REGULATION OF SPACE ACTIVITIES
Emerging Issues & Regulatory Challenges for Pakistan’s Space Programme-2040

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Outline

- Pakistan’s Space Programme-2040
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Pakistan’s Space Programme-2040

- **PSP-2040**
  - On 15 July 2011, the Prime Minister of Pakistan, Yousaf Raza Gillani, approved the Pakistan’s Space Programme-2040.

- **Objective of PSP-2040**
  - To bring the benefits of space technology to the people of Pakistan.

- **Operational Framework of PSP-2040**
  - Under this programme 5 Geostationary Orbit (GSO) satellites and 6 Low Earth Orbit (LEO) satellites are expected to be developed and launched from 2011 till 2040.
The United Nations' Five Treaties and Principles on 'Outer Space' serve a legal basis for National Space Legislation.
In 1959 the UN General Assembly created the Committee on the Peaceful Uses of Outer Space (COPUOS), through Resolution 1472 (XIV), for the discussion and codification of International Space Law.

During a period of thirteen years (1967-1979) COPUOS produced the five international space treaties and conventions existing today.

Number of Member States in the Committee: 71
The United Nations’ Treaties on Space Law governing space-related activities of States in Outer Space. These five treaties and agreements are:

1. The Outer Space Treaty 1967, entered into force on 10 October 1967;
2. The Rescue Agreement, 1968, entered into force on 3 December 1968;
3. The Liability Convention, 1972, entered into force on 1 September 1972;
4. The Registration Convention, 1975, entered into force on 15 September 1976;
International space treaties deal with commercial utilisation of space by any country, arms control in space, liability for damage caused by space objects, the safety and rescue of spacecraft and astronauts, the prevention of harmful interference with space activities and the environment, the notification and registration of space activities, scientific investigation and the exploration of natural resources in outer space and settlement of disputes.
Article VI of the Outer Space Treaty, 1967 prescribes that "States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities."
Liability Convention, 1972

- Article I of the Liability Convention defines the term “launching state.”

- Launching State means "a state which launches or procures the launching of a space object, or a State from whose territory or facility a space object is launched."

- Article II establishes absolute liability for damage caused on the earth or to aircraft in flight. In other words, no proof of damage caused on earth or to aircrafts in flight is required to be proffered by the claimant.
Article IV allows mitigation of liability on the basis of proof of gross negligence on the part the claimant. On the other hand, Article III of the Convention establishes fault-based liability for damage caused in outer space.

Article VII exonerates the launching state from liability in respect of nationals of launching state and foreigners participating in launch.

National legal system needs to be in place for the reimbursement of the compensation to the State which has been required to pay to the victim(s) of an accident by the space object of a private person.
Legal Implications: HGS-3

- Difficulties may arise regarding transfer of satellites in orbit, especially in the case of sale of satellites. Because transfers of satellites in orbit among launching states would be permitted under the Registration Convention. But transfer of ownership in orbit to a non-launching state, the Registration Convention does not permit any modification in this case:

- Case of HGS-3
  - Pakistan acquired a telecommunication satellite, HGS-3, on full time lease and relocated and renamed it as PAKSAT but originally it was launched by M/s Hughes Global Services for Indonesia.
  - Pakistan as a new State may not be held liable under the Outer Space Treaty and the Liability Convention. But under International Law the Pakistan will be internationally responsible, since the use of a satellite in orbit will definitely qualify as a national activity of the new State, as it will have the opportunity to exercise legal control, i.e., the use of a satellite in orbit will be within the new state's personal jurisdiction.
New State should execute an agreement with the state whose national sold the satellite whereby the former assumes a liability which may arise from damage caused by the satellite after its sale and consequent transfer of title and whereby it holds the latter harmless and agrees to indemnify it for any loss which it may incur.

The Liability Convention itself would allow this possibility, since Article V authorizes the possibility of agreements to allocate the financial obligation among States.
Rescue Agreement, 1968

- The Agreement on the rescue of astronauts, the return of astronauts and the return of objects launched into outer space gives detailed resolution to the duty imposed on State parties in terms of Article V of the OST 1967.
The Registration Convention, 1975 provides a mandatory system for the registration of objects, which provides for both substantive and procedural obligations for States to implement at the national level.
The Registration Convention provides a dual system:

- **National (Convention) Registration**
  - Register established in 1961 in accordance with Resolution 1721 B (XVI) to make provision for the national registration by launching States of objects launched into outer space.

- **International Registration**
  - Register established in 1976 in accordance with the United Nations Register of Objects Launched into Outer Space.
  - Supersedes the resolution 1721 B (XVI) Register
The Registration Convention obliges States to create a national registry. It prescribes that "when a space object is launched into earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain."
Article VIII of the Outer Space Treaty, States are required to maintain a “Registry” of space objects launched into outer space for the purpose of identification of space objects.

The article postulates that a “state party to the treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object and personnel in outer space or on a celestial body.”
The Registration Convention (Article IV para.2) requires that States to communicate certain information regarding the space object recorded at the national level to the Secretary-General of the United Nations, who maintains a central registry:

- name of launching State or States;
- an appropriate designator of the space object or its registration number;
- date and territory or location of launch;
- basic orbital parameters, including:
  - nodal period;
  - inclination;
  - apogee;
  - perigee;
- general function of the space object
Article IV requires that each State of registry shall notify the Secretary-General of the United Nations, to the greatest extent feasible and as soon as practicable, of space objects concerning which it has previously transmitted information, and which have been but no longer are in earth orbit.
The five sets of legal principles adopted by the United Nations General Assembly provide for the application of international law and promotion of international cooperation and understanding in space activities. These five declarations and legal principles are:

1. The Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space;
2. The Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting;
3. The Principles Relating to Remote Sensing of the Earth from Outer Space;
4. The Principles Relevant to the Use of Nuclear Power Sources in Outer Space;
5. The Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.
Regulation of Space Activities in Pakistan
Space activities were started in early 1990s but, up to now, there is no law in Pakistan governing the space activities.

