

AIR, SPACE, ENVIRONMENTAL LAW

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THE CONCEPT AND THE STRUCTURE OF THE INTERNATIONAL SPACE LAW (METHODOLOGICAL ASPECT)

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Abstract.

Purpose: the article discusses the development of the theorist foundations of space law. The views of scientists on the problem of the principles of space law are analyzed. The list of normative acts in this area is determined. **Methods:** classification of international instruments in the field of space law. The ways of further development of international and domestic space law as a sphere of activity of humanity are determined. **Discussion:** there is a conclusion about the necessity of development of domestic space law.

Keywords: international space law, principles of space law, regulations, international law

1. Introduction

Legal regulation of the activity on the exploration and use of outer space as opposed to the sea and air law started with the devising of regulations of international legal character rather than with passing national legal acts by the states. Therefore, it is the content of international documents on space activity that determined the development of national legislation about space.

International space law is one of the branches of international public law and therefore, is one of its constituents. The launching of first artificial Earth satellites in late 60-th gave birth to this branch of law.

International space law is defined as the set of special regulations of the current general international law that regulate the relationships of the states between themselves, with intergovernmental organizations, the relationships of these organizations with regard to their space activity, laying down international legal regulation of this activity within outer space, the Moon and other celestial bodies.

Therefore, international space law is defined according to the character of the states' activity (space activity), place of activity (outer space, celestial bodies).

2. Problem and its connection with scientific and practical tasks

The state of the legal system of the most developed states, including obviously Ukraine, enables us to say safely that space law of the state has evolved into the independent branch of the national law.

However, it is worth noting that current development of national legislation in the sphere of space law fails to meet the requirements of time and rates of development of scientific and technological progress. It is against this background that serious problem exists connected with absence of methodological papers in the sphere of space law. Ukraine, being the space country does not give full attention to methodological and scientific researches in the sphere of space law.

3. Analysis of result research

The following scientists study the problems of space law: I. Andrushko, A. Beglyj, S. Negoda, N. Malysheva, Yu. Shemshuchenko and others.

According to one of the existing definitions of the concept "national space law", proposed by one of the space law founder's Sergij Negoda, "national state space law" is the set of laws and other statutory acts regulating the relationships between the sub-

jects of national law arising due to their research of outer space” [1].

4. Setting objectives

The article is aimed at disclosing the main methodical fundamentals of space law as an element of national legislation from the perspective of legal disciplines’ methodology, revealing the sources, principles, subjects and objects of space law.

From our point of view, the concept and the structure of international space law presupposes setting sources, principles and methods of space law as an element of national legislation, clear definition of the subject and the object of legal relationships in the sphere of space law on the national and international levels.

By the sources of international space law, we mean forms of expression and confirmation of the rules of this branch of international law, regulating international relations arising with regard to and in view of the exploration and use of outer space.

In international space law (as well as in general international law), the main types of sources of law are an international treaty and a custom. It is worth noting that the process of forming and development of international space law occurs mainly in the contractual form [2].

The international treaty (agreement) is concluded between the subjects of international space law in written form and contains certain definitions of international space law norms.

While concluding a treaty the subjects of international law are aimed at forming of international legal norms directed at regulation of relations between them.

5. Presenting main materials

Depending on the groups of participants, the treaties are distinguished into universal and with limited number of participants (bilateral, regional).

All the rules of the treaty are legally binding for the participants of the treaty and their violation entails responsibility under international law.

The norm of international space law implies the rule of conduct that is accepted by the subjects of international space law as legally binding.

Apart from international treaties that are concluded on the subject of regulating relations in the sphere of space activity, international agreements

regulating the main principles and rules of international relations in all the spheres have to be legitimately included to the sources of international space law, with the following among them:

- The Charter of the United Nations of 26 June 1945.

- Declaration on Principles of International Law concerning Friendly Relations and Cooperation among the States in Accordance with the Charter of the UN of 24 October 1970 and many others.

