

## INDIAN SPACE ACTIVITIES BILL 2017: IN JUXTAPOSITION WITH THE SPACE FARING NATIONS

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### ABSTRACT

*The genesis of international law is based on dealing with global stumbling blocks and handling disputes between sovereigns on matters of diverse fields. UN became the torchbearer in this respect and instigated the formulation of breeding grounds for state legislation in education, environment, technology, criminal law, etc. The UN treaties and principles have a layered perception which seems discretionary at the face of it but becomes obligatory owing to ethical, moral and international goodwill at stake. Hence, the principles deciphered in such treaties must be complied with and enforced using national legislation. Similar to all growing fields, the hypothesis on space law was tabled in great antiquity. In 1957, when major political forces were eager to become part of the space race, it led to the realisation of specific regulations and legislations to regulate aeronautical and astronomical activities in outer space. Inference introduced by President Dwight Eisenhower in the United Nations in 1957 was further considered after the successful launch of Sputnik in 1957 by the Soviet Union and Explorer 1 by the US in 1958. The outrightness and radical nature of leading states, i.e. Soviet Union and the U.S. at the time, assisted in curbing power and accessibility in matters of outer space from a nascent stage of cosmos exploration. The cerebral aspect of space and celestial exploration deemed the adoption of systemised and concretised legislations and regulations to steer the development in this field as necessary.*

**Keywords:** Space law, Outer Space, Space, Space Bill.

### INTRODUCTION

Space Law has been gaining momentum on the international platform. States, to strengthen geopolitical relations and standing in the United Nations, are proactive in their approach towards the fulfillment of international obligations imposed through instrumentalities of conventions and treaties. Space Law has gradually acquired mass through various treaties. India, an exemplary custodian in line with faring states, has undertaken requisite steps to fulfill international obligations centred on space law. The preponderance of India's

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contribution to the space sector is undisputed. With the advent of continuous and fastidious space endeavour assumed by the Indian state, there has been an undying need for a statutory backbone. The conversation around legal aspects of space and space technology has been concretised through the establishment of apposite authorities, and an extension of it is codified legislation. Recently Indian Space Policy 2023 was approved, which has steered the satellite into the orbit of space development in India. The foundation set for enacting this policy, the first building block, is under construction, namely the Space Activities Bill. The drafters of this bill have minutely studied the international Space treaties with a particular focus on the Outer Space Treaty. It's a comprehensive and inclusive enactment to get recognition in the mainstream.

### **LEGAL FRAMEWORK OF SPACE LAW**

*A wise man looks into space and knows there is no limited dimension*

*-Zhuanghzi*

As stated above, international treaties must be complied with using national mechanisms, i.e. domestic legislation. The genesis of space law is platooned on the basic structure of international law, which is obligation erga omnes. These obligations are essential for global viability and can be enforced against states as and when violations occur. The international community concretises these obligations, but the point of contention arises from their characteristics. In simplified terms, two categories of duties are conferred under international law. Firstly, peremptory norms of general international law are granted under Art 3 of the UN chart, which disbars modification and volition from set obligations that can be modified only by a subsequent akin norm. Secondly, obligations erga omnes are important obligations stationed in the n interest of the international community as a whole but not horizontally characterised as essential. This can be comprehended in Bruno Simma, former Judge of ICJ, stating that international law has entered a stage at which it exhausts itself in reciprocity through rights and obligations between States but also incorporates common interests of the international community. In this context, space law is a field encompassing the interests of various states organised as a normative community, and if; violation or derogation is exercised by one state, it shall injure all states collectively, thereby giving rise to certain obligations towards the international community. Two outlooks of interests and values germinate the interests of the international community and states. Space law, being an international law, protects the international community's interests, which is a significant

development of international law. In furtherance of which principles of space law impose certain erga omnes obligations that are not considered part of peremptory norms of general international law, i.e. jus cogens, hence amendable and dynamic.

Space law is the epitome of cooperation and advancement in a more accurate sense. The rise of space activities in India and faring nations became the focal point of the development of space activities bill in many countries. Subsequently, the International Law Association formulated a model law on national space legislation to provide a roadmap for nations precisely stating the rules and obligations of states regarding space activities in conformity with all UN treaties.

