

Demilitarization of Outer Space in Neoliberal Times: Revisiting the Demilitarization Discourse in Space Law

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Abstract

The concept of militarization in outer space has always been a widely debated topic amongst numerous space law scholars. In this context, this paper argues that the demilitarization conflict has the character of a discourse, and aims to analyze it within the neoliberal framework. It is also argued in this paper that this discourse analysis is crucial to identify the presence of a serious contradiction within the Outer Space Treaty, 1967 [hereinafter referred to as 'the Treaty']. In other words, the purpose of the discourse analysis is to identify as to how the Treaty that upholds 'peaceful purposes' favor militarization (including weaponization) in outer space at all. Therefore, the focus question is whether militarization in outer space takes away the spirit of the Treaty. The paper argues that within the neoliberal setting, 'peaceful purposes' should be given a reasonable and standard definition and the possibility of multiple interpretations leading to absurdity should be curtailed. Further, it is also argued that demilitarization in outer space neither benefits nor harms the neoliberals in the existing context due to the ambiguity within the Treaty. Finally, the article concludes by arguing that amid the challenges of neo-liberalism, the scope of 'peace' and militarization in outer space should be re-contemplated.

Introduction

War and peace co-existing in harmony is unimaginable. The Outer Space Treaty, 1967 is unique in itself precisely for the same reason for it incorporates the regularized use of arms by the States; and the use of outer space exclusively for peaceful purposes, simultaneously. How do we understand this dichotomy? When outer space is permitted to be used only for peaceful purposes, then how could militarization therein be justified? When such a severe violation of the Treaty occurs, how is the sanctity of the Outer Space Treaty, 1967 being maintained? And this is the core issue that this paper tries to ponder upon.

In neoliberal times, both 'peace' and 'war' has transformed into a new phenomenon. The modified meanings attached to both the terms enable us to understand the contemporary space law scholarship and the need to either appreciate it or critique it. In this context, it is very much crucial to understand the meaning of neoliberalism and how it is affected by the demilitarization of outer space.

Part I of the paper explains what the very term "neoliberalism" stands for; while Part II briefly deals with the role of human activity in the outer space. Subsequently, Part III initiates the discussion on the Outer Space Treaty, 1967; and delves on to Part IV that talks about the dispute on "peaceful" purposes. This leads to Part V where an attempt has been made to unfold the dilemma between "militarization" and "weaponization" in the outer space; when Part VI identifies the various ambiguities within the demilitarization discourse. In Part VII, certain modifications to the existing legal framework of the Treaty are suggested to enhance clarity. Finally, the paper ends with a conclusion of an anticipated perspicuity to the existing discourse.

What Is Neoliberalism?

Neoliberalism is an ideology that emphasizes the value of free market competition. It is most commonly associated with laissez-faire economics, and is often characterized in its belief in sustained economic growth as the means to achieve human progress, its confidence in free markets as the most-efficient allocation of resources, its

emphasis is on minimal state intervention in economic and social affairs, and its commitment to the freedom of trade and capital².

In neo-liberal ideology, State intervention is the core concern. In an absolutely free economy, States play a very negligible role. It is important to understand neo-liberalism in the context of the Outer Space because there is no single ownership in the outer space; yet the exploration of outer space is restricted as well. What is the connection between neoliberalism and outer space? I shall delve into this point as I proceed for which we need to first understand what 'outer space' means and what are the permitted human activities therein.

Outer Space And Human Activity

Outer space is understood as everything beyond the Earth's atmosphere. It may be subdivided into near-Earth, interplanetary, and interstellar (meta-galactic) space, commonly also known as near, outer and open space³. The Greek word "cosmos" is synonymous with the astronomic definition of the concept of universe.

Most human activity in outer space occurs in "near space"⁴. It is believed that fewer than four percent of all the spacecrafts ever deployed have left the Earth's gravitational field⁵, enabled in discovering the main uses of outer space, like detection and observation of objects on the Earth's surface, below ground, at sea, in the atmosphere, and in space; navigation, communications, and control; and meteorology and scientific research⁶.

