



Bulletin of the European Centre for Space Law — Published under the auspices of the European Space Agency

Le mot du Président

'Le blé en herbe'

Les semaines commencent à lever, même s'il y a encore quelques parcelles moins ensemencées que d'autres.

Les points de contact nationaux se multiplient, solides. Saluons l'arrivée du NPOC espagnol après ceux d'Italie, des Pays-Bas, du Royaume-Uni, de France, l'Allemagne, qui ont pris l'initiative de divers Colloques avec le soutien de l'ECSL.

Me tiennent particulièrement à cœur comme illustration de l'apport d'un mécanisme comme l'ECSL:

- les travaux juridiques conduits avec la Commission européenne qui devraient se conclure par l'insertion, dans une directive, de dispositions essentielles pour la protection et donc le développement de données de satellites de télédétection;
- le premier Cours d'été en Europe sur le droit de l'espace accueilli par l'Université de Messine;
- le premier Forum européen des praticiens du droit de l'espace.

Multiplicité des acteurs, des actions, des directions dans une volonté unique, faire mieux connaître l'intérêt pour tous du droit de l'espace.

1993 s'annonce aussi passionnant: l'Assemblée générale bi-annuelle, le deuxième Cours d'été, le deuxième Forum, la participation à la Moot Court Competition... Cet intérêt pour le droit des activités spatiales, sous toutes ses formes, est essentiel à l'assise générale de l'Europe dans la coopération/compétition internationale à un moment de révision de bien des notions.

Gabriel Lafferranderie

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Le Conseil ministériel de Grenade de novembre 1992

'Hasta luego, l'année prochaine en Espagne', aurait pu dire le Ministre Claudio Aranzadi, Président de la réunion du Conseil de l'Agence spatiale européenne au niveau ministériel qui venait de se tenir à Munich en novembre 1991. Un an donné au Directeur général pour présenter une révision de son Plan européen à long terme. Munich avait accordé ce délai pour accommoder les contraintes financières des Etats membres et avait insisté sur la nécessité de placer à présent les activités spatiales européennes dans un environnement international en profond bouleversement.

A cet effet, d'un côté, le Directeur général mettait en place un groupe 'Stratégie' qui élabora une nouvelle approche dans l'exécution des programmes (la 'stepped approach') et dont les réflexions étaient soumises au Groupe de travail créé par le Conseil pour préparer la réunion ministérielle. Par ailleurs, le Conseil avait créé un Groupe de travail sur la coopération internationale dont les réflexions devaient être prises en compte par le Directeur général dans ses propositions au Conseil ministériel. La réunion ministérielle fut convoquée à Grenade – signe d'une nouvelle reconquête? – les 9 et 10 novembre 1992, précédée d'une réunion du Conseil au niveau des délégués. Les Ministres avaient reçu trois projets de Résolutions: sur les

programmes et les activités, sur la coopération internationale, et sur la coopération entre l'Agence et la Russie (une Déclaration de coopération avec la RKA, l'Agence spatiale russe, ayant été signée le 2 octobre 1992).

Le Ministre français de la Recherche et de l'Espace, M. Hubert Curien, fut élu Président du Conseil ministériel. Les discours des Ministres révélèrent bientôt un certain nombre de préoccupations essentielles et, finalement, la recherche d'un 'paquet'. On retiendra essentiellement les questions de retour industriel, l'ajustement rétroactif des contributions pour cause de fluctuations monétaires, le point de rendez-vous en 1994-95, les décisions complémentaires à prendre, le Centre spatial guyanais, sans oublier



le tableau de contributions annoncées aux divers programmes. A cet effet, le Conseil fut amené à créer deux groupes de travail, l'un sur les ajustements rétroactifs de contributions, l'autre sur une série de questions, principalement le rendez-vous de 1994-95, la gestion des grands programmes. Ces deux groupes s'attelèrent à leur tâche dès le lundi soir et après que soient résolus des problèmes d'acoustique et avoir parfois frôlé la crise, se séparèrent au petit jour et purent présenter des rapports permettant aux Ministres d'élaborer des compromis. Finalement, les trois projets de Résolutions furent adoptées (la deuxième et la troisième sans grande difficulté) et les résultats exposés lors d'une conférence de presse. (On trouvera dans le *Bulletin ESA* de novembre 1992 le texte de ces trois Résolutions ainsi que celui de la Déclaration finale). Comment peut-on les résumer en quelques lignes?