Starting from the outer space treaty incorporated almost half a century ago is arguably the most important treaty on outer space as it forms the seminal foundation of international space law. Ensuring the declaration<sup>1</sup> adopted by the General Assembly, five core UN treaties were devised that bolstered space law policy deliberation and conformation, namely: -

#### **OUTER SPACE TREATY OF 1967**

Colloquially known as “The Outer Space Treaty,” the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, has been the backbone of space law for five decades owing to its precocious and visionary ideology in contrast to the era when it was drafted. Inter alia, the treaty has two major provisions that depict the visionary and evergreen relevancy facets. Primo, the inclusion of peaceful provisions curbing military and nuclear activity in outer space deciphered in Article IV of the treaty<sup>2</sup>. This provision speaks volumes about the vision leaders adopted during international unrest. Two significant forces USA and Soviet Union expounded the possibility of a potential war. Also, the light of the unprecedented and vague power postulation over celestial bodies asserted over the years made it pertinent to embed certain restrictions and safeguards in outer space.

Furthermore, considering the commercial aspect is a breakthrough analysis at the time. Disregarding only the influential state’s participation in aeronautical and astronomical activities in the era, deliberation on private commercial activities in space was an ingenious move. Safeguards were also implanted here, with private participation only being allowed under supervision and clearance by the state enshrined under Article VI of the treaty.

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<sup>1</sup> Declaration of Legal Principles Governing the Activities of States in the Exploration and use of outer space 1963

<sup>2</sup> Outer Space Treaty 1967, art. IV

## **RESCUE AGREEMENT OF 1968**

Formally known as the “Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space”, with ten articles, the Rescue Agreement is the shortest of these five United Nations treaties related to Space. The Rescue Agreement is intended to elaborate on the Article V rescue provisions of the Outer Space Treaty. The Rescue treaty imposes obligations on the rescue state or entity with respect to distressed spacecraft or astronauts aboard such a vessel. It’s an elaborate and masterstroke extension to the provision of OST wherein two terminologies conclude the importance of this treaty. The terms ‘launching authority’<sup>3</sup> and ‘personnel of aircraft’ are widening articulation artfully used by drafters to include inter-governmental entities, astronauts and cosmonauts all under one hood. Essentially a means of standardisation and widening interpretation.

## **SPACE LIABILITY CONVENTION OF 1972**

The Space Liability Convention elaborates on the international liability regime introduced in Article VII of the Outer Space Treaty. This convention sets up two standards of liabilities but also ensures that claims under the Space Liability Convention are limited to State entities only. Under the Space Liability Convention, there are two standards of liability: strict liability and fault-based liability. Only one official claim has been made under the Space Liability Convention. In January 1978, a Soviet Union-controlled nuclear-powered satellite, Kosmos 954, crashed into Canadian territory upon re-entry after a malfunction. First, the Canadian officials invoked Article 5 of the Rescue Agreement to inform the Soviet Union that it had discovered and located satellite debris from Kosmos 954. Because some of this debris’ fragments were still radioactive, the recovery and clean-up process proved costly; pursuant to the Space Liability Convention, since the debris caused damage to the surface of the Earth, the Soviet Union is strictly liable for all costs associated with such damage. Hence, Canada demanded that the Soviet Union repay all the expenses associated with recovering, cleaning up for, and damages (including future expenses) caused by Kosmos 95e of 6,041,174.70 Canadian Dollars. The Soviet Union eventually agreed to pay about 3 million Canadian Dollars.

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<sup>3</sup>Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space 1968, art. 6

## **REGISTRATION CONVENTION OF 1975**

Like the Rescue Agreement and the Liability Convention, the Registration Convention, or formally Convention on Registration of Objects Launched into Outer Space, also expands on the Outer Space Treaty. Specifically, the Registration Convention expands on Article VIII of the Outer Space Treaty and lays the foundation for a registration system for objects launched into space. A reasonably straightforward treaty, the Registration Convention plays a critical role in providing teeth to and ensuring the success of the other United Nations space-related treaties.<sup>4</sup> For instance, countries must correctly identify and notify the relevant launch party responsible for the distressed spacecraft with proper registration. Governments will also need help successfully demanding damage-related compensation payments under the Space Liability Convention.

