

Extending the International Law Principle of Good Neighborliness to Outer Space

*Motolani Fadahunsi-Banjo**

Abstract

At inception of Mankind's activity in Space, the essentiality of maintaining peaceful demeanor in all activities to avoid extending war zones from earth to space was a major concern. This led to the creation of the Committee on Peaceful uses of Outer Space, International Space Law Treaties, principles, and codes of conduct. It is important that space activities be conducted in accordance with International Law, International Space Law and the principle of peaceful purposes. This paper espouses the frontier of the concept of who is your neighbor in space, obligations of states to each other as neighbors hinged on ownership of objects launched into Outer space, and brings to the fore consequences of non-conformity to such obligations. It also further seeks to discuss the International law Principle of good neighborliness, how it has affected activities of States on earth positively, and how such can be extended to outer space putting into consideration its *res communis* nature and non-appropriation principle as contained in the Outer Space Treaty. Also the question will be addressed whether such application of the good neighborliness principle can proffer solutions on issues regarding space debris and militarization in space, to foster continuous cooperation in Outer Space. In conclusion the paper emphasizes that a peaceful outer space as not only an obligation to all states but a necessity to ensure a sustainable space environment.

I. Introduction

The principle of good neighborliness in international law depicts a picture of the existence of a healthy relationship among neighboring states, states bordered by the sea or having a common frontier.¹ Generally, interaction among states is of

* Motolani Fadahunsi-Banjo, National Space Research and Development Agency (NASRDA), Nigeria, ayotolao@yahoo.com.

1 Elena Basheska: Contemporary Southeastern Europe, The Good Neighborliness Condition in Europe Enlargement (2014) at p. 92. See also www.suedosteuropa.unigraz.at/cse/sites/default/files/papers/Basheska_The_Good_Neighbourliness_Condition_in_EU_Enlargement_0.pdf, Components of Good Neighborliness Between States – Its Specific Legal Contents – Some Considerations Concerning the

great necessity to avoid conflicts, minimize misunderstanding, and enhance cooperation. It is important to stipulate that good neighborliness is not restricted to a geographical location alone, but rather it involves blooming international relations among nations.

In corroboration, the Preamble of the United Nations Charter enjoins all nations to live together in tolerance as good neighbors thereby expanding the definition of neighbor beyond geographical proximity.² It is opined by Elena Basheska that good neighborliness is easily embraced amongst nations with standing cordial relations bound by international law and maintained based on strict observance of such laws. The principle is conventionally portrayed as using individual property in a manner preventive of harming another person's property. In international parlance, this indicates that nations, while exercising sovereignty over the use of their territories, consciously observe their obligation to prevent harm to the environments of other states, and areas beyond state jurisdiction.³

The Outer Space is an area internationally agreed to be the province of all mankind, embodying activities beneficial and in the interests of all countries.⁴ Interrelationship and peaceful coexistence requires a continuous exhibition of good neighborliness to prevent hampering both individual and international interest. As a result of registration, Space objects acquired nationality traits of nations on earth, thereby extending state jurisdictions to space objects, exercisable within the object launched into the outer space and viewed by the researcher as a neighborhood owned and native to all human races. Extending good neighborliness into outer space requires continuous and consistent communication, international cooperation and reinvention of our commitment to peaceful co-existence in outer space.

From the forgoing, this paper seeks to uphold the existing peaceful inter relationship of states in Outer Space and further advocate an extension of good neighborliness in cohabiting, collaborating, and resolving issues; for instance militarization and space debris removal.

Reports of the Sub-Committee on Good-Neighborliness Created by the Legal Committee of the General-Assembly of the United Nations Bucharest: Editura R.A.I, 58. Pop writes that "good neighborliness does not designate a geographical situation, but a model, a type of international relations, a certain kind of ties, as between good neighbors."

