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ПОЗИЦИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ ПО РАЗМЕЩЕНИЮ ОРУЖИЯ В КОСМОСЕ С ТОЧКИ ЗРЕНИЯ МЕЖДУНАРОДНОГО ПРАВА

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Аннотация: Принятый в 1967 году Договор о принципах деятельности государств по исследованию и использованию космического пространства, включая Луну и другие небесные тела, запрещает размещение в космосе любого оружия массового поражения, но никак не оговаривает другие виды оружия, что создает существенный правовой пробел.

Достаточно нераскрытый принцип использования космического пространства в «мирных целях», сформировавшийся в конце 60-х годов XX века и до сих пор являющийся основополагающим в космическом праве, оставляет государствам свободу в развитии военного потенциала, который они сочтут необходимым для защиты своей национальной безопасности в космическом пространстве.

Начавшаяся гонка вооружений между крупнейшими космическими державами и появление на мировой арене новых субъектов, заинтересованных в развитии своего военного космического потенциала, несут в себе значительные угрозы мирному существованию человечества. В ходе освоения космоса разные страны запустили на орбиту множество аппаратов, которые, по сути, являются контркосмическим оружием, но мировое сообщество может лишь выразить свою озабоченность и осудить подобные действия.

В статье рассматриваются основные подходы к проблеме применения различных видов оружия в космосе. Автор исследует различные подходы к решению наиболее значимых вопросов международного права. В связи с этим необходимо искать новые универсальные способы обеспечения национальной безопасности и регулирования применения оружия, размещенного в космическом пространстве. Автор указывает на отсутствие дифференциации между пределами использования космического пространства в гражданских и иных целях и рассматривает другие актуальные проблемы в области применения новейших видов вооружений.

Ключевые слова: правовое регулирование, вооружение в космосе, технологии в космосе, размещение оружия в космосе, международно-правовое регулирование космоса, космическое право

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Policy and economy of Eurasia

Original article

THE POSITION OF THE RUSSIAN FEDERATION ON THE DEPLOYMENT OF WEAPONS IN SPACE FROM THE POINT OF VIEW OF INTERNATIONAL LAW

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Abstract: The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies adopted in 1967 the deployment of any weapons of mass destruction in outer space, but does not stipulate other types of weapons in any way, which creates a significant legal gap.

The sufficiently undisclosed principle of using outer space based on «peaceful purposes», which developed in the late 60s of the XX century and is still fundamental in the later applicable part of international space law, leaves States practically free to develop any defensive and offensive military potential that they deem necessary to protect their national security interests in outer space.

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The arms race that has begun between the largest space-flying powers and the emergence on the world stage of new actors interested in developing their military space potential promise significant threats to the peaceful existence of mankind. During the space exploration, different countries have launched into orbit many vehicles that are counter-space weapons and work in the interests of the military, but the world community can only express its concern and condemn such actions.

The article discusses the main approaches to the problem of the use of various types of weapons in space. The author explores various approaches to solving the most significant issues of international law. In this regard, it is necessary to search for new universal ways to ensure national security and regulate the use of weapons placed in outer space. The author points out that there is no differentiation between the limits of the use of outer space for civil and other purposes and other urgent problems in the field of the use of the latest types of weapons.

Keywords: legal regulation, armament in space, technologies in space, placement of weapons in space, international legal regulation of space, space law

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1.1. The role of Russia in the formation and development of international space law

The 21st century was marked by the development and emergence of modern technologies. As a result, not only in Russia, the USA and China, but also in many other countries, the space industry began to rapidly grow. A new sphere of influence has been formed, based on the application of technological innovations that can be used in the conducting of military operations. The relevance of the study of the international legal regulation of the deployment and use of various types of weapons and technologies in space is due to the need to form a fundamentally new policy based on international cooperation in order to ensure peace [1].

Modern Russia, as a subject of international law, positions itself as the continuator and legal successor of the USSR. This is confirmed by the practice of international relations, a number of international treaties, and, in particular, the Russian Federation (unlike other former Soviet republics) continues to be a permanent member of the UN Security Council. The regulation of the activities of the Russian Federation in the context of international relations is prescribed in the Federal Law of July 15, 1995 «On International Treaties of the Russian Federation» , where it is noted that in the conclusion of international treaties, «the Russian Federation is a party as a successor state of the USSR» [2].

