

SPACE POLICY IN RUSSIA: PERSPECTIVES FOR LEGAL DEVELOPMENT

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Introduction. Nowadays the country's space complex embraces over 1000 scientific and industrial enterprises. Cosmonautics holds about a 1% share in the country's GNP. It has more than 1 mln. immediate employees. In 40 years time, at a price of huge costs, the USSR has created the biggest scientific-industrial infrastructure in the field. The implementation of space programs is provided by two launching sites, with an annual output of dozens of launches carrier rockets, taking into space several hundred tons of pay load. Over thirty satellite systems, serving the purposes of defense, national economy and science, are in operation.

National cosmonautics is one of the few branches in the country which has reached the world level. However, nowadays it's on the verge of a collapse, especially in terms of finances. In 1991 the volume of funding for space programs is decreased by 35% compared to 1988. Moreover, the actual budget is curtailed by 700 mln. roubles, which left the works of the 4th quarter of 1991 without financing at all. At present, about 50% of industrial capacities do not produce anything. Social problems have become exceptionally poignant. Space science and industry lost 25-30% of the most qualified personnel.

Extremely dangerous is the uncoordinated process of dividing the Union property, involving the objects of space infrastructure. This development might paralyze the work of space systems and the

implementation of space programs/1/.

The situation is aggravated by the well-known fact of legal vacuum in the field of space activities in ex-USSR. The way out of "space" deadlock in Russia, therefore, could be considered only in terms of legal development, in legal stipulating priorities and principals of space activities, the system of management of space activities, forms of joint space activities in the Commonwealth of Independent States (CIS).

1. Priorities and principals in space activities

In a number of countries the adoption of an official space doctrine is a usual procedure. The common goals of space activities are formulated in legislative acts. This is done most thoroughly in the USA. The US national aeronautics and space administration act of 1958 envisages, for example, the expansion of knowledge of outer space, perfecting equipment, preserving the US leadership in the field of space explorations, using space means for defense purposes, technology transfer, assistance in international cooperation efforts, primarily on a commercial basis. Other countries set out more limited goals. In France these are: strengthening its role as a leading Western European space power as well as the leading position in branches of cosmonautics not pursued by the USA and the USSR. In Japan: scientific space research, practical use of satellites in such spheres as communications,

meteorology, navigation and geodesy.

In Russian experience, putting forward a space doctrine is not typical. The documents of conceptual character determining the strategic goals of Soviet cosmonautics have been classified. It's impossible to trace any long term objectives in the majority of space projects and experiments.

Nevertheless, the analysis allows to disclose some common features, which could be characteristic of Soviet cosmonautics, namely:

- striving for world leadership;
- priority of military goals.

Besides, it's necessary to emphasize the lack of a comprehensive approach to the development of space means and mechanisms of utilizing the results, over-politicizing, arbitrarily setting the terms of space projects, and, consequently, their repeated delays. All this doesn't contribute to the efficiency of space activity, and has nothing in common with efficient methods of control.

Hence, the reform in space science and industry requires exactly formulated goal and tasks of space activities, fixed legislatively as the priorities of space policy.

For Russia the goal of space activity can be formulated in the following way:

To use the space potential for realizing economic, defense, technical, scientific, social, cultural and international interests of the

Russian Federation.

The above mentioned goal demands that the following tasks be fulfilled:

- to use space technology for the development of communications, TV and radio broadcasting, navigational, geodesy, meteorological and cartography services, rational use of natural resources, ecological monitoring, for the production of unique materials in space;

- to use space means for conducting fundamental researches in the field sciences of the Earth, astrophysics, planetology and biology;

- to enhance the defense capacity of the State and to control the execution of international treaties on reducing weapons and disarmament.

Then the question arises, how these goal and tasks should be accomplished, i.e. what the principals are, legally binding all juridical and physical persons engaged in accomplishment of the said goal and tasks.

One of the drafts of the Law on space activities formulates such principals as follows:

- equal rights to take part in space activities and using results thereof;

- free access to the information of space activities;

- using results of space activities in the interests of consumers with full observation of rights of juridical and physical persons, participating in space activities;

- facilitating

entrepreneurial activities and depriving monopolism;

- independent expertise of decisions on the questions of space activities;

- insurance of security while space activities, including environmental protection;

- liability for damage caused due to space activities;

- responsibility for space activities and for the correspondence of such activities to legislation in force.