²See <https://www.britannica.com/topic/neoliberalism>

³Peter Topychkanov, 'Features of Outer Space Environment' (2010) *Carnegie Endowment on International Peace*, p. 3

⁴Id at 2

⁵B.D Watts, 'The Military Use of Space: A Diagnostic Assessment', (2001) *Centre for Strategic and Budgetary Assessment*, p. 8-9

⁶M . Belyakov, E.P. Palagin, and F.R. Khantseverov, "Kosmicheskiye apparat'" [Space Vehicles], in *Sovetskayavoennayaentsiklopedia* [The Soviet Military Encyclopedia] 'Military Use of Outer Space', (2006) *4Paramilitary Office of Science and Technology*, p. 382-387.

In the early stages, practical space activity is said to have begun on October 4, 1957, with the Soviet Union's launch of the world's first artificial earth satellite from its Baikonur Space Centre⁷. It was spearheaded by scientists and engineers led by Sergey P. Korolev and Mikhail K. Tikhonravov after many years of research. Later, the world's first manned spacecraft, Vostok-1, was launched on April 12, 1961 with Yuri Gagarin aboard. Cosmonaut Gherman Titov followed on August 6 in Vostok-2. After the launching of four more space crafts between 1962 and 1963, in 1964 the inception of multiple-man crews in space flight was made. During 1966 and 1970, nine space crafts were successfully sent to the Moon, where both of them made soft landings on the surface. Subsequently, there were numerous developments in the use of outer space, which has resulted in use of militarization till date.

Well, use of militarization is the crux of this paper. Here, I make a humble attempt to unearth the nexus between 'militarization' and 'peaceful purposes'.

The Outer Space Treaty, 1967

The Outer Space Treaty, formally called Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial bodies, (1967) is the international Treaty binding the parties to use outer space only for peaceful purposes.

The following declarations from the Outer Space Treaty, 1967 substantiate that the primordial intention of the legislation is the peaceful exploration of outer space:

"The States Parties to this Treaty ...

Recognizing the common intention of all mankind in the progress of the exploration and use of outer space for peaceful purposes ...

Desiring to contribute to broad international cooperation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes.."

⁷Id at 5

The Treaty could, thus, be viewed as furnishing a general legal basis for the peaceful uses of outer space and providing a framework for the developing law of outer space⁸.

Under the terms of the Treaty, the parties are prohibited from placing nuclear arms or other weapons of mass destruction in orbit, on the Moon, or on other bodies in space. States are responsible for their activities in space, and are liable to pay compensation for the damage(s) caused by their space expeditions⁹. States, however, cannot claim sovereignty over the Moon or any other celestial bodies.

As pointed out earlier, peace is the essence of the Treaty. Now, I shall try to define the meaning of 'peaceful purposes' as enshrined in the Treaty.

'Peaceful' Purposes In The Outer Space

The term 'peaceful' appears in many documents and space law treaties. Yet, even after years of launching Sputnik 1, the term "peaceful" still lacks authoritative definition¹⁰. Soon after the launching of the early artificial satellites, the United States started to change its position in regard to the meaning of the term "peaceful uses", claiming that the term means "non-aggressive" rather than "non-military."¹¹ Accordingly, all military uses of outer space were to be permitted and considered lawful as long as they remain "non-aggressive", according to Article 2(4) of the United Nations Charter, which prohibits the "threat or use of force¹²."

Eventually, the Soviet Union and other States who had a common interpretation of "peaceful" purposes incorporated the idea that the outer space could be used for military purposes as well. This changed ideology was summarized by a representative of a Western delegation in the Ad Hoc Committee on the Prevention

⁸*United Nations Treaties and Principles on Outer Space, 2002*

⁹*The Outer Space Treaty, 1967*

¹⁰McGill University, , "Peaceful" and Military Uses of Outer Space: Law and Policy, (2005)*Institute of Air and Space Law*, p. 1-21

¹¹ *Id* at 8

¹²*Id* at 8

of an Arms Race in Outer Space of the Conference on Disarmament according to whom: “even though in some contexts ‘peaceful’ means ‘non-military’, any ambiguity has been clarified by State practice which had not been contradicted in a forceful manner by any State formally protesting military utilization of space.¹³”

It could be safely concluded that ‘peaceful’ purposes lacks a clear and standard definition. This is a complex situation because, *prima facie*, military use itself takes away the peace element from the Treaty, unless, perhaps, military is deployed to “safeguard” the outer space. This again, would cause a lot of ambiguity.

