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Legal Status of Double-Uses Satellite Systems

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Abstract.

The main task of this paper is to analyze and to discuss the present binding regime of the legal status of double-uses satellite systems. In particular to outline the urgent need to strength the regime of immunity of satellite systems due to the international terrorism threat. This may be obtained by turning of the appropriate bilateral agreements between the Russian Federation and the USA into multilateral Treaties. Such «immunity» would cover all operating space objects, irrespective of their military or civil designation. This approach is justified taking into consideration that military satellites enhanced international peace and security and had broad advantages as a counter-terrorism means.

1. Refrain from the Threat or Use of Force-jus cogens Principle of Modern International Law

In Outer Space as well as in any other province of mankind

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international law fixed in the Charter of the United Nations, including the principle which obliges all UN Members to refrain from the threat or use of force in their international relations (p.4 art.2 of the UN Charter).

Thus, according to the fundamental rules of international law, the States are obliged to abstain from any hostile operations when carrying out space activity, to settle their international conflicts and disputes by peaceful means. In particular, it means non-acceptance of any violent interference with the rightful activity of an automatic or manned space object of another country by demolishing or damaging such object, its capturing or displacing from orbit. It is necessary to take into account that the 1967 Outer Space Treaty reconfirmed the applicability of the United Nations General Assembly resolution 110(II)) to outer space passed in November 3 1947, which condemned propaganda

designed or is likely to provoke or encourage any threat to the peace, breach of the peace or an act of aggression.

It is useful to remember that the 1979 Moon Agreement contains provisions prohibiting any threat or use of force or any other hostile act or threat of hostile act on the moon. It's likewise prohibited to use the moon in order to commit any such act or to engage in any such threat in relation to the earth, the moon, spacecraft, and personnel of spacecraft or man-made space objects.

2. Bilateral Legal Rules Securing Satellite Systems Immunity

In the time of "cold war" a positive step was made by conclusion of the bilateral Agreements securing satellite systems immunity between the Soviet Union and the United States.

The SALT-1 and SALT-2 Treaties are believed to provide for the immunity of satellites performing verification functions on an arms limitation and disarmament. Other satellites that enjoy immunity are those that perform communication functions directly sanctioned by the Nuclear Accident Agreement of 1971 and the subsequent Agreement on the Prevention of Nuclear War of 1973, as well as the «Hot Line» Treaties

. Russia as a successor of the former Soviet Union and the US strictly fulfils the obligation of these

agreements. These agreements requires Parties to notify each other immediately about the signs of interference with their early warning systems or related communication facilities, including those in outer space, if such interference could create a risk of nuclear war; to notify in cases of unauthorized or unpredictable incident connected with a possible detonation of nuclear weapon; about detection of unidentified objects by their early warning systems; about missiles launched from the territory of one state in the direction of another.. All mentioned Agreements are of bilateral character (between the Russia and the USA), and in this connection the problem on the right of other countries to similar «inviolability» repeatedly arose After a series of consultations held between the Russia and the USA on May 30 1994 the Agreement on the end of targeting of strategic missiles against each other was signed that practically was realized during 1995. The American and Russian onboard missile computers with divided war heads were switched to the «zero» flight programs (tasks) put into memory of computers together with other real flight programs. In 1995 Great Britain and China also declared about the cease of targeting of the missiles at the territory of Russia and other nuclear powers. The shortcoming of such measure is that it is not subject to the control

and can be quickly put on the reverse. Nevertheless, this Agreement has a great political value and is based on mutual confidence. According to the article 51 of the United Nations Charter, each state has the inherent right of individual or collective self-defence if an armed attack takes place against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Since the near-Earth outer space is not declared to be eliminated from an act of warfare in case of armed conflict between the States, according to the binding norms of international law including the United Nations Charter, it is necessary to recognize lawfulness of the use of outer space for a retaliatory strike against the State supporting international terrorism in the case of an armed attack on a satellite system as a lawful self-defence measure.

In the agenda of each session of the United Nations General Assembly we may find included the item: «International cooperation in peaceful use of outer space». It is necessary to remark, that the international cooperation on the peaceful use of outer space is out of harmony with the absence of the universal legal rules securing immunity of all Satellite Systems.

3. State Proposals on the Satellite Systems Immunity

From the moment of conclusion of the 1967 Outer Space Treaty the International Community try to reach the uniform understanding on the further measures to be undertaken on the ways of prevention of the use of force in outer space.

The Text of the Draft Treaty on the Prohibition of the Use of Force in Outer Space and from Space Against the Earth was put forward by the former Soviet Union in 1983. Among concrete aspects of securing the inviolable status of satellite systems first of all must be mentioned the proposals on complete prohibition of the Anti-Satellite weapons (ASAT). It is necessary to take into account that the express prohibition on carrying out of the ASAT tests is not provided by the agreements in force.

Under any conditions, the USA will enjoy superiority in space for at least the current decade and relatively few states could become an equal competitor of the USA on any level. In this situation the vast majority of states would be unequal competitors, while a select number would be unequal adversaries able to develop some means to counter satellite threats.

The unilateral moratorium of the former Soviet Union on the development of the ASAT weapons has been declared in 1983. The Russia as a successor of the former USSR continues to observe this moratorium. The delegation of India to the CD has proposed in 1987 the

conclusion of a multilateral agreement, which would transform the de facto moratorium observed by the USSR and the US on the development of ASAT weapons into a universally binding commitment covering both the dismantling of existing systems and the production of new ones. The idea was supported by a number of developing countries and China. In 1989 Sweden made a proposal on the prohibition of the ASAT systems. The delegations of the Netherlands, Sri-Lanka, Great Britain and Pakistan also expressed the opinion in favour of an inhibitory action or limitation of the ASAT systems.