2 United Nations Charter [1945] ATS 1 / 59 Stat. 1031; TS 993; 3 Bevens 1153, See also <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

3 These are jurisdictions or areas seen as global commons or, belonging to all humans. For instance the Outer space, high seas, and the Antarctica.

4 OST Article 1.

II. Who Is a Neighbor?

This paper is hinged on the international Law Principle of Good Neighborliness, thereby necessitating the definition and proper understanding of the word neighborliness. Neighborliness is sourced from the word *neighbor*, a neighbor is defined as *someone who lives very close to you or a country that is next to another country*.⁵ In Legal parlance *Neighbor* is defined in tort as *persons closely associated or nearby people or property that could be affected by my actions or omissions*.⁶ This is further deepened by the *Locus classicus* case of *Donoghue v. Stevenson*⁷ where Lord Atkins offered the foundational definition of a neighbor as ‘persons who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omission which are in question’.⁸

From Lord Atkin’s summation it arises that neighbors owe each other duty of care, refraining from intentionally or negligently harming one another. According to Elena Bashkeska,⁹ *neighborliness is the external ties of a country with other states, it further depicts a situation where a neighbor exhibits friendly attitudes expected of a good neighbor*.

In relation to the intent of this paper, these definitions will be related to international principle of good neighborliness bearing in mind nations as neighbors and further extending its effect and consequences to outer space. Thus it is imperative to give an insight into the Principle for proper understanding of its effect on earth.

III. International Law Principle of Good Neighborliness and Its Impact on Earth

The principle of good neighborliness is traditionally enshrined in the ancient Roman law of *sic utere tuo ut alienum non ledas* which means a property owner should have free enjoyment of his property without causing harm to others. In other words, refraining from harming others in exercising individual rights.¹⁰ Ab initio the principle guided individual activities, due to its general

5 <http://dictionary.cambridge.org/dictionary/british/neighbour>.

6 *Ibid.*

7 *Donoghue v. Stevenson* [1932] AC at p. 562.

8 Lord Atkins in his submission in the case of *Donoghue v. Stevenson* while answering the question “who then is my Neighbor in Law ” proffered the above answer to his question. The common law judgment of the case has formed the foundation of negligence, duty of care, product liability law in Common Law jurisdictions globally.

9 *Ibid.*

10 Lotta Viikari: *The Environmental Element in Space Law: Assessing the Present and Charting the future*, Martinus Nijhoff Publishers (2008) p. 150.

acceptance, it soon garnered international status.¹¹ Although the principle has no form of codification, Legal jurists and opinion-makers are of the view that the neighborliness principle is not only a general principle of law but also a general principle of international law.¹² Its global acceptance has made it an important principle of customary law¹³ and it is thus believed that it should apply in all human endeavors since the freedom of each subject of law is limited by the equal respect of the freedom of other subjects. Similarly, Article 74 of United Nations Charter buttresses the universal applicability of good neighborliness.¹⁴

The International implication of the Principle espouses that a State, in exercising rights to utilize its territory and resources within its control as it deems fit, should not inflict harm to the environment within another state and areas beyond state jurisdiction.¹⁵ The principle is further applicable to areas which could be of global common or importance and not necessarily geographically located within a state's jurisdiction.¹⁶ For instance, a state should consider the

11 *Ibid.*, the principle gained acceptance internationally as reflected in Treaties, international regulations and in domestic relations. For Instance Hungary in its application in Gabčikovo-Nagymaros Project invoked the maxim which is the foundation of good neighborliness as a fundamental rule. See Hungary v Slovakia, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ]. See also Philippe Sands: Principles of International Environmental Law Vol. I, Frameworks Standards and Implementations, Manchester University Press (1995) p. 197.

