

# ECSL

European Centre for Space Law

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## **A Word from the President**

*Resources on the Moon (and other celestial bodies)?  
To whom do they belong?  
How do we exploit them?*

*The question of the legal status of the Moon's resources resurfaced (on the Earth), when some years ago a certain Mr Dennis Hope, after having consulted some lawyers (it's always possible to find lawyers to discuss matters about which they are ignorant) decided to set up "the Moon Embassy" and to sell acreage for a very attractive price: a dream in the eyes of grandchildren willing to experiment with their own crossing towards a "new frontier".*

*Serious as usual, international space lawyers - the new 7th cavalry - launched their assault. But was it too late? Firms have already been developing business proposals such as scattering your ashes on or around the Moon, or offering a fantastic honeymoon in space. Tourists are coming, as usual, following the discovery and colonisation of a new territory. But who should administer the Moon? Where do you go in order to register your "property", your "vein" of gold or uranium on the Moon? Who should elect your sheriff to avoid a new gunfight at the OK Corral? (Clint Eastwood has already been to the Moon!)*

*The serious international space lawyers presented their views during the 43rd session of the UNCOPUOS Legal Subcommittee (29 March to 8 April), co-organised by the International Institute of Space Law and the European Centre for Space Law, under the Chairmanship of Ambassador Jankowitsch (Austria).*

*The audience listened as Mr Tennen, an attorney-at-law from Arizona, courageously alleged that the non-appropriation principle referred to in the Outer Space Treaty is at risk. Prof A. Kerrest de Rozavel, while comparing the law of the sea and the law of outer space, said there is a problem when the use of the res implies its destruction (but what is a res?).*

*Prof S. Hobe presented the Resolution adopted by the 2002 International Law Association, with a different vision than the one of Prof Kerrest. And, finally, Prof Lochan, a scientist from ISRO explained to the lawyers the "a,b,c's" of the exploration and exploitation of the Moon. Newcomers always have to pay a price higher than others (on Earth too!).*

*Discussions took place with the participation, among others, of Prof Gabrynowicz, Mr Cassapoglou and Prof Kopal. Prof Marchisio, Chairman of the Legal Subcommittee, expressed concluding remarks.*

*A last worry for 2005: where do we go after the Moon? To its hidden side? To Mars?*

*On the subject of "private property rights" on the Moon, let me mention the draft statement presented by the Board of Directors of the International Institute of Space Law last spring in Paris. The draft statement clearly concludes the prohibition of: national appropriation, the application of any sovereignty and the national legislation on territorial basis. The sellers of such deeds are legally unable to acquire title on their "claims".*

*I hope that Mr Hope receives this statement by special "DHL-Moon" and, also, that all governments are reminded that we don't own the Moon or any other celestial bodies. In the future we may have to set up "Texas rangers" in order to implement Earthly laws.*

**Dr G. Lafferranderie**  
**European Centre for Space Law**

## UNIDROIT Examines Space Assets

The first session of the UNIDROIT (International Institute for the Unification of Private Law) Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets took place at the FAO, Rome, from 15 to 19 December 2003.

In the mid 1990's, UNIDROIT started down the track of international harmonisation – in the first instance, with a major focus on aviation in view of the preponderant interest in that sector and the corresponding active role of ICAO. This process first led to the Capetown Convention<sup>1</sup> and the Aircraft Equipment Protocol<sup>2</sup>, both finalised at a conference in Capetown in November 2001. At that point in time, a Space Working Group (SWG), coordinated by Dr P. Nesgos of Milbank of Tweed, Hadley & McCloy (Washington/New York), had already kick-started a process of consultation with the relevant stakeholders<sup>3</sup> in the space industry to embark upon the same route. With the finalisation of the Convention and the Aircraft Equipment Protocol, it became possible to focus on the Space Assets Protocol as another area of highly valuable mobile equipment to be dealt with.