Since there is no space legislation, space related matters are governed by different laws and rules belonging to different areas of domestic law.
SUPARCO, a space research commission, was established through a Presidential Order in 1966.

It lacks constitutional and legal mandate to ‘regulate’ and ‘control’ national space activities and to implement space policies.
Does Pakistan Need Space Legislation?

- The United Nations Treaties and Principles on Space Law provide a legal framework for national space legislation by imposing a significant responsibility on every Contracting State to fulfill its international treaty obligations.

- Pakistan is party to all five treaties of space law but not yet incorporated its treaty obligations in municipal law.
Reasons for Space Legislation

- Every State is responsible for its space activities, whether undertaken by whatever private entity or not, as long as that state qualifies as State in respect of which these activities can be defined as national activities.

- It is international responsibility of every State to ensure that all public and private sector activities are conducted in accordance with international law.
According Article 26 of the Vienna Convention on the Law of Treaties 1969 every treaty in force is binding upon the parties to it and must be performed by them in ‘good faith.’

To the extent that international law derives its binding force from agreements freely entered into by States, they automatically assume two major duties:

1. conscientious fulfillment of international obligations;
2. responsibility for the breach of international rules.
Article 40 of the Constitution imposes an obligation on Pakistan to strive for the promotion of international peace and security, including friendly relations among all nations, and respect for international law and treaty obligations, and settlement of international disputes by arbitration.

It provides legislature for enacting national space laws to fulfill the PRINCIPLES OF POLICY as per Article 40 in the national interest.
Incorporation of Treaties

- Pakistan follows dualist system with respect to the value of international treaties in domestic law. This means international treaty must first be incorporated into domestic law through an act of Parliament, before the domestic courts can apply it.
Supreme Court on Treaty Rights

- Supreme Court of Pakistan in *Societe Generale De Surveillance S.A. v. Federation of Pakistan* held:

  - Treaty were not incorporated through legislation into the laws of the Country, rights arising therefrom can not be forced through Court as in such a situation, the Court is not vested with the power to do so”.

  - According to Article 175(2) of the Constitution of Islamic Republic of Pakistan, no court has any jurisdiction unless conferred by or under any law or the Constitution, therefore, treaty unless was incorporated into the law so that it become part of Municipal Laws of the Country, no Court shall have jurisdiction to enforce any right arising therefrom”.

Legislative Procedure

- Article 70(4) of the Constitution confers power to Parliament to make laws for implementing international obligations arising from ratification of treaties under Federal Legislative List, Fourth Schedule, Part -1, Item 32.

- Article 142 empowers Majlis-e-Shoora (Parliament) and Provincial Assembly to make laws in respect of the matters mentioned in the Federal Legislative List, while both the Federal and Provincial Legislatures have the powers to legislate in respect of the matters mentioned in Federal Legislative List.

- In case any subject is not enumerated in legislative lists, the Provincial Legislature could legislate by virtue of Article 142 (c) of the Constitution.
The Supreme Court of Pakistan held:

“Subject matter not fall substantially within any Legislative Lists, therefore, in view of sub-article (c) of Article 142 of the Constitution of Pakistan, 1973 Provincial Assembly could legislate/make the law with respect to the matters not enumerated in either the Federal Legislative List or the Concurrent List.”

Pakistan Flour Mills Association v. Government of Sindh
(2003 SCMR 162), p.172
Barriers to Space Regulation

- **Constitutional**
  - Subject of ‘space’ is not mentioned in the Federal Legislative List.

- **Administrative**
  - SUPARCO is working under the administrative control of the Federal Government but the Provincial Governments have legislation power.

- **Organizational**
  - Strategic Plans Division (SPD), an affiliated strategic body of the National Command Authority (NCA), is partly executing the technical side of the Pakistan’s satellite programme.
  - Pakistan Telecommunication Authority (PTA), a regulatory body established under Section 3 of Pakistan Telecommunication (Re-organization) Act, 1996, to regulate the establishment, operation and maintenance of telecommunication system and provision telecommunication services in Pakistan in pursuance of Section 4 (a), is partly regulating conduct of satellite service providers.
Actions at National Level

- There are THREE STAGES for implementation of international space laws at the national level:
  - First Stage
    - Development of National Space Plan
  - Second Stage
    - Establishment of ‘National Space Agency’ through an Act of the Parliament (i.e. Space Activities Act) as a Regulatory Authority for the regulation of space activities.
    - Enforcement of Space Regulations for procedural implementation of ‘Space Activities Act.’
  - Third Stage
    - Formulation of National Space Policy
There are 20 States with comprehensive and specific national space laws governing space activities:

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<th>1. Argentina</th>
<th>2. Australia</th>
<th>3. Austria</th>
<th>4. Brazil</th>
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Conclusion

- Most complicated challenge to Pakistan's Space Programme-2040 is implementation of effective, transparent and comprehensive legal framework governing space activities.

- In order to respond complex legal issues faced by the international organizations and private entities in the legal environment, it is imperative to enact national space laws to better serve the Pakistan's space sector in more efficient ways.
Thank You for your attention!