## **MOON TREATY OF 1979**

Although one of the five major United Nations treaties related to Outer Space, Treaty has primarily been considered a failed agreement. Specifically, Article 11 of the Moon Treaty states that “the Moon and its natural resources are the common heritage of mankind . . . [and] is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means.” it does not matter which country “dug up” these resources, that country will not have complete and exclusive ownership and control over such resources.<sup>5</sup> This treaty’s position on private ownership has had important ramifications on two key areas of space law today: 1) Space Mining (whether private enterprises can own the resources they mine as explored in this earlier blog post) and 2) Property Rights on Mars (whether private companies can stake ownership rights on other planets in the solar system.

## **OBJECTIVES OF SPACE LAW**

The objective of space law is minutely encapsulated in the intricacies of various treaties, conventions, proposals and inspired legislations thereon. The intent provides teeth to the codification of space law concretised on:-

### **Ownership and equitable sharing**

Space can be conveniently juxtaposed with the sea. Space, like the sea, has vast amounts of area impractical for any nation to claim.

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<sup>4</sup>The Five Core United Nations Treaties related to Outer Space’ (#TheSpaceBar, 26 November 2017)<<https://alexsl.com/thespacebar/2017/11/26/the-five-core-un-treaties-related-to-outer-space>>accessed 18April 2023

<sup>5</sup>Ibid

Hugo Grotius, a pioneer of international law, preferred the term *res extra commercium* in referring to the open ocean. He proposed the “freedom of the seas” doctrine, whereby the ocean is insusceptible of ownership as it cannot be occupied, and no one has the “right to appropriate things which by nature may be used by everybody and are inexhaustible”.<sup>6</sup> This holy grail has been rooted indefinitely in various treaties of space law. “Benefit and Interest of all countries<sup>7</sup>”, “province of Mankind<sup>8</sup>”, “Common Heritage of Mankind<sup>9</sup>”, and “not open for National appropriation<sup>10</sup>” are keywords used synonymously to indefinitely embed the concept of joint ownership and equitable sharing when it comes to space law. Space activities and exploration are open for all with reasonable restrictions to reap collective benefits without diminishing the competitive spirit. Equitable sharing finds its support from the soul of international law, i.e. no disruption to global security and peace. Hence, imposing reasonable restrictions in space exploration with definite and strict liability secures international interest whilst progressing collectively. In effect, rather than having separate and national organisations for space-related activities, it is advised to have a common international organisation in charge of space ventures. Article

### **Peace And Common Security**

According to Professor Louis Henkin, Charter Article 2(4) is the utmost important rule of international law since it defines peace as essential, outweighing interstate justice and other human values. The global public interests of international peace and security, as defined by Article 103 of the UN Charter, takes supremacy above other mutually beneficial goals of the worldwide community and the national interests of individual nations, as reiterated by MA Xinmin (Deputy Director General of the Dept. of Treaty & Law, Foreign Affairs Ministry, Peoples’s Republic of China) in his speech at United Nations /APSCO/China/ Workshop on Space Law. UN Charter enjoys supremacy by putting international peace and security as its grundnorm. Article 3 of the Outer space treaty emphasised the utilisation of outer space to maintain global security and stability. Additionally, all space activities are to be conducted for peaceful purposes using innocuous methods as ordained by the Moon Treaty 1984.

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<sup>6</sup> ‘Oceans and the Law of the sea’ (*United Nations*)<<https://www.un.org/en/global-issues/oceans-and-the-law-of-the-sea#:~:text=Freedom%20of%20the%20Seas,belt%20surrounding%20a%20nation's%20coastline.>> accessed 18 April 2023

<sup>7</sup>Outer Space Treaty, 1967, art. 1

<sup>8</sup>*Ibid*

<sup>9</sup> Moon Treaty, 1984, art. 11

<sup>10</sup> Outer Space Treaty, 1967, art. 2

Destruction, installation, experimentation and other endeavours shall be conducted for peaceful purposes.