Les activités et les programmes

La Résolution n° 1 entérine cette nouvelle conception de programme 'par étapes', permettant d'adapter l'exécution des programmes aux modifications intervenant dans le contexte politique, financier, scientifique et technologique. Cette notion est à la base du rendez-vous de 1994-95.

La réunion ministérielle fournit le cadre de décisions de programmes prises par les Etats participant auxdits programmes:

- en matière d'observation de la Terre; le programme POEM, constitué des missions Envisat-1 et Metop-1, en coopération avec Eumetsat;
- l'élément DRS du programme DRTM;
- l'éclatement du programme Columbus en quatre éléments: l'APM, la plate-forme polaire, les vols précurseurs et la future station spatiale.

Il a été convenu que les Ministres prendront en février 1995 une décision sur la phase d'utilisation de l'APM. Le Directeur général a été invité à conduire des négociations avec la NASA sur les coûts d'exploitation de la Station spatiale internationale, sur de nouveaux services, comme le véhicule de transfert Ariane (ATV).



Les Ministres ont décidé de poursuivre la réorientation du programme Hermes en étudiant trois options dont une en coopération avec la Russie. Une décision sur la mise en oeuvre de l'option choisie sera prise en 1995.

Diverses autres décisions ont été prises confortant les propositions du Directeur général sur les orientations proposées.

Par ailleurs, les Ministres ont repris et accentué la politique européenne en matière de lanceurs, base à présent de l'action entreprise par l'Agence et la Commission des Communautés européennes pour participer à l'élaboration d'une politique de compétition internationale saine. Une politique européenne ne peut aller sans reconnaître le caractère stratégique du Centre spatial guyanais, ce que fait cette Résolution. Les Ministres ont tiré les premières leçons des turbulences monétaires et reconnaissant les défauts du système actuel de l'ESA, ont lancé le mouvement pour la mise en place d'un système plus juste, des mesures intérimaires devant être adoptées par le Conseil de la mi-décembre 1992. Une réponse positive à ce problème complexe avant la fin 1993 est essentielle pour un certain nombre de pays. Il a été décidé de mettre en place un Groupe de travail chargé de proposer de nouvelles mesures avant la fin de 1993. De même, il a été convenu de créer un autre Groupe de travail chargé de proposer des mesures sur la gestion des grands programmes à insérer dans les Déclarations amendées dont la prise d'effet est prévue avant fin mars 1993 (POEM, Columbus, DRS, Hermes).

Les Etats participant aux programmes concernés sont donc invités à finaliser

les Déclarations pour le 31 mars 1993 au plus tard. La Résolution comporte en annexe un tableau des contributions annoncées pour les divers programmes.

Enfin, les Ministres sont convenus de se revoir en 1995 pour notamment prendre les décisions complémentaires sur Columbus et Hermes.

La coopération internationale

L'autre grand volet de la réunion ministérielle a porté sur la coopération internationale, les programmes européens ayant un besoin de celle-ci et la coopération internationale ne pouvant se passer de l'élément européen.

Deux Résolutions, l'une générale tournée vers la synergie avec les autres Organisations européennes et l'apport aux besoins internationaux, la seconde relative à la coopération spatiale avec la Fédération de Russie. Dans cette dernière, l'accent est mis sur des études communes dans le domaine des infrastructures orbitales et les télécommunications associées et en ce qui concerne les systèmes de transport habités et les missions d'astronautes européens à bord de la station Mir.