The positioning of Russia as the continuator and successor of the USSR was reflected in the latest edition of the Constitution of the Russian Federation, which was supplemented by a separate article 67.1.: «The Russian Federation is the legal successor of the USSR on its territory, as well as the legal successor (continuator) of the USSR in relation to membership in international organisations, their bodies, participation in international treaties, as well as in relation to obligations and assets of the USSR stipulated by international treaties outside the territory of the Russian Federation» [3].

It should be noted that there are legal connotations regarding the categories of «continuity» and «legal succession». The continuity in international law means the continuity of the existence of a state as a subject of international law. In this sense, we can note the permanent transformation of the same participant in international relations, a subject of international law, which historically has not ceased to exist.: The Russian Empire – the Russian Republic – the RSFSR – the USSR – the Russian Federation [4].

The legal succession means a partial or entire transfer of rights, obligations and agreements from one subject of international law to another (for modern Russia – from the state of the USSR to the state of the Russian Federation). This is possible if there are clearly distinguishable common features between the predecessor State and the successor State, such as territory, population, economy, culture and traditions. It is important to note that Russia's continuation towards its direct predecessor, the Soviet Union, is unconditional: it cannot be partial, which means that it is recognized and accepted in its entirety, without any conditions and restrictions by all participants of international relations, including the UN.

Besides, Russia as the legal successor of its direct predecessor, the USSR has sovereignty, and can also independently decide which international agreements to keep and which to abandon. Nevertheless, emphasizing its status as a continuator, the Russian Federation strives to preserve the membership in the most part of international treaites previously concluded by the Soviet Union. But this does not mean that Russia must strictly fulfill all previously accepted international obligations and agreements, both at the level of intergovernmental agreements and in connection with its membership in the UN.

Socio-economic and political conditions are changing, and new technologies are constantly being developed. Especially these processes have accelerated in the current century. Russia, while continuing to be a global player (especially in the political, military, scientific and technical spheres), is inevitably involved in these processes [5].

Thus, Russia, as the continuator and the legal successor of the USSR, has every reason to position itself as a subject of international law, acting in accordance not only with the norms of law and contractual obligations adopted in contemporary history, but also with those international acts that were adopted before the beginning of the 90s of the previous century during the existence of the USSR. The same positioning of the Russian Federation applies to its space exploration activities and contractual relations related to international space law.

Being one of the first historically established space powers, Russia had a significant impact on the development of world cosmonautics and international law accompanying the activities of States in space exploration. In fact, Russia has played a key role in the development of every significant document adopted within the framework of international space law and positioning itself as a major participant. The most important legal acts of international law in which the Russian Federation participates:

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

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

Convention on International Liability for Damage Caused by Space Objects, 1972;

– Agreement between USSR and USA concerning Cooperation in the Exploration and Use of Outer Space for Peaceful Purposes, 1977;

– International Charter on Space and Major Disasters, 2000.

The adoption of fundamental documents within the framework of international space law took place against the background of increasing international cooperation on outer space. The USSR, from the very beginning of the space age, has been actively involved in this cooperation. In 1957, the USSR launched the first international satellite into orbit. In 1962, an official decision was made on space cooperation between the USSR and the USA. Ten years later, this resulted in the development of the Soyuz-Apollo program, which ended in 1975 with the space-link in near–Earth orbit of the ships of the two states-world leaders in space exploration at that time. The event entered the annals of the history of cosmonautics under the symbolic name «Handshake in Orbit».

Since the mid-1960s, the Soviet Union, the countries of Eastern Europe, Cuba and Mongolia (oriented towards socialism) established long-term cooperation in the field of cosmonautics and space exploration, which called the Intercosmos program. The program was aimed at obtaining information from space, for the needs of meteorology, satellite communications and for the development of science such as space physics, biology and medicine. In the future, until the collapse of the Soviet Union, socialist countries (due to socio-political closeness) were linked to the USSR in the implementation of joint space projects.

