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A Critique of National Response to Space Activities: The Nigeria Situation

Olatinwo Khafayat Yetunde (Ph.D)*

Igbayiloye Oluwatosin Busayo*

Abstract

The 1957 space travel by the Soviet Union and United States opened up the prospect of outer space exploration. The reality of space exploration and space-based technology prompted the world community to put together principles at International level on the use of outer space. This paper intends to discuss some of the national responses of some states in respect of their space activities to complement International Space law vis-à-vis the effort of the Nigeria government in putting in place legal mechanism to regulate its space activities and the adequacy of such laws. This paper adopted doctrinal legal method of research as it discussed some of the national responses of some states in respect of their space activities to complement International Space law vis-à-vis the effort of the Nigeria government in putting in place to regulate its space activities and the adequacy of such effort. It found that, even though Nigeria has put lots of effort in its space activities by launching Satellite for different purposes, it is yet to make laws specifically to regulate its activities in Outer Space. The available regimes addressed were found to be insufficient. Hence, recommendations were suggested to cater for the lacuna which includes the need to have a Nigerian Space law which would take into consideration some of the provisions identified in the Laws of other jurisdiction addressed.

Keywords: National Response, Space Activities, Nigeria

1.0 Introduction

Until the middle of the last century, neither man nor machine had contact with the environment called "Outer Space". The year 1957 can be said to be ground breaking as it marks the beginning of space age when the first unmanned artificial satellite was launched successfully in Space, ever since, series of satellites have been launched in space for different purposes by developed States like the United States of America, United Kingdom, Germany and Russia. Developing countries like Nigeria have also shown their interest in space exploitation¹.

The need to control the activities of states on space exploration and exploitation brought about the various International Legal regimes which include the Treaty Banning Nuclear Weapon Tests in the Atmosphere in Outer Space and Under Water often called the partial test ban treaty or Nuclear

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¹ Nigeria's first satellite was launched into orbit on 27 September, 2003 as an earth observation satellite called the NigeriaSat-1 with a five years life span and then communication Satellite code-named as NIGCOMSAT-1 in 2007 and recently Nigeriasat-2 and Nigeriasat-x in 2011

Test Ban Treaty of 1963², Outer Space Treaty of 1967³, Convention on International Liability for Damaged caused by Space Objects 1972⁴ Convention on Registration of objects launched into outer space (1975)⁵, Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space 1968⁶ and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979⁷

Aside from the International (Multilateral and Bilateral) Agreements on Outer space, States at national level have taken the initiative to put in place laws and policies on space activities to compliment the International Agreements to regulate their domestic activities in Space. These laws cater for areas which may not be necessarily dealt with in the various international laws such as insurance, contracts, issuance of licenses and permit. This move is quite important more so where the particular state is actively involved in space exploration. This paper addresses the efforts of some States who have made laws to complement the International regulations in respect of Space activities. The states whose domestic space laws that would be appreciated briefly in respect of work are South Africa, China, United States of America, Japan and Nigeria⁸

2.0: South Africa

The South Africa's Space Affairs Act of 1993 regulates its domestic space activities. This country has ratified the relevant international space treaties, conventions and agreements which include the Outer Space Treaty, Registration Convention, Rescue Agreement, Liability Convention and the Moon Treaty. The 1993 Act establishes⁹ the South African Council for Space Affairs to implement its space policy and oversee the interests, obligations and responsibilities of South

² Entered into force on 10 October 1963

³ The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies (the "Outer Space Treaty", adopted by the General Assembly in its resolution 2222 (XXI)), opened for signature on 27 January 1967, entered into force on 10 October 1967

⁴ The Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", adopted by the General Assembly in its resolution 2777 (XXVI)) opened for signature on 1 March 1972 entered into force on 1 September 1972

⁵ The Convention on Registration of Objects Launched into Outer Space (the "Registration Convention", adopted by the General Assembly in its resolution 3235 (XXIX)), opened for signature on 14 January 1975 entered into force on 15 September 1975

