

# ***Towards a Legal Framework for Space Activities and Applications:***

## ***The European Perspective***

***26 April 2006***

***Stefania Barbieri  
Head of the Legal Department  
European Space Agency***

# ***The European Space Agency***

- The idea of an independent European Space Agency dates back to the early 1960s
- The ESA Convention was approved by the Conference of Plenipotentiaries held in Paris on 30 May 1975. In accordance with Resolution 1 of that Conference, ESA functioned de facto from 31 May 1975. Its Convention entered into force on 30 October 1980, the date of France's ratification.
- ESA has 17 Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Norway, the Netherlands, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Canada takes part in some projects under a cooperation agreement.

# ***ESA's purpose***

- According to Article II of the ESA Convention

*"The purpose of the Agency is to provide for and to promote , for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space applications systems."*

- ESA achieves this through:

- Space activities and programmes
- Long term space policy
- A specific industrial policy
- Coordinating European with national space programmes

# ***ESA's role with regard to national space legislation***

ESA's intention is, *inter alia*, to strengthen the space sector in Europe and to contribute to the competitiveness of European industry worldwide.

These objectives can be furthered by a stable regulatory environment, together with harmonised national space legislation in Europe.

Therefore, ESA heartily welcomes any such harmonisation efforts.

# ***Issues to be taken into account***

In the process of the creation of a national space legislation, the following issues of a legal and political character deserve some consideration:

- Essentially global nature of space activities
  - *Provide Europe with the necessary means to have unrestricted access to space and to space-based services .*
  - *Ensure the availability of critical technologies from European sources.*
  - *Ensure non-aggressive use of space systems and applications.*

# ***Issues to be taken into account***

In the process of the creation of a national space legislation, the following issues of a legal and political character deserve some consideration:

- Support and encourage the development of new space applications
  - *Provide for an appropriate legal frame for private actors, reflecting the responsibilities of States under public international law.*
  - *Encourage private investment by ensuring an appropriate regime for private space activities (liability, insurance, IPR, ..)*
  - *Ensure the harmonisation of national legislation in Europe to avoid "legal" competition among different regimes.*

# ***Issues to be taken into account***

Responsibilities of States arising from international space law that are to be implemented by national legislation:

- According to Article VI (2) of the Outer Space Treaty, the activities of non-governmental entities in outer space, including the Moon and Other Celestial Bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.
- According to Article II (1) of the Registration Convention, 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 and inform the Secretary-General of the establishment of such registry.
- Since according to Article VII of the OST and the Liability Convention a launching State is internationally liable for damage caused by its space object, it is of interest to the State in question to also introduce a mechanism for the recovery of costs incurred due to such liability. However, such mechanism should not discourage private investment, while leaving to the private investor such share of liability commensurate to its investment. The introduction of a ceiling as maximum amount to be reimbursed seems advisable. However, the amount of such ceiling should be harmonised on a global basis.

# ***Additional issues***

The creation of a national space legislation might also present the opportunity to reflect on these additional issues:

- environmental aspects
- IPR aspects
- export control regulations
- the settlement of potential disputes.

In addition, procedural rules for the implementation of these regulations might need to be established or adapted.

# ***The necessity of harmonisation***

The different existing national space legislations and the draft versions differ not only with regard to their wording but sometimes also in their contents and in the interpretation of the public international law terminology.

- ➔ *Private entities might be left with a choice between different legal systems, which might lead to a "flag-of-convenience"- problem.*
- ➔ *Thus, harmonisation of national space legislation is needed in order to obtain - at least in Europe - a consistent legal framework for space activities.*
- ➔ *Such a consistent legal framework provides for legal certainty among all players concerned.*

# ***ESA's role with regard to national space legislation***

Experience in international fora shows, that harmonisation may be easier achieved on a European level first, before addressing even broader fora.

One option for harmonisation of national space legislation in Europe, obviously, is harmonisation led by the EC/ EU, bearing in mind, however, that the responsibilities arising from public international space law remain attributed to the States parties to the treaties.

Pending the entry into force of the Constitutional Treaty, the legal basis for such a harmonisation might be found by drawing on Articles 2, 3 I litt. h and m of the Treaty establishing the EC (approximation of laws of Member States to the extent required for the functioning of the common market and the strengthening of Community industry).

In the spirit of the Framework Agreement between ESA and the EC, ESA would be more than happy to let such a project benefit from its own experience.