

# Re-Examination of The Role of Armed Forces in Space and Discipline of International Space Law : Meta-International Law Approach\*

YONEDA Tomitaro\*\*

< Contents >

1. Introduction
2. Space Development and Armed Forces-Meaning of 31 August 1998 Launching
3. Expansion of the Activities of the Armed Forces in Space and ILS -the Meaning and the Contents of the Construction of Legal Standard
4. Conclusion

## 1. Introduction

The armed forces of individual state, since the termination of the Gulf War substantially, has increased their concerns on military operations in space.<sup>1)</sup>

---

\* This is an expanded and revised version of the paper read at the 21st Autumn Symposium of Air and Space Law of the Korean Association of Air and Space Law at Seoul, Korea in 1998.

\*\* Visiting Researcher, Research Institute of Public Local Entity, Chuo University, JAPAN.

1) For the view that the increase of the concerns on the military operations in space-by

They have become to recognize the essentiality of their military operations in space for their national security. Because a military and diplomatic utility of operations of military satellite and ballistic missile in space were a good lesson to each nation.<sup>2)</sup>

The most significant issue of some issues on this military enlargement, wever, is that the range of the activities of the armed forces of individual state are likely to spread beyond the military field into the non-military field, and space development is likely to militarize as a whole under the comprehension of national security policy.<sup>3)</sup> The armed forces of individual state has played an important role since the beginning of space development on account of hazard or unknown in itself. We could predict that the increase of the playing role of armed forces in space development will continue even in a near future. As the space military operations of armed forces of individual state have already expanded beyond an inherent military field, new normative standard aiming at these armed forces's all of activities in space should be introduced in International Space Law System (hereafter cited as ISLS )for a peaceful use and an all of mankind's interests.<sup>4)</sup>

Needless to say, normative access, in general, aiming at the activities of armed forces of individual states in space should be applied to the military operations.<sup>5)</sup> Namely, its object of legal restriction only was military

---

the military authorities of individual states-after the termination of the Gulf War by, see the magazines on the military affairs, for example, JAPAN MILITARY REVIEW, THE AVIATION WEEKS, The SHIPS OF THE WORLD, THE MILITARY TECHNOLOGY, THE SPACE NEWS and etc.

- 2) See, e.g., Glenn H.Reynolds and Robert P. Mergers, "Outer Space-Problems of Law and Policy" (Westview Press,1997) pp.90-93.
- 3) See, e.g., Richard J. Samuels, "Rich Nations, Strong Army: National Security and the Technological Transformation of Japan" (Cornel University Press.1994) pp.23-65. David Dewitt, "Common, Comprehensive, and Cooperative Security," The Pacific Review, Vol.17, No.1(1994).
- 4) Kemal Baslar, "The Concept of the Common Heritage of Mankind in International Law" (Martines Nijhoff Publishers, 1998) pp.159-204.
- 5) Bin Cheng, "Military Use of Outer Space-Article 4 of The 1967 Space Treaty Revised", Abstract paper of the Seoul international Conference on Air and Space

activities of armed forces. For instance, the object of legal restriction to the armed forces in 1967 SPACE TREATY (hereafter cited as 1967 TREATY) Art'4 is only their military activities.<sup>6)</sup> However, under the following conditions, namely, the scope of activities of armed forces has expanded beyond their inherent military field into the non-military field, still more, the non-military activities by the armed forces has become to deepen a military meaning and affection, the realization of the interest for all of mankind and the peaceful use could not achieve without regulating all of activities by the armed forces. We must draw attention to this point.

Though DPRK launched their ballistic object in 31 August 1998, this launching caused the above concern.<sup>7)</sup> As the present space development has been put at the leading position in the comprehensive national security policy, the relationship of space development and the armed forces have been indispensable. This actual tendency caused the difficulty of a conceptual discrimination on a military activities and a non-military activities. As a result of this difficulty, some country has tried to abuse this ambiguity to get their political-military objects. And this launching issue revealed this possibility.

The aim of this Meta-Discipline of International law study (hereafter cited as MDILS) consists in how to control legally the armed forces' activities in space and what shall DIL do for this. The result of this issue has great influence upon the space development for the maintenance and progression of international public order and the development of DISL. The purpose of this short essay is to stir up and propose the construction and introduction of the new standard to regulate substantially all of activities by the armed forces in space. As this new standard, I propose the introduction of "the Interest of Individual States Standard/the Interest of International

---

Policy, Law and Industry for 21st century (the 4th Seoul International Conference).

6) See *ibid.*, pp.1-6.

7) On this point, see JAPAN MILITARY REVIEW, 98'8, 10(1998), SHIPS OF THE WORLD, No.544(1998)

Society Standard”<sup>8)</sup> in stead of “Aggression Standard” in ISLS, especially in 1976 TREATY.

