

POSSIBLE CONSEQUENCES OF THE LACK OF SECONDARY LEGISLATION WITH RESPECT TO OUTER SPACE IN MEXICO

Rosa María Ramírez de Arellano*¹

Julio Daniel Carvajal Smith²**

Ramírez de Arellano y Abogados, S.C.³**

I. ABSTRACT

International treaties of any scope or on any matters to be dealt with represent agreements that, ratified by the Governments, become part of their legislation; however, a treaty, like a Constitution or the Fundamental Law of a State, includes provisions, - some specific and some others of a general character-; the general character dispositions are subject to specific interpretation that may oppose the motivation of the Treaty. Mexico is a country of treaties, - bilateral or multilateral-, which, being ratified by the Senate of the Republic, become part of the Supreme Law of the country.

The object of this paper is to make evident the need for space regulation in Mexico, due to the implications and consequences that the lack of such regulation implies.

II. INTRODUCTION

The Mexican State is constituted according to article 40 of the Political Constitution of the United Mexican States in a representative, democratic, and federal Republic, made up of 31 free and sovereign Federal States and the Capital City. In accordance with article 44 of our Constitution the seat of the Powers of the Union and the capital of the Republic is the Federal District, better known as Mexico City. We are speaking of the Mexican Federation.

The United Mexican States has its Judicial, Executive and Legislative Power, both on a federal and state level, in Mexico City; which is to say, that our Federation is controlled by the Federal Congress, which consists of a House of Representatives and the Senate, by the President of the Republic and by the Supreme Court of Justice of the Nation,

and the lower courts. In the local government, each State of the Federation also possesses its House of Representatives, a Governor and its own courts.

The laws that govern foreign affairs of the Mexicans are created by the federal congress if dealing with norms which are relevant to the entire territory and population of the republic; otherwise they are emitted by the congress of each entity. For the specific case of Mexico City, there exists the legislative Assembly of the Federal District, owing to the fact that the capital of the United Mexican States does not possess the legal situation to be considered as a State of the Federation.

Regarding the dispensing of justice in Mexico, the head of the judicial system is the aforementioned Supreme Court of Justice of the Nation, even though, at a federal level, there exist more federal courts but none with the powers of the Supreme Court of Justice. On a local level, each state possesses its Court of justice and in turn, its lower courts. The matters dealt with by each court or tribunal are distinct. There are Civil, Family and Penal courts, as well as courts in Administrative matters and Electoral Law, for example: there exist legal areas which are analyzed and developed by the federal judges, such as Commercial Law, and others by the state judges, for example Civil Law.

Although during its existence, Mexico has accepted many bilateral and multilateral instruments, Mexico has actively participated for a relatively short time in the creation and development of international links on different levels and in different areas of expertise. In order to illustrate the foregoing, Mexico's admission into GATT was concreted toward the end of the 1980's. During a considerable part of Mexico's life, in the twentieth century Private International Law did not undergo much progress due to the country's preoccupation with the national system.

Today, at the beginning of the 21st century, Mexico requires urgent changes, one of which is legal change. The development of technology, trade, interpersonal relations, and culture in general, shows no signs of slowing down; on the contrary, it is fortunately or unfortunately, gathering momentum. Hugo Grotius spoke of the seas, the English had the opportunity to dominate a considerable part of the world, thanks to their seafaring abilities. It is possible that marine areas and related activities are not as predominant a subject as they once were, even though such subjects are unknown to many. Following the attempts of the soviets and the United States to reach outer space, and land on the Moon, long after the studies of Copernicus and Leonardo Da

Vinci, man has the real possibility of knowing Mars with his own eyes, and to take vacations away from the planet Earth. Such ideas seem impossible to many people but they are not impossible in reality, and the Nations are preparing for such events, while others such as the United Mexican States continue to direct their eyes only earthbound.

III. The Need for Mexican space Regulations

Mexico is a developing country, which, except for some institutions, among which are academic institutions such as the Universidad Nacional Autónoma de México (UNAM) and the Instituto Politécnico Nacional (IPN), have forgotten and underestimated the national technological advance and its consequent legal regulation.

