

Legal Insider

Outer Space Law



Prepared by:

**Associate Professor Dr. Tunku Intan Mainura
Tunku Makmar Nizamuddin**
Faculty of Law, UiTM Shah Alam



*Twinkle, twinkle, little star
How I wonder what you are!
Up above the world so high,
Like a diamond in the sky*

Do you remember this nursery rhyme? Do you remember your curiosity as a child, while being driven in a car at night during your family outings, while looking out of the window into the night sky and wonder what are those bright things twinkling up in the sky and asking 'why is it that the moon is following me everywhere?!'. I believe many of you can recall those magical moments, right?

Those stars and moon that you see are classified as a part of the celestial bodies and they are located in the outer space (United Nations Office for Outer Space Affairs, 2019). Although the definition of 'celestial bodies' are seldom disputed, the discussion over the delimitation of outer space have attracted many views and opinions over the years (Dempsey, 2017). Nevertheless, it has been recently proposed that the outer space starts at 80km above sea level (McDowell, 2018).

The reason why it is important for us to know exactly where the outer space began because there is a special branch of law that governs outer space. It is known as outer space law. Outer space law is a branch of international law and is based on the premise that 'conduct is presumed to be lawful in the absence of prohibitions, whereby permitted and unpermitted conducts are conditioned by both formal international law and customary law' (Christol, 1982). Space law consists of multilateral law and is complemented by the large volume of space law resulting from many bilateral treaties entered by space-faring nations (Reynolds and Merges, 2019).

As regards to the United Nations-made multilateral instruments, there are five treaties that regulate the conduct of States concerning their space-related activities and there are five sets of resolutions adopted by the United Nations General Assembly that lay down the legal principles pertaining to the peaceful uses of outer space. These five treaties, which are also known as 'formal space law' (corpus juris spatialis), are:

1. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies 1967,
2. The Agreement on Rescue of Astronauts, the Return of Astronauts and of Objects Launched into Outer Space 1968,
3. The Convention on International Liability for Damage Caused by Space Objects 1972,
4. The Convention on Registration of Objects Launched into Outer Space 1974, and
5. The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979.

These five treaties are open for signature and ratification by member States and under international law; their provisions are binding upon States that have ratified them. This principle of *pacta sunt servanda* can be clearly seen under Article 26 of the Vienna Convention on the Law of Treaties 1969, whereby it is provided that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'. Thus, if a treaty creates legally binding obligations, then a breach of a treaty by one of its parties is a breach of international law.

In practice, this means that if, for example Malaysia ratifies any of the five treaties, therefore, Malaysia would be a party to them, and is thus bound by their provisions. As such, Malaysia would be responsible if Malaysia were to breach any provisions provided by them. On the other hand, if Malaysia does not ratify any of these treaties, Malaysia would not become a party to them, and as a third party to these treaties, Malaysia would not be bound by the provisions, and technically therefore would not be responsible if it does not comply with any provisions provided by the treaties.. Vice versa, since Malaysia would not be responsible, hence it also could not claim any right provided by the provisions in those treaties.

Be that as it may, many States have considered the provisions in the outer space treaties as customary international law (Jakhu and Freeland, 2016). This means that the principles in the treaties effectively bind all States irrespective whether the States have ratified it or otherwise. This is because according to Article 38 of the 1969 Vienna Convention on the Law of Treaties, a treaty rule can be binding upon non-parties if it becomes customary rule of international law.

As at December 2019, Malaysia is only a signatory to 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 and the Agreement on Rescue of Astronauts, the Return of Astronauts and of Objects Launched into Outer Space 1968 (United Nations Office for Outer Space Affairs, 2019). It is still in the process of analysing the advantages and disadvantages of ratifying those five United Nations treaties (Attorney General's Chambers of Malaysia, 2019).

As a conclusion, we can see that there are laws and principles available to protect the outer space. However, with the advancement of recent modern technologies, it is submitted that more specific laws need to be drafted for this Heritage of Mankind to be further protected accordingly.

References

- United Nations Office for Outer Space Affairs, 2019, website: <https://www.unoosa.org>.
- Glenn Reynolds and Robert Merges, *Outer Space: Problems Of Law And Policy*, Routledge, 2019.
- Dempsey, Paul Stephen and Manoli, Maria, *Suborbital Flights and the Delimitation of Air Space Vis-À-Vis Outer Space: Functionalism, Spatialism and State Sovereignty* (2017). *Annals of Air and Space Law*, Vol XLII, 2017, p.197.
- Jakhu, Ram S. and Freeland, Steven, *The Relationship Between the Outer Space Treaty and Customary International Law*, 67th International Astronautical Congress 2016, 59th IISL Colloquium on the Law of Outer Space.
- Jonathan C. McDowell, *The edge of space: Revisiting the Karman Line*, *Acta Astronautica*, Volume 151, 2018, p. 668.
- Attorney General's Chambers of Malaysia, website: http://www.agc.gov.my/agcportal/index.php?r=portal2/left&menu_id=VE83STNZOUdEVHpUN3lpY3cybTJSdz09.
- Carl Q. Christol, *Modern International Law of Outer Space*, New York: Pergamon Press, 1982.
- United Nations, website: <http://ask.un.org/faq/15010>.

Issue 3/2019

@ UiTMLaw 2020

All rights reserved. No part of this publication may be reproduced or transmitted in any forms or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is restored in a retrieval system of any nature.

This newsletter has 2 versions, printed and online. The online version is available at the Faculty of Law, UiTM website. This newsletter is published in April, August and December every year.