

SPACE LAW AS A BRANCH OF INTERNATIONAL LAW

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Abstract

The analysis of space law as a branch of international law and the outlining of its framework is of important theoretical and practical significance. Two criteria are used in differentiating the branch: a. the unity of the object of regulation and b. specific branch principles. Space activity is the object of the legal regulation of space law. This is an activity whose essence or aim is linked to the exploration or use of outer space. The norms of this object of regulation constitute space law in the broad sense of the word. Only three of the principles contained in the Space Treaty create a specific legal regime and can be used as branch principles. These are freedom of outer space, jurisdiction and control over space objects and over any personnel thereof and the ban on the national appropriation of outer space. These principles operate only in outer space where they create a homogeneous and specific legal regime through their peremptory force. The norms subject to its action in this spatial sphere constitute the actual space law (or space law in the narrow sense of the word). This specific regime does not operate outside outer space. The common feature which links all the norms of space law in the broad sense of the word is the subject of regulation.

Significance of Scientific Systematization

Regardless of the already long history and large number of norms of space law, its definition as a branch of international law has not been fully and accurately developed in theory. The minimum necessary for this definition is to determine the range

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of norms which fall within its framework, along with the specific legal regime which exerts an integrating effect on these norms. This means that the common features which unite these norms in a separate branch and at the same time differentiate them from the other branches of international law need to be discovered.

The theoretical systematization of the norms of space law in a separate branch is of important theoretical and practical significance. Within the framework of the branch it is possible to carry out an inner systematization of the norms and principles, to study its specific legal regime. Comparative legal studies with other branches of international law are also possible. On this basis valuable conclusions may be drawn regarding the interpretation, implementation and development of the norms of space law, and blanks in the normative regulation and trends in its development can be revealed.

The following basic criteria will be used in differentiating the norms of space law as a separate legal branch: a. the common object of regulation, b. the specific principles acting with regard to the norms of space law.

Object of International Legal Regulation

The object of international legal regulation is the main criterion for the differentiation of the separate branches of international law. This concept refers to those relations between the subjects of international law which are regulated by the norms of international law. The specific object of the regulation of space law are those relations between the subjects of international law which relate to the realization of space activity, i.e. the exploration and use of outer space. Consequently, this object of regulation outlines

the broad framework of space law as a branch of international law.

Subjective rights and obligations aimed at space activity proceed from the norms of space law. Space activity is the object of legal relations which emerge between the subjects of international law on the basis of the norms of space law, i.e. space activity causes states to enter into legal relations. This is why space activity is that specific phenomenon, the object of regulation of the norms of space law, which permeates the entire fabric of this branch of international law.

In this connection great significance is attached to the definition of the concept of "space activity". However, it is not defined by international law. International treaties normally use the formulation "exploration and use of outer space".

The definition of space activity which uses the essence and ultimate aim of the activity as a criteria is most suitable to scientific taxonomy. Space activity is that whose essence or aim is linked to the exploration and use of outer space. This formulation is sufficiently flexible to encompass all the space activities settled by international law so far, as well as future ones.

In conclusion it may be generalized that from the point of view of the object of international legal regulation, international space law includes those norms which regulate international legal relations concerning the realization of activities whose essence or aim is linked to the exploration or use of outer space and which can be realized in all spatial spheres. This criterion defines the framework of space law as an independent branch of international law in the broadest sense of the word.

Specific Principles

Within the thus outlined broad framework of space law, both in theory and in practice, certain norms are cited to which principal significance is attached. They are codified in the basic legal instrument of space law - the 1967 Treaty on Principles Covering the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (Space Treaty).

The qualification of some norms in the Space Treaty as principles is effected on the basis of two criteria: firstly, their degree of generalization and secondly, their universality. However, these criteria are not sufficient to allow the differentiation of principles which have some special juridical significance for the other norms of international law. No special legal consequences proceed from these for the norms of space law; consequently they are not suitable for the structural differentiation of space law as a branch of international law and its distinction from the other legal branches.