En conclusion, la réunion ministérielle de Grenade fut empreinte à la fois de réalisme, face aux capacités contributives des Etats et au calendrier de mise en oeuvre des programmes, et d'ambition pour que l'Europe spatiale soit reconnue comme partenaire à part entière. 'En France, en 1995, pour poursuivre cette œuvre', aurait pu dire le Président Curien.

G. Lafferranderie

Space Law (and Togas!) in Messina ECSL's Summer Course

The first ECSL Summer Course on Space Law & Policy took place in Messina, Sicily, from 10 to 17 September 1992. The first event of its kind in Europe, this course was sponsored by ESA, the EC (Erasmus Programme), ECSL, BNSC (for the British participants) and the University of Messina. Eight universities from five ESA Member States were represented by 40 students (five from each university). There were thirteen lecturers.

The principle of having a summer course was accepted by the ECSL Board as part of the research and educational policy laid down in 1990. Its aim is to stimulate European students to pursue space law and policy research by giving them a good basis in the subject. After having received support from ESA and Erasmus, the programme was finalised in 1991 and Prof. Zanghi kindly made arrangements for the course to be held at the University of Messina in Sicily.

Basic Approach

While the course had, of course, to cover the basic principles of space law, it also treated specific themes on which eight working groups prepared presentations on aspects of their choice. These were given on the last day of the 10-day intensive course, and were followed by discussion.

The themes themselves were selected with an emphasis on matters of current practical importance; they are thus subject to change every year. Each

working group consisted of five participants from different Universities and was guided by a tutor. Background documentation for the course and the presentations was prepared by ECSL and divided into syllabi covering eight themes (one for each working group). Each working group received one-hour training on ESALEX to help with their research.

In terms of structure, activities comprised, in the introductory part of the course, 20 hours of lectures. These focused on:

- 1) the UN framework and the treaties, principles and resolutions it has produced (8 hours);
- 2) the conventions of international space organisations like ITU, Intelsat, Eutelsat, Inmarsat, Arabsat, Eumetsat and ESA (4 hours);
- 3) non-European national space organisations and law, e.g. NASDA, NASA, US Land Remote Sensing Act, US

Commercial Space Launch Act (again in 4 hours of lectures); and

- 4) European national space agencies and law (4 hours).

The course's second theme concentrated in 16 hours on:

- 1) the Changing Structure of Europe in Space, especially on the EC's potential role in space policy and regulation and the possibilities for increased international cooperation involving ESA;
- 2) environmental space issues, such as orbital debris and nuclear power sources;
- 3) the commercial uses of outer space, including topics such as dispute settlement, GATT aspects, intellectual property rights, launch services competition and space insurance; and
- 4) the international Space Station cooperation and its law.



Lecturers

(in order of appearance):

- Prof. Zanghi (Univ. of Messina)
- Prof. Pocar (Univ. of Milan)
- Prof. Juan Manuel de Faraminan (Univ. of Granada)
- Dr. Ferrazzani (ESA)
- Prof. Reijnen (Univ. of Utrecht)
- Dr. P. Tuinder (ECSL)
- Dr. von der Dunk (Univ. of Leiden)
- Dr. Thiebaut (ESA)
- Prof. Böckstiegel (Univ. of Cologne)
- Prof. Malanczuk (Univ. Amsterdam)
- Dr. Madders (ECSL)
- Dr. Masson-Zwaan (Univ. of Leiden)
- Prof. Martin (Univ. of Toulouse I)

Results

This course clearly showed that interest in space law and policy is growing in Europe. It was an unqualified success due to the very active support of the University of Messina, Erasmus, ESA, BNSC and of course the professors and students of the participating universities. The students' presentations were of high quality and worthy pieces of research in themselves. It was thus very much a two-way process – indeed almost all of the lecturers found new aspects had been touched on in their subjects during discussion with students.