In Mexico, Space Law is often confused with Air Law, and such legal branches are in turn confused with Telecommunications. There exists a Federal Telecommunications Law, but not a law regulating space activities. Many would ask "for what purpose?" among whom would unfortunately be the federal and state* legislators. The United Mexican States does not currently have a Space Agency, but it does have the real possibility of developing aerospace knowledge and technology at the Universidad

Nacional Autónoma de México as well as its corresponding experts, we already have a Mexican astronaut who is on the teaching staff of such University.

Further still, as from the 1980`s there have been accidents caused by space artifacts, both in outer space as well as on Earth. It could be asked, and to a certain degree, rightly so at first, what relevance is borne by Mexico on such matters which concern the lives of scientists, which represent the loss of millions of dollars and irreplaceable time? To which someone could respond, with greater relevance, that it is of immense importance. If a spacecraft were to disintegrate, its parts could fall on national territory or in national waters, or they could cause death, affect populated zones, or affect cultivated lands with the possibility of radiation. But it is not only a question of the possibility of regrettable situations; by our commenting on the life of outer space, distinct points of more favorable interest are touched upon. Space development includes better medicines, the geological analysis of different celestial bodies and of the Earth itself, the discovery of new oil deposits, the prevision and prevention of natural phenomena, tourism, the possibility of savings of water, more advanced communications with other persons, and innovating

scientific theories.

Due to the forgoing, Mexico has the possibility and real urgent need of creating an advanced legal norm in matters of Space Law, as well as updating its legal experts.

IV. Jurisdiction Problems due to the lack of Mexican space legislation

It was mentioned at the beginning of this document that in the United Mexican States, there exist different authorities and jurisdictions. Despite the fact that our Constitution stipulates the matter as such, Federalism has not really been experienced within my country. The federal government absorbed the state governments, however, regarding the matter in question, the Federation should have legal and practical control. Space Law is highly technical and based on the whole, on international treaties, about which, article 133 of the Mexican Constitution, textually states:

"This Constitution, the laws of the House of Representatives which derive thereof, and all the treaties which are, in accordance with same, entered into by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the entire Union. The judges of each State shall abide by such Constitution, laws, and treaties, despite any provisions to the

contrary which may exist in the Constitutions or laws of the States".

From the foregoing it is understood that the United Mexican States is legally authorized to become internationally bound regarding Space Law, but not that Mexico has a national legislation in accordance with the legislation which is not national. Consequently there exists an enormous legal vacuum, given that it combines the unawareness of the judges and of the general public of the international instruments of Space Law. It is consequently fundamental to point out that the Mexican state courts should undertake a lot of work regarding legal matters directly related to either individuals of corporate entities, with one reason being that the distinct activities of such persons normally fall within the sphere of the aforementioned courts. But it is necessary for Congress to create federal Mexican legislation regarding Space Law for the following reasons: It is considered that the expertise on matters of space regarding Judicial Power should be the exclusive responsibility of the federal judges. The activities linked to outer space are directly related to the Mexican State** in their entirety and with their interests, for example; it would be difficult to mark territorial boundaries, for matters regarding space, between the states which make up the United Mexican States or

for the purpose of stipulating which state should or should not obtain the benefit of any data provided by a satellite, in case a space artifact provides information concerning the presence of a hurricane, how could we define which Mexican states were affected or not by the provision of such information? On the one hand, when placing the space theme in the hands of the federal judicial authority we are avoiding conflict of jurisdiction*** within the Mexican territory, which would considerably facilitate matters in the beginning, and subsequently it would speed up the process of matters regarding space presented before the courts; and on the other hand, it is fitting to mention that being a local judge in the United Mexican States does not, unfortunately, guaranty an optimum performance of work, even when such judges have graduated from prestigiously****recognized academic institutions. On the contrary, it is considered that the federal justice system does possess the best legal solvency, whereby strengthening the proposal for the Mexican Federal Court System to be in charge of ruling on legal disputes regarding matters of space.