The cited provisions are of general character. Nevertheless one should not underestimate their significance as a carcass for a future body of Russian space legislation. One should not underestimate also the binding effect of such principals, being implemented by more detailed legal norms.

2. Space Activity Management

The managerial system of Soviet cosmonautics has been formed as a replica of the political structure of the society and based upon arbitrary political orders rather than upon law.

By August 1991 the following administrative line constitutes the corn of this system: CPSU Central Committee Secretariat - State Commission of the USSR Cabinet of Ministers on Military Industrial Complex (MIC) - ministries and departments (mainly the Ministry of General Machine Building, the Ministry of Defense, the USSR Academy of Sciences) - enterprises and organizations.

The top of the pyramid

concentrated on main (according to the logic of the bureaucracy) function, that of ideological control, appointing and dismissing chief officials. In the absence of legal regulations decisions were made under the influence of casual factors, including personal ties and inclinations.

A gross error was the mixing of managerial functions, delegating to governmental bodies tasks alien to their nature. For instance, the Ministry of General Machine Building and the USSR Ministry of Defense in many cases simultaneously acts as the producer and the customer of relevant equipment and services. Exceptionally vague was the system of financing space activity. Until recently allocations on space issues were given from the State budget to the correspondent ministries. The ministries in their turn concluded contracts on the fulfillment of works with the organizations subordinate to them. Such practice produced a number of negative consequences.

First, the space science and industry turned out to be isolated, oriented primarily on themselves.

Second, an attempt to optimize the correlation between production of space equipment and the development of space technologies, particularly those dealing with new construction materials, failed.

Third, cosmonautics never bred independent consumers. The overwhelming majority of present-day customers are governmental bodies and budget

organizations. They pay State money for services and, moreover often from the sums allocated for production of related equipment.

Fourth, the design and serial production of technical means that would allow for a broad circle of enterprises, organizations and individuals to use space services remained without due attention.

The optimization of managerial system presupposes dividing control and controlled subsystems, giving freedom of actions to the elements of the system within the established "rules of the game".

The basic features of a new managerial system should be:

- setting up goals and tasks of space activities at the legislative level;
- legislative approval of space budget/2/;
- introducing of contractual relations between producers and customers of space equipment and servers.

The highest level on the system of space science and industry management is the Supreme Soviet of the Russian Federation. The functions of the Supreme Soviet are: to adopt space legislation, to study and adopt the State space program, to approve the related budget. In order to realize these tasks, the Supreme Soviet should form a competent deputy commission. Now it is The Commission on transport, communications, informatics and space.

The executive branch (the President and the Government) is responsible for the execution of the State space

program and ensures day-to-day management of space activities. At present for these purposes the President formed by special decree of 25 February, 1992 the Russian Space Agency (RSA) as an organ under the government of the Russian Federation.

In accordance with the project of the Agency, presented by the authors of this article to President B.Eltzin in September 1991/3/, RSA differs drastically from a traditional soviet ministry. It should not interfere into the operational activity of enterprises and organizations. The RSA should be a coordinating body. The main functions of RSA are:

- development of the State space program;
- competitive selection of space projects on the basis of independent expertise;
- working out proposals on budget financing of space projects;
- exercising control over the safety while space activities;
- licensing of space activity;
- facilitating the utilization of space technologies in national economy.

The RSA has to coordinate its activity with the Ministry of Defense, the Ministry of Communication, other departments and governmental bodies.

These provisions have been included into the Charter of RSA confirmed by special act of the Government of 9 April, 1992. However, this document is not free from remnants of former mentality. According to

it RSA vested with the authority:

- to order space systems, complexes and means of scientific and economical destination;

- to participate in creating and using of space systems, complexes and means of dual (military and civilian) destination;

- to develop in cooperations with organizations and industrial enterprises scientific and testing facilities;

- R&D in the field of rocket and space technic;

- coordination and promotion of commercial space projects.

Such confusion will certainly cause many legal problems. For example, in June 1992 RSA concluded a commercial contract concerning possibilities to use "Souz" spacecraft for rescue operations on space stations "Freedom" on behalf of NPO "Energia" which pretend to be an independent juridical entity. It's clear, that the contract is very vulnerable for both American and Russia law.

One should take into account here that the competence of the former Ministry of General machine building was inherited by the Department of General machine building of the Ministry of industry. All industrial enterprises of space complex are supervised by this governmental body as the representative of the owner, i.e. the State. There seem to be a contradiction between the charters of these to organs.