But it wasn't only a study programme of ten hours per day. The students also organised a number of social events. Togas were reintroduced to Sicily for one memorable party, and the students presented their national specialities during one dinner evening. The University of Messina also organised an excursion to the Vulcano Island on the only day off – an appropriate venue for space lawyers, if one remembers Nietzsche's recommendation on living arrangements!

That the course was received well by the students is also illustrated by the fact that the students are maintaining contact through an association, which were to organise a reunion in December 1992 at ESA Headquarters.

P.H. Tuinder

ECSL Activities

First ECSL Practitioners Forum, Paris 18.11.1992

Around 100 people attended this event at ESA Headquarters, achieving the Forum Steering Committee's first aim - i.e. to bring the European space law practitioner community together in one spot. ECSL's mailing list was in fact 900 addressees, well beyond the registered ECSL practitioner members, and included public sector jurists as well as corporate lawyers, law firms and consultants. It is planned that the forum should be a regular feature, developing its own personality and activities as an 'interest grouping' within the loose ECSL structure.

Greeting the participants, Professor Böckstiegel, the Chairman, expressed the hope that the forum would provide a regular platform for the exchange of information, ideas and views. It is especially important that such an exchange should now take place on a European scale, since there are particular sectoral needs that cannot be achieved in any

...a letter from a Course student

"...The experience of being part of a congregation of forty or so people, from five or six different countries, is one that we shall remember for many years. The songs are the same wherever you go, but the singing of them can vary from 'original' to a cacophony. For me the beauty of listening to opera under the stars translates into any language, and seeing the fiery moonscape of Vulcano impressed us all.

Apart from the frenetic parties (we were pleased the professors joined in and often provided a great deal of entertainment), the spirit of the course was summed up when, for the last night, everybody slept on the roof together, cracking jokes and swapping addresses.

There will be many summer courses to come, but we will always gladly be able to say we were the first..."

other setting, including even within the other activities of ECSL itself. The forum will seek to bring aspects to light that the practitioner can then look at in greater detail back at his or her office.

The agenda assumed a good familiarity with the main areas of space law practice and devoted the morning session to briefing papers on current developments field by field (mobile satcom, satcom in general, EC and ESA). The comments of Tim Howell (Deputy Head, Space Telecommunications Policy Unit, CEC DG XIII) on EC regulatory and policy developments were of particular interest. After giving details on the progress of draft directives on terminals and other matters, he addressed the 'politics of low earth orbit' regarding Motorola-type systems and, while denying that the CEC was intent on creating a 'Fortress Europe', it was also impermissible to allow the Federal Communications Commission (FCC) to give licences for the world (which it was now effectively trying to do). On the mutual recognition of (non-satellite) telecommunications operating licences, there were reasons to fear that a North-South split may be emerging in Europe, with the North becoming increasingly liberal on this point, yet with some southern countries apparently not aware that their ministers had indeed voted binding norms of EC law into effect.

In his paper, Phillip Dann (Bird & Bird) pointed to the insufficiency of present EC law (due to the exemptions regarding satcoms), but also underlined the other barriers to creating a healthy European 'mobiles' market, such as radio-spectrum allocation and type approval norms. Market fragmentation, moreover, exacerbated these difficulties. Sa'id Mosteshar then brought the meeting's attention to the remarkable development of the satellite service operator's licence in the UK, including the conflicts of interest inherent in the past and present role of the UK Signatory Affairs Office.

Winfried Thoma (Head of Contracts Department, ESA) first provided an explanation of the changes to ESA's General Clauses and Conditions for ESA Contracts - of which the bulk concern Intellectual Property Rights – and then gave insights into the difficulties encountered in contracting with Russian

entities when it came to applying notions such as 'price incentives' (see *ECSL News* N° 10 article on other aspects).