⁶ The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the "Rescue Agreement", adopted by the General Assembly in its resolution 2345 (XXII)), opened for signature on 22 April 1968, entered into force on 3 December 1968

⁷ The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the "Moon Agreement", adopted by the General Assembly in its resolution 34/68), opened for signature on 18 December 1979, entered into force on 11 July 1984

⁸ "Reply from the questions asked at the Forty-Fifth Session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space in 2006." DOC. UN A/AC.105/SS9 2007
⁹ <http://www.unoosa.org/en/copous/working-groups/lsc/ddos/index.html> accessed 16 September 2018. "Nigeria Needs Space Law Center, Says Space Scientist" *Vanguard* (11 October 2012) <<http://www.vanguardngr/2012/10/nigeria-needs-a-space-law-centre-says-space-scientist/>> and <<http://www.nigeriacommunicationsweek.com.ng/news/nasrda-mulls-law-on-space-regulation>> accessed 16 October 2018

⁹ Section 4 Space Affairs Act 1993

Africa's space-related activities according to the existing Outer Space regimes entered into or ratified by the South Africa.¹⁰ Other South Africa's space legislation include Space Affairs Amendment Act 1995, National Space Agency Act No 36 of 2008 and Astronomy Geographic Advantage Act 2007.

The South African National Space Agency Act established the National Space Agency for the purpose of promoting the use of space, cooperation in space-related activities, fostering research in space science and the advancement of scientific engineering through development of human capital, support of industrial development and fostering research in space science.¹¹ South Africa also had representative as a member of the Committee for Peaceful Uses of Outer Space (UNCOPUOS).¹²

3.0: China

In China, several rules and regulations put in place by regulatory agencies presently govern the State's space activities. According to China's white paper¹³ "the aims of China's space activities are: to explore outer space, and learn more about the cosmos and the Earth; to utilize outer space for peaceful purposes, promote mankind's civilization and social progress, and benefit the whole of mankind; and to meet the growing demands of economic construction, national security, science and technology development and social progress, protect China's national interests and build up the comprehensive national strength."¹⁴

China's domestic space legislation includes its 2002 Interim Measures on the Administration of Permit for Civil Space Launch Projects,¹⁵ Provisions and Procedures for the Registration of Space Objects¹⁶ and Regulations on Control of Military Products Export.¹⁷

In February 2001, the country made Rules of Administration on the Registration of Space Objects in an effort to strengthen the State's regulation of space activities and to establish a registration system for space objects, and to implement effectively the obligations of a State party to the Registration Convention on space object into Outer Space. In November 2002, China also issue provisional regulations on the administration of licenses for civilian space launch projects.¹⁸

¹⁰ Ibid.

¹¹ See the Preamble, South African National Space Agency Act No 36 of 2008

¹² 1994. Committee on the Peaceful Uses of Outer Space: Membership Evolution. United Nations Office for Outer Space Affairs <http://www.unoosa.org/oosa/en/ourwork/copous/members/evolution.html> accessed 6 march 2019

¹³ China's Space Activities (White Paper) Date : 2003-12-15<<http://www.spaceref.co.jp>> accessed 15 July 2018

¹⁴ Ibid.

¹⁵ "Decree of the Commission of Science, Technology, & Industry for National Defense of the People's Republic Of China No 12. Entered into force on the 21st December 2002." <<http://www.fdi.gov.cn/pub/FDI-EN/Laws/default.htm>>accessed 15 July 2018

¹⁶ Published in 2001 by the Commission of Science, Technology and Industry for National Defense (COSTIND) and the Ministry of Foreign Affairs (MFA)

¹⁷ First enacted in 1997 and revised in 2002

¹⁸ UN Committee on the Peaceful Uses of Outer Space Information on "National Legislation Relevant to the Peaceful Exploration and Use of Outer Space." Note by the Secretariat. A/AC.105/932 Distr.: General 2

4.0: United States of America

United States' space legislation includes the Land Remote Sensing Policy,¹⁹ Space Transportation Infrastructure Matching Grants,²⁰ Commercial Space Act 1998, National Aeronautic and Space Act²¹ and the Space Commercialization Promotion Act of 1996²² put in place to facilitate the development of commercialization in its space industry.²³

