group on the "Ethics of Outer Space" set up by the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology (COMEST).[6]

This is a serious threat by individuals to undermine the legal status of the new domain. It should not be taken lightly at all. Therefore, it is the duty of all States and peoples of the world, as represented in the United Nations, to adopt strict measures against those involved in these illegal sales of plots of land on the Moon. Outer space, the moon and other celestial bodies must and should remain the province of all mankind or humanity.

Moreover, in order to strengthen the legal status and regime of the new domain, I would like to submit that those States who have not ratified the 1967 Outer Space Treaty and the 1979 Moon Agreement should do so as a matter of priority. The international community should not allow those means which were used by the colonial powers for territorial acquisitions in Africa, Asia and Latin America to be used in the new domain of activities of the human race. The fact that Article II does not define the precise boundary between outer space and airspace of sovereign States should not serve as a reason for the private individuals and entities to infringe on the established legal status and regime.

Article III of the 1967 Outer Space Treaty stipulates the applicable law. It provides that States Parties are obliged to carry on all space activities in the exploration and use of outer space, the moon and other celestial bodies in accordance with international law, including the UN Charter, in the interest of maintaining international peace and security and promoting international cooperation and understanding. It is interesting to note that similar provisions are embodied in resolutions **1721 (XVI) A** of 20 December 1961 and **1962 (XVIII)** of 13 December 1963.

The UN Charter is the fundamental and primary source of contemporary international law and international relations between States. Its provisions are binding on Member States in all their international relations and intercourse. Thus, reference to international law and the UN Charter in the provisions of Article III, is a further consolidation that all the principles of international law as enshrined in the Charter and in resolution **2625 (XXV)** of 24 October 1970 on **Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States,** including those embodied in other international legal instruments, are applicable in the new domain - outer space, the moon and other celestial bodies. For example, any threat or the use of force in whatever manner in outer space, the moon and other celestial bodies is inconsistent with the purposes and principles of the UN Charter. With the commercialisation and privatisation of outer space activities, it is the duty of all States to ensure that the provisions of international legal instruments, including

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[5] For more details, see, **ETELÄ-SANOMAT**, Friday 21 October 2005, page 20.

[6] Pompidou, Alain, **THE ETHICS OF SPACE POLICY**, UNESCO /ESA (2000), p. 20.

national legislation, are strictly observed and complied with by their nationals who are actively engaged in outer space activities. The maintenance of international peace, security, law and order must be ensured and strengthened at all times in the new domain. Cooperation, mutual understanding and trust, not competition and profiteering, should be encouraged by all the actors in the new domain.

The principle of partial demilitarisation of outer space and total demilitarisation of the moon and other celestial bodies is embodied in the provisions of Article IV of the 1967 Outer Space Treaty and Article 3 of the 1979 Moon Treaty. Article IV provides that: "States Parties to the Treaty undertake not place around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner. The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. 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 not be prohibited."

During the past 38 years the interpretation of the provisions of Article IV of the 1967 Outer Space Treaty has been the subject of extensive discussions in various international forums by eminent experts and scholars in space law. A lot has already been written on these provisions.[7]

At this juncture, it should be borne in mind that the Charter of the United Nations is the primary and principal source of contemporary international law. Therefore, in interpreting the provisions of the 1967 Outer Space Treaty and the 1979 Moon Agreement, it is always necessary to take into consideration the purposes and

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[7] For more details, see, for example, **Maintaining Outer Space for Peaceful Uses**, Proceedings of a Symposium Held in The Hague, March 1984, Edited by Jansentuliyana, Nandasiri, The United Nations University (1984); Christol, Carl Q., (1982), op. cit., pp. 25-37; Cheng, Bing, (1997), op. cit. pp. 244-252; Andem, Maurice N., **INTERNATIONAL LEGAL PROBLEMS IN THE PEACEFUL EXPLORATION AND USE OF OUTER SPACE**, University of Lapland Publications in Law, Rovaniemi (1992), pp. 185-234; Lachs Manfred, **THE LAW OF OUTER SPACE**, Sijhoff, Leiden (1972), pp. 105-112; Andem, Maurice N., "**Implementation of Article IV of the Outer Space Treaty of 1967 During the 21st Century**", in **PROCEEDINGS OF THE FORTIETH COLLOQUIUM ON THE LAW OF OUTER SPACE**, October 6-10., 1997, Turin, Italy, pp. 338-351; **ILA: Report of the 62nd Conference**, Seoul (1986), pp. 385-408; **ILA: Report of the 63rd Conference**, Warsaw (1988), pp. 282-380.

principles of the UN Charter.

Throughout the 60 years of its existence the United Nations (UN) has done a lot in the implementation and realisation of the purposes for which it was created. The maintenance of international peace and security and the strengthening of international co-operation were of primary importance to the UN and its specialised agencies at the very beginning of the nuclear-space era. It is also necessary to bear in mind that this era coincided with the disarmament efforts of the United Nations to control the arms race between the super powers. In resolution **1722 (XVI)** of 20 December 1961, for example, the General Assembly noted with concern that "the continuing arms race is a heavy burden for humanity and it is fraught with dangers for the cause of world peace."

