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UNIVERSITÀ DI ROMA

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Role of International Space Law in the Development and Strengthening of International and Regional Cooperation in the Peaceful Exploration and Use of Outer Space

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STATES OF THE EUROPEAN UNION, EUROPEAN SPACE AGENCY (ESA)

Prof. Sergio Marchisio
University Sapienza of Rome
Institute for International Legal Studies (ISGI)-CNR

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- **<u>Summary</u>**

- **The States of the European Union (EU) and the European Space Agency (ESA)**
- **The European legal framework and the European model of co-operation in space;**
- **The ESA/EC Framework Agreement**
- **A common European legislation on space activities**
- **Resolution on the European Space Policy**
- **A comparative look at national laws: some cases**
- **Future Perspectives**

THE IMPLEMENTATION OF THE UN SPACE TREATIES THROUGH NATIONAL LEGISLATION

- **1969 Vienna Convention on the Law of Treaties**: **States must perform in good faith treaties in force binding upon them; they may not invoke the provisions of their internal law as justification for their failure to perform them (Articles 26 and 27).**

- The **1967 Outer Space Treaty (OST)** establishes:

- **ARTICLE VI: Obligation of conformity with the OST of national activities in outer space and obligation of controlling and supervising the activities in outer space of non governmental entities;**
- **ARTICLE VII: Liability;**
- **ARTICLE VIII: Jurisdiction and control.**

- **Presently, several States have enacted national space legislation according to different models and with different contents, though often inspired by common principles.**

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THE EUROPEAN LEGAL FRAMEWORK

the European model of co-operation in space is the result of more than thirty years of joint efforts among European States and **is** characterized by **three main actors**:

➢the **European Space Agency (ESA)**:

•ESA is an independent intergovernmental organizations founded by the 1975 Paris Convention;
•ESA has 18 Member States; they sit on the ESA's ruling Council.

➢The **European Community/European Union (EC/EU)**:

•EU is presently founded on the Treaty of Nice (2001), which will be superseded by the Treaty of Lisbon;
•the member States of the EU are 27.

➢ The **member States of both organizations:**

•not all member countries of the EU are members of ESA and not all ESA Member States are members of the EU.

MEMBER STATES OF THE ESA	MEMBER STATES OF THE EU
Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

- 15 STATES (Austria, Belgium, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, United Kingdom) ARE MEMBERS BOTH OF THE ESA AND THE EU.
- 11 STATES (Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia) ARE ONLY MEMBERS OF THE EU.
- 2 STATES (Norway, Switzerland) ARE ONLY MEMBERS OF THE ESA.

ESA

❖**ESA is responsible for developing a long-term European space policy and conducting a European space program.**

❖ESA maintains close ties with the EU through an **ESA/EC FRAMEWORK AGREEMENT entered into force in 2004**, which has created a **EUROPEAN SPACE COUNCIL gathering the member States of both entities (29).**

FUNDAMENTAL DATES

➢***1964:*** European States decide to create two different agencies:

•the **EUROPEAN LAUNCH DEVELOPMENT ORGANISATION (ELDO)** to develop a launch system,;

•the **EUROPEAN SPACE RESEARCH ORGANISATION (ESRO)**, to develop spacecrafts.

➢***1975:*** **ESA is created in its current form, merging ELDO with ESRO**.

➢***2007:*** **The European Space Policy** (*Resolution on the European space* policy), has created a common political framework for space activities in Europe.

ESA/EC FRAMEWORK AGREEMENT

- **The FA identifies eight specific fields of cooperation**: sciences, technology, earth observation, navigation, and communications by satellite, human space flight and microgravity, launchers and spectrum policy related to space.
- **The FA establishes regular joint and concomitant meetings of the Council of the European Union and the Council of ESA at ministerial level.** These meetings are called **"SPACE COUNCIL".**
- The two organizations share a joint **European Strategy for Space** and have together developed the 2007 **EUROPEAN SPACE POLICY (ESPI)** to strengthen Europe and benefit its citizens. **GALILEO and GLOBAL MONITORING FOR ENVIRONMENT AND SECURITY (GMES) are the currently most advanced applications projects.**

EU

EU FUNDAMENTAL DATES

- ***1992:*** the **MAASTRICHT TREATY** created the '**EUROPEAN UNION**' (TEU).
- ***2001:*** **the NICE TREATY.**

- The **WHITE PAPER adopted by the European Commission on November 1, 2003 included space among the competences of the EU.**
- **Space assets could contribute to making the EU more capable to fight security threats.**
- **Space activities still go beyond cross-sectoral policies like research and innovation.** Their scope affects many EU policies**.**
- **The growing determination to pursue space activities will lead to further adaptation, including the reshaping of the relations between the EU and the ESA.**

THE TREATY OF LISBON (not yet in force)

The Treaty of Lisbon mentions 3 categories of EU competences (EXCLUSIVE; SHARED; SUPPORT COMPETENCES). Space is included in the third category. Art. 2, para. 5: In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

ARTICLE 4, PARA. 3: *In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.*

Furthermore **ARTICLE 189**:

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonization of the laws and regulations of the Member States". Finally, the Treaty states that "the Union shall establish any appropriate relations with the European Space Agency.

RESOLUTION ON THE EUROPEAN SPACE POLICY

- On the occasion of the 2007 Space Council, the Council of ESA at ministerial level and the Council of the European Union, adopted the RESOLUTION ON THE EUROPEAN SPACE POLICY (ESPI).

It contains a commitment to increase coordination of activities, roles and programs relating to space.