Some Legal positive sects will show some negative critics on this study style because the work of this paper is not a positive analysis, but a mere policy proposition. The typical style of legal positive study, surely, on this launching case consists in doing a strict interpretation on the present ISLS, and this fruit of this interpretative analysis connects with the development of the system of management of legal conflicts and the legal theories. From point of this view, I could sufficiently recognize this paper is not an analytical study, but a mere policy proposition. But as I grasped the total meaning of this launching case consisting in the aggressive challenge against keeping international peace and order, and against the international legal system which has sustained this international peace and order system in legal and ideological phase, I tried to enter the world of MDILS -What is the aim of MDILS is to grasp scientifically the way of thinking of ISLS on the basement of self-criticism<sup>9)</sup> - beyond the traditional legal study.

## 2. Space Development and Armed Forces- Meaning of 31 August 1998 Launching

DPRK launched one ballistic object from their territory to the Japan-Sea and the Pacific Ocean through space in 31 August 1998. After this launching, DPRK announced officially this launching was the launch of satellite.<sup>10)</sup>

---

8) The content of this standard, as you may easily imagine, very vague. However, as a functional standard, this normative standard is useful for managing the legal control of the activities of the armed forces in space.

9) Ernest Topitsch, “Sprachgische Probleme der sozialwissenschaftlichen Theoriebildung,” in Topitsch Herausgegeben., “Logic der Socialwissenschaften”(Neue Wissenschaftliche, 1993).

10) Useful information and comments on the official announcements by DPRK in 9 September 1998 is given by The JAPAN TIMES, 1 October 1998.

Some views of the related states on this launching were bifurcated, one supports this is for the satellite launching, another supports this is for the missile launching.<sup>11)</sup> The issue on which is the satellite or the missile, surely, is an important, however, more important issue is to make concerns on the following fact that any armed forces of individual state have performed all of kind activities in space, not only military activities but also non-military activities.

Because, the activities of the armed forces in space has extend to the field of the non-military, we must grasp the nature of the present space development as the militarized space development.<sup>12)</sup> The present space development is taking the top seat in the policy of the state development and national security, the armed forces has ranked first in the space development. It is the issue how to coordinate legally the gap between the increase of the playing role of armed forces in space and the realization of the interest for the all of mankind and the peaceful use.<sup>13)</sup>

The space development has been really carried out as one of the synthetic national policies, which have been beared by the forces through the history of space development. We can not understand the apprehension and the real substance of space development without decoding on this fact. The principle for understanding the present space development should be grasped as the synthetic of the military and the non-military, in accordance with the sift from the military centrism to the science-technological centrism in the national security policy. Namely, the present space development has composed of the joining of the military field and the non-military field, and more the present space development has connected

---

11) DOS and DOD of United States and DOD of Korea had their official statements that this launching means the failure of the launching of satellite, The government and military authorities concluded that this launching was the test firing of Taepodong-type ballistic missile.

12) This view is argued by Dr., Honorable Chairman of SOLAPSU., KURODA. See, in particular, TAHARA Souichiro "Human Document Series -Top Runner of High Technology-a Japanese pioneer of rocket in the post WW-2"(Shinchosha, 1990)

13) See also Bin Cheng's abstract.

with the comprehensive national security policy.

Surely, the hybrid nature of the present space development has been continued from the beginning of space age.<sup>14)</sup> The history has proved that the science and technology have been developed in accordance with the necessity of the armed forces, this development has contributed to the wealth of nations and the national security. In fact, there are few launching rockets and satellites which have no origination of missiles. For examples, Ariane rockets of ESA and H-II rockets of Japan are the non military use, however, some foreign authorities have showed their anxiety that these rockets will be capable of using for military purposes. For example, the United States authorities showed the same anxiety to the experimentation of the launching of the Pencil type rocket in 1965, the success of launching satellites into the Geostationary orbit after 1972, that is these rockets have some military potentials.<sup>15)</sup>

Any armed forces have been demanded to completely realize the various functions as the main actors. This demand is parallel not only to the necessity of the modern armed forces but also to the request of the non-military sects for getting their various interest.

### 3. Expansion of the Activities of the Armed Forces in Space and IILS -the Meaning and the Contents of the Construction of Legal Standard

The expansion of the activities of the armed forces in space has supported by a lot of nations, because the space development has contributed to the development of nations and its national security. But

---

14) See, e.g., Bin Cheng, "Studies in International Space Law" (Oxford: Clarendon, 1997), Ch.19.

15) Alfred J.Zaehring(American Rocket Company, Associate Editor), "Japan Launches First Military Missile", THE JET PROPULSION, Vol.26, No.10, Part.1 (American Rocket Society, 1956).

because of this egoistic character in this motivation , it is likely to lead to the loss of the interest of all mankind. And also, the revolution of the modern strategy in the military field caused the contradiction against the peaceful use in space. What could the modern ILS do against these crises of the peaceful use and the interest of all mankind in space?