The role of the Ministry

of Defence also requires a thorough legal clarifications, especially in context of commercial space activities. Rendering services through military units as is the cause now often leads to serious violations of financial and administrative legislation.

The next level in the hierarchy of space activity management is presented by industrial enterprises and scientific organizations. The only method of controlling their activity should be normative regulation, licensing of some types of activities, the system of "punishments and rewards".

3. Space Activities in the Commonwealth of Independent States

The development of the space policy in Russia is impossible without considering the distinctive interests of the former USSR republics.

The overwhelming majority of objects pertaining to the scientific-production base of cosmonautics are situated on the territory of Russia. However, other republics also have a number of enterprises and organizations of the space complex, such as, NPO "Yuzhnoye", NPO "Elektropribor", PO "Kommunar", PO "Monolit" (The Ukraine), PO "Izmeritel", BELOMO (Byelarus), KB of machine building (Uzbekistan), etc. The fact that the above-mentioned enterprises could fall out of the technological cycle of developing and producing space equipment demands a new orientation of space programs, as well as the adoption of additional organizational,

economic and technical measures with costs of 20-30 billion roubles (in 1992 prices).

The ground space infrastructure includes the following: three launching sites - Baikonur, Plesetsk, Kapustin Yar (the latter is seldom used), the mission control complex, including 15 ground and 6 floating stations, and locations receiving satellite information. The costs for the maintenance, operation and exploitation of these objects amount to 10 billion roubles. An important part of the space complex is the Baikonur launching site. About 40% of all space objects are launched there. At present, without utilizing this launching site it is impossible to maintain satellite communication systems as well as to implement the program of manned flights, planetary and lunar researches.

The key role in the space infrastructure belongs to satellites. Nowadays, there are 175 such apparatus working in orbit. Satellites are situated in outer space, which is beyond any national jurisdiction as stated by international space law. Hence, they are outside of the "principle of soil", which is the basic concept for dividing the former Union property between the republics. However, it is extremely difficult to define the share of each republic in operational satellites otherwise. All of them have the ground to claim for their rights over the satellites of the former Union.

The only way to regulate the problems emerging in the present situation is through

methods of international law, i.e. through multilateral or a series of bilateral talks and inter-State agreements.

On December 30, 1991 the Heads of the CIS signed in Minsk the first international instrument - the agreement "On Joint Activities in Research and Uses of Outer Space". The agreement lays down the basic principals of relationships of Independent States in the field of space activities. It envisages that joint activities in space shall be conducted on the basis of interstate programs, while each state may have its own space program. Interstate space programs shall be financed proportionately by the interested states and shall be supported by the existing space facilities. The State-parties also agreed to distribute the expenditures on the exploitation of space facilities and profits gained therefrom proportionally to actual participation of each state in relevant space activities, to refrain from actions which could hamper normal functioning of space facilities, to retain and develop the existing scientific and industrial potential for design and construction of space technology, to coordinate their efforts to solve international legal problems of space exploration, and so on.

Certain attempts to clarify the content of proprietary and financial principals of Minsk agreement were made in the agreement on retaining and using the objects of space infrastructure of 15 May, 1992 (11 signatories) and the agreement on using the

launching site "Baikonur" between Russia and Kazakhstan of 25 May, 1992. However, these attempts could not be considered successful. The only meaningful provision on the first document as to share funding of space facilities by the interested states is just a repetition of article 4 of Minsk agreement. Article 5 of the second document specifying the share of Kazakhstan on retaining the launching site "Baikonur" not exceeding six percent of that for Russian Federation seems hardly correlate with the whole pocket of multilateral agreements on space within CIS.

Such disruptions could be avoided if article 2 of Minsk agreement as to creation of an Inter-State Council on Space had been realized. This organ as the authors of this article suggested last year/4/, should be vested with the following functions:

- elaboration of joint space programs as well as proposals on financing them;
- coordination of work of space agencies or other responsible bodies of Commonwealth States.

Nowadays, perhaps, it is necessary already to create an intergovernmental organization as a subject of international law. The mechanism of creating such entity and the legal ground thereof are well known in international practice.

Footnotes:

- 1 - "Space Policy of Russia", Report for the Supreme Soviet of Russian Federation, Working Group on Cosmonautics, Moscow, 25.12.1991, mimeo
- 2 - for the first time in the

history of Russian cosmonautics it was done in the Law on the budget system of Russian Federation adopted on July 17, 1992

3 - V.Postyshev, I.Moiseyev "Space Policy for Russia", 1.09.1991, mimeo

4 - ibidem