12 *Ibid.*

13 Hendric A. Strydom: International Law and Institutions; The Legal Principle Relating to Climate Change at 5 www.colss.net/sample-chapters/c14/E1-36-10-00.pdf it has been codified into International regulations in form of humanitarian law, for instance the Stockholm Declaration 1972, moreover it is widely accepted as a customary international law by many authors evident in Report of the 64th Conference of International Law Association 1990 p. 168, the United Nation Charter related good neighborliness to issues concerning social, economic, and commercial matters but I has been extended to the environment.

14 The Charter of the United Nations (adopted 26th June 1945, in force 24 October 1945) 59 Stat. 1031 UN Charter. (Assessed 25th June 2015) its universal application is evident in its extension beyond commercial, social activities into various human endeavour such as the environment, international relations and cooperation amongst states in areas beyond state jurisdiction such as the Outer space, high seas, and Antarctica.

15 Corfu Channel Case: United Kingdom v. Albania I.C.J (1949) I.C.J 4 at p. 22, Areas beyond state jurisdiction refers to outer space, high sea, and Antarctica and areas which has no state ownership.

16 Principle 2 of the Rio Declaration, in accordance with the Charter of the United Nations and the principles of international law, States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to *ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

interest of other states while carrying out activities such as exploiting resources in areas within its jurisdiction or control, installations both within and outside its territory which he has ownership over or has under its supervision;¹⁷ Examples of such are space objects or installations located in outer space.

The United Nations Charter enunciates in Article 74 the importance of good neighborliness among states in being considerate in their activities putting into cognizance the global interest of all nations.¹⁸ The application of this principle was shown in the leading cases of *Trail Smelter*¹⁹ and *Corfu channels*.²⁰ In the Trail Smelter case, the issue for determination was to ascertain whether a state is obliged to protect other states from injury occasioned by the act of an individual within its jurisdiction. It was held that not only is a state responsible for preventing harm occasioned by individuals within its jurisdiction, to other states, it was further established that no state has the right to permit the use of its territory for any activity causing injury by fumes to another's territory, property or persons as stipulated by International law or laws of the United States.²¹ Similarly in the *Corfu Channel* case, the International Court of Justice held that states have the obligation not to allow their territory to be intentionally used for activities contrary to the rights of other states.²²

IV. The Principle of Good Neighborliness in Outer Space

At the inception of man's physical entrance into outer space, the essentiality of good relations and inter-cooperation amongst humans regardless of race, nationality, and disposition, established the foundation of space activities. This is evident in the content of international space regulations in the form of Treaties, principles, conventions, codes of conduct that have been emphatic on the importance of international cooperation. International organizations

17 These are installations owned by private individuals or juristic persons or by foreigners carrying out activities within a state where they are registered.

18 United Nations Charter (accessed 26th June 2015): "Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters." See also, Philippe Sands: Principles of International Environmental Law Vol. I, p. 197.

19 Trail Smelter Arbitration (United States-v-Canada) Arbitral Tribunal 3 U.N Rep. Int'l Arbitration. Awards 1905 (1941).

20 Corfu Channel's Case.

21 *Ibid.*, also www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-18/trail-smelter-arbitration-united-states-v-canada/2/.

22 The Corfu channels case was a suite between United Kingdom and Albania, where Albania failed to inform United Kingdom of the presence of mines in its waters; the mines exploded resulting to the death of British naval personnel. Albania was held responsible that it ought to have notified United Kingdom of the Presence of Mines.

were inaugurated to enlighten each member state of the necessity of good relation and cooperation with all states regarding space activities.

The Outer space is a *res communis* with non-discriminatory access to all nations,²³ despite being an area beyond state jurisdiction, Space objects launched into outer space are owned and controlled by nations, private or juristic persons on earth, exhibiting ownership and control rights on such objects. Ownership of objects launched into outer space is not affected by their presence in outer space; all space objects have similar attributes of state nationals.²⁴ The rights to ownership and control are followed by responsibilities expected of the appropriate state where such objects are registered or otherwise agreed in situations of possible multiple states contact of a space object.²⁵ Ownership and control of a space object extends to Outer space thus attracting responsibilities and obligations. From the researcher's perspective space objects are extensions of states' territory in a *res communis* which is a province of mankind immune to state appropriation.

