

THE BRAZILIAN SPACE LICENSING REGULATION

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ABSTRACT

The prospects for space commercialization that have been showing up, specially in the case of the Alcantara Launch Center, direct the Brazilian legal system on a search for a statute law suitable for that aim.

In the context of the Brazilian legislative process, and due to a provision of the law which creates the Brazilian Space Agency (BSA), just this organization is in charge to establish rules and to issue licenses and authorizations regarding to space activities.

BSA has been working hard on that purpose, elaborating regulations that have been approved by its Superior Council. The rules on procedures and definitions required for application, assessment, issuing, controlling the indispensable license for launching space² activities on Brazilian territory have been established by BSA Resolution n. 51 of January 26th, 2001, as well as by BSA Edict n. 27 of June, 20th 2001.

According to this legislation, the adopted licensing procedure does not apply to space activities carried out by Brazilian governmental agencies.

It points out the intention of hastening the fulfillment of the necessary licenses and authorizations requirements related to the commercial uses of the Brazilian Launch Center (Alcantara and Barreira do Inferno) in order to attend potential partners interested on space launch business.

This paper aims to present the current stage of Brazilian Space Law, as well as its development and application. Special attention is give to the increasing demand for an even more dynamic space law making process in Brazil. The conclusion is that Brazil must create, as soon as possible, wide and efficient legal instruments.

1. INTRODUCTION

In order to implement its space policy, Brazil has been developing scientific and technological programs for research and development of space systems which, in addition to meeting its own needs, bring about collaborative ventures with other countries. In this context, the need for increased study and knowledge of space law becomes more evident, considering its singularity and the multiple and diverse aspects that so often characterize its application.

Following this line of thought, we must conclude that the joint efforts

stemming from partnerships entered into with universities and other Brazilian institutions dedicated to the furtherance of space law studies take on a dominant and strategic role, for they are bound to generate an increased level of efficiency and efficacy in governmental programs. The latter encompass two Brazilian space launch centers, the Alc ntara Launch Center-CLA being particularly noteworthy because it possesses all the elements necessary to render the country internationally competitive in the commercial use of space services, due to its privileged geographic locale.

This situation highlights the need to put together a regulatory framework in the area of Brazilian space law, in order to discipline space activities in the national territory, the use of the available infrastructure, and the issuance, supervision and control of space launch licenses and authorizations, among a variety of other activities that may result therefrom.

This reality has certainly generated a great deal of international expectation over the matter of issuance of regulatory legislation regarding the services to be provided by the Brazilian State, through the use of the Alc ntara Launch Center-CLA, because that would provide a greater degree of certainty for those countries that have expressed an interest in carrying out launches from the national territory.

According to this perception, Brazilian competitiveness will hinge, to a large extent, on a most significant aspect, i. e., the enactment of legislative rules designed to bring about the degree of administrative and operational flexibility that is required for an effective handling of the demand for services, thereby ensuring that future negotiations on launches from that center will be as expedient as required.

My presentation is designed to give a description of the current state of Brazilian space law and the results already obtained, as well as the significance of the role that must be played by universities and similar institutions, not only in regard to the drafting of the much-awaited codification of Brazilian Space Law, but also - and perhaps more significantly - in connection with the study, development and application of that law.

2. THE BRAZILIAN LEGISLATIVE PROCESS

As set forth in Sec. 22 of the Brazilian Constitution, the Union has the power to legislate on matters of space law. Thus, the federal government is exclusively empowered to issue ordinary legislation on the matter. It should also be pointed out that, pursuant to national legislative procedures, all manner of bills introduced in the Senate or the Chamber of Deputies must first come under the scrutiny of the appropriate committees, that is, those having jurisdiction by reason of subject matter.

The requirement of examination by technical groups is in keeping with the universal principle of division of labor, and also fulfills the need of ensuring that the subject matter will be examined by legislators who are familiar with the respective field of knowledge. A favorable report by the committee constitutes a decisive step for the approval or rejection of a bill in either legislative house.

It should be stressed, moreover, that a report by the Committee on Constitution and Justice on a bill's compliance with basic legal, constitutional and parliamentary rules is a mandatory initial step with regard to practically the totality of bills introduced

in any of the houses of the Brazilian Parliament.

The exclusive powers vested in the Union by the Constitution to regulate space law matters must conform however, to the principle that is at the essence of the democratic representative regime, to the effect that fundamental legal regulations must be enacted by the Legislative Branch, as the basic institution in a democratic representative regime. For this reason all bills of law dealing with essential reforms demanded by society at large must be submitted to it.

There is an awareness of the fact that such task is neither easy nor simple but, on the contrary, one that requires a great deal of time and must also comply with the requirement set forth in Decree n^o2,954 of January 29, 1999, whereby the enactment of politically or socially relevant regulatory statutes must be preceded by a process of ample public consultation.