The branch sources of international space law include:

- Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space of 13 December 1963;

- Treaty Banning Nuclear Weapons Tests in the Atmosphere, Outer Space, and under Water of 5 August 1963;

- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967;

- Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 22 April 1968;

- Convention on International Liability for Damage Caused by Space Objects of 29 March 1972;

- Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting of 10 December 1982;

- Principles Relating to Remote Sensing of the Earth from Outer Space of 3 December 1986;

- Principles Relevant to the Use of Nuclear Power Sources in Outer Space of 14 December 1992;

- Declaration on International Cooperation on Exploration and Use of Outer Space for the Benefit of all States with Special Regard to the Needs of Developing Countries, 13 December 1996.

In Ukraine, the sources of space law also include:

- Constitution of Ukraine;

- Law of Ukraine “on Space Activity” and other Regulatory Acts.

Custom. The process of creating customary norm is complicated. In Clause 1 “C” p. 38 of Stat-

ute of the International Court of Justice, custom is defined as “an evidence of general practice accepted as a legal norm.” It means that international custom, which is the norm of international space law, can become such a rule of conduct of international space law subjects that was formed in the result of repeated uniform actions.

It is also possible to mention that at present customary norm has been formed governing the border between air and outer spaces.

When it comes to the principles of international space law it is first of all worth noting that any individual or collective activity of states or international organizations on exploration and use of outer space has to first and foremost comply with the main (general) principles of current international law [3].

The main principles of international law - are directly expressed, generalized and recognized rules of conduct of subjects of international relations concerning the most vital issues of international life.

Therefore, the principles of international law are the same norms in substance but in comparison with other international legal norms constitute the basis of international rule of law.

Thus, Article 2 of the UN Charter makes this organization and its members act in accordance with certain principles, including:

- sovereign equality of all the members;
- fulfilment in good faith of obligations under the Charter;
- peaceful means of settling international disputes;
- non-use of force or threat of use of force in international relations;
- refusal to provide assistance to any state against which the UN takes preventive measures and rendering of assistance to the UN while taking such measures;
- providing support for states’ actions – non-members of the UN in accordance with these principles as it can be of importance for the maintenance of international peace and security;
- non-interference of the UN in the affairs of internal competence of any state.

Fixing of these principles in the UN Charter imparts them the binding force of rules of conduct. No

principles of international space law and international treaties have to contradict the main principles of international law by their imperative nature.

The principles of international space law considered in this article are branch principles in so much as they refer to laying down the main legal conditions in the sphere of space activity that is governed by the norms of one of the branches of international public law [4].

The main principles of international space law are fixed in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967.

The principles of space law were also reflected in Partial Test Ban Treaty of 5 August 1963.

In accordance with the listed documents and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967, the main principles of international space law include the following: a) freedom of exploration and use of outer space and celestial bodies; b) prohibition of national appropriation of outer space and celestial bodies; c) carrying activity on exploration and use of outer space and celestial bodies in accordance with the main principles of international law, including the basic principles of the UN Charter; d) the use of the Moon and other celestial bodies only for peaceful purposes and prohibition of location in outer space the objects with weapons of mass destruction; e) reservation of states’ sovereign rights on the launched or space objects; f) international responsibility of states for the national activity in space including the damage caused by space objects; g) prevention of potentially harmful consequences of experiments in outer space and on celestial bodies; h) rendering assistance to the crew of spaceship in case of accident, disaster and compulsory landing; i) promotion of international cooperation in peaceful exploration and use of outer space and celestial bodies.

The listed principles of international space law cover the most common states’ rules of conduct on which they have to rely in their space activity. They, in their turn, reflect both specific orientation and special characteristic of international space law

as a separate branch of current general international law.

One of the main components of international space law science's methodology is the presence of "legal relations in the sphere of space".