The SWG has held five sessions since 1997. In the last 4 years (since 2000), this has been in close coordination with the COPUOS Legal Subcommittee in order to assess potential conflicts or other problems with existing UN space treaties. The result of this process was a Preliminary Draft Protocol on Matters Specific to Space Assets<sup>4</sup>, which was put before the delegates of the relevant

UNIDROIT member state governments at the Rome session for a first comprehensive round of consideration and discussion.

The 5-day session was attended by representatives from the governments of the 38 Member States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, the Czech Republic, France, Germany, Greece, India, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Malaysia, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, the Republic of Korea, the Russian Federation, Slovakia, South Africa, Spain, Sweden, Syria, Tunisia, Turkey, the Ukraine, the United Kingdom and the United States, plus Thailand as an observer. Advisors from the Aviation Working Group (which had been responsible for the development of the Aircraft Equipment Protocol in its early stages), the Space Working Group, the European Commission, ESA, IMISO, UNOOSA, IISL, ILA, the Rail Working Group and, of course, yours truly from ECSL, were also present.

After welcoming speeches by Prof H. Kronke, Secretary-General of UNIDROIT and Ms. C. Gardner, Assistant Director-General, General Affairs and Information Department, FAO, the meeting unanimously elected Prof S. Marchisio, incoming Chairman of the COPUOS Legal Subcommittee and Vice-Chairman of ECSL, to act as the Chairman of the meeting. The agenda was adopted as proposed, including the organisation of work.

Prof Kronke then gave an introduction explaining the background and rationale for the development of a space assets

protocol. He highlighted the benefits of a Space Assets Protocol which all parties and stakeholders concerned could expect, namely, easier and less expensive financing of space activities as a consequence of increased legal certainty for financiers of such activities. He recommended the Capetown Convention as the basis for a space assets protocol, pointing out that the Convention had focused on three areas where international harmonisation of relevant private law would be most effective and beneficial:

- the provision of default remedies,
- the international registration of security interests, and
- the rules for priority regarding such security interests.

Dr Nesgos offered some further thoughts for consideration, in particular, that the ensuing discussions should be mindful of the main target groups: satellite operators, satellite manufacturers and financiers. From that perspective, a clear, predictable, efficient and speedy regime for the recognition and implementation of securities on space assets should have the highest priority. Several general statements by delegates from participating states on the importance and interest of the effort to arrive at a well-balanced Space Assets Protocol followed, concluding the general session.

The meeting progressed over the next days, coming to a close on Friday, 19 December, with a discussion, Article by Article, of the Preliminary Draft Protocol on Matters Specific to Space Assets, hereafter: Draft Space Assets Protocol, starting with the Preamble. The main topics of intensive discussion were the following:

<sup>1</sup> Convention on International Interests in Mobile Equipment (hereafter Capetown Convention), Capetown, done 16 November 2001, not yet entered into force; ICAO Doc. 9793; UNIDROIT 2003 C.G.E. Space Pr./1/W.P.2.

<sup>2</sup> Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (hereafter Aircraft Equipment Protocol), Capetown, done 16 November 2001, not yet entered into force; ICAO DOC. 9794.

<sup>3</sup> Satellite manufactureres and operators, financiers, launch service providers, insurers and, largely indirectly, governments

<sup>4</sup> For the text, see UNIDROIT 2000 C.G.E. Space Pr./1/W.P. 3, at vi.

<sup>5</sup> Drafting Committee, Report, UNIDROIT 2003 C.G.E. Space Pr./1/W.P. 21, 19 December 2003; including Annex I, Preliminary Draft Protocol on Matters Specific to Space Assets.

- the relationship between the Space Assets Protocol and public international space law, notably the five United Nations space treaties,
- the issue of a definition of “space assets”, and its consequences,
- the issue of a definition of “associated rights”, and its consequences,
- the issue of ground infrastructure as possible collateral to fall within the regime of the Space Assets Protocol,
- the closely related issues of public services, (access to) command codes and escrow,
- the identification of space assets under Article VII of the Space Assets Protocol,
- the issue of relief pending final determination,
- the future supervisory authority, and
- the issue of waiving sovereign immunity.

