Space law challenges for smaller European countries. The prospective legal framework for space activities in Poland.

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A summary of speach

In the early 2006 Warsaw Technical University (*Politechnika Warszawska*) has announced that the University team has been working on the first student satellite (the so-called PWsat), which would in fact be the first Polish satellite when successfully launched into outer space. The satellite has been designed as a 1kg device capable to manoeuvre space debris from their orbital paths into orbital graveyards or into the atmosphere, where they could be safely burned. This space project attracted a considerably large public attention, as it has testified on an impressive scientific and engineering potential of the student designers, however it has also become a starting point for the discussion on how to proceed with the authorisation and registration of the object, yet to be transported into outer space. In plain words, it has triggered a reflection on any possible regulatory action pertaining to the national implementation of international space law treaties. The legal considerations did not yet prompt any regulatory solutions. However they did indeed reveal a complex picture pertaining to the foreign and space policy postures, which are characteristic for smaller states.

Poland is a relatively small country in terms of the size and the scope of its space activities, and in general terms it maintains its space policy low-profiled. Therefore the first reaction on the university satellite project immediately brought a question whether it is the best-suited incentive for developing a dedicated legal framework for space activities? What should be the character and the scale of prospective regulation and why some solutions are more relevant than the others? Moreover as there were forces, which encouraged the development of such dedicated framework (i.e. the lack of respective regulations might hinder the ability of public or private national entities to successfully deal on the level of contractual arrangements with international partners, for example concerning launching contracts), there were also some obstacles preventing from doing so (i.e. it is evident that for smaller countries the aim might be to keeping any framework as flexible as possible, including application of para-legal solutions if so preferred.)[2]

These are all particularly puzzling issues, to which there hardly ever were any upfront answers: for last forty years throughout which Poland was pursuing its space programmes, nothing was actually prospecting as a valid momentum to regulate space activities differently then by the direct application of international space law provisions. No national space law was ever issued, no regulation was accommodating respective competencies to implement international space law treaties to any of the governmental

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[2] Such as an informal national register of space objects.

bodies. Therefore what arises these days is a quest for a rationale for providing a regulatory framework for national activities in outer space, or at least for attracting more of a government attention and interest in such framework. Drawing from the Polish example it might be useful to bring in mind that the proper assessment of specific political and economic circumstances, which have shaped national capabilities in space science and technology in the past, is a prerequisite to understand and possibly foresee the implications for the future. Such reflection may eventually explain the preference toward certain legal actions and disregard for the others.

Legally speaking the decades of Cold War was the most fruitful period for space law development in Poland. The country became a party to the four major UN space treaties: Outer Space Treaty (30 Jan 1969), Rescue & Return Agreement (23 May 1969), Liability Convention, (11 Dec 1973) and Registration Convention (15 Feb 1979) and, as most of others, it did not recognize the Moon Treaty a binding part of international law. The period of the 1960's and 1970's was also fertile in space scientific and technological development achievements, which were prompted by a close cooperation with one of the major space powers at the time – the USSR. On the other hand the years of Cold War era has substantiated a number of impediments, such as restrictive and inclusive international (non-)cooperation, the ubiquitous concept of the so-called "socialist division of labour" and the Communist approach, which effectively ruled out the competition or autonomy in space-related research, development and industrial procurement in the entire Eastern-European region. What has eventually paved the way of the ongoing commitment to space science, technology and applications and further shaped the prospects for the Eastern-European countries after the collapse of the Soviet Union, was a well-trained engineering and scientific human resource. However what brought the qualitative change was the departure from centrally planned economy to the market economy, which resulted in the de-monopolization of state own enterprises and public institutions traditionally confined to space affairs. The availability of the enabling technological capabilities allowed new, smaller private and public players to claim their share in what is called "national space activity." Today the Warsaw Technical University is pursuing a small satellite project and this relatively modest, university endeavour brings a number of interesting legal issues in order to satisfy responsibilities under the Outer Space Treaty and the Registration Convention. In a situation in which there are no evident procedures to automatically apply, there might be even a problem of legal or procedural vacuum, which in a worst scenario might hinder the country's ability to fulfil the obligations under international space law.

The character and scope of the prospective regulation related to national space activities has not been decided yet. The initial idea to apply the provisions of the existing Polish Air Law[3], which has already been pursued by the satellite providers, did not meet a support of the government legislators. However as the satellite project is currently facing some delays, therefore there is still a time to decide on legal tools to be appropriate to use. On the other hand at this point it is reasonable to expect that the policy goal might be to create a system, which would be flexible and easily adjusting to

[3] *Ustawa z dnia 3 lipca 2002 r. Prawo lotnicze (Dz.U.02.130.1112, Dz.U.04.99.1002, Dz.U.05.180.1490)*

changing circumstances and the ad-hoc nature of this and other space -related R&D projects. Such approach would inherently stimulate the development of the legal framework able to meet functional and symbolic dimension of domestic needs and aspirations.