

IDSA *Backgrounder*

Outer Space Treaty: 50 years later

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S*ummary*

There is a need to rework the Outer Space Treaty and contemporize it to deal more directly with issues of the current era.

Space has always been the final frontier for human knowledge and imagination. From conspiracies of alien life to the possible creation of sustainable habitats and colonies on Mars, the possibilities remain boundless. But from a geopolitical perspective, Space is increasingly becoming an essential modality of State Power and Sovereignty. From the Space Race that began with the Cold War to the integration of cyber networks and outer space for the socio-economic advancement of individual nation states today, there is a need to re-engage with our traditional epistemological understanding of Outer Space. The launch of Sputnik in 1957 was one of the most significant movements towards exploring what lies beyond the terrestrial horizon. The Space Race which ensued as a result escalated quickly, as both the US and USSR attempted to demonstrate their technological prowess in this uncharted domain. A stable framework to govern Space related activities and their usage was the need of the hour and the United Nations formed a Committee on the Peaceful Uses of Outer Space to address the issue. Today, 27 January 2017, marks the 50th anniversary of one of the most fundamental foundational frameworks governing Outer Space, namely the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, or the Outer Space Treaty (OST) for short. This commentary attempts to look back at the creation of the OST and examine it within the context of the current challenges it faces today.

Background

The Outer Space Treaty was opened for signature on 27 January 1967 and came into force in October that year. It was done in triplicate in London, Moscow and Washington D.C. and had 62 signatories in the first year. That number has increased to 104 today. “These include major space powers like the US, Russia, China, Japan and the European members of the European Space Agency (ESA), as well as emerging space powers like Brazil and India.”¹ The United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) was the primary body in charge of negotiating the treaty. COPUOS was established post the launch of Sputnik and OST was the first binding legal instrument for the management and governance of outer space that came into force. The treaty itself draws on several previous United Nations General Assembly resolutions, primarily Resolution 1962 (XVIII) regarding the “Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space,”² which was adopted on 13 December 1963, and Resolution 1884 (XVIII) which called 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.”³ There have been four more major treaties dealing with Outer Space that have been signed since, namely:

¹ Christopher D. Johnson, “The Outer Space Treaty at 50,” at <http://www.thespacereview.com/article/3155/1>

² <http://www.un-documents.net/a18r1962.htm>

³ <http://www.un-documents.net/a18r1884.html>

- 1) The Rescue Agreement.⁴
- 2) The Liability Convention.⁵
- 3) The Registration Convention.⁶
- 4) The Moon Treaty.⁷

Yet, the Outer Space Treaty remains as one of the primary documents governing the control of Outer Space. The other four agreements served to elaborate and further clarify the OST while also providing legally enforceable measures regarding the violation of any of the OST's articles.

Details of the Treaty

The spectrum of Space and its relation to State Power and Sovereignty has shifted over the years. But as unchartered real estate, Space holds the answers to many of our dilemmas and terrestrial limitations. This boundless expanse provides both an opportunity as well as a threat to the sovereign interests of Nation States. Given the profitability of enterprises such as asteroid mining and satellite exploration, if uncontrolled, the Space Race could lead to an apocalyptic extension of the geopolitical bid for power into the realms of Outer Space. The ideological power struggle of the age when the treaty was signed was a classic example of the interspersing of geopolitics and space exploration. The OST, therefore, served as a necessary mechanism aimed at preventing escalatory conflict. The need for establishing Space Law was to ensure the “non-appropriation of Outer Space by any one country.”⁸ It was an attempt to establish Space as a Global Commons of sorts, for the benefit of all of mankind. Given the technological proliferation that has taken place since the establishment of the treaty, and the increased conflation of Critical Infrastructure/Cybernetworks and Space Technology, the OST has become more relevant than ever. There is a need to re-examine the treaty and contemporize it to deal with current challenges.

While most analysts believe that the document is an excellent tool to maintain the status quo for the time being, Article IV remains a major bone of contention. The dual use of Space technologies – particularly missile guiding satellites – can be attributed to the loopholes that can be seen in the phrasing of the treaty. Article IV requires that signatory parties, in their own capacity,

⁴ Agreement on the Rescue of Astronauts the return of Astronauts and the Return of Objects Launched into Outer Space, at http://www.unoosa.org/pdf/gares/ARES_22_2345E.pdf.

⁵ Convention on International Liability for Damage Caused by Space Objects, at http://www.unoosa.org/pdf/gares/ARES_26_2777E.pdf.

⁶ Convention on Registration of Objects Launched into Outer Space, at http://www.unoosa.org/pdf/gares/ARES_29_3235E.pdf.

⁷ Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, at http://www.unoosa.org/pdf/gares/ARES_34_68E.pdf

⁸ <http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html>

- a) Prevent the Placement of Weapons of Mass Destruction (WMD) in outer space;
- b) Prevent the Attack of a Nation's Satellites/Critical Infrastructure;
- c) Prevent the establishment of military bases, installations, and fortifications.

The article bans the deployment of military technology, but a later clause suggests that military technology can be used for research purposes. What needs to be remembered is that the clause and the treaty as a whole were attempting to counter what we now consider a 20th century threat. With the emergence of Ballistic Missile Defence systems, asymmetric warfare, cybermilitary operations and information warfare, traditional modes of war are increasingly becoming obsolete and, to counter the threat of a digital war, the Treaties governing the digital world need to be contemporized as well.

The Treaty Today

Analysts remain divided in their opinion regarding the OST. Some believe that it is the cornerstone of successful diplomatic negotiation, and that treaties in the modern age should follow some of the underlying principles and strategies used by the US and USSR to effect compromise. Others, examining it from the perspective of realpolitik, believe that certain sections of the document, particularly Article IV, need to be re-evaluated. Issues that crop up include the vagueness of its lexicon, the lack of definition of its terms and its inadequacy to envision and subsequently cope with concurrent challenges. In the 50 years since its establishment, the OST has been witness to several technological, military and critical infrastructure advancements. Issues such as the privatization of space exploration, the dangers of excessive satellite debris, the utilization of satellite technology for unethical breaches of privacy, the emergence of Quantum Physics, Quantum Mechanics and Quantum Computing; all pose tremendous challenges to our understanding of Space today. While the OST does deal with some of these issues, there is a need to rework the treaty and contemporize it to deal more directly with issues of the current era. The possibilities of space exploration are boundless but there remains a need to cultivate and establish a stable and well defined framework that can help with conflict de-escalation and crisis resolution. Perhaps 50 years later, it is time to revisit the treaty and equip it to deal with the unique challenges posed by the interconnected postmodern globalized world we live in.

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