### **International cooperation**

The Outer Space Treaty takes the promotion of international cooperation as a contractual obligation. Article 1<sup>11</sup> obliges States Parties to facilitate and encourage international cooperation in scientific investigation. Article 3<sup>12</sup> obliges them to carry on activities in the exploration and use of outer space in the interest of promoting international cooperation and understanding. Article 5<sup>13</sup> obliges them to render to astronauts all possible assistance in the event of accident, distress, or emergency landing. Article 9<sup>14</sup> gives States Parties the right to seek international consultations and the obligation to undertake appropriate international consultations. Article 10<sup>15</sup> states that other states can request the launching state to observe the flight of the space object as a matter of equality. As per Article 11<sup>16</sup>, States Parties inform the Secretary-General of the United Nations, along with the public and the international scientific community, of the feasibility and practicability of the nature-conduct, locations and results of such activities.

### **INDIAN SPACE POLICY 2023**

#### **Overview**

India has been acutely progressing towards acquiring the status of a prominent international entity through organic and exemplary efforts. Allegiance portrayed to the space treaties and international law is evident with concurrent development in the legal and administrative front of space activities in India. In recent news, approval of the Indian Space Policy 2023 is akin to fastidious and dynamic space strata under the Indian gamut. The heart and soul of International space treaties are rooted in the concept of international cooperation effectuated through inclusivity and accountability. Conspicuously attempting to include various stakeholders in the space game, the vision approved by the Cabinet has taken life through the Space Policy 2023. The Indian Space Policy 2023 has been cast to have a transient, composite and overarching framework to enforce the reform vision approved by Cabinet.

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<sup>11</sup> Outer Space Treaty, 1967, art. 1

<sup>12</sup> Outer Space Treaty, 1967, art. 3

<sup>13</sup> Outer Space Treaty, 1967, art. 5

<sup>14</sup> Outer Space Treaty, 1967, art. 9

<sup>15</sup> Outer Space Treaty, 1967, art. 10

<sup>16</sup> Outer Space Treaty, 1967, art. 11



The vision is simple and classic, to enhance space capabilities, to enable, promote, and establish a thriving commercial presence in space; to exploit space as a driver of technological growth and derived advantages in other fields; pursue international relations, and create an ecosystem for the effective implementation of space applications among all stakeholders; for the nation's socioeconomic development and security, environmental and human life protection, peaceful exploration of outer space, public awareness stimulation, and scientific quest.

### **Strategy**

Skimming through the policy, it's apparent as the custodian of establishing administrative powers in the space sector. This Policy applies to any space exertion to or from Indian Home or within the governance of India, including the area to the limit of its exclusive profitable zone. Notwithstanding Anything contained in this policy, Govt. of India reserves the right to give immunity to the vittles' contained herein on a case-to-case basis. The focal here are inclusivity, research and development, expansion, consumer viability and private-sector exposure. The Gratification of these points is to be analysed through the following authorities acquiring power via the policy, namely:-

#### **1. IN-SPACE- Indian National Space Promotion & Authorisation Centre**

INSPACE shall serve as an independent government association, commanded to promote, hand-hold, guide and authorise space conditioning in the country. For this purpose, IN-SPACE shall periodically issue guidelines and procedures that would, among other effects, promote ease of doing business.

#### **2. Indian Space Research Organization**

ISRO, as the National Space Agency, will concentrate primarily on the exploration and development of new space technologies and operations and on expanding the mortal understanding of eternal space

#### **3. NewSpace India Limited**

NSIL, as the Public Sector Undertaking under DOS,

- It shall be responsible for commercialising space technologies and platforms created through public expenditure.
- It shall manufacture, parcel, or land space factors, technologies, platforms and others. Means from the private or public sector, on sound marketable principles.



- It shall serve the space-grounded requirements of druggies, whether Government realities or NGEs, on sound marketable principles.

#### **4. Department of Space**

It shall be authorised to regulate, supervise, implement, propagate, and space activities in India in conformity with the established laws and in cooperation with other agencies.

#### **SPACE ACTIVITIES BILL, 2017**

The Bill is comprehensive and encompasses significant facets of the Outer Space Treaty. The Department of Space has probed the introductory dogmas of a draft space bill in juxtaposition with the space acts of other space-faring nations. Latterly, consultations were held with experts on space law and transnational law and representatives of Ministries and departments through a public position factory. Through these deliberations, a broad agreement was arrived at on the need for a space act for India and what it should address to support the growth of space conditioning in the country.

