Legal practice of intergovernmental organisations: the example of the European Space Agency (ESA)

United Nations/Argentina Workshop on Space Law
"Contribution of Space Law to Economic and Social Development"

Session 2:
International Legal Frameworks Governing Space Activities

5 - 8 November 2012
Buenos Aires, Argentina

P.M.REYNAUD Head of the International Law and EU Legal Affairs Division - (pierre.reynaud@esa.int)

ESA UNCLASSIFIED – Releasable to the Public

PREAMBLE OF THE ESA CONVENTION Para 1

The European Space Agency (ESA) was established by the Convention opened for signature on 30 May 1975 which entered into force on 30 October 1980 and ESA replaced the satellite and launcher organisations ESRO and ELDO established in 1964.

The first part of the Convention's preamble reads :

The States parties to this Convention,

CONSIDERING that the magnitude of the human, technical and financial resources required for activities in the space field is such that these resources lie beyond the means of any single European country."

ESA UNCLASSIFIED – Releasable to the Public

ESA and its purpose (Article II Convention)

ESA is thus an inter-governmental organisation of European States who want to **cooperate** and invest in space research and technology and their space applications:

- by elaborating and implementing a long-term European space policy;
- by elaborating and implementing activities and programmes in the space field;
- by coordinating the European space programme and national programmes;
- by elaborating and implementing an industrial policy; and by recommending a coherent industrial policy to the Member States.

ESA UNCLASSIFIED – Releasable to the Public

ESA's Activities and Programmes

Mandatory activities, Art V.1.a

All Member States participate on a GNP basis in activities related to space science and a common set of programmes

General Budget:

Future studies,

Technological research,

Education,

Common investments

- Science:

Solar System science,

Astronomy and fundamental physics

Optional programmes, Art V.1.b

In addition, Member States choose their level of participation.

- Human Spaceflight
- Telecommunications & Integrated Applications
- Earth Observation
- Launchers
- Navigation
- Robotic Exploration
- Space Situational Awareness

ESA UNCLASSIFIED – Releasable to the Public

ESA Optional Programmes

According to Article V.1.b of the Convention a programme is:

- the design, development, construction, launching, placing in orbit, and control of satellites and other space systems;
- the design, development, construction, and operation of launch facilities and space transport systems.

- Decided when needed by some States (a Member State may decide not to participate) funded through specific mechanisms ad-hoc;

- Each programme is thus a multilateral agreement of States, then entrusted to the Director General for its execution.

- Ad-hoc cases of participation to a programme also by a non-Member State (Canada) or an International Organisation (EUMETSAT)

ESA UNCLASSIFIED – Releasable to the Public

ESA's International partnerships

- Achieved usually through **Cooperation Agreements** which provide a basic general frame for establishing the basis for ESA to conduct joint activities with a given partner such as Member States of the European Union (Slovenia, Estonia…) and space faring States (Argentina, Brazil, China, India, Russia, Turkey, …..)

- Advantage: it confirms acceptance of a number of guiding principles, and of legal provisions (privileges, immunities, liability) common to the implementation of joint projects;

- The frame is to be filled over time, through the conclusion of implementing Arrangements covering activities in dedicated fields (Earth Observation, Science, Human Spaceflight, ground control stations).

ESA UNCLASSIFIED – Releasable to the Public

ESA Key Figures after 32 years of experience

- 19 Member States, 20 in November 2012 with the accession of Poland
- Five establishments in Europe, about 2200 staff
- 3.7 billion Euro annual budget (2010)
- Over 60 satellites designed, tested and operated in flight
- 17 scientific satellites in operation
- Five types of launcher developed
- Over 190 launches
- Some 400 Agreements concluded
- Creation of the European Centre for Space Law (ECSL)
- Founding member of the European Space Policy Institute (ESPI)
- Founding member of the International Charter for Space and Major Disasters
- Observer in UN COPUOS and its sub-committees
- Inter-Agency Space debris Coordination Committee, IADC
- Participant organisation to the GEO

ESA UNCLASSIFIED – Releasable to the Public

ESA and the UN space Treaties 1/3

- In order to execute its mandate ESA has been given the necessary legal personality under international law through its Convention.

- The European Member States of ESRO/ELDO required the insertion of a clause allowing International Organisations to deposit a " declaration of acceptance" of those treaties without having the full rights of a party.

- Such declarations were made by ESRO for the Astronaut, Liability and Registration and taken over by ESA when its Convention entered into force in 1980.

ESA UNCLASSIFIED – Releasable to the Public

ESA and the UN space Treaties 2/3

- When executing its programmes ESA complies with the obligations resulting of the Space treaties it has accepted

- If one takes the Registration Convention which in its Article I (a) defines the notion of "launching State":

  (i)A State which launches or procures the launching of a space object;

  (ii)A State from whose territory or facility a space object is launched;

- ESA fulfills several of these criteria. Therefore, ESA is a "launching State" in the meaning of Convention and as such
  - registers its space objects;
  - maintains a registry; and,
  - furnishes to the UN Secretary General the information required.