To proceed further to understand the rigid linkage between the ‘undefined’ peace, if it may be termed so, and militarization of outer space, it is quintessential to dissect the meaning of militarization and how it is both useful and harmful for the outer space.

‘Militarization’ And ‘Weaponization’

Militaries across the world rely on satellites for command and control, communication, monitoring, early warning, and navigation with the Global Positioning System (GPS). *Militarization* includes using satellites to direct bombing raids or to orchestrate a “prompt global strike” capability, which is “the ability to control any situation or defeat any adversary across the range of military operations¹⁴.”

A similar phenomenon to be understood is that of *Weaponization*. Weaponization refers to placement in orbit of space-based devices that have a destructive capacity.¹⁵ It is the placement of weapon systems that could attack targets in space or on the Earth. Interestingly, till date there has been no authoritative definition of “space weapon”. For example, according to a definition proposed by a group of UNIDIR experts: “A space weapon is device stationed in outer space (including the Moon and other celestial bodies) or on earth environment designed to destroy,

¹³See : UN Doc. CD/1165 of 12 August 1992

¹⁴ See: <http://www.reachingcriticalwill.org/resources/fact-sheets/critical-issues/5448-outer-space>

¹⁵*Id*

damage or otherwise interfere with the normal functioning of an object or being in outer space, or a device stationed in outer space designed to destroy, damage or otherwise interfere with the normal functioning of an object or being in the earth environment. Any other device with the inherent capability to be used as defined above will be considered as a space weapons¹⁶”There are space-based devices that have indirectly a destructive capacity, like satellites serving GPS navigation of military aircraft and precision guided missiles¹⁷. However, satellites themselves have no destructive capacity on their own and their support of military missions is not considered weaponization of space.¹⁸

I shall argue that neither of the words ‘militarization’ nor ‘weaponization’ connotes peace. It seems to be old wine in a new bottle. Further, I shall also attempt to put forth a critical discourse analysis on the terms peace and militarization in the context of the outer space, by answering the following two questions:

- a) Does militarization take away the spirit of the Outer Space Treaty, 1967?
- b) Does demilitarization favor in the neoliberal regime?

It is indisputable that the above raised questions cannot be given a justified response by a bare reading of the text of the Treaty. Moreover, the jurisprudence of the Outer Space Treaty, 1967 is precisely the conflicting discourses of peace and force (military).

Resolving Ambiguity

Does militarization in the outer space take away the spirit of the Outer Space Treaty, 1967?

One school of thought interprets the term as the opposite of “military”, while the other maintains that “peaceful” means “non-aggressive¹⁹.” Western states, including the U.S., have tended to favor the latter interpretation, while Soviet Union, together with certain other members of the Outer Space Committee, favor the former.

¹⁶See: <http://www.unidir.org/publications>

¹⁷Id at 8

¹⁸Id at 8

¹⁹Id

It is to be borne in mind the distinction between the Treaty's treatment of outer space around the earth, and its treatment of the moon and other celestial bodies on the other. The Treaty adopted different substantive regimes to regulate the demilitarization of each zone²⁰. Therefore, a uniform application of the term "peaceful" is impossible.

