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GENERAL CONVENTION ON SPACE LAW: SOME ARGUMENTS FOR ELABORATION

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Abstract

Most outer space treaties have served us well for more than 30 years and they continue to serve as a good foundation for regulating States' activities in peaceful uses of outer space. These treaties continue to play an active role in regulating States' space activities. Therefore it is necessary to continue work towards making sure that these treaties are ratified by the States that have failed to do so to date.

Furthermore, wherever possible, work needs to be done to modify these treaties to introduce the necessary additions and amendments and adopt additional protocols on these issues as necessary. This refers specifically to the concept of the launching State and its relationship to the matters of registration and liability for damage caused in the course of space activities. There is a number of other aspects on which the outer space treaties adopted in the 1960s and 1970s can and must be modified.

A General Convention on Space Law: some arguments for elaboration

The basis of modern international space law, that was mainly formed in 60-th – 70th years of previous century, is 5 United Nations treaties: *Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), 1967; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement), 1968; Convention on International Liability for Damage Caused by Space Objects (Liability Convention), 1972; Convention on Registration of Objects Launched into Outer Space (Registration Convention), 1975; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement), 1979* and 5 basic Codes of Principles adopted by the UN General Assembly.

Most Outer Space Treaties and Principles have served well for more than 30 years a good foundation for regulating States' activities in peaceful uses of outer space and they continue to play an active role in regulating States' space activities. Therefore it is necessary to continue work towards making sure that these treaties are ratified by the States that have failed to do so to date.

Furthermore, wherever possible, work needs to be done to modify these treaties to introduce the necessary additions and amendments and adopt additional protocols on these issues as necessary. Mainly, it is connected with the intensive development of commercial cosmonautics, the appearance of new types of space activities by strengthening of international co-operation in this area, by the appearance on the arena of the new actors' space activities, whose role couldn't be thrown away during the creation period of base agreements on Outer Space.

This refers specifically to the concept of the launching State and its relationship to the matters of registration and liability for damage caused in the course of space activities. There is a number of other aspects on which the outer space treaties adopted in the 1960s and 1970s can and must be modified.

The certain lag from the necessities of lawmaking works in the field of international space law resulted in the passing ahead growth of arrays of national adjusting in this area. For about 20 states of the world already have main laws (acts) in the field of space activities. Approximately the same quantity of states is developing such laws. From one side, the noted tendency is positive. From the other side, we can observe the exciting apprehension moments connected with substitution by national law for the lacunas, that can be regulated in effective way only at the international law level (The experience of the development of Outer Space Law demonstrates that lacunas in the international legal infrastructure are mostly filled by States through their domestic laws). It is particularly concerned of the application of space law terminology: notions of "space object", "space activities" and a lot of others initial notions have different understanding by national legislations. We also have the examples of settlement in the national legislation of the questions on delimitation of Air and Outer Space and a number of other aspects which need the international level of regulation by their character.

The noted tendency was aggravated in connection with deceleration in the last years of the process of joining the states to the main international agreements on Outer Space.

The development status of international space law in the last 10-15 years can be described as stagnation.

From the tribune of UN Committee on peaceful use of Outer Space the anxiety on the occasion of Outer Space sounds more frequent and appeals to make the attempts for better possession of information in states about advantages concerned with addition to these agreements. However, the reasons of such position are not only because of insufficient knowledge of states about profit in attachment to base agreements on Outer Space, but also because of the regulative role weakening and more frequent treatment of states to national-legal instruments for the decision of daily problems.

In this context it is worthwhile and expedient, parallel to the improvement of the existing outer space treaties and their continuing ratification, to start a profound, in-depth study of the matter of codifying international space law through developing a draft universal convention.

Not for the first year Ukraine constantly supports for the beginning of works on codification of international space law and the drafting of all-embracing Convention on Space law.

This is not a new idea. The concept of a universal Convention on Space law was first raised on Legal Subcommittee of UN Committee for Peaceful Use of Outer Space in 1998 and then mentioned again in the many working document of this Subcommittee. To date, the idea of elaboration of universal convention on space law has been actively supported by a number of States, but roughly the same number of States objects to this change in the development of International space law. And their argument primarily is that such a codification could destroy the progress that has already been achieved with much difficulty throughout the years of the United Nations previous activities in the field of outer space law. Controversial estimates have been voiced with regard to the possibility of using maritime law as a model for a possible universal convention on outer space law. Specifically, the United Nations Convention on Maritime Law developed 20 years ago could be used as a model. Most States have not yet come up with a clearly stated position regarding the matter of a universal convention on outer space law and, more broadly, the matter of codifying international outer space law. Today, this is one of the problems that we are still divided on and it is not likely that the Legal Subcommittee of COPUOS will reach a

consensus on it in the near future unless the matter is studied further.

We suppose that the way of codification is the most appropriated one at present and that it will allow raising the international space law on the new high-quality level of its development. The modification of running agreements on Outer Space by the method of "patching of holes", i.e. the acceptance in the case of necessity of resolutions of the General Assembly with elucidation (and actually – by addition) of separate questions is not productive for today because from one side it will not be able to provide a complexity in adjusting of space-legal problematic. From the other side, it is a number of aspects that at present require international legal instruments but cannot be addressed through modifying the existing outer space treaties.