- The institutional alignment is one where
- the EU is in charge for policy setting and regulatory frame, ground technology and security related technology, and
- the ESA and the National Space Agencies are in charge for access to space, science, exploration, space technology and space industry.

A COMMON EUROPEAN LEGISLATION ON SPACE ACTIVITIES

- The European States have not a common space legislation.
- The ESA has not power to adopt space legislation.
- Also the EC/EU does not possess such competence under the Treaty currently in force (Nice, 2001).

↓

- Some States member of the European Union (EU) carrying out space activities have enacted specific space legislation, such as the United Kingdom, Sweden, France and Belgium.

- Other Member States have covered only some aspects, as Italy and Germany, and are in a drafting process for a national space legislation addressing authorization and licensing procedures for private activities.

A COMPARATIVE LOOK AT NATIONAL LAWS: SWEDEN

❖SWEDISH ACT ON SPACE ACTIVITIES 1982 and SWEDISH IMPLEMENTING DECREE ON SPACE ACTIVITIES 1982

Main features:

- obligation of private operators to obtain a licence from the Swedish Government;
- the Swedish National Space Board (SNSB) is the authority empowered to issue space licence and to supervise space activities;
- the issuing of a licence may be subject to conditions to ensure control of activities, but no further formal procedures nor control conditions are imposed;
- sanctions for breach of the obligations set therein;
- space operators have to reimburse the Swedish government of the amount disbursed for damages.

A COMPARATIVE LOOK AT NATIONAL LAWS: UNITED KINGDOM

❖UK OUTER SPACE ACT 1986

Main features:

- **empowerment of the Secretary of State to issue authorisation for space activities and carry out control over such activities;**
- **establishment of a set of conditions for the issuing of a licence (public health, safety of property and persons, national security, the prevention of contamination of outer space, the avoidance of harmful interference with activities of others);**
- **unlimited liability for private operators.**

A COMPARATIVE LOOK AT NATIONAL LAWS: THE NETHERLANDS

❖THE NETHERLANDS SPACE ACTIVITIES ACT 2007

Main features:

- **Appointment of the Minister of Economic Affairs as the authority empowered to issue a licence;**
- **establishment of varying conditions which the licensee must abide;**
- **in case of damages caused to third parties due to the space activities, the State is entitled to recover from the private operator the sum paid by the State;**
- **the criterion of the "maximum possible cover", according to which the Minister shall consider what can reasonably be covered by insurance. However, the Netherlands Act expressly limits the liability of the private operator to providing redress only up to the value of the sum insured.**

A COMPARATIVE LOOK AT NATIONAL LAWS: BELGIUM

❖BELGIAN LAW ON THE ACTIVITIES OF LAUNCHING, FLIGHT OPERATIONS OR GUIDANCE OF SPACE OBJECTS 2008

Main features:

- open basis for authorisation: it establishes general obligations to ensure some specific interests;
- environmental supervision: it is foreseen the assessment of the impact on the environment of the activities and the issuance of studies at the beginning, during and at the end of the space activities;
- innovative regime for liability for damages to third parties (the right to institute a counterclaim against the private activities which caused the damage);
- the involvement of the private party in the assessment of the damage;
- right of direct recourse: the State can recover compensation directly from the insurer.

A COMPARATIVE LOOK AT NATIONAL LAWS: FRANCE

❖FRANCE SPACE OPERATIONS ACT 2008

Main features:

- **obligation to obtain the prior authorization for the activities of space operators. The licence is granted by the Ministry of research;**
- **other requirements are to be defined within the "decree on authorisation" and are to be assessed by the Ministry of research and the CNES;**
- **space operators are to be insured up to the ceiling fixed according with Art. 13 and French financial law. The State guarantees for the portion of liability exceeding the ceiling;**
- **space activities are under a strict control system after the grant of authorisation;**
- **if the operator acts without authorisation or fails to comply with the requirements laid down in the decree of authorisation, it is subject to the payment of a lump sum fine.**

A COMPARATIVE LOOK AT NATIONAL LAWS: GERMANY

❖GERMAN SATELLITE DATA SECURITY ACT, 2007

Main features:

- implementation of a licensing procedure for the distribution of remote sensing satellite data generated by high-grade remote sensing satellite systems;
- three kinds of licenses: satellite operation, general data distribution, specific data transactions;
- according to the data distribution mechanism, any operator, distributor or operator/distributor will be licensed;
- first time dissemination is subject to a two-phase procedure of authorisation.

A COMPARATIVE LOOK AT NATIONAL LAWS: ITALY

❖LAW 12 JULY 2005, N. 153 concerning the registration of space objects

- the Italian Space Agency (ASI) is entrusted with the institution and custody of a National Register for the objects launched into outer space;
- all persons, natural and juridical, of Italian nationality that launch or procure the launch of a space object;
- the "territorial criterion" for the registration of objects launched in outer space by foreigners;
- obligation to notify the ASI that the registered object has abandoned the Earth orbit.

❖LAW 25 JANUARY 1983, N. 23 concerning the indemnification for damages caused by space objects

- not applicable if the victims of damage caused by objects launched in outer space are directly pursuing a claim for compensation in the tribunals of the liable launching State;
- only in cases of damage caused by space objects launched by foreign launching States;
- natural and juridical persons can obtain compensation by the Italian State only if and to the extent which the latter presented and obtained compensation by the launching State under the 1972 LIAB.

FUTURE PERSPECTIVES

- The ESA as technical body for setting up space programs and, in cooperation with the EU, for realizing a European Space Policy.
- The EU as the political body for ensuring strategic decisions.
- The member States will continue to exercise the legislative competence.
- Which kind of Harmonization within the EU context?