3. THE ROLE OF THE BRAZILIAN SPACE AGENCY IN ESTABLISHING THE LEGAL FRAMEWORK

The BRAZILIAN SPACE AGENCY - AEB, a federal autarchic¹ entity, under the Ministry of Science and Technology - MCT, was set-up by Law n^o8,854 of February 10, 1994, for the purpose of "furthering the development of space activities that are in the national interest" with, among others, the power to "establish rules and issue licenses and authorizations regarding space activities.

Decree n^o1,332 of December 8, 1994, in turn, gave approval to the Space Activities Development Policy - PNDAE and, in item II, n^o3 of its Appendix provided as follows:

"Space activities should be understood as consisting in the systematic effort to develop and operate space systems, and

the necessary infrastructure, related therewith, for the purpose of enabling Man to increase his knowledge about the Universe and, in particular, of planet Earth and its atmosphere, as well as to explore, for utilitarian purposes, the availability of such systems."

This statutory citation makes it clear that the BRAZILIAN SPACE AGENCY is duly empowered to **establish rules and issue licenses and authorizations relative to space activities.**

It should also be mentioned that launch operations will have a major role in consolidating the efforts for the utilization of the Alc ntara Launch Center - CLA whose privileged geographic location may render Brazil internationally competitive in providing a wide range of services, especially for carrying out orbital launches.

In effect, there has been a great deal of speculation about the framework of the rules designed to discipline the services to be provided by the Brazilian State, particularly those pertaining to the launch center in question, given the need for legal safeguards that has been expressed by countries that have shown an interest in making launches from Brazil.

The BRAZILIAN SPACE AGENCY - AEB's decision to strive for the establishment of rules leading to future codification of Brazilian space law has met with a very positive reception, since there is a need for the country to develop its own set of legal rules, in harmony with the international accords signed by it, and designed to bring about the utilization of its space infrastructure.

AEB may be said to have initiated that process, through the issuance, by its Superior Council² and its president, of a set of regulations designed to achieve that purpose, through rules that establish procedures and define

requirements to govern license application, evaluation, issuance, control, follow-up and oversight management, for the conduct of space launch activities in the Brazilian territory, as follows³:

- CHAPTER I - GENERAL PROVISIONS - (secs. 1 to 5): pertains to the definition of licenses and exempts therefrom those space activities that are carried out by governmental agencies or entities; allows the insertion of restrictive or conditional clauses; deals with the question of funding and criteria for the control, follow-up and inspection of licensee's activities, as well as the definition of damage, for civil liability purposes.

- CHAPTER II - DOCUMENTATION AND APPLICATION - (secs. 6 to 14): defines criteria for legal status documentation, technical qualification, economic-financial qualification and fiscal standing of interested legal entities, as well as the terms and conditions for document submission; makes it mandatory for the legal entity to be licensed in its country of origin, in order to engage in the activities it proposes to perform, and that it have a legal representative in Brazil, with express powers to receive summons and to be held administratively, as well as judicially, liable; requires that documents provided by foreign legal entities be submitted in the original language and the original text, by means of authentic copies, and that it be duly translated by a certified public translator; contemplates the possibility that AEB may require the submission to it of an instrument of commitment regarding technological safeguards, if this comes to be demanded by Brazilian government authorities; requires insurance coverage for possible third party damage, to the extent warranted in specific cases and in

keeping with the degree of risk of the activities to be performed, such amounts to be set by AEB beforehand.

- CHAPTER III - PROCEDURES FOR APPLICATION - (secs. 5 to 19): defines, on a step-by-step basis, the procedures to be followed by legal entities for submission of their documentation and defines the jurisdiction of the Special Applications Commission.

- CHAPTER IV - ADMINISTRATIVE SANCTIONS - (secs. 20 and 21): defines administrative sanctions applicable to an infringer of the rules set forth in the Regulations and the criteria for their application.

- CHAPTER V - ADMINISTRATIVE APPEALS - (secs. 22 to 24): sets forth the procedure for filing appeals and their judgment.

- CHAPTER VI - FINAL PROVISIONS - (secs. 25 to 27): deals with the publicity of administrative actions resulting from the application of the Regulations; contemplates the issuance of a normative act to deal with the matter of the charging of fees for the granting of licenses and with the question of supplementary instructions for the implementation of technical and administrative actions required to be carried out, in compliance with the licensing procedures.

At a later stage a set of rules was issued, to govern the procedure for authorizing a space launch operation in the Brazilian territory⁴, likewise through the Superior Council and the President of AEB, according to the following outline:

Section 1, of 10.26.2001 and DIRECTIVE n.º 5 of February 21, 2002 published in the DOU

Section 1, 02.25.2002.

- CHAPTER I - GENERAL PROVISIONS - (secs. 1 to 8): deals with the definition of space launch and excludes space activities carried out by

governmental organs or entities; defines authorization and sets forth the general principles for its granting.

- CHAPTER II - PROCEDURE AND AUTHORIZATION - (secs. 9 to 11): defines the administrative proceeding to be followed by legal entities upon their obtaining an authorization.