The researcher is of the view that space objects have attracted the attributes of neighbors in space due to their continued connection to states, retaining ownership of the objects. The activities within installations, space objects, the satellites and its components are attributed to the state with ownership and control, but success recorded by the activity is an achievement to mankind. From the forgoing, the satellites which is a quasi-territory of a state in itself confers a duty of care on its national owner to ensure all activities from within its territory both on earth and in space does not harm the environment of other states and areas beyond state jurisdiction. This environment here refers to the part of outer space where the space object is located. For instance where a space object owned by state A is launched in to the outer space for a specific activity,²⁶ State A is obliged not only to ensure compliance with re-

23 Article 1 of Treaty on Principle Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies Resolution 2222(XXI) annex – adopted on 19th December 1966, opened for signature on 27th January, entered into force on 10th October 1967 (OST 1967).

24 Article VIII OST [...] Ownership of objects launched into outer space are not, including space objects landed or constructed on a celestial body and of their component parts is not affected by their presence in outer space, on a celestial body or by their return to earth...

25 Article V, VI and VIII OST, 1967; Article 5, Convention on International Liability for Damage Caused by Space Objects, Adopted by the General Assembly in its resolution 2777(XXVI) of November 1971, opened for signature on 29th March 1972, entered into force on 1st September 1972 (Liability Convention); Article II(1)&(2) Convention of Registration of Objects Launched into Outer Space, Adopted by the General Assembly in Resolution 3235(XXIX) of 12th November 1974, opened for signature on 14 January 1975 entered into force on 15th September 1976 (Registration Convention).

26 By virtue of the Outer Space Treaty, all activities in space are expected to be peaceful, devoid of any harm to the Outer Space environment, and earth.

restrictions applicable to the intended activity but also prevent such activity from causing harm to other Satellites symbolizing the territory of another state or the global commons, which is beyond state jurisdiction or ownership where they are all placed.²⁷ Thus where a space objects drifts from its orbit or has a different payload for activities which has a possibility of causing harm to other space objects, the national owner is obligated to pay due recourse to the wellbeing of other space objects otherwise tantamount to negligence, preventable where good neighborliness is taken seriously by all states.

Each state has a right to be in space, explore all opportunities, and exercise its rights within its satellite or space object. This right is punctuated by ensuring any activity explored is harmless to the activities of other states and the space environment resulting in harm to other states territories in space via their space objects. Obviously, launching satellites in space imposes some duty of care following from international obligations resting on the state of registration, as specifically the state with jurisdiction and control over the space object.²⁸ Moreover state activities with regard to that state's object in space may directly or indirectly affect other space objects owned by other nations, thus it can be inferred that all space objects are neighbors in space emanating from their nationality.

V. Obligation of States as Neighbors in Outer Space

According to Sumudu Atapattu,²⁹ the Principle of good neighborliness is entrenched in the Principle of sovereignty, as maintained in *Island of Palmas Case*;³⁰ where the definition of Sovereignty was connected to the duty of a state to ensure the protection of the rights of other states within its territory especially the right to integrity and inviolability in peace and war. This obli-

27 Article IX OST...if a state party to the Treaty has reason to believe that an activity or an experiment planned by it or its nationals in Outer space including the moon and other celestial bodies would cause potentially harmful interference with activities of other state parties in the peaceful exploration and use of outer space it shall undertake international consultation before proceeding with any such activity....