It contains six chapters and 33 sections, including a detailed regulation on space activities. This bill, in its composition, acquires its backbone from the Outer Space Treaty though not immediately referencing other space treaties. It leaves room for interpretation, thereby widening the scope of its application corollary to the dynamism of the space sector. The entire bill can be diluted to four loci, namely:-

- a. Regulatory mechanism
- b. Stringent compliance with international treaties
- c. accentuation of international integration
- d. accountability and enforcement through licensing

#### **Regulatory Mechanism**

Chapter II of the bill conspicuously highlights the roots of implementing this bill: compliance and regulation. Section 3 of the account adorns the supreme power of the Central Government<sup>17</sup> to develop space activity plans, frame policies, ensure compliance, provide technical and financial support, grant licenses, monitor, supervise, investigate, safeguard, and administer space activities<sup>18</sup> and all and every stakeholder involved in space endeavour.

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<sup>17</sup> Space Activities Bill 2017, s. 3

<sup>18</sup>Ibid

### Stringent Compliance with International Treaties

The bill is rapt in its conformity to the Outer Space treaty. Every provision at the base of it mentions international law compliance, to which India is a prominent party. The drafters have acutely considered the genesis of space treaties and inculcated the same in the bill. Section 3 talks about authorisation for commercial activity which notify this ideology using the words “in compliance with any international treaty on outer space activity, for which India is a State Party, and the Central Government has an obligation in the manner as may be prescribed”. The acts proposed to be regulated by this bill are stringent and cannot be deflected under any circumstances. The soul and vision of space law are defined in this section. It has been reiterated in the following sections as well.

- **Section 5- Prohibition of unauthorised space activity**<sup>19</sup>

*“(b) any activity which is certified under any international agreements that arrangements have been made between India and another country to secure compliance with international obligations.”*

- **Section 6 (2)**<sup>20</sup>-

*The Central Government may, by notification, exempt any person or space activity from the requirement of authorisation if it is satisfied that the requirement is not necessary to secure compliance with any international obligation of India.*

- **Section 7- Licence for commercial space activity**<sup>21</sup>

*7(2)(b) A licence under sub-section (1) may be granted where the space activity is consistent with the international obligations of India;*

### Accentuation Of International Integration

India religiously applies the Outer Space Treaty in its functions. The bill explicitly mentions commercial space activities and provides licenses to carry on the same under section 7<sup>22</sup> of the bill. The principle of space law is centred on international cooperation, peace and security. It accentuates the concept of international integration, of which India has been an evident part. In the past, India vastly collaborates with global scientific institutions in space. Three landmark specimens Firstly, ISRO collaborated with the Japanese agency JASA (Japan

<sup>19</sup> Space Activities Bill 2017, s. 5,

<sup>20</sup> Space Activities Bill 2017, s. 6(2),

<sup>21</sup> Space Activities Bill 2017, s. 7(2)(b)

<sup>22</sup> Space Activities Bill 2017, s. 17

Aerospace Exploration Agency)<sup>23</sup> to carry on a moon mission to ameliorate connection with international scientific agencies and joint utilisation of resources. Reference for this can be drawn back to the TRISHNA mission, made by ISRO and its French counterpart CNES and designed to observe the earth's surface in the thermal infrared realm. Secondly, India's leading role as a global commercial launch service after ISRO signed an agreement with Network Access Associates Limited, United Kingdom (a One Web Group company) for the launch of 72 satellites into low-earth orbits (LEOs).<sup>24</sup> Thirdly collaborating with the US for the training of Indian astronauts as part of future cooperation in the space sector.<sup>25</sup> These instances are in consonance with the preamble of the Outer Space Treaty, which emphasises desiring to contribute to broader international cooperation in the scientific and legal aspects of space exploration. These collaborations, if backed by statutory power, signify enforcement of the preamble of the Outer Space Treaty, 1967, which acts as the foreground for space exploration tools for the benefit of humankind through collaborative international efforts. With enforcing the space activities bill, such commotion shall gain momentum leading to more diversified and magnanimous collaborations in the space strata.