The Congress, while re-asserting the Outer Space as common heritage in the National Aeronautics and Space Act, declared its space policy to include the use of Outer Space peacefully for the benefit of mankind and to contribute to the following objectives:²⁴

- (1) "The expansion of human knowledge of the Earth and of phenomena in the atmosphere and space;
- (2) The improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles;
- (3) The development and operation of vehicles capable of carrying instruments, equipment, supplies, and living organisms through space;
- (4) The establishment of long-range studies of the potential benefits to be gained from, the opportunities for, and the problems involved in the utilization of aeronautical and space activities for peaceful and scientific purposes;
- (5) The preservation of the role of the United States as a leader in aeronautical and space science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere;
- (6) The making available to agencies directly concerned with national defense of discoveries that have military value or significance, and the furnishing by such agencies, to the civilian agency established to direct and control nonmilitary aeronautical and space activities, of information as to discoveries which have value or significance to that agency;
- (7) Co-operation by the United States with other nations and groups of nations in work done pursuant to this Act and in the peaceful application of the results thereof;
- (8) The most effective utilization of the scientific and engineering resources of the United States, with close cooperation among all interested agencies of the United States in order to avoid unnecessary duplication of effort, facilities, and equipment; and
- (9) The preservation of the United States preeminent position in aeronautics and space through research and technology development related to associated manufacturing processes."²⁵

The Act establishes the National Aeronautics and Space Administration (NASA).²⁶ NASA is headed by an Administrator and a deputy Administrator, appointed by the President and with

February 2009<<http://www.qwu.edu>> accessed 15 July 2018

¹⁹

15 United States Code Chapter 82

²⁰

49 USC Chapter 703

²¹

Pub. L. No. 85-568 72 Stat. 426 (Jul. 29, 1958) As Amended (HR3936)

²²

<Ibid. <http://www.sites.google.com>> accessed 15 July 2018.

²³

Section 102

²⁴

Section 102

²⁵

Section 202, Title II

²⁶

Senate approval. Both are under direct supervision of the President.²⁷ The function of the Administrator is exercised by the Deputy Administrator when the Administrator is absent or suffers any disability which hinders him from carrying out his function as the Administrator. Both the Administrator and the Deputy Administrator cannot engage in any other business, vocation, or employment during their tenure.²⁸

The Space Commercialization Act which provides for the commercialization of space define commercial provider to mean 'any person providing space transportation services or other space-related activities, primary control of which is held by persons other than Federal, State, local, and foreign government'²⁹ while space-related activities include research and development, manufacturing, processing, service, and other associated and support activities.³⁰

As at 30th October 2018, a bill to promote the development of a United States commercial space resource exploration and utilization industry and to increase the exploration and utilization of resources in outer space cited a Space Resources Exploration and Utilisation Act 2015, had been placed on the Union's calendar since 15th June 2015 for consideration and passing into law³¹

5.0: JAPAN

Amongst the Space laws enacted in Japan are the Law Concerning the National Space Development Agency of Japan³² and Fundamental Act of Outer Space.³³ Wherein it is stated that the country recognizes that the significance of outer space exploitation and utilization i.e space use and exploitation is increasing along with advancing science technologies and changing situations in and around the country, hence, the purposes of this law is to promote in a planned and comprehensive manner the overall policies and measures concerning space use and exploitation; to contribute to improving the citizens' living standards and developing the economic society; and to dedicate to peace and welfare for all human beings in the world.

These purposes will be attained in line with the pacifist principle of the Japanese Constitution and in harmony with the environment. The country also shall expand the roles space use and exploitation plays in the country by making and enforcing fundamental rules and principles concerning space use and exploitation; by clarifying responsibilities the government should take for space use and exploitation; by drafting the Outer Space Master Plan; and by establishing the Outer Space Exploitation Strategy Headquarters.³⁴

Furthermore, that "the use and exploitation of space is to be done in conformity with the pacifist principle of the Japanese Constitution and in accordance with outer space treaties and other international promises, including Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.³⁵ And that

27

Ibid.

