

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Young Scholars Session with Keynote Lecture (1)

Author: Mr. Tejas Bharadwaj
India, tejasbharadwaj14@gmail.com

Ms. Tanushri Joshi
India, tanushrij61@gmail.com

ANALYZING THE OBLIGATION TO RECOVER AND RETURN SPACE OBJECTS UPON
CONTROLLED RE-ENTRY UNDER INTERNATIONAL SPACE LAW

Abstract

Cases of Uncontrolled Re-Entry and impact of Space Objects have been increasing over the last few years. This has led to a call for multilateral negotiations on a Controlled Re-entry Agreement and for countries to commit to a National Controlled Re-entry Regime.

With countries developing reusable vehicles and objects that can be controlled and manoeuvred upon re-entry into airspace, will such objects still be regarded as Space Objects upon Re-entry? In absence of legal demarcation between Airspace and Outer Space, the relevance of governance under Air Law or Space Law falls on the definition of a “space object”.

The status of being defined as a “Space Object” is pertinent considering that State Parties are obliged under Article VIII of Outer Space Treaty (OST) and Article 5 of the Return and Rescue Agreement (ARRA) to assist in the recovery of space objects found in their territory and beyond and return it to the owner/launching State respectively.

Thus this paper will analyze whether state parties are obligated to recover and return such objects that have been deliberately re-purposed to perform surveillance or other military/illegal activities in their airspace, upon controlled re-entry from Outer Space.

Firstly, considering that neither the OST nor ARRA define a Space Object, this paper will evoke subsequent State practices under Vienna Convention of Law of Treaties to suggest that obligations to “recover and return” under Article VIII of the OST and Article 5 of the ARRA shall apply only to uncontrolled re-entry of space objects and not to controlled re-entries. Further, the paper will analyse the Object and Purpose of ARRA to establish that obligations under Article 5 shall be applicable only during the time of unintentional or accidental landing and not during deliberate act of surveillance or breaches of Airspace of a country.

Secondly, this paper will clarify the definition of “Space Objects” under ARRA to exclude those objects that can be manoeuvred/controlled in Atmosphere upon re-entry, regardless of it being a component part of space object. Further, the paper will use the definition under Annex 2 of Chicago Convention to classify such objects as Aircrafts.

Finally, the paper will conclude that to prevent adversaries from exploiting the ambiguity in International space law, it is important for countries to work on a clear and uniform definition/interpretation of “Space Object” at the UN Open Ended Working group on Reducing Space threats, before committing to a controlled re-entry regime.