Western European countries focused more on space cooperation with the USA. Nevertheless, the USSR established constructive contacts in this area with a number of capitalist countries. Perhaps the most successful and stable relations were established with France, which was preceded by an official visit in 1966 by General Charles de Gaulle to Moscow, during which an intergovernmental agreement on cooperation in space exploration was signed.

In the 70s and 80s, the USSR carried out cooperation on a number of space programs. In particular, it was one of the initiators of the formation of the International Organization «Inmarsat» in 1979 , which included more than 30 states. The main goals of the consortium were to carry out maritime, river and aviation satellite communications, navigation, coordination of rescue operations in oceanic waters, and provision of telephone mobile communication terminals. In the late 1980s, the USSR joined the international Intelsat consortium.

In 1998, Russia took part in the International Space Station (ISS) project. The duration of the project was determined for the period until 2010, then, under an intergovernmental agreement between the participating states, the ISS operation period was extended until 2016, and upon reaching this date - until 2024. After two decades of operation of the station, there are different assessments of the implementation of the project itself among experts. Thus, critically-minded Americans believe that with the low efficiency of experiments conducted at the station, NASA's costs for its operation turned out to be incomparably large. From the point of view of Russian experts, the criticism is primarily related to the organizational and legal aspect: it is believed that the Roskosmos agency, as the main Russian representative of the project implementation, when concluding partnership agreements with NASA, failed to define and prescribe the interests of the Russian side in terms of ownership articles.

Legally incorrectly spelled out unequal ownership of the ISS, according to which the owner of the basic modules of the space station is the United States, seems clearly flawed against the background of the fact that Russia originally invested in the project its unique experience of using «the Mir» predecessor station. Moreover, Russian cosmonautics, after the disaster of the U.S. space shuttle Columbia, delivered cargo and astronauts to the ISS exclusively by its own vehicles (Soyuz-TM spacecraft), which allowed this international project to be extended for almost ten years.

Under international space law, the fundamental international instrument on outer space is the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty). But the very fact of the discussions unfolding in the legal community (for example, around the problem of the «use of extraterrestrial resources») shows the need to supplement and adopt a new version of this document. In fact, which is often reflected in the works of Russian and foreign researchers, the Outer Space Treaty defines the basic elements of the legal regime of outer space and celestial bodies, but does not establish specific norms concerning the legal regime of natural resources of celestial bodies and does not prohibit the potential use of such resources [12].

In the current situation, it is inadvisable to take a conservative stance and be overly critical of the revision of the foundations of international space law. The history of competition between states in the field of space exploration has shown that it should not rest on the results achieved, but the one who seeks and finds fundamentally new solutions wins. This also applies to legislation: lagging behind global trends here can have negative consequences for the implementation of national projects for the development and exploration of outer space.

Therefore, it should be evaluated as a constructive proposal to develop a draft Law of the Russian Federation on the exploration and use of space resources – similar to the US Space Resource Exploration and Utilization Act of 2015.

While assessing the acceptability and constructiveness of proposals to revise certain provisions spelled out in previously adopted documents on the use of outer space and celestial bodies, it is also necessary to determine the permissible limits of revision of international space law. Drawing attention to the basic conditions laid down in earlier space documents, the provisions touching on security and peacekeeping should be highlighted. This is what Articles III and IV of the Outer Space Treaty are aimed at.

But as the recent history of the Treaty on Elimination of Intermediate-Range and Shorter-Range Missiles Between the USA and the USSR and the U.S.-Russian bilateral treaty on further mutual reductions of deployed strategic nuclear weapons, any international agreements in the politico-military sphere can, for utilitarian purposes, be unilaterally renegotiated. In this regard, it should be emphasized that the revision of Article IV of the 1967 Treaty, according to which states «undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner» [6] is, in principle, not acceptable.

What is important, but no longer only from a politico-military point of view, but in a broader international context, is the position of those who call not to destroy the legal and political world order previously established in the global community. Such a position is inherent in the Russian leadership, expressed, in particular, in the well-known statement of the Russian Foreign Ministry calling on the international community «to take collective action to prevent the transformation of outer space, including the Moon and other celestial bodies, into an arena of confrontation» [7].

At present, Russia still has the Convention on International Liability for Damage Caused by Space Objects (1975), which provides for state liability for the fall of satellites on the territory of another state and emphasizes the compensation of losses associated with accidents of satellites of states parties to the Convention in space [8].