28

Ibid.

29

Section 2

30

Ibid.

31

Union Calendar No. 111, H.R.1508, Report 1/No.114-153<<http://www.congress.gov/bills/114th-congress/house-bill/1508/all-info>> accessed 30 October 2018

32

Law No.50 of June 23, 1969 (as amended)

33

(Law No.43, 2008) Enacted on 21 May 2008 and entered into force on 27 August 2008

34

See Article 1

35

See article 2

outer space exploration and exploitation will be carried on to improve the citizens' living standards; to form a safe and secured society; to remove any kind of threats to their lives, such as natural disasters and poverty; and to maintain peace and security in the homeland and the world"³⁶

Finally, Article 7³⁷ provides that the government of Japan shall formulate and implement comprehensive policies and measures concerning space use and exploitation in compliance with the fundamental principles mentioned from Article Two to Article Seven

6.0: Nigeria

Though Nigeria is a signatory to most of these International Treaties and Conventions on Outer Space,³⁸ Nigeria is yet to pass a law specifically on Space activities.³⁹ As pointed out by Momoh,⁴⁰ recourse would be had to available laws in Nigeria relevant enough to be borrowed and applied to outer space. To him, some of the State's domestic laws that are applicable to, some aspects such as communications, insurance, export controls and intellectual property/database protection can be made applicable, by reference, to space-related activities. This was the situation with France until it enacted its own National Space Law in 2008.⁴¹ For example, the Insurance Act of 2003 which provides that 'part of the re-insurance pertaining to assets such as satellites, underwritten by foreign insurance companies, must be placed with Nigerian underwriters,'⁴² while the Nigerian Communications Act of 2003⁴³, grants the Nigeria Communication Commission (NCC) the sole and exclusive power 'to manage and administer the radio frequency spectrum for the communications sector and in that regard to grant licenses for and regulate the use of the said radio frequency spectrum.'⁴⁴ It is a fact that satellite communications⁴⁵ rely upon the use of radio frequency spectrum for signal transmissions. On the protection of remotely sensed data, one must take into account, the Copyright Act,⁴⁶ and the 2003 National Geo-

- ³⁶ See article 3
- ³⁷ Fundamental Act of Outer Space 2008
- ³⁸ Including the Outer Space Treaty, Registration Convention, Liability Convention and the Moon Treaty
- ³⁹ W Momoh 'An Abstract on the Overview of Nigeria Space Activities and Space Law' <<http://www.space.gov.za/conferences/alc2007/programme/momoh>> accessed on 7 July 2018
- ⁴⁰ W Momoh 'An Overview of Nigerian Space Activity and Space Law' (2008)
- ⁴¹ French Law on Space Operation 2008
- ⁴² Section 72, Pt XII
- ⁴³ Section 32 & 33 (3) (b)
- ⁴⁴ It is interesting to note here that though the private entity established by the Nigerian Government to operate the Nigcomsat-1 communications satellite is subject to the provisions of the Nigerian Communications Act of 2003 as far as the use of radiofrequency spectrum is concerned, its day to day operations would ordinarily be governed by those guidelines put in place for the operations of state-owned companies under the Federal Ministry of Science and Technology, as stated in the Nigerian Federal Civil Service Circular - Reference No. SGF/OP/IS.3/T.1/142 of 2nd August 1999
- ⁴⁵ G A Alabi 'Telecommunications in Nigeria' University of Pennsylvania- Africa Studies Center.
- ⁴⁶ Online Article <http://www.africa.upenn.edu/ECA/aisi_infil.html> accessed 26 October 2018
- Cap 28, LFN 2004

information Policy⁴⁷ which makes provision for the purpose of protecting intellectual property with respect to remotely sensed data. Also, the Fire Arms Act, provides regulations on the use, import and export of artillery and rocket weapons (which would cover space launch vehicles).⁴⁸ Hence, this may become cumbersome since reference may be made to numerous laws to regulate space activities.