The latter part of the forum consisted of a briefing, chaired by Phillip Dann as the Forum's Rapporteur, targeted towards issues in space contracts. Michael Schmittmann (Heuking Kuhn) described the content of a typical transponder lease, and was followed by Steve Kahn (ESA Head of Rules and Procedures, Contracts Department), who called for greater standardisation of terms where their substance was in essence the same. In the last three papers, Ralph Kröner (Trenite van Doorne) analysed some recent US court decisions on liability, while Ian Awford (Barlow, Lyde and Gilbert) took the meeting through the potentialities attached to liability clauses in space contracts (especially cross waivers) and Jacques Masson explained the types of risk that are covered in current insurance contracts. During discussion, more technical questions such as the validity of cross-waivers vis-a-vis certain classes of delict were raised.

In his concluding remarks, Prof. Böckstiegel noted how far 'space law' issues and concerns had come down to Earth. Many of the questions discussed had a flavour familiar in ordinary business law. Although this is a trend that will probably strengthen in the future, it is equally important to note the specific characteristics this area of law will retain. Based on the mood of the meeting, the chairman confirmed that further forum activities will be undertaken in 1993.

K. Madders

Second EC-ECSL Workshop on Legal Aspects of Access to Earth Observation Data

This was held in Brussels on 20 October 1992 (see *ECSL News* N° 10 for details of the first workshop). The 20 participants included representatives from all major European remote-sensing bodies. Chaired by Mrs Bridget

Czarnota of the CEC's DG III, it discussed the second part of a study carried out by a team under the direction of Prof. Gaudrat on the legal protection of satellite remote sensing data. Whereas the first part dealt with raw data, this part focused on the protection of processed and value-added remote sensing data, as well as general conclusions.

The results of the study were impressive. For the first time an exhaustive overview was given of existing legislation (covering the most important Community and ESA Member States) that is potentially applicable to remote sensing data. One received also a thorough analysis of the problems that ESA and the different supplier and user communities will encounter when dealing with the legal means for protection.

After the overview had been presented, the conclusion was that existing legislation gives inadequate protection even in this area (it had been thought that it would have been fuller than in the case of the raw data). Indeed, even where protection can be used it is national only in scope and the interpretation of its applicability is not harmonised.

The means to a solution in these circumstances is identified in the study's suggestion to bring remote sensing data generally under the wider protection for data being considered in the proposed EC Council Directive on the legal protection of databases. This directive is still in its drafting phase, which is fortunate considering that the discussions among workshop participants revealed that some (it is hoped, minor) realignment of the draft would be needed to bring the situations which occur in remote sensing activities under its scope.

Once a suitable solution has been found and included in the Commission's proposals, this will represent important progress in the commercialisation of European remote sensing activities. That is, a harmonised legal situation will exist for remote-sensing operators that protects their data legally against unauthorised interception or use, so giving security to their investment. Another benefit would be to make the European position in international forums dealing with data policy and the exchange of remote sensing data that much stronger.

It is planned that the study will be finished in December 1992 and be published in 1993.

P.H.Tuinder

ECSL 1993 Summer Course

At the time of writing the process has been started to organise the 1993 Summer Course. It will be hosted by the University of Toulouse I, thanks to the kind invitation of Prof. Martin. So far ECSL has received Letters of Intent from thirteen Universities from seven ESA Member States regarding their participation in the course. As with the process leading to the Messina course, for which the University of Messina was the Erasmus coordinating university, the University of Toulouse I will now make the application to Erasmus for funding. Both ECSL and ESA will also have a fresh funding approval process for the course.

The 1993 participating Universities thus far are those of Aberdeen, Amsterdam, Cologne, Granada, Leiden, Louvain, Messina, Padua, Paris, Rome, Siena, Toulouse and Utrecht.

