

Legal Analysis of Military Observation from Outer Space

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Abstract

While the legality of military related observation from outer space, done by reconnaissance satellites, was not considered in detail, the actual activities have played an important role in the cold war era. In legal sense, these activities remains in the gray area. In the United Nations, however, there can be seen a new tendency for introducing more ideal peace and security in outer space. Through this tendency, the legalized activities might be thought. On the other hand, civil remote sensing technology now can provide the adequate data and information for security purposes. In order to promote its active role in international peace and security, new legal framework for those usage will be needed in near future.

Introduction

In the field of military related observation activities from outer space, while their legal implication has not fixed up yet, *de facto* usage is continuing.

This paper looks at the general discussion around this matter and considers one of the fundamental principles which regulate the future activities. And also, this paper points out some problems rising from the civil remote sensing activities from the military viewpoint.

Military Observation Activities from Outer Space

The idea that for the national security, the outer space is the most adequate sphere for observing the military related activities on the earth surface began when the space utilization started in 1950's. Reconnaissance satellites have mainly been used for that purpose.

The space law system which consists of some treaties including the Outer Space Treaty of 1967 set no concrete regulations regarding the existence and operation of reconnaissance satellites. The activities that have been prohibited are to put the weapons of mas-destruction on the earth orbit and military activities on the moon and other celestial bodies (Article 4).

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The U.S.A. who owns and operates the reconnaissance satellites for the national security expressed that though the Outer Space Treaty forbade some activities clearly provided in the article 4, the other activities should be done according to the international law including the United Nations Charter (Article 3). In this opinion, the U.S.A. can launch and operate the reconnaissance satellites, because the international law did not treat that kind of activities and reconnaissance does not violate sovereignty of the subjacent countries. They insisted that the observation from outer space should be allowed like the observation and information gathering from the high seas because they both are done from the areas to which national jurisdiction does not extend.

In fact, the latest US National Space Policy in 1996 declared that "the United States rejects any limitations on the fundamental right of sovereign nations to acquire data from space."¹

Under this interpretation and following practices, the absence of explicit claims against the military data gathering from outer space means the implicit acceptance in legal sense.

The only one protest by Egypt against The U.S.A. when the Suez area was detected by US reconnaissance satellites in 1970 is thought to be an exception².

On the other hand, there can be another idea that the activities which are not prohibited directly should be controlled by other basic principles in the space law system. Whether reconnaissance activities violate the common interest principle, as a main pillar of space law system, in the article 1 of Outer Space Treaty as well as the article 3 is considered. In general, it is an interpretation assumed to be a wide concept that this principle contains peaceful use of outer space. The understanding that

international cooperation and peaceful use are included in common interest principle was born in the recent United Nations resolutions adopted by General Assembly. For instance, one resolution during the 51st session is "Recognizing the growing scope and significance of international cooperation among States and between States and international organizations in the exploration and use of outer space for peaceful purposes" in the sixth sentence of preamble³. And this understanding is also shown more clearly in the following phrase; "Deeply convinced of the common interest of mankind in promoting the exploration and use of outer space for peaceful purposes and in continuing efforts to extend to all States the benefits derived therefrom" in the next resolution of the same session⁴. In addition, the other resolution titled "Prevention of an arms race in outer space" is, at the beginning of the preamble, "Recognizing the common interest of all mankind in the exploration and use of outer space for peaceful purposes."⁵ Here, the trend in the United Nations can be read. That is, the common interest principle should be activated by the peaceful use and international cooperation concepts. In this context, for considering whether all the space activities including observation activities by reconnaissance satellite can conform with the common interest of all mankind, two basic concepts, peaceful use and international cooperation will become a judgment standard for accepting its legality. Therefore, a triangle shaped tester which is composed of common interest of mankind on the top, peaceful use and international cooperation on both sides of the base, can be thought for the legal judgement.

Using this tester, there might be the room for questioning legality of the present reconnaissance satellite activities because those are for the

national security purpose, not for the international cooperation. If so, the above mentioned protest by Egypt can be treated as an evidence for denying the implicit acceptance of military observation from outer space.

Actually, each agreement of the outer space law system did not restrict observation activities of reconnaissance satellite directly, though a number of reconnaissance satellites exist and are used for mainly national security. The existence of reconnaissance satellites themselves has been ambiguous because the nations have not informed the Secretary General of the United Nations of real functions of reconnaissance satellites according to the registration Treaty. Until now, military observation activities from outer space has not been treated by any space law treaties, and remained in "gray" existence in the outer space law system.

On the other hand, observation activities have been legalized in part.