The National Space Research and Development Agency Act,⁴⁹ though provides for the authorisation for the licensing of space activities and prevention of space activities that can cause contamination to the environment as part of the functions of the Agency, cannot be said to be exhaustive enough in its provisions. Thus there is the need for a domestic space regime which will cover basic aspects of space activities. This will enable the country to comply with her obligations under international space law.⁵⁰

Nigeria's first⁵¹ satellite was launched into orbit on 27 September, 2003 as an earth observation satellite called the NigeriaSat-1 with a five years life span. The encouraging successes recorded from the NigeriaSat-1 resulted in further investment by the Federal Government in a communication Satellite code-named as NIGCOMSAT-1⁵² and a second earth observation satellite, Nigersat-2.⁵³

NigeriaSat-1 images have been used to address issues in virtually every facet of life in the Nation. For instance, in the terrorist attack by Boko Haram group, particularly the kidnap of the Chibok girls, the country relied on the images from the satellites to get a clear view of the Sambisa forest.⁵⁴ Also through the Disaster Monitoring Constellation (DMC), images have been made available worldwide for the management of disasters.⁵⁵ The Director-General⁵⁶ of NASRDA,⁵⁷

⁴⁷ IA Ganiy 'Current Trends in Nigeria's Space Development Programme to Facilitate Geospatial Information (GI) Sharing and Implementation of the NGDI' <http://www.aag.org/galleries/gdest/Agbaje.pdf> accessed 16 October 2018

⁴⁸ 1958. Cap F28, LFN 2004

⁴⁹ 2010. Government Notice No. 382 <http://www.nasrda.gov.ng/en/nasrda-act/> accessed 6 March 2019

⁵⁰ Frans G. Von der Dunk 'The Second African National Space Law: The Nigerian NASRDA Act and the Draft Regulations on Licensing and Supervision' (2017) (92) SCTLFPF <<http://digitalcommons.unl.edu/spacelaw/92/>> accessed 16 October 2018

⁵¹ So far five Satellites have been launched by Nigeria. The recent one was launched in December 2011 called Nig ComSat. <<http://www.nasrda.gov.ng>> accessed 26 October 2018

⁵² Launched in May 2007 in China

⁵³ Efem Nkanga, 'History as Nigeria Finally Launches Two Satellites' *Thisday* (Nigeria, 17 August 2011) <www.thisdaylive.co/articles/history-as-nigeria-finally-launches-two-satellites/9658> accessed 26 October 2018

⁵⁴ 'Overview of Space Exploration in Nigeria: Challenges and Solutions for the Effective Operation of the Sector' <<https://s3.amazonaws.com/documents.lexology.com/df30977b-68b2-4e11-bf66-16c5e10e7411.pdf>> accessed 16 October 2018

⁵⁵ NigeriaSat-1. Online. <http://www.globalsecurity.org/space/world/nigeria/nigeriasat-1.htm> accessed 6 March 2019

⁵⁶ Seidu Mohammed

⁵⁷ 'National Space Research and Development Agency (NASRDA) was established in 1999. NASRDA is responsible for implementing the National Space Policy of Nigeria. The Agency is launched to promote space activities and research in Nigeria. The scope of the national Space program of Nigeria includes Study and Learning of Basic Space Sciences Research and Education in areas of rocketry, satellites and space

however, identified some of the burning issues in space development to include strategies for the long-term security of space operations in a more crowded and more militarized environment, development of voluntary guidelines for space debris mitigation, discussion on possible 'rules of the road' for space operations, as well as other issues such as cooperative space exploration. Others, he cited to include analysis of long-term sustainable space activities, development of potential legally binding space rules, processes for avoiding interference or collision in space, and strategies for preventing space from becoming an area of conflict.⁵⁸

Nigeria's interest in space activities also informed its co-hosting of a four-day Workshop on Space Law titled 'Meeting International Responsibilities and Addressing Domestic Needs' with The United Nations Office for Outer Space Affairs (OOSA).⁵⁹ The Nigeria government also incorporated the Nigeria Communication Satellite Ltd (NIGCOMSAT) in 2006 to provide fixed Satellite services.⁶⁰

Recently, in April 2018, the Nigeria Communication Satellite announced that it will launch another two satellites in collaboration with China Great Wall Industry Cooperation (CGWIC). These satellites is planned to be deployed in 36 months from the time it was announced.

