

OUTER SPACE COLONISATION: OUTER SPACE TOURISM

Dr. Shobalata Udapudi;
Ms. Soma Battacharjya*

For the wise men look into space and he knows there is no limited dimensions.

—Laozi

Space law is maturing, and in its process it is bifurcating. Principles have been established, many a issues are now considered as to being settled; other formerly contentious issues appear dead, some of them are reappearing in altered forms. In the early days of the space age, states alone were the actors. Now we have the emergent commercial uses of space and their requirement of the regulation, whether it is national or international.

Civilisation has come a long way. There was a time when warriors of the world wanted to capture the entire earth. With the scientific development attention has been shifted towards colonisation of outer space. It means human habitation outside the earth. The first space colony may be established on moon and mars. For this access to food, water, space, people, construction materials, energy, transportation, communications, life support, simulated gravity and radiation protection. It is likely that colonies would be located to the vicinity of such resources.

There are few pertinent questions attached to life in outer space.

- Spread of life and beauty throughout universe
- Survival of species
- Save the environment of earth
- Distributing population.

The reason behind choosing the topic is its 'futuristic approach' which they hold for coming generation with little negative impact. One should not forget that Outer space Colonisation will prove to involve massive amounts of financial, physical and human capital devoted to research, development, production and deployment. Apart from this the habitant has to be adjusted with the atmosphere of the outer space.

Outer space colony will be nothing but a human expansion from earth. This human expansion should be for the betterment of civilisation and not for effectuating the imperialistic policy of few nations.

* Dr. Shobalata Udapudi, Associate Professor of Law, Gujarat National Law University, Gandhinagar, Gujarat; Ms. Soma Battacharjya, Assistant Professor of Law, Gujarat National Law University, Gandhinagar, Gujarat.

Outer space Colonisation can be divided into parts:

- (i) Outer Space habitat
- (ii) Outer Space tourism

Currently it is an alluring idea to be settled at Outer Space and occupy the various Planetary, satellite and asteroids. In this entire situation the role of Outer Space Treaty needs to be considered. It contains the noble idea and open great prospects before mankind for its entry into outer space. It emphasises further on the aspect of use of outer space for peaceful purpose for the benefit of all human kind irrespective of their economic and scientific development. The noble idea of mutual understanding among the nations and their friendly relation is inherent in the Outer Space Treaty.

Article II of the treaty states that Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.¹

Outer Space should be exploited without any discrimination. Irony to the matter is that it contains certain loopholes which are badly manipulated by the people. People like Dennis Hope states that as the law on Outer Space says nothing about individual holder 'it is un owned land'. For private property claims, 197 countries at one time or another had a basis by which private citizens could make claims on Japan and U.S.A to have plans for moon colonies.

Article VIII deals with A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return.²

The above provision has been interpreted to confer 'limited property rights' on the private entities. It is on this basis that the concept of 'Outer Space Property Rights' has developed and evolved. Implementation of this legal property rights will give impetus to the new international aspects of Outer Space regime. It will provide legal certainty to the investors and entities participating in the development and settlement of outer space.

At the same time specific issues brings specific concern. To deal with 'property rights of outer space' specialised courts and specialised judges shall be set up to deal with specific scientific issues. With such occurrence of process with advancement in communications and the globalisation of business interests on earth, there will be a flow of cross-fertilization of legal ideas.

In the midst of all these one has to consider feasibility of property rights in Outer Space. Some where we need to strike a balance between space faring and non space faring nation.³

Outer Space tourism will become the booming industry in coming year. The Outer Space tourism is governed by private enterprises and it is beneficial for the country having private economy. This is an entire new realm of industry which is going to play its own part in near future. Outer space treaty talks about exploration and use of Outer Space. Outer Space tourism falls within the scope of use of Outer Space.

In human space flight the law relating to space tourism must be develop on an international as well as national basis.

Solutions for this problem area may also inter relate with some of the problems of the space plane.

In the present law the concept of 'astronaut' is not suitably defined to cope up with these novelties. The precise status of "Space flight participants" must be clearly distinguished from that of "crew" and their relationship with ARRA (Agreement on Rescue of Astronauts, the Return of Astronauts and the Return of Objects launched into the outer space - 22nd April 1968) and similar provisions clarified. The status of "Space Hotel" also requires considerations from the perspective of International Law, irrespective of what may be provided by relevant national laws.

Outer Space Treaty stipulates a national State responsibility for Outer Space activities, no matter if government or private organisation carries out these activities.

In respect of space tourism Liability Convention provides for responsibility of launching state to pay for any compensation for the harm to be made by space object on earth.

The Registration Convention is required to co-ordinate launches on one hand and to ensure identification of the launching state on the other hand in order to affix liability under Liability Convention. There are certain practical difficulties that have to be borne in mind.

- (i) In near future space tourism shall be conducted by different space agencies and this could lead to a lot of registration.
- (ii) All launching state may not be a member of Registration Convention.

Within the limits of Rescue Agreement, the 'space tourist' are not among the person needs to be rescue. It is because, the time Rescue Agreements were made, space tourists were not covered within the fold.⁴

"Rights" in space may be recognized remains to be settled. This is most obvious in relation to "immovable property" on the Moon and other Celestial bodies. The present law makes clear that national appropriation cannot occur, with the corollary that not state can invest its nationals with rights of property in

celestial bodies. Nor will an individual or private entity secure "title" to space or to any naturally occurring celestial object, simply by claiming it. Over the years many individuals have sought to claim title to lands and invariably these have not been recognized by the states. Whether "recognition" is declaratory or constitutive it is necessary for an effective title. It is however clear that in the future some method will have to be developed in which some effect will be given to at least an analogue of "property" rights. Entrepreneurs need to be assured that the security of the return on investment afforded by "terrestrial property law" will be available for investment in space.

Apart from being careful as to innovation, we must also ensure that international space law does not come up to become something separate from general international law. Were it to be so done, it would necessarily become encysted and sterile. There is an argument that space law is a 'Lex Specialis' and of course some of its provisions are such; but this argument is away from fact as it does not become separate from the general international law. In Space we seek the 'rule of law' and not 'rule by law' where rules are simply adhered to when convenient to the powerful and altered at their behest.

Endnotes

1. Outer Space Treaty, 1967.
2. Outer Space Treaty, 1967.
3. Wayar N. White Jr, Implications of a proposal for real property rights in outer space in www.spacefuture.com, last visited on 17.02.10.
4. Wollersheim Michael, Considerations towards the legal framework of space tourism at 2nd International symposium on Space tourism, Bremen April 21-23 1999 at www.Spacefuture.com.