28 *Ibid.*

29 Sumudu Atapattu: *Emerging Principles of International Environmental Law*, 2006 at p. 291.

30 *United States v. Netherlands RIAA (1928) 829*, in the *Case Max Huber* enunciated a classical definition of Sovereignty: 'Sovereignty signifies independence, that is the right to act on part of the globe, and to the exclusion of other states the functions of a state: this right has a corollary duty, the obligation to protect within its territory the rights of other states in particular their right to integrity and inviolability in times of peace and in war together with the rights each states may claim for its nationals in foreign territory.'

gation was further buttressed by the Arbitration tribunal in the Trail Smelter case.³¹

V.1. Non-Interference

Duty of non-interference is an obligation rooted in the principle of good neighborliness particularly the maxim *sic utere tuo ut alienum non laedas*, interpreted as use your property in a manner not harmful to another's property. This is a duty all states must observe meticulously as a violation affects the territorial integrity of another state. There exist no unified form of interference states are expected to refrain from, however, some writers are of the view that the International right of good neighborliness includes the obligation connected to the activities been carried out in a state.³² Others are of the view that Interference could be political³³ or jurisdictional which undermines the territorial sovereignty of other states and could be as a result of military operations at the boarder of another country.³⁴ A nexus in diverging views of these writers is that the interference causing the damage in question emanated from activities within a state obliged to prevent such activity.

According to Maria Del Lugan fores, technology and a new conception of the environment has modified the traditional notion of good neighborliness and physical contiguity is no longer a sine qua non requisite for an obligation arising from the Principle governing relations among states. The application of the obligation to outer space activities involves proper supervision and continuous monitoring of space activities within a state's jurisdiction, extending such duties to installations and space objects launched in outer space. This entails ensuring space object launched within its territory or space object bearing its nationality in space is strictly monitored to *stick* to the purpose for which it is launched.

A state in possession of the knowledge that activities of its citizen on earth or in space has a possibility to have trans boundary effect is expected to nip such in the bud taking precautions to prevent its occurrence in totality. For instance where a state is informed that a space object registered in its territory is conducting an experiment, with an apprehension of creating a long lasting debris field in space. It is obliged to prevent such activity, due to the possibility of trans-boundary damage on other neighboring satellites in space.

Moreover, Article IX of the OST specifically provides that state parties to the treaty must interact with other states in situations where it apprehends that

31 Ibid.

32 Andrassy, J.: Les relations internationales de voisinage. RCADI 1951-II, Vol. 79. 77-182, cited by Maria Del Lugan fores at p. 260.

33 Lammers J.G: Pollution of International Water Courses, (1984) Martinus Nijhoff Publishers p. 264.

34 Ibid.

an activity by it or its nationals will cause harmful interference to neighbors in space or the space neighborhood.

There exist no agreed interference causing activities in space, however, activities such as intentional anti-satellite tests in orbit, intentional laser beaming of other satellites and jamming have been agreed and deemed capable of harmful inference.³⁵ An act of non-disclosure of a wandering satellite is also viewed as a form of interference since it has a possibility of damaging other satellites in space.³⁶

V.2. Due Diligence

Due Diligence is an obligation that involves states taking relevant steps to adopt measures that prevents inflicting harm to the right of other states, redress damages arising from interference and punishing the author. The principle is coupled with exclusive competence of a state in relation to its territory. This touches on the policing and judicial activities of a country. The states are expected to develop regulations in this regard to prevent interference before its occurrence and also punish any erring citizen engaging in such activities within its territory. In a like manner the registering state of a space object has an obligation to extend its domestic regulations on good neighborliness to its space objects in outer space since ownership, jurisdiction and control of a space object extends to outer space. Generally states are obliged to have clauses on good neighborliness in domestic national space legislation, and ensure strict compliance especially where the activity in question was carried out by an individual or private company registered with the state.

V.3. Obligation to Cooperate on International Issues

In international law, it is an obligation and a binding principle that states should cooperate with neighbors on international issues.³⁷ The importance of cooperation among states and its practical significance is emphasized in several international agreements and instruments.³⁸ The obligation to cooperate is

35 Leonard David: Play Nice Up There Code of Conduct for Space Sought, Online publication of Space.com on 6th, January 2011. See www.space.com/9701-surface-mars-possibly-shaped-plate-tectonics.html. In determining activities regarded as misconduct in space he interviewed Marcia Smith, Micheal Kreplon, and Theresa Hitches.