ILS has a lot of what to do. However, in this paper, I would like to propose the two works. In the first place, as ILS has no long history. The completeness of disciplinary system had not achieved, and also the positioning in the present domestic and international legal system has been under the vague<sup>16)</sup>, therefore ILS must cultivate highly the cognitive sensor to catch correctly the facts to overcome these what it is. In doing so, international space lawyers would be able to make the positive analysis in its nature. And the construction and the system of recognition should be grasped in critical phase. Above phase means that international space lawyers, at first, must grasp not only the facts as the given conditions, must propose to some issues which must be resolved and build the resolution policy. The second is the making of the rules as one of the traditional work in jurisprudence. The development of the efficiency of present rules, theories and judicial systems. In this paper, I would like to analyse the second works. It is the introduction of The Interest of Individual States Standards/the Interest of International Public Standards in ILS especially in 1967 TREATY.

1967 TREATY Art.4 provides that "States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds weapons of mass destruction, install such weapons on celestial bodies or station such weapons in outer space in any other manner. ...the use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited."<sup>17)</sup> The cognitive

---

16) Almost of international space lawyers have supported a view that the space law and the discipline of space law is be in existence. But they has not been in existence, they have been still in existence as the international and the domestic space law and a part of the discipline of international law and domestic law in for the time being.

17) Cf. The MOON TREATY, Art.3., G.A.Res.34/68, U.N.GAOR, 34th Sess., Supp. No.46

construction of this article is the following content. At first, the object of legal control is only the military activities of the armed forces. The aim of the military activities by the armed forces is for the national security. Other activities by the armed forces are recognised the non-military activities. The object of 1967 TREATY Art.4 is the inherent military activities, and in these activities, the aggressive and mass destructive activities only be prohibited. This TREATY convinced the realization of the interest of all mankind and the peaceful use will be achieved on account of this rule.

This cognitive construction and the rules on the legal control of the activities by the armed forces in space could maintain its stability in the time of deterrence and the time of superpowers.<sup>18)</sup> The dissolution of the Cold War and the deterrence have revealed the defects of this cognitive construction and the rules. Especially, the legal deception of 1967 TREATY Art.4 had been revealed.<sup>19)</sup> And also the expansion of the activities by the armed forces in space accelerated to reveal this defects.

This new management standard means the creation of new legal cognition and the new rules to the activities by the armed forces in space. This new standard divides the activities by the armed forces in space into two categories, those are the interest of individual states and the interest of international society.

Any armed forces of individual states could not perform for their individual interest in space including the military purpose or the non-military purpose. On the contrary, they could perform for the international interest including both purposes. It is impossible to draw a clear-cut line between both standards.<sup>20)</sup>

---

and U.N.Doc.A/34/664.

18) See, e.g., Reynolds & Mergers, "The Role of Commercial Development in Preventing War in Outer Space, 25 *Jurimetrics*" *Journal of Law, Science & Technology* 130(1985) 81-90 (This journal has already ceased publication).

19) See also Bin Cheng's abstract, especially pp.2-5.

20) All of the legal concepts or ideal types are artificial, and they have been created to play some functional objects. Therefore, it is natural that they have some vagueness.



However, as the history of the armed forces have showed, the mission of the armed forces lies on contributing to the higher public interest. In modern times, the higher public interest is parallel to the international interest. Therefore, according to the development of international society, any the armed forces must shift their missions from for the interest of individual states to for the interest of international society. The development of space utilization will change the *raison de'tre* and the mission of the armed forces.

#### 4. Conclusion

The first, the development of space in modern times has occupied the top seat in the contextual phase of the national development and the national security. The armed forces are involved in the center position in the space development. Therefore, the scope of actions by the armed forces reaches to all the fields in the space development, from the military field to the non-military one. We could not clear-cut the line between the concept of the military activities and the non-military ones. The expansion of activities by the armed forces in space has caused some crises and crucial issues for the interest of all mankind and peaceful use in space. The launching of DPRK has become the origin of this concern.

The second, the task of DISL on this case is the reconstruction of the way of thinking of DISL. The present DISL could not recognize the reality of the nature of the modern space development, because the cognitive structure of the present DISL has not grasped the expansion of their activities and the influences by the armed forces. At the same time, in such a condition of what DISL is, we could not point out the the legal deception of 1967 TREATY Art. 4. The DISL has the mission to overcome that defect. The new normative standard must be created.

This new standard for the legal control on the activities by the armed forces in space is "the interest of individual state standard/the interest of

international society standard". The third, the content of this normative standard means that the armed forces can perform their military activities in space as far as coincide with the interest of international society irrespective of its military/non-military activities. The armed forces of individual states could not perform the non-military activities even in case of pursuing the interest of individual states.