Attempting to put the problem out of deadlock, many States acted with idea of adoption of partial measures by ensuring «immunity» of the satellite systems. Among them were the Netherlands, Canada, Australia, Argentina, Poland, Hungary, Bulgaria, Germany, France, Great Britain, Japan, Indonesia, Pakistan, Sri-Lanka etc. The problem of inviolability of satellites, or their «immunity» has remained at the level of discussion in the 90s.

Practically speaking the discussions demonstrated that the need to consolidate the efforts against international terrorism, more positive result can be achieved in the field of the confidence-building measures (CBMs) and Space Traffic Management.

4. Transparency Measures

Such measures intended to obtain greater and predictability in prior notification of a space object launch, including prelaunch inspection procedures of satellites.

A number of countries attempted to attract attention to the necessity of taking measures on raising transparency and predictability in space activity and, in particular, on the problems of verification and control¹. In 1989 the French Government came back to its 1978 proposal for the establishment of an International Space Monitoring Agency (ISMA) by offering, in addition, the creation of an International Trajectory Centre (UNITRACE)² and Satellite Image Processing Agency (SIPA)³. In 1993 a similar proposal was made by France with regard to the Centre of Notification about Start of Space Objects and Ballistic Missiles (CNSSOBM). In 1987 the USSR put forward the proposal on creation of an International Space Inspectorate (ISI)⁴ to verify the non-deployment of weapons of any kind in outer space followed by the proposal of creation the International Space Monitoring Agency (ISMA). In 1987 Canada proposed «the PAXSAT Concept»⁵ as a verification measure.

5. Traffic Rules

This kind of measures would be used for the establishment of measures to increase the safety of space objects

and predictability of space activity, including notification on change of a satellite orbit, rules concerning space debris and space manoeuvres.

.As was emphasized by world known space law experts the freedom of outer space use can only be guaranteed when all users respect this principle with regard to others as well.⁶ The space debris pose a threat to all operational space systems {civil, military, double used} since objects in outer space can reach extremely high velocities. It's necessary to note the importance the effort of the COPUOS to develop a document on space debris mitigation using as a basis the technical content of the Interagency Space Debris Coordination Committee (IADC) space debris mitigation guidelines.⁷

6. The Double-Used Satellite Systems against International Terrorism.

At present-day situation the Double-Used Satellite Systems of various functions (early warning, communication, data acquisition, reconnaissance and navigation) were actively used and continue to be used with the purposes of raising efficiency of ground armed forces, especially in the fight against international terrorism and to protect the well-being peoples. In the United States one governmental agency, which has been increasingly engaged in the protection of individuals is the National Geospatial-Intelligence

Agency (NGA)⁸ At the same time such satellites are not a weapon in the literally sense of that word since they do not create by themselves the threats of armed attack in outer space or from outer space. The double-used satellite systems are not a combat force in itself irrespective of their space activity. They are completely different from such combat units as anti-satellite (ASAT), which are commonly referred to as space weapons based in space or on earth. We agree with the opinion of Dr. Benko that the term "weapon" is used without sufficient clarification since there is no indication as to the question of what could be a weapon in space⁹

Moreover, these satellite systems promote maintaining of stability in the international relations. For these reasons the reconnaissance and data acquisition satellites are effective means used for the verification of the observance by some States of non proliferation of nuclear and other weapons of mass destruction and non violation by them of the appropriate agreements. Such satellite systems must be under international protection as the national technical means of the verification and control. Similar protection is enjoyed by the early warning satellites. With the help of space communication facilities the more reliable operative connection of the statesmen is organized in the strained situations. By this way the probability of

making the incorrect retaliatory decisions in critical political situations is reduced. At the same time it's necessary to take into consideration that the activities of the double-used satellite systems are tightly connected with ground armed forces of the States.

NOTES

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- ¹ . Prevention of an Arms Race in Outer Space: A Guide to the discussions in the Conference on Desarmament.UNIDIR.NY 1991, p.117-128.
 - ² Conference on Disarmaments CD/937, 1989 July 21
 - ³ . Conference on Disarmaments CD/OS/OW.59,1993 March 12
 - ⁴ Conference on Disarmaments CD/PV 428,1987 August 6
 - ⁵ Conference on Disarmaments CD/PV 410,1987, April 30
 - ⁶Luboš Perek Ex Facto Sequitur Lex: Facts which Merit Reflection in Space Law in Particular with Regard to Registration and Space Debris Mitigation p.29-46 and Marietta Benkő The Problem of Space Debris A Valid Case Against the Use of Aggressive Military Systems in Outer Space? In essential air and space law SPACE LAW, current problems and perspectives for future regulation ed. by Marietta Benkő and Kai-Uwe Schrogl 2005 Eleven International Publishing p.155-174
 - ⁷ Dr.Lubos Perek Current Status of Mitigation Measures on Space Debris In: Bulletin of the European Centre for Space Law №32 May 2006 p.8-10
 - ⁸ Carl Q Christol Remote Sensing in the War Against Terrorism in: IISL Proceedings of 48Colloquium on the Law of. Outer Space 2005 p.471
 - ⁹ Marietta Benkő The Problem of Space Debris, op.cit, p.167