The Rome session marked a transition in the process towards developing a Space Assets Protocol from the preparatory phase – the SWG provided the main forum for discussion, and ultimately came up with the Draft Space Assets Protocol<sup>5</sup>

discussed – to the drafting phase. During the Rome session, a Drafting Committee was agreed upon consisting of seven UNIDROIT member states: Canada, China, France, Nigeria, Tunisia, the United Kingdom and the United States. This Drafting Committee would henceforth be in charge of the draft text. On the last day of the session, the Drafting Committee presented a report which included (in Annex I) a revised version of the Draft Space Assets Protocol<sup>5</sup> based upon the discussions during the previous days.

The areas where the most work would still be required, are mainly those where the Aircraft Equipment Protocol had been (un)intentionally followed, without taking into account all the intricate ramifications specific to the space industry including issues of sovereign jurisdiction (public services, sovereign immunity, ground infrastructure and interim relief). Thus, the most substantive extension to the Space Assets Protocol requiring further discussion and realisation, would be the inclusion of not only “associated rights” (further refined and subdivided into “debtors” rights and “related rights”), but

also of ground infrastructure - mobile (and possibly non-mobile) TT&C stations.

The SWG will be solicited for further detailed input due to its expertise, as well as its character as being representative of the various main stakeholders. Hopefully, this input will be provided. The second session of the UNIDROIT Committee of Governmental Experts will be scheduled to take place in the autumn of this year. Two or three more sessions might be necessary before a Diplomatic Conference can be convened.

From Rome, it will still be a long and winding road to a suitable and objective Space Assets Protocol. But then, space is not exactly near either, and the road to space is bumpy and risky in any sense you care to imagine. At least the Rome session convinced those present that it was both necessary and viable to go down that road, also in terms of financing and enhancing the opportunities for doing so.

*Frans G. von der Dunk*  
Board Member, ECSL  
Co-Director, IIASL, Leiden

## The World Summit on the Information Society (WSIS)

From 10 to 12 December 2003, six students of the 2003-2004 class of the “Masters in Space Activities and Telecommunications Law” of the University of Paris-XI attended the first phase of the World Summit on the Information Society (WSIS) in Geneva. The WSIS is held in two phases. The second phase will take place in Tunis hosted by the Government of Tunisia, from 16 to 18 November 2005.

The WSIS addressed a broad range of Information Society themes during plenary sessions and at round table meetings. Consequently, a “Declaration of Principles and Plan of Action” was adopted. Particular attention was paid to the topic of the promotion (by governments, private sector, civil society and the United Nations) of ICTs for development with the goal of “digital inclusion”. This would enable universal and affordable access to ICTs, in which satellites have a central role to play. Various round table discussions and conferences on themes such as legal issues in the context of the Information



*Students of Masters in Space Activities and Telecommunications Law (University Paris-XI) attended the first phase of the World Summit on the Information Society*

Society, public and private broadcasting, and cultural diversity, were organised.

Participation in the WSIS was important on many levels. Not least, it was a unique opportunity for the students to be part of a top-level international meeting and to have an overview of the different actors in

the Information Society community. It allowed them, as researchers at the Institute of Space and Telecommunications Law (IDEST), to promote their project - a multilingual lexicon on electronic communications - and to foster new working relationships for their future professional life. The group was also able to co-organise two events directed by Prof Francis Muguet (ENSTA, Paris) on the free access to information and software.

The IDEST is planning to play an active role in the second phase of the WSIS and is setting up a working group for this purpose.

*Roxane Kazancigil*  
IDEST-Masters Student

## **Project 2001 Plus - 3rd Workshop: “Towards a Harmonised Approach for National Space Legislation in Europe”**

The third workshop of Project 2001 Plus took place in Berlin from 29 to 30 January 2004. More than 50 participants followed presentations and took part in discussions covering elements of harmonisation for National Space Legislation in Europe. The workshop was co-chaired by Professors Vladimir Kopal and Stephan Hobe. Dr Michael Gerhard was appointed rapporteur and summarised the results of each session. In conclusion, participants identified essential aspects for legislation. Moreover, they gave their view on the methods for achieving harmonisation.

