



Right to Travel Space: An analysis under the international Law

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Space, Tourism, Flights Law

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ABSTRACT Freedom to travel has been protected under the Indian constitution as the fundamental right to the citizens. Travel freely is one of the essential and significant pillars of the democracy. But can this right to freedom to travel be extended to space too? Or is it just available to skilled people like astronauts? What are the laws available protecting the right to travel space internationally or at national level. This article attempts to examine the laws that are available to individuals for travelling space. It further examines the current state of space tourism in Indian and its protection in the regulations.

Introduction

With the advent of sputnik in 1957 by the Soviet Union, the space exploration began to start and eventually the needs of space laws were also felt. And we have the legislations like the outer space treaty, 1967, The Rescue Agreement, 1968, The Liability convention, 1972, The Registration convention, 1975 and The Moon treaty 1979.

Though, Article 1 of the Outer Space Treaty of 1967, states that the 'exploration and use of outer space shall be carried out for the benefits and in the interests of all countries and shall be the province of all mankind'. But this exploration of space is not limited to only to professionals but it extends to humans age old inquest to visit space. Space tourism is defined as 'any commercial activity offering customers direct or indirect experience with space travel' and a space tourist as 'someone who tours or travels into, to, or through space or to a celestial body for pleasure and/or recreation'²

Position of space tourism under International Law:

International law in case of space tourism comes into the picture because it is a cross border activity and involves more than one jurisdiction, international law will come into play, and the first question is, which law? Air law? Or space law? To determine this, one of the oldest questions raises its head once again: where does air end, and space begin? We will shortly address this issue and will then discuss a few other subjects that are relevant.

From a strictly legal perspective, there is yet no clear definition of outer space, or put another way, where (and how) air space ends and outer space begins. While outer space activities have continued to develop notwithstanding this uncertainty, there are important practical reasons why a clear legal distinction between 'commercial aviation flights' and 'commercial space flights'³⁶ may become more pressing, given the possible advent of space tourism activities—particularly involving suborbital flights. This is even more appropriate given the fundamental differences between air law and outer space law. The Outer Space Treaty provides that 'outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. This also reflects a customary law principle evidenced by the practice of States as early as the launch of Sputnik 1³. On the other hand, air law regards air space as part of the 'territory' of the underlying State. A well-established body of Treaty law confirms that 'every State has complete and exclusive sovereignty over the airspace above its territory'⁴. This is also reflected in customary international law⁵. Of course, any space tourist activities.

requiring a launch from earth (or an air launch such as Space Ship One) and a return to earth will also involve a 'use' of air space. In this respect, the law of air space may be relevant to the legal position. Given the distinction in fundamental legal principles between air law and the international law of outer space, it is important to determine

what laws apply where. There has, over the years, been controversy as to how far air space extends above the surface of the earth, 'with none of the suggested methodologies having been accepted as a legal definition through the UNCOPUOS process. More recent developments in domestic space legislation may, however, herald the start of a move towards a more widely recognised demarcation point.'⁷ This evolutionary process was given significant impetus by the inclusion of a the definition of 'outer space' in a draft document headed Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force Against Outer Space Objects (PPWT) that had been presented in January 2008 to the 65 members attending the Plenary Meeting of the United Nations Conference on Disarmament (CD) in Geneva. The PPWT had been developed by Russia and China, two of the major space superpowers in the world. An earlier draft had been informally circulated the previous June, resulting in comments from a number of other countries. The PPWT defines outer space as 'space beyond the elevation of approximately 100km above ocean level of the Earth' (Article I(a)). Apart from the curious use of the word 'approximately'—the PPWT should perhaps have explained in what circumstances it would not be 100km—this represents a rather revolutionary suggestion by two major superpowers, which, along with the USA, have previously tended to stifle attempts to designate a formal demarcation, primarily for strategic and political reasons. Indeed, it was only a few years ago that a Chinese Foreign Ministry spokesperson referred to outer space as the 'Fourth Territory'.