Only three principles form an exception. These are the principles of the freedom of exploration and use of outer space, the jurisdiction and control of the state over space objects and over any personnel thereof in space, and the ban on the national appropriation of outer space and of celestial bodies. These three principles, besides their high degree of generalization and universality, are peremptory in their juridical essence. Precisely for this reason they can play the role of branch principles with a structure-determining significance.

The peremptory character of these three principles of space law has not explicitly been settled in international space law. The first two principles - that of the freedom of outer space and of the jurisdiction and control over space objects and over any personnel thereof - have a peremptory power because they are a part of the content of another peremptory principle of international law. This is the principle of state sovereignty. Essentially they represent its expression in space and bear its peremptory character.

The principle of the ban on the national appropriation of outer space and of celestial bodies is essentially a norm which limits the territorial expansion of state sovereignty in the direction of free space. That is, this norm limits the activity of another peremptory norm of international law - the principle of state sovereignty. In keeping with art. 53 of the Vienna Convention on the Law of Treaties, a modification of the peremptory norm is possible "only by a subsequent norm of general international law, having the same character". In this instance the principle of the ban on the national appropriation of

outer space is that peremptory norm which limits the action of the principle of sovereignty. Consequently, from a logical legal point of view, the principle on the ban of the national appropriation of space and of celestial bodies has the peremptory power of international law and any conflicting norms are void.

Actual Space Law and Space Law in the Broad Sense of the Word

A characteristic feature of the activity of these three basic principles of space law is that they operate only in one space sphere. This is outer space. In this spatial sphere the principles have a structure-determining significance for the system of norms of space law. They create a specific legal regime which is determined by their peremptory international legal power. The norms which are encompassed by the action of this legal regime belong to space law in the narrow sense of the word or to the so-called actual space law.

The integrating properties of these three basic principles as the system-forming elements of space law proceed both from their common object of regulated, as well as from their peremptory international legal power. Thanks to the latter the interrelation is effected in the system of norms of actual space law. Through it the most characteristic features of the principles are imposed as characteristic features of the branch, permeate the content of all its norms and distinguish it from the other branches of international law. They determine the characteristic peculiarities of this branch of international law and guide the functioning of its norms, as well as their development.

From their peremptory power it follows that the other norms of space law cannot conflict with them because otherwise they become void. In this way they are leaving their mark on the specifics of the functioning of the norms of space law in space. They are significant in defining the direction of the development and the interpretation of the norms of this branch of international law. This is so because the new norms of space law cannot conflict with the peremptory principles of space law either. These three principles link the norms of space law within a

branch, i.e. in a relatively independent juridical entity which as such is expressed before the other branches of international law, e.g. with regard to air law, sea law, etc. Namely these legal peculiarities of the three principles determine their specific place and raise them to the rank of its branch principles. Thanks to their peremptory action these principles organize the norms of space law to which they relate in their entire multitude of interlinked elements.

Consequently, from the point of view of the homogeneity of the legal regime, space law may be subdivided into two parts - actual space law and space law in the broad sense of the word. In the science of international law, including the science of space law, such a difference is not made. Space law as a branch of international law encompasses both types. The reason for this consists in the use of a single criterion for the systematization of norms in a separate branch of international law - this is the object of legal regulation. The specific integrating effect of the above-mentioned three principles on the norms of space law in space is ignored.

The use of one criterion for the differentiation of the branch, such as the object of legal regulation, into one branch of international law combines the norms which do in fact have a different legal regime - those of actual space law and the other norms of space law. There is no reason why the existing systematization of space law should not remain, but the existing differences should always be kept in mind. This is a question of important practical significance since the regime operating in space is not applicable to the norms of space law operating outside this spatial sphere. Failure to take into account this specific peculiarity frequently leads to conflicts in the application of the norms of space law in both theory and practice. Thus, for example, the freedom of space is non-applicable to air space. If deemed necessary, the legal regime of space law operating in space can be expanded by way of international legal agreements with regard to other spatial activities carried out outside outer space as well, for example in air space and on earth.