ESA UNCLASSIFIED – Releasable to the Public

ESA and the UN space Treaties 3/3

The acceptance by ESA of certain Conventions and their rights and obligations facilitates the conclusion of both bilateral and multilateral cooperation with Sates.

- The preamble of the Agreement between the Argentine Republic and ESA concerning space cooperation for peaceful purposes *"Taking into consideration the provisions of the Treaty on principles Governing the Activities of States in the Exploration and use of Outer Space ……..and other multilateral agreements on the exploration and use of outer space to which the Government of Argentina and member States of the Agency are parties and which the Agency has accepted"*

- The ISS cooperation governed by an international treaty (IGA) calling the space treaties and the memorandum of understanding between ESA and NASA deriving from this treaty and outlining relevant ISS responsibilities obligations and rights.

ESA UNCLASSIFIED – Releasable to the Public

ESA and Social Development

ESA is not a regulatory organisation and as such does not create international norms regulating space activities but through multilateral collaboration has a vocation to participates to the elaboration of such norms which impact social development:

- International Charter on Space and Major Disaster the objective of which is to promote cooperation in the use of space facilities as a support to disaster relief efforts.

- Inter-Agency Space Debris Coordination Committee who has developed space debris mitigation guidelines and the technical content and basic definitions formed the basis for UN Space debris Mitigation Guidelines

- COPUOS in which ESA as observer acts on its purpose to concert the policies of its Member States on the adoption of international instruments.

ESA UNCLASSIFIED – Releasable to the Public

ESA and Economic Development 1/3

While it is often said that the socio economic impacts of public sector investment in space systems are often not a primary objective, this can not be said in the frame of ESA.

The primary law of ESA is its Convention and socio economic objectives have been enshrined in it by establishing an industrial policy (Annex V of the Convention is dedicated to it) the objective of which is :

Art. VII 1.b :*"improve the world-wide competitiveness of European industry by maintaining and developing space technology and by encouraging the rationalisation and development of an industrial structure appropriate to market requirements, making use in the first place of the existing industrial potential of all Member States"*

Art. VII 2: *"For the execution of its programmes, the Agency shall make the maximum use of external contractors…."*

ESA UNCLASSIFIED – Releasable to the Public

ESA and Economic Development 2/3

- Art I.2 of Annex V : *"The Council shall keep under review the industrial potential and industrial structure in relation to the Agency's activities, and in particular:*
- *a. the general structure of industry, and industrial groupings;*
- *b. the degree of specialisation desirable in industry and methods of achieving it;*
- *c. the coordination of relevant national industrial policies;*
- *d. interaction with any relevant industrial policies of other international bodies;*
- *e. the relationship between industrial production capacity and potential markets;*
- *f. the organisation of contacts with industry,*

  in order to be able to monitor and, where appropriate, adapt the Agency's industrial policy."

- Art II.1 of Annex V: *"In the placing of all contracts, the Agency shall give preference to industry and organisations of the Member States. However, within each optional programme covered by Article V, 1 b of the Convention, particular preference shall be given to industry and organisations in the participating States."*

ESA UNCLASSIFIED – Releasable to the Public

ESA and Economic Development 3/3

- *Art III.3 "When placing contracts or entering into agreements, the Agency shall, with regard to the resulting inventions and technical data, secure such rights as may be appropriate for the protection of its interests, of those of the Member States participating in the relevant programme, and of those of persons and bodies under their jurisdiction. These rights shall include in particular the rights of access,of disclosure, and of use.*

In order to achieve the above the Agency developed secondary legislation adopted by its Member States and which does not fall under national or international regulations (WTO GPA..)

- Intellectual property rights deriving from contracts placed by ESA remain with industry allowing it to exploit it under certain conditions which form part of the "General Clauses and Conditions for ESA contracts"
- ESA procurement is regulated by the ESA procurement regulations which limit the access to ESA procurements in accordance with the Convention.

ESA UNCLASSIFIED – Releasable to the Public

In Conclusion

The contribution of the ESA Convention in contributing to the competitiveness of Europe and thus to its economic and social development can be summed up as follows:

- Today 30000 people work directly for the European space industry

- Ten time that number when including employment in downstream sectors linked to space such as satellite operators, satellite services and value added services

- Each institutional investment of €1 Million contributed to ESA generates a turn over of € 4 Million via new market developments

- This multiplier effect can be considered doubled when including the societal effects

ESA UNCLASSIFIED – Releasable to the Public

THANK YOU FOR YOUR ATTENTION

ESA UNCLASSIFIED – Releasable to the Public