

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
National space law and security – an update (5)

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2020 INDIAN SPACECOM POLICY – A NATIONAL SECURITY VACUUM

Abstract

In October 2020, the Indian Department of Space released the Draft Space Based Communication Policy of India – 2020 and the related Norms, Guidelines and Procedures (Spacecom Policy), for public consultation. The Spacecom Policy does well to recognize that satellite communication technologies are essential to ensure national security interests but unfortunately provides only incremental steps to ensure how such interests would be fortified.

The Spacecom Policy offers at first glance a contradiction in terms. Its Preamble notes that the Government of India will promote the participation of private Indian entities to provide space-based communications. However, this is swiftly circumscribed by a “realization” that space-based communication systems cannot be “effectively, affordably and reliably satisfied” by such commercial entities inter alia because of “national security concerns”. The Spacecom Policy thereby creates a spurious distinction in allowing commercial activity in the spheres of “broadcasting, telecommunications and networking activities” while reserving “domains of national security, strategic communications, surveillance and critical economic transactions” to remain under direct governmental control.

The Policy appears unable to comprehend the dual-use nature of satellite communication activities. The activities it lists to be amenable to the private sector have the potential to seriously impact Indian security interests. This limitation is compounded by the fact that India does not have any legislative regime that governs the authorization of private players to engage in space-based communication activities. Therefore, it becomes critical that a policy which welcomes the commercialization of space activities develops adequate safeguards to protect national security interests.

For this purpose, inspiration may be drawn from a number of national space legislations. For instance, the French Law on Space Operations explicitly notes that “authorizations cannot be granted when the operations for which they are requested, regarding in particular the systems intended to be implemented, are likely to jeopardize national defense interests”. Specifically, in relation to satellite communications the United States’ Communications Act of 1970 appoints the Federal Communications Commission as the nodal agency to license the use or operation of inter alia satellite communications. The legislation provides that the license can only be given if “public interest” will be furthered and reserves “War powers of the President”. Further, it provides the executive to “suspend or amend” any rules applicable to communications in the context of national security.

Thus, shortcomings of the Spacecom Policy need resolution and a comparative analysis of legal norms can enable India to fill this national security vacuum.