The Convention on Registration of Objects Launched into Outer Space (1980) does not include an obligation for a state to register the purpose of a satellite launch. Moreover, if an artificial satellite cannot be identified and it is of a dangerous or malicious nature, then states are effectively deprived of leverage, their powers are limited to asking other participating states for help in identifying the satellite. Under the Convention, they have no authority to destroy it; de facto, the state is not empowered to destroy a threat to national security.

The UN Charter and other documents provide for a system of collective security of member states, but the use of weapons and new technologies in the space sphere is not regulated [5], which could lead to serious geopolitical problems in the future. Thus, the Convention is formally outdated and requires updating in connection with the development of geopolitical relations, the improvement of technological development and many other factors [13].

1.2. The Russian–Chinese PPWT initiative

Back in the 1980s, the USSR proposed to the UN that agreements beon the non-use of force from space against the Earth and from the Earth againstspace objects. The proposals met with opposition from the US and did not develop further. Then, in a new turn of history, in response to a proposal by the Russian president at the Millennium Summit in New York in September 2000, an international conference «Space without weapons: an arena for peaceful cooperation» was held in Moscow in April 2001.

An international conference took place in Moscow in April 2001. It was the first time the ideas on the elaboration of an agreement on the prevention of the weaponization of outer space were clearly formulated and voiced during the conference.in space and not to use or threaten to use force against space objects. The idea of a moratorium on the placement of weapons in space was also voiced.

This initiative was formalized at the 56th session of the UNGA (September 2001), when the Russian foreign minister proposed to begin work on the relevant arrangements. Specific proposals included the development of an agreement to prevent the placement of weapons in space, as well as the introduction of a moratorium on the placement of weapons in space. At that time the initiative was embodied in a Russian-Chinese document on possible elements of a future agreement to prevent the placement of weapons in space, which was presented in June 2002 at the Conference on Disarmament.

At the 59th session of the UNGA in 2004, Russia declared that it would not be the first to place. At the 59th UNGA session in 2004, Russia declared that it would not be the first to deploy weapons of any kind in space and called on all states possessing space capabilities to follow suit. In 2005, the CSTO states joined the initiative. To date, other members of the initiative include Sri Lanka, Brazil, Indonesia, Argentina and Cuba.

The Russian-Chinese draft treaty on the prevention of the placement of weapons in outer space (PPWT) was officially submitted by the Russian Foreign Minister to the Conference on Disarmament on February 12, 2008. Formal and informal meetings of the Conference on Disarmament, annual international conferences on security of space activities held by the UN Institute for Disarmament Research were used to promote the draft, to explain the essence of its key provisions.In June 2014. Russia and China submitted to the Conference on Disarmament an updated version of the draft PPWT 1, which took into account the comments made. Thus, the document ceased to be a product of bilateral efforts, becoming, in essence, the result of collective Thereby the document ceased to be the product of bilateral efforts and essentially became the result of collective work and thus became multilateral in nature.

One of the stated goals of Russia and China in the PPWT Treaty was to «preserve outer space as a sphere where there is no place for any weapons». The Russian Federation is making active efforts to promote the no first placement of weapons in outer space initiative, in particular within the framework of the Conference on Disarmament and the First Committee of the United Nations General Assembly, UN Disarmament Commission, BRICS, SCO.

In the stated initiative, «space weapons» is definated as «any device placed in outer space, based on a physical principle, specially created or transformed to eliminate damage or disrupt the normal functioning of objects in outer space, on Earth or in the air». At the same time, it was further clarified that the placement of weapons in outer space means the withdrawal of an object to an orbital trajectory or its placement on a permanent basis in space. Thus, the PPWT does not cover kinetic weapons, such as anti-satellite missiles [6].

It is worth noting that this joint bilateral initiative is not supported by many states, for example, Germany, France, the United States and Israel. In the beggining of 2020 Germany's representative to the UN Disarmament Committee, Susanne Baumann, said the issue was not to prevent the weaponization of outer space and prevent a new arms race, noting that the main thing now is to focus on the «earthly» – general security in the world and the strengthening of trust between countries.