- CHAPTER III - ADMINISTRATIVE PENALTIES - (secs. 12 and 13): defines administrative penalties applicable to an infringer of the rules set forth in the Regulations and the criteria for their application.

- CHAPTER IV - ADMINISTRATIVE APPEALS - (secs. 14 and 15): sets forth procedures for the filing and judging of appeals.

- CHAPTER V - FINAL PROVISIONS - (secs. 16 to 20): deals with the publicity of administrative acts arising out of the application of the Regulations; contemplates the issuance of a normative act regarding the charging of fees for the granting of an authorization; provides for the creation of a public register for the registry of space objects launched into outer space from the national territory, and defines the information that should be provided.

It should be stressed that, although these normative acts still fall short of meeting the expectations of international partners, their existence in the Brazilian space law is a sign of Brazil's resolve regarding the elaboration and systematization of a legal framework for space activities that are in the national interest.

VI - PARTICIPATION OF UNIVERSITIES AND SIMILAR ENTITIES IN THE STUDIES, DEVELOPMENT AND APPLICATION OF BRAZILIAN SPACE LAWS

There cannot be any doubt that the successful development of Brazilian space programs and the increase in the number of partnerships have unleashed a more effective phase in the race to marshal the human resources needed for attaining the national goals for this important market segment.

As a result, universities and similar institutions, which are fertile grounds

for specialized teams will certainly provide a decisive contribution to government sectors dealing with space law, as needed to face up to the challenge posed by this complex and relevant subject matter. One such example is in the work that has been performed by the Brazilian Aerospace Law Society - SBDA, whose pioneering efforts have provided incentive and spread the knowledge of space law.

A number of reasons come together to recommend the involvement of the above-mentioned institutions in this relevant branch of the law, among them is the need to form groups made up of professors and jurists, all of them engaged in the study and application of space law, in a national as well as, in an international context. The growing attention to the matter is one of the upshots of Brazilian space activities carried out in the last years. This fact, together with the reality of the privileged location of the two launch sites existing in Brazil - one in Alc ntará, Maranh o and the other at Barreira do Inferno, in Natal, constitute vital signs of promising business prospects with regard to launch operations. This fact constitutes an added reason for accelerating the dissemination of knowledge and the training of professional cadres of specialists in this new branch of the law.

It is necessary, however, to advance a little more in this endeavor, and to that

effect, the Brazilian Government ought to stop relegating to a secondary plane the need to introduce a course in space law as part of law course curriculum, even if it is on an optional basis. This would bring about increased awareness on the part of scholars and heighten their interest in this still novel branch of the law. Such action would be an unequivocal demonstration of the government's commitment and determination to promote the development of much needed human resources and the enhancement of their capability.

This represents yet another challenge that must be met by the Brazilian Government, as it cannot fail to keep abreast of technological progress and other advances, under penalty of compromising the goal of promoting the development of space activities of national interest, which encompass the study, development and application of their own legal system that is designed to meet such needs.

V - CONCLUSION

This presentation has sought to provide a picture of the present stage of development in the Brazilian legal system with regard to space activities that are in the national interest, and to highlight the innumerable reasons for an acceleration of the process of building the legal framework of Brazilian space law, in order to provide society with an effective regulatory instrument, one that fits in with the needs of the times.

The approach adopted was designed not only to report on what is being done in Brazil, in connection with its space legislation, but also to reach out to those responsible for the management of Brazilian institutions engaged in the study, discussion and application of the law, in the hope of increasing their

awareness of this promising market. It is essential that they realize that the institutions in question must play an essential part as invaluable agents, and not merely as spectators, in the effort to achieve a better development and increased knowledge of space law, mindful of the fact that none of the branches of the law failed to go through a similar participatory process in their development.

Man will always be searching for knowledge and new experiences and, as such, has overcome the most diverse challenges, over the course of time. Once Brazilian universities are given new opportunities to gain a better knowledge of this matter, which is at present one of fundamental importance for the process of national and international development; this will bring about a new perspective for future professionals of this new legal field, one that is not so far behind, as well as the emergence of new academic works that will enlarge its universe and usher in new expectations and horizons.

In conclusion, it must be stated that, in the present stage of its space legislation, even if it may be still in an embryonic stage, Brazil is already able to meet the demands of the various areas that are encompassed by space activities, especially those having to do with the commercial development of the launch sector through the utilization of the Alc n tara Launch Center structure.

References

¹ An autarchic entity is a governmental organization subject to Public Law, having its own assets and source of revenue and is established by law in order to carry out activities that are within the sphere of the public administration.

³ RESOLUTION n;51 of 01.26.2001 - published in the Official Gazette of the Union — DOU Section 1 of 06.21.2001

⁴ RESOLUTION n;55 of 10.24.2001 - published in the Official Gazette of the Union DOU — Section 1 of 10.26.2001