This concern is being expressed in the preambles of the 1967 Outer Space Treaty, the 1979 Moon Agreement and resolutions adopted by the UN General Assembly on international co-operation in the peaceful uses of outer space. For example, in the preamble of first resolution **1348 (XIII)** on **Question of the peaceful use of outer space** of 13 December 1958, the General Assembly recognised the common interest of mankind in outer space and that it was the common aim that outer space should be used for peaceful purposes only. It also expressed the wish to avoid the extension of national rivalries into the new domain.

Furthermore, in the Preamble of the 1967 Outer Space Treaty the States Parties recognise the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes. Reference was also made to resolution **1884 (XVIII)** of 17 October 1963 on **Question of general and complete disarmament**. In the preamble of this resolution, the General Assembly expressed the determination to take steps to prevent the spread of arms race in outer space. It welcome the expressions of the USSR and the USA of their intention not to station in outer space any object carrying nuclear weapons or other kinds of weapons of mass destruction. It solemnly called on all States: (a) To refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner and (b) To refrain from causing, encouraging or in any way participating in the conduct of foregoing activities.

It could be seen from the foregoing that the provisions of resolution **1884 (XVIII)** of 17 October 1963 have been elaborated and consolidated in Article IV of the 1967 Outer Space Treaty. Thus, pursuant to the principle of **"pacta sunt servanda"** as stipulated in the provisions of Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT), the provisions of the Article IV of the 1967 Outer Space Treaty are binding on all States.

Moreover, as regards the definition of the term "any other kinds of weapons of mass destruction", I would like to submit that semantics should not be used to derogate or undermine the legal status and regime of the new domain, as stipulated in the provisions of Articles I, II, III and IV of the 1967 Outer Space Treaty. In this regard I would like to refer to my paper presented during IISL Fortieth Colloquium on the Law of Outer Space. In it, I strongly emphasised that "any other kinds of weapons of mass destruction" should be construed in the context of total disarmament, to mean all existing weapons and their delivery systems (e.g., ASAT, etc.), including future ones which may be developed for military purposes.[8] Furthermore, I would like to submit that the interpretation of the 1967 Space Treaty should be in accordance with the provisions of Article 31 of the 1969 Vienna Convention on the Law of Treaties (VCLT).

It is very sad and disheartening to observe that the intensification of the militarisation and weaponisation of outer space by some states has been gathering momentum since the beginning of the 21st century. New types weapon systems and sophisticated weapons of mass destruction, costing billions and billions of US dollars, are being developed, tested and deployed all the time, while billions of people are in dire need of food, clothing, shelter and basic medical care.[9] It seems to me that 60 years after Hiroshima and Nagasaki the policy-

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8 **PROCEEDINGS OF THE FORTIETH COLLOQUIUM ON THE LAW OF OUTER,** OCTOBER 6-10, 1997, TURIN, ITALY, pp. 343-344

9 For more details, see, e.g., **AVIATION WEEK & SPACE TECHNOLOGY**, April 12,

makers and political leaders of major industrialised countries, particularly those currently engaged in creating new weapon systems in outer space, are still to be reminded that all humanity want to live in peace here on earth and that outer space should be free from all types of weapons in general.

I had promised in the introduction to be very brief in my reflection on the 1967 Outer Space Treaty. Thus, I would like to end my comment on the provisions of Article IV with **The Houston Declaration for Peace in Space**:

"Forty years ago a peaceful vision of space was embraced by the world. It was a hopeful vision, inspired by cooperation, courage and exploration.

Today, that vision is threatened. Certain governments are planning and testing space weapons. This endangers the precious peace of space, and demands a response from people of the world.

Putting weapons in space will provoke an arms race above our heads. It is destabilizing, unnecessary, immoral, and will pollute the space environment.

Space beckons us to a new future, a future that is not dictated by our past. Space is the place where humankind could leave its weapons behind. To those who say this vision is unrealistic, we respond that it is the path to a better world.

On this historic anniversary, we rededicate ourselves to this vision, and call upon our governments to take immediate action to keep space free from weapons."[10]

I am very happy that the members of the Space Generation are very much aware of the danger of extending an arms race into outer space. They are protesting on behalf of the voiceless majority of the peoples of the world. It is the duty of all peace loving people in the world to render their support to this organisation.

Concluding Remarks and Observations

In the foregoing paragraphs I have tried to briefly reflect on some of the provisions of the 1967 Outer Space Treaty. As mentioned earlier, it is the **Magna Carta** and legal policy code of international space law or the law of outer space. It also embodies ethical rules in its provisions. Its observance and implementation by all States Members will greatly strengthen the United Nations in making this world to be more peaceful, safer and free from fear of another world war throughout the 21st century and beyond.

Space law or the law of outer space should also be seen as a developing common law of all humanity, which embodies and expresses the hopes and aspirations of the present and future generations. As a branch of contemporary international law, its function as embodied in the provisions of its main source - the 1967 Outer Space Treaty, is to further the purposes and principles of the UN Charter in outer space -

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2004; August 16, pp. 49-51; September 5, 2005, pp. 50-59; September 26, 2005, pp. 56-64; October 3, 2005, pp. 48-56; Octber 24, 2005, pp. 48-55.

[10] It was adopted my the Space Generation during the World Space Congress, Houston, Texas, 2002.

the province of all mankind.

It is the sacred duty of all States to support the efforts of the United Nations in consolidating and strengthening the rule of law in the new domain- outer space. Thus, may I seize this opportunity, with due respect, to call upon the Governments of African States who have not ratified all the five outer space treaties to do so as a matter of priority.