Concerning Article 133 of the Mexican constitution, in the final section, it is proper to mention the legal vacuum present therein. The state

judges have the obligation of applying, in matters of space and territory, the international treaties accepted by the United Mexican States****, with the difficulty of how such international norms would be put into practice once materialized as Mexican Law, since there does not exist in my country, any concrete legal or procedural document which clarifies, explains or develops for the Mexican people in general, the matters stipulated in the current treaties. If to the foregoing we add the aforementioned better preparation and performance of the federal judges, the logical outcome is to seriously consider that all matters regarding Space Law should be dealt with by the Federal Court System.

To sum up, due to the lack of Mexican regulations regarding Space Law today, in case of any given legal dispute, it would not be clear which court should hear or resolve such matter. Lets suppose that due to the relevance of the matter, a federal court, and perhaps even the Supreme Court of Justice of the Nation would legally deal with such case, which causes discretion in the delivery of justice, thereby impeding the provision of legal certainty within the Mexican Court System.

Considering the above we have placed at the consideration of the Senate of the Republic, distinct regulations and a bill regarding matters of space.

V. Conclusions

I. The United Mexican States should urgently regulate matters on space due to the fact that the development on such matters on an international level, has long been underway, and such State is legislatively, although not academically or technologically, way behind. The responsibility of the creation of such law should be borne by the Federal Congress.

II. The creation of Mexican space legislation should be federal, and deal exclusively with the activity in outer space, which means a detachment, except where strictly necessary, from Telecommunications and Air Law, with such themes bearing some relation but not being the same as Space Law.

III. In case of legal disputes regarding space activities, the Federal Court System should hear and rule on such matters, in accordance with the corresponding basic and procedural space law, with the corresponding international instruments and with the norms of International Public Law and International Private Law accepted by the United Mexican States.

IV. The federal government should guarantee, by law, an annual budgetary allocation to the public superior academic institutions for the purpose of encouraging the Mexican space

development, especially to the Universidad Nacional Autónoma de México (UNAM) and to the Instituto Politécnico Nacional (IPN), who are the project leaders in matters on outer space today in Mexico.

V. Legally and pragmatically, the federal government should guarantee the existence of a document which develops and explains the obligations and rights stipulated in the functioning of the international instruments which are valid in the United Mexican States, and not only regarding Space Law.

VI. Bibliography

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6. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter

Outer Space Treaty),
London/Moscow/Washington,
adopted 19 December 1966,
opened for signature 27 January
1967, entered into force 10
October 1967

Endnotes

*Federal legislators and congressmen are Members of the Federal House of Congress and Senators. Local or state legislators are Members of the State House of Congress.

** The concept of State includes three elements: Territory, populations, government and legal order.

*** Such conflicts, in case the subject of Space Law in Mexico were not to be considered federal, could be dealt with by municipal judges of the Federal States of the Federation. The municipalities consist of the different States of the Mexican Federation, and possess the lowest level of power and government. The federal states possess the second or intermediate level of power and government in the United Mexican States and the Federation, constituted by Federal States and Municipalities, possess the highest level of power and government.

****On a state level, the judges do not always fill such posts by means of the legal profession or on academic merits, but rather on political merits.

*****The signing of treaties corresponds to the President of the Republic, in accordance with article 89, section X, the subsequent approval of the international instruments is the responsibility of the Senate in accordance with article 76, section I. Article 133 determines the hierarchy of the laws within Mexican Law. The aforementioned articles form part of the body of the Political Constitution of the United Mexican States.

Mexican foreign policy is of the expertise of the Federation, and the head of such national agenda, is the Department of Foreign Relations.

*1 Member of ISL, IAA, and Mexican Bar, Attorneys College, A.C ; Prof in Telecommunication Law, and Space Law in INAP, and Universidad Panamericana

**2 Member of Mexican Bar, Attorneys College, A. C.; Prof. In Internacional Law in Facultad de Derecho, UNAM.

***3 Member of IAF and IISL.