Apart from our hopes for renewed support from the EC Erasmus programme and ESA, it is also hoped that the course will attract a greater degree of sponsorship from national space agencies (BNSC was the sole national agency sponsor for 1992). It is of course vital to secure reasonable financial security in order to plan for the coming years. ECSL is, in fact, currently drafting a schedule for future courses so that a 'Tour de l'Europe' can be undertaken in order to stimulate space law knowledge in most European countries active in this field. It would, in addition, be in keeping with the wider goals of international cooperation if funding could be acquired so that some students from Eastern Europe and the CIS countries could attend.

Space Law Moot Court Competition 1993

The first Space Law Moot Court Competition was organised for 1992 by the American Association of US Members of the IISL (AUSMIISL). That competition was so successful that the IISL Directors have decided to organise a second competition in 1993. This competition, in which ECSL is participating in cooperation with the IISL, will have its final sessions in Graz, Austria, during this year's IAF Conference there. Both European and American teams will take part. Preliminary rounds will be organised by AUSMIISL in the USA for American contenders and by ECSL for European teams. After organising the European preliminaries (in the week of 29 March to 2 April 1993), ECSL will sponsor the winning European team to go to Graz for the final round with the winner of the American preliminaries in the week of 16-22 October 1993.

How will the competition be run? A case has been drafted and will concern the commercial exploitation of Moon resources; its definitive version will be sent in January to the registered teams in Europe and the United States. (Regarding registration, an invitation based on it has already been sent to some 30 universities in Europe.) For the European preliminary competition, each team will have to submit a written paper and to plead its case before a Moot Court which will consist of European space law specialists. The final round will be judged by an international panel of space lawyers including members of the International Court of Justice.

The language of the competition is English.

Conditions

Teams will consist of two students having successfully followed international law and/or a space law course at a university. The students will be registered as such for the 1992-93 academic year. Only one team from each university is eligible. The costs for the participation at the preliminaries in Paris will be borne by the teams themselves.

Cover for a brochure (ESA BR-86) published in English, French and Spanish on the occasion of the Ministerial Conference in Granada.

Forthcoming Events

Le droit face aux techniques de télédétection par satellite au service de l'environnement

Strasbourg, 2-4 juin 1993.

Colloque organisé par: Centre d'études et de recherche sur le droit de l'espace de l'Institut de Droit comparé de Paris II, Centre du Droit de l'Environnement de l'Université Robert-Schuman de Strasbourg, Groupement scientifique de Télédétection spatiale et Groupe universitaire de recherches et d'études sur l'Espace de l'Université Louis-Pasteur, Strasbourg.

Contact: Congrès Louis-Pasteur.

Tél: (+ 33) 88 79 15 00

ECSL General Meeting

The third ECSL general meeting will be held on **25 June 1993** to elect a new ECSL Board, to discuss and approve the 1991-93 ECSL Biennial Report, and to decide upon the future organisation and direction of ECSL.

Dutch NPOC/ECSL Workshop on New Opportunities for Cooperation in European Space Activities.

This workshop was planned for October 1992 at ESTEC (NL), but has been postponed to **26 March 1993** due to conflicting agendas of the speakers. Contact : Mr. F. von der Dunk, International Institute for Air & Space Law, Leiden University. Tel.(+31) 71-277724

Publications

Staudt B, On the legal aspects of the International Space Station cooperation, in: *Transatlantische Raumstationskooperation*, Peter Lang, 1992 (in German). This book was presented as a doctoral thesis written under the

direction of Professor Böckstiegel of the University of Cologne. Available at ECSL.

Robinson M & Meredith G, *Space Law: A Case for the Practitioner Implementing a Telecommunications Satellite Business Concept*, Kluwer, 1992.

Reijnen B C M, *The United Nations Space Treaties Analysed*, Editions Frontières 1992.

ECSL, *Space Law Teaching in Western Europe (Vol. 2)*. This booklet will be distributed to ECSL members free of charge in the early part of 1993. This updated and expanded version will be printed and distributed by Kluwer.

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