Outer Space Treaty: An Old But Visionary Document

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Introduction:

The 1967 Outer Space Treaty (OST), drafted during the Cold War, remains the backbone of international space law. It is the first treaty of "general applicability" governing human activity beyond Earth. Although today's space environment is far more crowded, with actors such as NASA, SpaceX, BlueOrigin, ESA, CNSA, Roscosmos, and others, these actors continue to operate within the framework of the OST. This contribution focuses on the 1967 original treaty, followed by its contemporary reinterpretation and its limitations.

The Treaty:

The treaty elevates space to the "province of all mankind": not the property of one state, but a realm that can be used to benefit humanity. Article I mandates that the use and exploration of outer space and celestial bodies must be carried out for the benefit and interest of all countries. This makes space a shared domain, open to scientific exploration and access to all states. Article II establishes the rule of non-appropriation. Outer space, including the Moon and other celestial bodies, cannot be claimed by any country through sovereignty, occupation, or use. Aiming to prevent colonial-style competition, especially in the Cold War context, this article prohibits states to declare national territory in space. Article III anchors space to the UN charters, providing the institutional architecture of international law. States remain responsible for their behaviour beyond Earth. Article IV prohibits the placement of weapons of mass destruction in space orbit.

Furthermore, Article IV mandates the exclusive use of celestial bodies for peaceful purposes, forbidding, for example, the establishment of military bases and weapons testing. However, military personnel are permitted in space due to their essential expertise in space environments. Article V frames all astronauts as protected human envoys.

Today:

The OST relies on an anachronistic set of broad generalities that are increasingly exploited today. For example, military bases are banned in celestial bodies, but not in the void of space (the areas in between), which remains open to militarisation, spy satellites, and kinetic weapons. Of special concern is the deployment of dual-use technologies in outer space. These technologies can be placed in orbit for peaceful purposes while retaining offensive potential. In 2020, the Trump administration established the United States Space Force, institutionalising space as a potential warfighting domain. This highlights the growing tension between the treaty's peaceful language and the treatment of space as a warfighting domain.

Conclusion:

The debate around the effectiveness of the OST remains central among analysts, the current scenario, with a crowded multi-actor environment taking over state-led space missions, risks eroding the existing governance regime.

Liberian President W. Tubman once criticised the OST, arguing that humanity was too "undisciplined" to seek the secrets of the universe without extending its terrestrial violence into space. Humans are not there yet, but rising competition urges a new set of rules and renewed governance to prevent Tubman's pessimistic prediction.

Further reading:

Buono, S. (2020). Merely a "Scrap of Paper"? The Outer Space Treaty in Historical Perspective. *Diplomacy & Statecraft*, *31*(2), 350–372. https://doi.org/10.1080/09592296.2020.1760038