These activities and workshop indicates keen interest of the Nigerian government in space activities. Therefore, domestication of a space law is necessary in order to address the present challenges as indicated earlier.

It is the submission of this paper that Nigeria has more potential in its space activities than to have law which is inadequate for space activities. The 2010 NASRDA Act is a start as there are still many countries without domestic space regulations.⁶²

sciences, establishment of National Earth observation station for remote sensing and satellite meteorology data acquisition and the provision of reliable telecommunication services in Nigeria.' NASRDA ACT 2010 No. 9 A 1255.

⁵⁸ *Thisday* (Nigeria, 17 August 2011) <www.thisdaylive.co/articles/history-as-nigeria-finally-launches-two-satellites/9658> accessed 26 October 2018.

⁵⁹ Within the workings of the United Nations Programme on Space Applications, the Workshop was organized and hosted by the Government of Nigeria, and was held in Abuja, Nigeria, 21-24 November 2005. 'United Nations Holds Space Law Workshop In Nigeria' Press release, 18 November 2005. UN Office for Outer Space Affairs. <<http://www.spaceref.com>> accessed 7 September 2018.

⁶⁰ This company launched its first geostationary Satellite in 2007 (Nigcomsat-1) which was later deorbited due to operational failure. It subsequently launched another replacement satellite in 2011 called NigComSat-1R at Xichang Satellite Launch Centre, South West China <<http://nigcomsat.gov/about.php>> accessed 27 September 2018.

⁶¹ 'Nigeria to Launch 2 Satellites Soon- NIGCOMSAT' *Vanguard* (Nigeria, 30 April 2018) <<https://www.vanguardngr.com/2018/04/nigeria-launch-2-satellites-soon-nigcomsat/>> accessed 16 October 2018.

⁶² The following listed countries have submitted their national space law to the United Nations Office for Outer Space Affairs. Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, France, Germany, Japan, Kazakhstan, Netherlands, Norway, Republic of Korea, Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States.

According to the Act, besides from the establishment of NASRDA, it is to also encourage capacity building in space science technology development and management, develop satellite technology for various applications and enhance the development and entrenchment of research.⁶³ However, a cursory look into the provisions of the Act reveals a rather keen interest in the establishment of the Agency than other purposes identified in the preamble.

The Act is divided into 6 parts. Part I deals with the establishment and composition of the Agency. Part II, III, IV and V are concerned with the functions, structure, staff and financing of the Agency while the last part provides power of acquisition and disposal of property as well as its borrowing powers, Court action and the power of the Council to make regulation to further the objectives of the Agency.

There is need to put more effort in specific regulations such that would put in the interest of individual corporation interested in space activities, insurance of space object or activities, registration of space objects, safety of Nigerian Astronauts, liability of space users and the list is endless. Clue can be taken from the domestic space laws of other countries such as those identified.

The Council can also make regulations which would cover all these aspect not dealt with in the substantive Act.

7.0 Conclusion

Progressive steps are taken by Nigeria which is to advance its position in the exploration of Outer space and the country is ambitious to participate in space activities. As one of the leading countries in Africa in outer space, Nigeria made an attempt to enact a legislation i.e National Space Research and Development Agency Act to contribute to further the development in space law. However, the Act appears to be inadequate as it caters for few aspects of space activities. Hence, other laws may need to be referred to as regards other aspects of space activities which may be cumbersome. Nigeria can learn from other countries which aside from ratifying international treaties, adopted specific legislation to regulate space activities.

The domestication of the various International Space Law and national space legislation comprehensive enough to address vital aspects of space activities of the country are therefore recommended.

America as at 27 July 2015 <<http://www.unoosa.org/oosa/en/ourwork/space/space-law/national-space-law/index.html>> accessed 27 July 2018
⁶³ See the preamble