### **Accountability And Enforcement Through Licensing**

With the advent of progression in the space field, accountability is inarguably a critical facet to deliberate upon. Unauthorised activities, as mentioned under Section 6 of the bill, provide a loose inference for unauthorised space activities. Still, the same has been rectified by giving the terminology a pessimistic view under the head of terms and conditions for a license<sup>26</sup> that prohibits the contamination of space, breach of space activities and violation of international obligation that is in consonance with article IX of the treaty.<sup>27</sup> as the term unauthorised activities have broad interpretation under the bill, but the law provides stringency by imposing a stern investigation and scrutiny process while giving licenses. Section 7<sup>28</sup> imbibes

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<sup>23</sup>ISRO discussing possible mission to moon with Japanese agency: S Somanath' (*The Economic Times*, 22 March 2023) <<https://economictimes.indiatimes.com/news/science/isro-discussing-possible-mission-to-moon-with-japanese-agency-s-somanath/articleshow/98909884.cms>> accessed 20 April 2023

<sup>24</sup>PM Modi lauds ISRO's LVM3 injecting 36 satellites into intended orbits' (*The Economic Times*, 26 March 2023) <<https://economictimes.indiatimes.com/news/india/pm-modi-lauds-isros-lvm3-injecting-36-satellites-into-intended-orbits/articleshow/99014566.cms>> accessed 20 April 2023

<sup>25</sup>US proposal to train Indian astronaut is not for Gaganyaan, India's first human space mission' (*The Economic Times*, 20 February 2023) <<https://economictimes.indiatimes.com/news/science/us-proposal-to-train-indian-astronaut-is-not-for-gaganyaan-indias-first-human-space-mission/articleshow/98089674.cms>> accessed 20 April 2023

<sup>26</sup>Space Activities Bill 2017, s. 8

<sup>27</sup>Outer Space Treaty 1967, art. IX

<sup>28</sup>Space Activities Bill 2017, s. 7

unconditional permission to the Central government to investigate space activity, space material, purpose, facility, location and equipment. The section fulfills conditions propagated in the treaty and restricts state liability through strict compliance. Section 8 provides strong backing that imposes terms and conditions on the fulfilment of which license shall be granted. Acquisition of a license is not an absolute right and can be revoked on a charge of transgression under section ten. Such absolute right is restrained further under section 9 by denying the transfer of licence use to a third party without prior permission of the central government.

The viability of enforcement depends on sanctions. The bill imposes penalties on transgressors under Chapter V, which is drafted in reference to Articles VI and VII of the treaty that obtrudes state liability for violation and compels authorisation and authorisation of government and non-governmental activities by the state in addition to liability for damages caused to another state party or natural and juridical person or parts of earth or air or space. Transgressions under the bill are namely undertaking commercial space activity without authorisation or licence<sup>29</sup>, false information or false document<sup>30</sup>, Suppression of factual information<sup>31</sup>, and disclosure of restricted information.<sup>32</sup> The liability imposed is reasonable and adequate by imposing a penalty of one crore and imprisonment extendable to 3 years. The Central government also imposes liability on the licensee to indemnify the state against any claim arising out of damage or loss out of commercial space activity carried on by the licensed entity: an extended provision for enforcing Article VII of the treaty.

## CONCLUSION

The Bill is needful legislation to support Space exploration and scientific collaboration undertaken by the Government of India. It shall sheath of safeguards and non-government entities to actively participate in the space race as intended by the Indian Space Policy 2023. Faring nations are willing to cooperate and work cooperatively with Indian minds to reap undeniable results. The scope of space law is ever-expanding and a nascent field that requires a leash to pave its accelerated possibilities. The wide interpretation of the Bill leaves scope for amendments and improvement in light of subsequent changes which is as surety will arise owing to governmental and private entity's commercial interest spawning in the field of space and celestial bodies. Prevention is better than cure. With stringent rules and regulations,

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<sup>29</sup>Space Activities Bill 2017, s. 13

<sup>30</sup>Space Activities Bill 2017, s. 14

<sup>31</sup>Space Activities Bill 2017, s. 15

<sup>32</sup>Space Activities Bill 2017, s. 18

the boon of space law can be prevented from becoming a bane or the world's worst nightmare. It might just become a robust binding factor for international.