According to Russia, the US is seeking to dismantle the system of arms control and nonproliferation in space. This is stated in a statement of the Russian Foreign Ministry, published on its website. A similar position can be seen among Chinese researchers: «Currently, the US, based on its selfish interests, is opposing this arms control process in space. At the same time, they have already declared outer space to be a space in which it is necessary to ensure dominance, created a separate kind of troops for this purpose, and even accelerated the tendency to deploy weapons in outer space» [9].

The contradiction between the international community's diplomatic efforts to reduce tensions in outer space and prevent the acceleration of a space arms race, on the one hand, and the continuous testing of counter-space technologies that contribute to escalating such friction, on the other, is proof that achieving a true consensus on rules of behavior in outer space is not an easy task.

The legal basis for space activities in the Russian Federation is currently represented by the following regulatory documents [10]: The Constitution of the Russian Federation, the Civil Code of the Russian Federation, federal laws: «On Space Activities», «On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation», «On Defense», «On Military-Technical Cooperation of the Russian Federation with Foreign States», «On the Procedure for Foreign Investment in Economic Companies of Strategic Importance for Ensuring the Defense of the Country and the Security of the State», «On Industrial Policy in of the Russian Federation», «On industrial safety of hazardous production facilities», «On environmental protection», «On security», «On military duty and military service», the Military Doctrine of the Russian Federation (approved by the President of the Russian Federation on December 25, 2014 No Pr-2976), orders of the Minister of Defense of the Russian Federation and heads of other federal bodies of the Russian Federation and other regulatory legal acts.

In fact, the international legal framework exists, but the individual processes of international legal regulation of the placement and use of various types of weapons and technology in space are a cause for concern. Now there is no unified normative legal act fixing the limits of the use of weapons in space and technologies used in space. A serious scientific-theoretical development of the conceptual foundations of international legal regulation of the placement and use of various types of weapons and technology in space in conditions of armed conflicts is required in order to ensure the national security of the Russian Federation, taking into account the best international practices [11].

For several years Russia has been signing statements with various countries about not being the first to place weapons in space. Among the latter are treaties with Sierra Leone, Guatemala, Burundi, Suriname, and other countries. As the experts explain, it is not the influence of countries that support the idea of space without weapons that matters, but their number. With their help, Moscow intends to influence Washington on this issue.

No one can guess what the growing arms race may lead to: at best, to armed conflicts between the leading space powers, at worst, to the undermining of international space security and the final polarization of interests [12].

The United Nations Office for Outer Space Affairs and the United Nations Committee on the Peaceful Uses of Outer Space, as guarantors of international space security and stability, should continue to make greater efforts to ensure that these issues are addressed through negotiations and open dialogue between states.

Conclusion

The current legal regulation of outer space raises many issues. And while international cooperation is not quite responsive to all the challenges of space law, domestic law is much more effective in resolving «whack-a-mole» issues of space activities.

The following problems are currently identified [13]:

– there is no distinction between the limits of the use of outer space for civil and other purposes;

– the status of «space weapons» is not enshrined in law;

– there are no prohibitions and liability for the use of cyber technologies used in space to disable space and ground-based strategic equipment;

– there is no legal regulation of situations involving the possibility of using various types of weapons in outer space in order to ensure the national security of the Russian Federation;

– the procedure and methods for identifying space satellites and determining their launch targets are not defined;

– the limits of the use of new technologies for civil and military purposes are not defined.

The deployment of weapons in outer space is a radical and reckless choice. Even if space weapons are not used, their flight tests or presence overhead, which can affect a country's ability to see, hear, navigate, detect impending danger and fight, have serious consequences for international relations. The environment of outer space does not depend on a specific country. The placement of space weapons in the Earth orbit is of concern to any country over which space weapons pass or may pass. If space becomes another area of flight testing and deployment of weapons, then there will be no refuge and no guarantees that important satellites will be available when they are needed for military missions, global trade, everyday life. Therefore, it is so important to expand the scope of application of existing legal norms, to develop a code of conduct establishing agreed rules of conduct for responsible space powers, which can strengthen international efforts to prevent the deployment of weapons in outer space. Not so confident, but going in the right direction, steps are being taken today. And these initiatives should be the key to a reliable peace.

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