Concretely, it is an allowance in disarmament treaties including the ABM treaty (1972) as verification means. In addition, the International Satellite Monitoring Agency (ISMA) proposal of 1978 where the use of reconnaissance satellites as international treaty verification means and crisis observation measures was shown does not collide with the Outer Space Treaty though it is not established. There also is a similar allowance about various fields for the maintenance of international peace and security like UN Peace Keeping operations. Because these activities are thought to be legalized usage through the above-mentioned judgment tester. It can be evaluated internationally that the allowance as verification means contributes for improving the effect of disarmament, decreases the possibility of a military collision and is related to the crisis

evasion. The verification and crisis monitoring by ISMA will contribute to the international peace and security more widely than verification between the contracting parties and be connected with common interest of all mankind. Observation from outer space for Peace Keeping activities is sure to become common interest of mankind for the peaceful purpose, too. Those activities from outer space with such specific purposes can become one of the legal precedent for the future observation activities, because such activities can successfully pass the test (peaceful use and international cooperation) of the common interest principle derived from the article 1 of the Outer Space Treaty.

Civil Observation Activities from Outer Space

The civil remote sensing activity which uses now a technology similar to reconnaissance satellites in part did not become a problem regarding their existence. The problem treated in international space law was the method of distributing the data and information. Remote sensing principles of 1978 adopted by the United Nations⁶ shows basic principles about the distribution of the data and information. These principles are thought to follow the common interest direction showed in the Outer Space Treaty of 1967.

Recently, high resolution civil remote sensing satellites appears because of transferring military technology after the collapse of the cold war structure in the end of 1980's. However, even if those satellites achieve the high resolution, fundamental purposes of civil remote sensing is not security. It is an improvement and control of the natural resource, the land use, and the environment (Principle I). It seems

clear that the Outer Space Treaty allows that idea as a peaceful use and international cooperation.

When the nations use those 'civil remote sensing data and information for their national security, there is no legal problem in international law. First of all, the data and information are marketed in general according to the UN remote sensing principles. Principle XII and XIII provide that those are distributed to any nation on an indiscriminately basis. After purchasing those data by some countries, the data usage is legalized by the general international law. The activities done by the Western European Union Satellite Centre which uses marketed remote sensing data for regional security is a good example to be pointed out. This centre should be recognized positively because it plays an important role in European regional security and cooperation⁷.

It is time when cause the problem that information about the specific region where the tension rises is opened to the public by the third parties like media. There is a possibility to increase the needless tension and cause the actual collisions and disputes. An arbitrary opening such information to the public might be an unstable factor for the peaceful settlement and not agree with common interest principle of the space law.

Actually, the reasonable restriction in distribution should be considered in the above mentioned case though the data and information are basically accessible by any nations according the UN principles. There also is a problem "who does restrict data distribution?" It is assumed that the countries who are responsible for supervising the private entities' activities and/or the United Nations (the Security Council) who are responsible for international peace and security decide, judging the influence of the related data according to the

Outer Space Treaty. In addition, the previous consent of the country which receives the disadvantage by opening information to the public, should be considerable. Oppositely, the data supply which profits one country of the disputed area cannot be admitted by the common interest principle. These problems are not discussed relating the civil remote sensing, when the civil activities have not been connected directly with the security problem in initial stage. The access right secured in the United Nations principles concerning the remote sensing data and information is the one which related to the problem of sovereignty over the development which was the concern from developing countries. Now since the civil remote sensing satellites achieve the high resolution ability, the new influence to the international peace and security will be the problem to be discussed according to the common interest of all mankind principle.

Conclusion

There is room that the new style of lawful observation from outer space is considered because the clarification of common interest principle is progressing in the United Nations while there is no direct regulations which limit and prohibit observation activities by the military satellites as a whole. Though there also is no rules to forbid the civil remote sensing for the military purposes, when the international peace and security seems to be harmed by high resolution data and information, the additional restriction is thinkable. And it will be the time in near future that the positive use of civil remote sensing for the international peace and cooperation should be considered.

Notes

1. National Space Policy, National Science and Technology Council, The White House, 1996, (3).
2. Frankfurter Allgemeine Zeitung, Montag, 7 September 1970, Nr. 206, Seite 4.
3. A/RES/51/122 on 4 February, 1997.
4. A/RES/51/123 on 10 February, 1997.
5. A/RES/51/44 on 7 January, 1997.
6. A/RES/41/65 on 13 December, 1986.
7. Y. Hashimoto "MULTILATERAL VERIFICATION ORGANIZATIONS -CASE OF WEU SATELLITE CENTRE", The Proceedings of the 38th Colloquium on the Law of Outer Space, pp. 262-265, AIAA, Washington, DC.