During the first session, speakers outlined the scope and background of the subject. Dr Kai-Uwe Schrogl gave an overview of the results achieved during the previous Project 2001 workshop on the “Need and Prospects for National Space Legislation”, held 5 to 6 December 2000 in Munich. He highlighted the “building blocks” for national space legislation which were identified during the workshop and which, in the meantime, have been endorsed by several institutions such as the Legal Subcommittee of UNCOPUOS and the ECSL. He looked forward to further enhancements during current workshop discussions. His presentation was followed by a briefing given by Dr Frans von der Dunk on the development of national space legislation since the last workshop, with special mention given to

the “UN Workshop on Space Law Capacity Building” in Daejeon, South Korea. Mr Philippe Clerc then presented the results of the study group on the evaluation of space law in France which has also researched this topic.

Having paved the way for further achievements on the issue of national space legislation, the speakers went into medias res. Administrative procedure was identified as a first aspect which might be subject to harmonisation. The duration of, and fees for, authorisation might differ from one state to another and therefore cause inequalities between space faring entities. Mssrs. Niklas Hedman and Richard Tremayne-Smith presented and analysed the relevant provisions within their respective national space acts, which are the only ones applied within Europe to date. In the discussion which followed, participants agreed that this aspect is relevant for harmonisation, although with minor importance since the duration of an authorisation process is determined by various factors which are not subject to harmonisation itself, and fees are only a minor item within the overall costs of a space activity. But some participants stressed the fact that in case of more than one appropriate state in terms of Art. VI OST, the acceptance of an authorisation already granted by another state for the same activity might be an important issue.

The second aspect identified is part of the administrative procedure itself: the safety (technical) evaluation process. Here, Dr Richard Crowther presented the rather well elaborated procedure based on UK space legislation. In addition, Dr Andreas Jain presented the ECSS quality standards for space projects. In a synthesis of both presentations, participants highlighted the need for a harmonised evaluation procedure and suggested to further examine the reference to well-established standards, such as the ECSS, in doing so.

The next aspect discussed was the compulsory third party insurance issue which is included in almost every existing national space legislation. Mr David Sagar gave a general overview of this and other more general legislation within the different European states. He was followed by Mrs Sophie Moysan who discussed this issue from the perspective of an insurer. After some discussion, participants came to the conclusion that this type of compulsory insurance is necessary and must be subject to European harmonisation. This is especially true for some minimum standards, such as minimum coverage and reliability of the clauses within the cover note. Nevertheless, further examinations of the issue were asked for.

The last aspect of harmonisation dealt with liability issues. On the one hand, following the presentations of Prof Armel Kerrest and Mr Alain du Parquet, the need of recourse clauses was stressed, enabling the liable launching state to indemnify itself against the entity which caused the damage for which the state now was held liable on an international level. Strong need for harmonisation was also identified for a common cap of such recourse in order to foster private space activities. On the other hand, the possibility of agreeing on cross-waiver clauses was examined with regard to their admission by general national contract law. Here, participants did not come to a common point of view. Thus, it was argued that states should come to a common understanding on which kind of fault might be subject to a waiver.





The third session dealt with methods of harmonisation. Dr Bernhard Schmidt-Tedd outlined the possibilities on how harmonisation might be achieved within Europe. Prof Sergio Marchisio gave an insight into the draft treaty establishing a European Constitution as well as the White Paper on Space of the European Commission, discussing how harmonised European space acts might be achieved according to the instruments provided in these sources. After an extensive discussion, most participants were in agreement that since there is no real competence of the EU to deal with the aspect of national space legislation and such a competence is not foreseen within the next years, states should be asked to coordinate on an informal level, maybe agreeing on some framework aspects within multilateral agreements.

Before starting with the final panel discussion, representatives of the Netherlands, Belgium, UK, Germany and Italy gave brief statements on how their (draft) legislation deals with the aspects discussed earlier and how harmonisation might be achieved according to their views. These statements were followed by a panel discussion chaired by Dr Kai-Uwe Schrogl. Panellists were Dr Hans Joachim Kroh from the European Commission, Dr Ulrike Bohlman from the European Space Agency and Mr Niklas Hedman from the Swedish Ministry for Foreign Affairs. Their discussion was based on the conclusions of the presentations and discussions as presented by Dr Michael Gerhard, and concentrated on methods of harmonisation.