In accordance with general theory of law, legal relations mean social relations, governed by the rules of law. The space legal relations should mean social relations between the subjects of international space law arising with regard to and in view of their exploration and use of outer space and governed by both principles and norms of general international law and international space law.

The most complicated and controversial problems of international space law as well as the whole international law is the problem of determination of the group of subjects and the object of this branch of law that has not unfortunately been fully developed and did not get uniform decision in the theory of international law.

According to the general theory of law a holder of rights and a bearer of duties is meant by the subject of law i.e. a person involved or one that can be involved in legal relations.

Legal relation as a means of impact on the subjects' conduct represents by itself only the model of subjects' conduct in these relations; it should be identified neither with existing factual social relations nor with their form.

Legal relation as a result of legal impact is social relation in which the activity of subjects is governed by law. Moreover, rights and duties arising based on legal rules need one another and cannot exist without each other as physical phenomena. In the result of the impact of subject rights and legal duties, as well as their realization social relations gain new legal form, they become regulated.

These provisions can be fully applied to international law as a whole and to such its branch as international space law in particular, with regard to their special features and specificity.

By the subject of international law in general and international space law in particular is meant potential participant of international legal relation (space legal relation) that is capable of having rights and duties and if appropriate to be internationally liable. Herewith international legal relation

is defined as social relation governed by the norms of international law.

The problem of subjects is closely connected with the problem of object of law in general and international law or international space law in particular, since according to the general theory of law the object is always influenced by the subject.

In terms of international law, international relations will be its object, the relations that are governed and influenced by international law.

Accordingly, the object of international space law can be defined as international relations arising with regard to and in view of space activity, i.e. with regard to the activity of international space law subjects on exploration and use of outer space and celestial bodies based on the international legal mechanism in force.

However, it should be born in mind that the object of international space law does not coincide with the object of international space legal relation and is different from the latter in its volume and coverage.

6. Conclusions

The object of international space law is a wider and more general concept that is related to the whole branch of international law being considered.

The object of international space legal relation is on the contrary a narrower concept that reflects specific manifestation of the object of international space law, the definite factual international relation that is influenced by international space law.

Consequently, we can conclude that the development of methodological basis of international space law is the reflection of general trends of development of international and national legislations in the sphere of space exploration. The process should objectively show modern challenges in the sphere of scientific technical progress, development of military technologies and prevent dangerous tendencies of space use for military or other purposes that can damage the environment of the Earth or outer space.

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СТРУКТУРА МІЖНАРОДНОГО КОСМІЧНОГО ПРАВА (МЕТОДОЛОГІЧНИЙ АСПЕКТ)

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Мета: у статті розкривається питання розвитку теоретичних основ космічного права. Аналізуються погляди вчених на проблему принципів космічного права. **Методи дослідження:** визначається перелік нормативних актів в даній сфері. Класифікуються міжнародні акти у сфері космічного права. **Результати:** визначаються шляхи подальшого розвитку міжнародного та вітчизняного космічного права як сфери діяльності людства. Робиться висновок про необхідність забезпечення розвитку вітчизняного космічного права. **Обговорення:** проблеми національного законодавства та імплементації норм зарубіжного законодавства до норм вітчизняного законодавства.

Ключові слова: міжнародне космічне право, принципи космічного права, нормативні акти, міжнародне право.

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Цель: в статье раскрывается вопрос развития теоретических основ космического права. Анализируются взгляды ученых на проблему принципов космического права. Определяется перечень нормативных актов в данной сфере. **Методы исследования:** классифицируются международные акты в сфере космического права. **Результаты:** определяются пути дальнейшего развития международного и отечественного космического права как сферы деятельности человечества. Делается вывод о необходимости обеспечения развития отечественного космического права. **Обсуждение:** проблемы национального законодательства и имплементации норм зарубежного законодательства в нормы отечественного законодательства.

Ключевые слова: международное космическое право, принципы космического права, нормативные акты, международное право.