What are these matters? First of all, these are the key issues of international space law terminology, definitions of such fundamental concepts as space activities, space objects, space debris, etc. Now at the scientific and technical level are discussed matters relating to space traffic regulation. It would be interesting to ask, which of the existing outer space conventions can be modified to address those issues. And, of course, there are many other aspects, especially pertaining to the commercial uses of outer space or environmental issues arising from space activities that were not addressed in the 1960s and 1970s in the treaties that we now have in effect, all of these require additional legal instruments.

In international space projects, very often we run against the matter of the protection of intellectual property and the mechanism for protecting intellectual property rights is another matter that needs to be addressed by an international legal instrument. Of course, we could go on with the list of such examples.

The elaboration of universal Convention does not mean the revision of base norms and principles of acting international space law. It is fundamentally important to save the functioning international legal regulations of space activity during the codification. The purposes of codification should be firstly related with systematization of acting international legal regulation in the field of space activities. In other words, it is expedient to put norms of 5 main agreements on Outer space on the basis of Convention's draft.

The second task, that (as for us) should be settled during the preparatory process of universal Convention, - is the rise of legal force and regulative role of the number of principles of international space law and the other documents so-called "soft law" till the level of international law norms. In particular, principles, that are pertinent to the use of nuclear sources in outer space, - don't suffice for the needs of modern development of space activities. Present-day is the rise of legal force of the number of noted principles till the level of norms, especially that ones, which regulate the questions of safe use of nuclear sources in Outer space. The other norms that are not formulated now in Principles need further development. Of course, it is possible to begin the creation of new separate legal instruments in the appropriate field. However, these questions may be regulated more efficiently in the universal space activities legal instrument.

The elimination in the present space legal agreements of duplicating and incardinating with each other positions should become the third purpose of codification. It is also necessary to extend the legal regulation of the positions, which currently don't satisfy the needs of practice. In present a number of base norms of UN agreements on Outer space "roam" from one document to another that makes the unhandiness in the international legal regulating.

Finally the forth, but not the last by the meaning, aspect of the codification of international space law should be the packing of lacunas in international space law, that appeared because of the rapid development of commercial use of Outer space at the turn of centuries, the settlement of the problems, which actuality could not be foreseen in 60-70 years of previous century. This trend of codification will need

preliminary work on differentiation of the objects of regulation of international and domestic space law. At the same time it is important to put on the international level only that questions, which can not be efficiently regulated on the national level or on the level of bilateral or multilateral cooperation in the network of concrete space projects. The states should make a revision of their legislative systems so to expel from them the norms to which the national level will not be admitted as the most adopted one.

We have already paid the attention earlier on the necessity of space legal terminology uniform during the process of codification. At that we consider it expedient to put into use the notion of "space state" with definition of its criteria as such. It is also necessary to think about the most adapted level of adjusting of such aspects of space activities as the protection of the environment during the process of use and exploration of space, the space traffic regulation, the legal status of objects of "space debris" and the responsibility for the damage, which may be caused to them, the common beginnings of protection of the intellectual property rights in the process of space activities. In the conditions of the expansion of operations of private sector in space field and the other ones connected with it there is a need of revision of the norms of space law, which regulate the questions of state belongings space aircrafts; the protection of investors' rights in the relation to the space objects; the combination of international responsibility of states with liability of commercial subjects – the direct participants of space activities, for the damage caused in the results of such activity; the other aspects of the commercialization and the privatization of space activities influence on the state sector of services in this field.

For a long time in the international legal literature was put question about the necessity of creation of the efficacious system of the space legal disputes settlement in the way of the establishment of the international space arbitration. The elaboration of all-embracing convention is the right time for the settlement of these questions.

It is actual regulating in the Convention of the so-called "space club" creation/ It means of the international organization in which "the space states" would be included. It should be expedient to entrust the elaboration on this organization of the game directive at the market of space services and technologies, the grant of commercial services in the space activity.

At the same time we should accentuate that the process of elaboration of universal convention is the process not only for one year. That's why it is important so these works would not have an influence on the present activity of application of base agreements on Outer space: till the norm of international law is valid it should be strictly kept. It should not also restrain the process of joining to the base agreements on space law of that states, which have not done it yet. And in this case there are reasons for the studying of the work experience of Convention on the Law of the Sea signed at Montego Bay.

And finally. The works on codification will not start till there will not be a consensus on this question in Legal Subcommittee of UN Committee on Outer space. So to go further in this way, it is necessary to study the positions of states in the following question. In the best way of the obtaining the corresponding information is the diffusion among the participant states of Subcommittee of the questionnaire about their positions on the further development of the international space law: either in the way of modification of the present agreements on Outer space or in the way of acceptance of the all-embracing Convention on Outer space and also bring to light the states, which positions on the following question were not formed yet or they want to propose another way.

Such questioning would allow to estimate better the tendencies of the corresponding process development and also to predict the possible time of the beginning of works in this field. It is supposed, that the spade-works may be started right by now

from the elaboration of conception of the future Convention and "inventory" of the acting international legal array in the proper field.

The process of elaboration of a universal convention is a matter for many years, and, therefore, we are emphasizing the need to deploy this work here and now, necessarily in parallel to continuing the ratification of the existing outer space treaties and conventions and their modification, where necessary.