A full report of the workshop as well as all presentations are published in the proceedings "Project 2001 Plus – Towards a Harmonised Approach for National Space Legislation in Europe", published by Stephan Hobe/Bernhard Schmidt-Tedd/Kai-Uwe Schrogl. These proceedings are available from the Project Office under sekretariat-hobe@uni-koeln.de.

As a next step, participants of the workshop were asked to set up an informal working group to draft some principle statements on harmonisation, which shall be presented at the Final Colloquium of Project 2001 to be held 8 to 10 June 2004 in Cologne. Anyone interested in participating is kindly asked to contact the Project Office at the above email address.

*Dr Michael Gerhard  
Ms Kristina Moll*

## 1<sup>st</sup> International Week of Space and Telecommunications Law (IDEST)



From 16 to 19 February 2004, the Institute of Space and Telecommunications Law (IDEST, University Paris-XI), headed by Prof Philippe Achilléas, organised its "1st International Week of Space and Telecommunications Law" in Geneva. IDEST Masters and PhD students visited various international organisations, and attended presentations on Space and Telecommunications Law given by experts in the field, making for an enjoyable and interesting week.

A variety of activities took place during the international week, beginning with a visit to the World Intellectual Property Organisation (WIPO), located in Geneva. A presentation of the organisation was given and a conference on the issues of e-commerce and intellectual property rights was attended. The students then visited the Palace of the Nations, headquarters of the United Nations Organisation (UNO), and were introduced to the topic of the Prevention of Arms Race in Outer Space (PAROS) presented by a member of the Conference of Disarmament. The group was then welcomed by Mr Paratian, Chief of Protocol of the International Telecommunications Union (ITU), who had arranged two conferences. The first one examined the results of the latest World Administrative Radio-communications Conference (WARC 2003) and the second focused on the important topic of digital divide, and the role of ITU in this matter, particularly in organising the World Summit on the Information Society. The week was completed by a visit to the World Trade Organisation (WTO). A presentation of the organisation and a workshop covering WTO audiovisual regulation and cultural exception were attended.



*Students of Masters in Space Activities and Telecommunications Law (University Paris-XI) during their visit to Geneva*

The concentrated interest of both students and researchers during the week was rewarded with a day off. The group enthusiastically took advantage of the sunny weather to walk through the city and around Lake Geneva.

IDEST is currently planning a 2nd International Week of Space and Telecommunications Law.

*Roxane Kazancigil  
IDEST-Masters Student*

## Report on the ECSL Practitioner's Forum of 12 March 2004

On 12 March 2004, the European Centre for Space Law (ECSL) once again organised the annual Practitioner's Forum at ESA Headquarters in Paris. A broad overview of "New Issues in Earth Observation and Data Policy" was provided. Some 60 participants from a wide variety of stakeholders in earth observation issues joined the Forum.

The Practitioner's Forum, as customary, was divided into two sessions: morning and afternoon. The morning session was chaired by Prof S. Marchisio of the University of Rome and reserved for "Current Topics in Earth Observation and Data Policy". After an introduction by the Chairman, the first presentation was held by Mr M. Ferrazzani of ESA's Legal Department on "The ESA Legal Framework for Database and Data Policy". In particular, he focused on the changing paradigm underlying developments in earth observation: the change from a scientifically-oriented towards an application-oriented approach brought about by the rapidly growing number of civil and commercial users. In legal terms, this change of paradigm was reflected in an increasing focus on national space laws and policies, as well as those of the (few) international

organisations and fora involved in the operation of earth observation satellites, and a decreasing focus on the more general principles developed, for example, in the context of the United Nations. Against this background, he sketched the development of the new, general (as opposed to mission-specific) data policy of ESA which provided for two fundamental categories of use, each with their own attendant data policy.