36 Ibid.

37 Article 1(3) United Nations Charter: 'To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;'

38 See: The preamble to the OST, Agreement on the Return of Astronauts, the UN Charter, UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. This principle was codified to emphasize the importance of cooperation

reflected or affirmed in totality in international law and customs, particularly the principle of good neighborliness, reciprocity, non-discrimination and good faith. The obligation is of utmost necessity in areas beyond state jurisdiction, for instance the Outer space which is a global common. This obligation in the outer space context is contained in the preamble of all United Nations Treaties and Principles on Outer space, believed to further strengthen international co-operation amongst nations. The ability to regulate state activities in outer space requires total cooperation from all nations without which anarchy could be the result, thereby developing into a battle frontier. Thus, the researcher opines that this obligation is foundational, essential and a prerequisite to world peace.

VI. Consequences of Non-Conformity to Obligations

States as neighbors both on earth and Outer space have equal right to exercise their rights and an equal duty to recognise the rights of other states beyond their territories. Mutual respect in reciprocity is essential for international good neighborly relations among states.³⁹ The golden rule; *do unto others as you want them do to you*⁴⁰ substantiate this position. Article 12 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts⁴¹ provides that: ‘There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.’

The action of a state amounts to breach if it is a party to the law or regulation giving rise to such obligation.

Situations where nations neglect their duties emanating from good neighborliness especially in outer space, creates general noncompliance with international regulations guiding space activities. The implication is far reaching as activities of nations on earth hugely depend on space technology. It creates a vindictive atmosphere without recourse to international interests and cooperation, thereby attracting non-peaceful activities and militarization in space.

among nations, despite the non-codification of the principle of good neighborliness, the declaration on friendly relations forms its foundation.

39 Henrikson, Alan K. (2000). Facing across Borders: The Diplomacy of Bon Voisinage, *International Political Science Review* 21(2), 124.

40 *Ibid.*, As noted by Henrikson: “neighbors are to be accepted as being equal and thus as deserving of considerate regard when an action that might adversely affect them is being contemplated, just as the shoe were on the other foot. ‘Do unto others as you would have them unto you’ – the Golden Rule-obtains.

41 Draft Articles on Responsibility of States for Internationally Wrongful Acts UN GAOR 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001). Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session, See www.un.org/documents/ga/docs/56/a5610.pdf visited 29th June 2015.

The global efforts regarding space debris removal and reduction will be hampered due to indiscriminate debris causing activities in the space, since states are more interested in their own activities without recourse to international interest.

State security nationally and internationally is of immense concern to nations as it is connected to state sovereignty. Insecurity within a state's jurisdiction emanating from extraterritorial activity prevents the affected state from exercising its rights absolutely. In like manner, non-conformity with obligations regarding good neighborliness as contained in International space Laws creates insecurity among space faring nations resulting from efforts geared towards protection of national interest.

VII. Conclusion

Outer space has been of tremendous benefit to mankind both space faring and non-space faring nations alike. From spinoffs from remote sensing and communication satellites to the international space station and all other space objects in space which guide and our daily activities. A snag which encumbers space activities is the effect it has on the space environment. The emergence of space debris from the effect of man's use of space has begun to threaten the use of outer space as numerous space debris fly freely in space. Embracing the good neighborliness principle arouses states consciousness of duty of care to other states in outer space, thus encourages states to embrace means by which space debris can be mitigated and a possibility of mapping out means by which existing Space debris can be removed while all nation make conscious effort not to create more space debris in future. In the researcher's opinion, issues pertaining militarization in outer space must always be weighed against good neighborliness irrespective of the definition ascribed to it. The denominator and the underlying intent for all activities in outer space must always be for peaceful purpose.