The Treaty prescribes total non-militarization of activities on the Moon and celestial bodies, simultaneously stating that the all activities on the surface of the Moon and other celestial bodies must be "non-military". However, this does not have any linkages to the activities *around* celestial bodies. On a strict interpretation, this applies only to surface activity and not to orbital activity. But, the intention of the Treaty is clearly absolute non-militarization of celestial bodies, a fair argument also lies that the military activity around celestial bodies would contravene the ban and conflict with the reservation of the use of celestial bodies "exclusively for peaceful purposes"²¹

When circumterrestrial space is concerned, the language of the Treaty requires only partial non-militarization of the outer space surrounding the earth.²² Unlike celestial bodies, the Treaty does not reserve this circumterrestrial space for "peaceful uses". But, the Preamble emphasizes the use of outer space for common interest of mankind and international corporation.

The primary ambiguity lies at this point as to what essentially connotes "peaceful" purposes.

On the contrary, if the term "peaceful" is connoted to mean "non-aggressive" and not "non-military", then probably the Treaty should permit all defensive military activity that is not aggressive, including the development of orbital weapons

²⁰ *Outer Space Treaty, 1967*

²¹ UN Doc. A/AC. 105/L. 113/Add.4, 1979

²² Zedalis And Wade, 'Anti-Satellite Weapons And The Outer Space Treaty of 1967', (1978) *CAL. W. Int'l L.J* 8: p.22

systems²³. This interpretation is in compliance with the Treaty's consistent policy of maintaining a separation between the armament regimes of circumterrestrial space and of celestial bodies.²⁴But, this is a mere interpretation and the Treaty lacks clarity to this effect.

A second ambiguity is related to the use of surveillance and verification.

It has been argued by some space law scholars that certain purely *passive defensive devices* such as sensors and listening devices, which cannot themselves be used as attack weapons, should be allowed on the surface of celestial bodies or in orbit²⁵. Here also the Treaty lacks clarity. Article XII of the Treaty represents the timid approach characteristic of all international inspection schemes²⁶ It is consensual and reciprocal. For instance,

“All stations, installations, equipment and space vehicles on the Moon and other celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity...”.

Even if the term “on the Moon and other celestial bodies” is interpreted to include all stations, installations, and equipment in orbit around the moon and celestial bodies, the verification arrangements of the Treaty do not measure up to the standard required by the far-reaching “exclusively for peaceful purposes” ban in Article IV.²⁷

A third ambiguity rests with the question as to whether demilitarization includes *de-weaponization* as well. In accordance with the definition by the United Nations General Assembly, any danger to the maintenance of peace falls within the scope of ‘aggression’; “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner

²³IssacI. Dore ‘International Law and the Preservation of the Ocean Space and Outer Space as Zones of Peace: Progress and Problems’ (1982) 15 (1) *Cornell International Law Journal*, p. 34-38

²⁴*Id*

²⁵*Id*

²⁶*Id*

²⁷*Id*

inconsistent with the UN Charter as set in its definition²⁸." Accordingly, a mere placement of a space weapon in the outer space could also result in "danger" as per the definition, and this makes weaponization a form of aggressiveness too.

The term 'non-aggressive' includes the possibility to apply military activities in outer space lawfully as long as those activities do not aim at direct attack in the UN's definition of aggression²⁹. It ought to be questioned whether a mere placement of a space weapon itself is a direct attack in the outer space.

The confusion regarding the meaning of "peaceful purposes" existed even in the initial days when the Treaty was formulated. Interestingly, the Soviet Union had a very key role in the creation of the demilitarization discourse.

The Soviet Union And Demilitarization

With the signing of the Outer Space Treaty, 1967, the Soviet Union came to a fix when the Article IV, para 2, declared that "peaceful purposes" only applied to activities on the moon and other celestial bodies, but not to outer space generally. In order to come out of the situation, the Soviets retained their original definition, in addition to, creating the new strand of 'demilitarization'.