Notwithstanding these developments, the threshold question remains, until the issue is determined unequivocally, what laws should apply to space tourism in the absence of an accepted demarcation between air space and outer space? Should, as seems to be happening in Europe, air law apply for part of the journey and space law then be applied at some (as yet undefined) point during the space tourism activity? Is the case different for suborbital flights and for orbital flights? And then for horizontal (single or multiple stage) take-off as opposed to vertical rocket propelled take-off? Just imagine having to apply two totally different regimes to one suborbital flight, depending on where it flies at a certain given moment, or how it takes off or lands, and having to apply perhaps yet another regime for an orbital flight; this would be highly unsatisfactory and impractical. Ideally, the development of a comprehensive and uniform legal regime encompassing the complete launch and return journey of private individuals should be preferred. However, given the long time needed to agree on a new multilateral treaty, this is not a very realistic response for the short term and will not solve the immediate problems of today's space tourism entrepreneurs. Therefore, as an alternative, for the interim, we believe that the best approach would be to apply space law to the entire orbital or suborbital international flight, simply on the basis of the proposed function of the vehicle—namely that it involves a flight into outer space.⁸ However, space law does then need appropriate clarification, perhaps in the form of a code of conduct developed under the

auspices of the UNCOPUOS, as has recently happened with the guidelines on debris mitigation.⁹ Such guidelines could seek to harmonise the rules governing the liability of the operator towards passengers and third parties, including limits on that liability, as well as provisions to ensure safety, and could be modelled after air law, which is well equipped in this field.

Conclusion:

A comprehensive legal framework must be established at the international level to reflect the wishes of the wider global community and to provide certainty. The advent of space tourism raises many unanswered legal questions, some of which have been highlighted in this article. Other legal issues will also arise. As more space tourism and other activities take place, appropriate dispute resolution procedures must be agreed to deal with conflicts that will inevitably arise, both at the public and private international law level. Detailed traffic management systems must be developed.

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3. North Sea Continental Shelf Cases (Germany vs. Denmark; Germany v Netherlands), 1969 ICJ 3, 230 (February 20, 1969) (separate opinion of Judge Lachs)
4. Convention on International Civil Aviation 59 Stat 1693 (1947) (Chicago Convention), Article 1.
5. In Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)(merits), the International Court of Justice noted that '[t]he principle of respect for territorial sovereignty is also directly infringed by the unauthorised overflight of a state's territory by aircraft belonging to or under the control of the government of another state'. 1986 ICJ 14, 128 (1986).
6. On 3 December 1976, eight equatorial States signed the Bogota' Declaration (reprinted in English in 6:2 Journal of Space Law 193 (1978)), which asserted that, in the absence of any legally determined upper limit to air space, those segments of the geostationary orbit above their territory constituted part of their respective sovereign territories. This assertion has not been accepted by other States and is not considered to properly reflect international law.
7. The Australian Space Activities Act 1998 (Cth) (no 123 of 1998), as amended by the Space Activities Amendment Act 2002 (Cth) (no 100 of 2002), incorporates a reference to 'the distance of 100 [kilometers] above mean sea level'. This was the first example of domestic law that refers to a specific 'demarcation point' for the purposes of applying space-related regulation. Should this approach eventually be extensively adopted and followed elsewhere, it may represent evidence tending towards the eventual creation of a new customary international rule. See Steven Freeland, When Laws are not Enough—The Stalled Development of an Australian Space Launch Industry, 8 University of Western Sydney Law Review 79 (2004).
8. See Bin Cheng, International Responsibility and Liability for Launch Activities, 20:6 Air and Space Law 297, 299 (1995).
9. Report of the Scientific and Technical Subcommittee on its fortyfourth session, 2007, A/AC.105/890, Annex 4 at 42; available online at: http://www.oosa.unvienna.org/pdf/reports/ac105/AC105_890E.pdf.