

# INTERNATIONAL INSTITUTE OF SPACE LAW

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[For inclusion in the Hearing Record, Senate Commerce Committee, May 23, 2017]

24 May 2017

To: U.S. Senate Committee on Commerce, Science, and Transportation  
Senator John Thune, Chairman  
Senator Bill Nelson, Ranking Member

CC: U.S. Senate Subcommittee on Space, Science, and Competitiveness  
Senator Ted Cruz, Chairman  
Senator Edward Markey, Ranking Member

**Subject: Letter for the record for the hearing on “Reopening the American Frontier: Exploring How the Outer Space Treaty Will Impact American Commerce and Settlement in Space”**

**Dear Chairman Thune and Ranking Member Nelson,**

Founded in 1960, the International Institute of Space Law (IISL) is an independent non-governmental organization dedicated to fostering the development of space law. The purpose of the IISL includes the promotion and further development of space law and the expansion of the rule of law in the exploration and use of outer space for peaceful purposes.<sup>1</sup> As such, the IISL has a keen interest in the topics to be discussed at the hearing organized by your Subcommittee on May 23, 2017. We submit the following letter in support of the Subcommittee’s deliberations.

## **1. Status of the Outer Space Treaty**

The Outer Space Treaty of 1967 was drafted and negotiated within the Committee on the Peaceful Uses of Outer Space (COPUOS), a body of the United Nations constituted in 1958 as subsidiary to the United Nations General Assembly. Meeting in New York and in Geneva, Switzerland, COPUOS and its Legal Subcommittee drafted the treaty in the mid-1960s amidst geopolitical tensions which threatened to spill over into outer space, a new realm of humankind’s exploration and use. The founders of the IISL participated in the drafting of this important instrument.

Then comprised of 28 States, COPUOS adopted the draft text of the treaty in late 1966, which was expedited to the United Nations General Assembly for inclusion in its Resolution 2222 (XXII) of December 17, 1966.<sup>2</sup> Signing ceremonies were held in Moscow, London, and in Washington D.C. at the White House. The Outer Space Treaty entered into force on October 10, 1967.

The Outer Space Treaty was quickly followed by a number of subsequent treaties on space, also negotiated and drafted within COPUOS with the direct involvement of IISL membership. These treaties clarified and

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<sup>1</sup> Composed of individuals and institutions of more than 40 countries elected on the basis of their contribution to space law, the IISL is sister organization of the International Astronautical Federation (IAF) and the International Academy of Astronautics (IAA). With special consultative status to the United Nations Economic and Social Committee (ECOSOC), the IISL is an officially recognized observer at the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and of two subcommittees, the Scientific and Technical Subcommittee, and the Legal Subcommittee; *see also* [www.iislweb.org](http://www.iislweb.org).

<sup>2</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, G.A. Res. 2222 (XVII), U.N. Doc A/RES/2222 (Dec.17, 1966), available at <http://www.un-documents.net/a21r2222.htm>.

expanded many of the major provisions of the Outer Space Treaty. The 1968 Astronaut Agreement expanded on Article V of the Outer Space Treaty. The 1972 Liability Convention expanded on Articles VI and VII of the Outer Space Treaty. The 1975 Registration Convention expanded on Article VIII of the Outer Space Treaty.

As of 2017, the Outer Space Treaty has 105 States which have ratified the treaty.<sup>3</sup> These include all of the major and historical spacefaring States such as the US, Russia, China, India, Brazil, Japan, and all the Member States of the European Space Agency (ESA). New and emerging space powers also often sign the treaty as a way to solidify their arrival in the community of serious spacefaring States. Additionally, a further 25 States have signed the treaty, which expresses their intention to ratify it in the future, or at least not to take actions which violate the intentions of the treaty.

## 2. Effects of the Outer Space Treaty

The Outer Space Treaty is an instrument of guiding principles that have served all aspects of the space sector successfully since inception. First granting space freedoms to explore and use outer space for peaceful purposes and the benefit of all mankind, the treaty's subsequent articles provide a framework denoting activities that are either permitted or prohibited in furtherance of those freedoms. Commercial space applications and activities have flourished in this legal environment. The framework relies upon responsible legislation promulgated at the national level by State Parties to the Treaty. The United States has shown leadership in this regard, enacting laws and regulations that are aligned with treaty obligations while constructively facilitating innovation.

Many significant accomplishments have been achieved within the parameters of the Outer Space Treaty. Benefits directly accrue to the space sector and all State Parties. However, because of the far reach of space applications and their intrinsic role in improved quality of life,<sup>4</sup> all of humankind benefits from responsible behaviour in space. Withdrawal from the treaty could invite a number of undesired outcomes, including *inter alia* far greater uncertainty to the thriving private sector, or withdrawal by other State Parties, or loss of credibility in the international space community, or worse.

## 3. National Implementation of International Obligations

Article VI of the Outer Space Treaty creates the international legal responsibility of States to ensure treaty compliance with regard to the activities of their governmental agencies and non-governmental entities in outer space. Further, the activities of its non-governmental entities trigger a State's authorization and continuing supervision ("shall require"). This direct responsibility and liability for damage on the international plane for the activities of nongovernmental actors is absolutely unique in international law, and is the impetus for supervision on all nongovernmental actors in the space domain. Further, Article VI accountability has served the private sector, both in the United States and internationally, in providing a level of transparency, legal certainty, and responsibility in the development of space applications. The United States has maintained Article VI responsibility with the promulgation of a well-developed *res* of domestic law overseeing launches and re-entries, the telecommunications industry, and earth observation activities.

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<sup>3</sup> United Nations, Committee on the Peaceful Uses of Outer Space, Legal Subcommittee, Status of International Agreements relating to activities in outer space as at 1 January 2017, A/AC.105/C.2/2017/CRP.7 (2017) available at [http://www.unoosa.org/res/oosadoc/data/documents/2017/aac\\_105c\\_22017crp/aac\\_105c\\_22017crp\\_7\\_0\\_html/AC105\\_C2\\_2017\\_CRP07E.pdf](http://www.unoosa.org/res/oosadoc/data/documents/2017/aac_105c_22017crp/aac_105c_22017crp_7_0_html/AC105_C2_2017_CRP07E.pdf).

<sup>4</sup> Space applications will figure prominently in the achievement of the United Nations Sustainable Development Goals for 2030.

#### **4. Conclusion**

In conclusion, the International Institute of Space Law would like to recognize the Subcommittee's serious inquiry into the appropriate level of legislation necessary to maintain treaty compliance in furtherance of the United States' international responsibility while also fostering an environment of innovation. We further remind this Subcommittee of the lasting and fundamental importance of this foundational and visionary treaty governing the activities of States, and of the non-governmental actors they are responsible for, in the peaceful exploration and use of outer space.

Respectfully,

#### **President of the International Institute of Space Law**

Prof. Dr. Kai-Uwe Schrogl (Germany)

#### **Vice-President of the International Institute of Space Law**

Prof. K.R. Sridhara Murthi (India)

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