Accordingly, the Soviets interpreted the Treaty to be resulting on the "complete demilitarization of the Moon and other celestial bodies", but only the "partial demilitarization of outer space."³⁰ They believed that the nations of the world might agree at a later time to amend the Treaty so as to achieve the total demilitarization of outer space, but since "there is no such agreements as yet, international documents refer to the explosion and use of peaceful purposes exclusively merely as a goal to be pursued".³¹

²⁸UNGA Res. 3314-A/9631, 14, 1974

²⁹ International Law Commission(MUN) 'Regulating Military Activities in Outer Space', (2015)

³⁰*Id*

³¹ Boris Belitsky, A.S Piradov, *International Space Law*, 2nd ed.(Paperback, 2000), p. 28-29

Demilitarization Versus Neutralization

Just like demilitarization, the Soviets even laid foundation to the phenomenon of “neutralization” of outer space. This means the total or partial exclusion of outer space and celestial bodies from the sphere of military operations in the event of armed conflict³². “Demilitarization has had both merits as well as demerits for the Soviets: firstly, the emphasis on “exclusive peaceful purposes” in the outer space as a goal for future has allowed them to continue to use their non-military definition of the term, if and only in a teleological sense. Further, that definition has appeared more appropriate than the Western one with regard to the Treaty’s strict regime for the moon and celestial bodies; secondly, on the other hand, the modified Soviet position on “peaceful purposes” has made it hard for the U.S.S.R to distinguish its policies from those of the West, and they have been hard pressed to describe with any precision those military activities which they consider impermissible in outer space³³. While the Soviets have endeavored to place the “non-banned military activities” under the Outer Space Treaty in a “category...different from the activities aimed at utilizing outer space for peaceful purposes³⁴”. Unfortunately, this was never clarified. According to M. Lazarev, the best positive anticipation for States could be for “the maximum possible demilitarization”, and that “the militarization of space cities at least has to be considered in the form of police or militia³⁵”. Space “neutralization”, which for the Soviets was “total neutralization” of outer space was nothing but a novation of demilitarization. According to them, total neutralization in outer space would preclude its use in wartime for:

- a) launching military space objects in or from space to strike at enemy targets;
- b) conducting military operations directly in space; and

³² UN Charter, Article 2

³³ Malcolm Russell, ‘Military Activities in Outer Space: Soviet Legal Views’, (1984) 25 (1) *HeinOnline*, p. 1-43

³⁴*id*

³⁵*id*

c) firing combat missiles with nuclear warheads via space at targets on the territory of other states.³⁶

Essentially, neutralization did only add on to the existing debate and failed to resolve it. And this is the fourth ambiguity as to what was the Soviet intention behind creating the same concept of demilitarization into another form, having the same disadvantages.

A final ambiguity would be as to what kind of interpretation of the Outer Space Treaty will the neoliberal States favor. Neoliberalism, being an on-going political ideology should be able to give a sound reflection on the same. This is what I shall be discussing next.

Does demilitarization of outer space favor the neoliberal regime?

Neoliberalism, just like any other political ideology has two sides to it. At the national level, neoliberal ideas heavily promote market-based economies that highly value competition and efficiency, thus moving it closer to social Darwinism. It has been argued that neoliberalism directly led to the economic liberalism/rationalization of the State, thus restricting the State sectors, and dismantling the welfare State³⁷. However, this cannot be fully supported as by placing a mathematical quality on social life, neoliberalism has encouraged formerly autonomous states to regress into penal states that value production, competition, and profit above all else, including social issues³⁸.

At the international level, it is argued that neoliberals have focused on three primary points³⁹. They are:

³⁶d

³⁷ Peters Michael A, *Poststructuralism, Marxism and Neoliberalism: Between Theory and Politics* (Rowman and Littlefield, 2001)

³⁸ Bourdieu Pierre, "The 'Myth' of Globalization and the Welfare State" in *Acts of Resistance: Against the Tyranny of the Market*(The New Press, 1999a), pp.29-45

³⁹ George Susan, *A Short History of Neoliberalism* (1999) Presented at the Conference on Economic Sovereignty in a Globalizing World , March 24-26at Bangkok, Thailand.

- a) free trade in goods and services,
- b) free circulation of capital, and
- c) freedom of investments

Accordingly, there has been an emphasis placed on exchanges across national borders, financialization, and the development of international organizations as well as a transnational civil society⁴⁰. By adopting such an economic worldview, it is argued that it could exaggerate the North-South gap and global inequality in the coming years⁴¹.

At the individual level, neoliberalism insists on rationality, individuality and self-interest⁴². Their focus on individual means that ideas related to things such as “the public good” and “the community” are now being discarded as unnecessary components of a welfare state.⁴³ This would imply that areas of unemployment, inequality, and poverty have become increasingly blamed on individuals rather than on structural constraints⁴⁴.

As established above, neoliberalism is a profit-centric ideology. The welfare of the State or “public good” is given least significance. In this crisis, if I may call so, I am tempted to argue that in the existence of the present Outer Space Treaty, 1967, it is difficult to conclude whether the neoliberals could gain advantage from it or not. The legislative intention behind the Treaty itself being unclear, a suitable interpretation is difficult to be made.

⁴⁰Bandelj Nina; Kristen Shorette and Elizabeth Showers, ‘Work and Neoliberal Globalization: A Polanyi Synthesis’, (2011) 5 *Sociology Compass*, p.807-823

⁴¹*Id* at 38

⁴²*Id* at 36

⁴³ Martinez, Elizabeth and Arnolando Garcia, *What is “Neo-Liberalism?” A Brief Definition* (The New Press, 2000)

⁴⁴ Passas, Nikos, ‘Global Anomie, Dysnomie and Economic Crime: Hidden Consequences of Neoliberalism and Globalization in Russia and Around the World’ (2000) 2 *Social Justice*, p.16-44

However, I shall argue that certain modifications and corrective measures ought to be made to the existing Outer Space Treaty so that all the ambiguities shall cease to exist.

Suggested Modifications

- 1) The term “peaceful” purposes should be given a standardized definition so as to restrict numerous interpretations which lead to chaos and confusion;
- 2) The term “militarization” should not be equated with “aggressiveness”. This would mean that a mere use of military weapon for investigation purpose could also be a form of “militarization”.
- 3) The difference between demilitarization and de-weaponization should be clarified. Since, militarization and weaponization per se could not become “aggressive”, there should be a clarity as to how is one form different from another, if at all.
- 4) The term space “neutralization” should not be equated to “demilitarization”. “Neutralization” presumes the existence of conflict in outer space, while demilitarization argues for a total ban on the use of arms in the outer space.
- 5) There should be a clear statement of rule within the text of the Treaty as to what kind of use of force causes a ‘threat to peace’ in the outer space.

Perhaps, the above-stated modifications do not solve all the ambiguities within the Outer Space Treaty, 1967. However, it could be safely argued that the existing conflict of “peaceful” purposes and “demilitarization”, which are the fundamental principles of outer space, shall be resolved in its entirety.

Conclusion

In the light of my above discussions and analyzes, I shall conclude this paper by enlisting the following points:

- a) “Peace” and “Militarization” do not have separate discourses within the space law scholarship, because without the clarity of one discourse, the other cease to exist.

- b) In the present form of the Outer Space Treaty, 1967, it is impossible to culminate the understanding that “militarization” takes away the spirit of the Treaty. Until an honest attempt is made to re-contemplate the notion of “peace”, there cannot be any answer to this question as to what causes the threat to the spirit of the Treaty.
- c) The existing Outer Space Treaty, 1967 does not seem to harm the neoliberal regime in any manner because of the peace-military paradox. Neoliberalism, that focusses on individual profit-maximization would be harmed only if there is a ban on militarization completely. However, such a ban would not be entertained by any State, regardless of its political ideology, unless the militarization/neutralization discourse is sufficiently addressed. As of now, this question too remains open-ended. Hence, amid the challenges of neo-liberalism, the scope of ‘peace’ and militarization in outer space should be re-contemplated.

It is to be noted that this paper does not critique the Outer Space Treaty, 1967 completely. It is to be appreciated that this was the only Treaty, in the initial days that, probably focused on peaceful co-existence. It continues to act as a local point where actors (States) co-ordinate. Once the speculative nexus between “peaceful” purposes and “demilitarization” is answered, the Outer Space Treaty, 1967 transforming into one of the greatest aid to space law scholars and State actors is assured.