The second speaker was Prof P. Achilleas from the University of Paris XI (Sceaux). Dealing with "Data Policy and Security Issues" involved in earth observation, he pointed out the particular role of military activities in the development of earth observation. From this point of departure, he analysed the data policies of four major states involved in earth observation. In the United States, an interesting policy change was that from license-based restrictions and "shutter control" in situations where military interests of the United States were perceived to be at stake, to a "buy-to-deny" policy. The speaker further dealt with the French policy of denying Spot data diffusion to Iraq, with developments in Russia which now tended to allow uninhibited diffusion of data down to a 1-meter resolution, and

the Indian policy of focusing on the prohibition of diffusion of earth observation data on specific geographical areas considered to be of a particularly sensitive nature.

The third speaker, Mrs K. Ernst of EUMETSAT's Legal Department, detailed "EUMETSAT: the new data policies". With respect to the Meteosat system, she outlined that - in accordance with WMO Resolution 40 - essential data were indeed provided on a free and unrestricted basis, whereas other data were encrypted, and subject to a license agreement and a licensing fee. Four categories of users were distinguished:

- National Meteorological Services (NMS's) of EUMETSAT Member States for Official Duty Use (ODU),
- NMS's of non-Member States for ODU,
- educational and research users including private end-users – who also receive such data at no charge!, and
- commercial and all other users.

Dr S. Camacho, Director of the United Nations Office for Outer Space Affairs in Vienna, then sketched the road to a new humanitarian application and "The UNOOSA View and Contribution to the



Charter on Space and Major Disasters". At UNISPACE III, in 1999, a number of space agencies (ESA, CNES, CSA, ISRO, NOAA and CONAE, with JAXA currently in the process of applying) proposed this Charter, to allow both for rapid response to disasters and crises with on-demand systems, and for inter-crisis phase management and prevention activities with "always-on" systems. The United Nations - accepted in 2003 as a Cooperating Body under the Charter - has already triggered its operation five times, during natural disasters in Nepal, the Dominican Republic, the Philippines, Indonesia and Morocco. The added value, in particular to the mitigation of the consequences of such natural disasters, was established.

The final speaker of the morning session was Mr P. de Smet from the Directorate-General Research and Security at the Commission of the European Union in Brussels. Mr de Smet spoke about "The EC White Paper on Space and Earth Observation Issues". He extensively outlined the background, context and contents of this particular White Paper which was published in November 2003. The Global Monitoring for Environment and Security (GMES) project - the next major space programme after Galileo in which the EU/EC will work closely with the European Space Agency - had a prominent place in this White Paper as a cornerstone for future European space policies. Issues like the Digital Divide were touched upon.

The afternoon session, "New Avenues for Earth Observation Applications?", essentially dealt with more future-oriented issues and was chaired by Prof R. Harris of the Department of Geography at the University College of London.

Prof Harris was the first speaker of the afternoon session, highlighting "GMES and INSPIRE: Policy and Legal Issues". With regard to GMES, he pointed out that whilst the EU and ESA had taken the lead, many other partners were involved as well. Thus, statistical institutes, mapping agencies, institutes for natural resources and environmental monitoring, regulatory bodies, and (other) earth observation organisations would all have to participate in GMES, in order for it to deliver the benefits promised. As to INSPIRE, this initiative to (further) develop an infrastructure for spatial information in Europe had by definition a much larger

purport than just earth observation issues. But, from the other end, it was clear that earth observation could play both a pivotal role in enhancing the aims of INSPIRE and to be further "inspired" by it.

The second speaker in this session was Mr M. Paganini of the ESA Directorate of Earth Observation Programmes at ESRIN. He spoke about the "Status of GMES and plans for the period of 2004-2008". He stressed that the underlying mission of GMES was to ensure independent European access to timely and reliable information on the status and evolution of the earth's environment, and the security of the citizens of Europe (in the broadest sense of the word). Furthermore, he pointed out that for the first phase - which is supposed to run until 2008 - GMES would concentrate on existing assets and how to make them more effective for the above purposes; only as of 2008 would the provision of new assets (possibly including satellites) be contemplated.

Dr F.G. von der Dunk then spoke about "GMES: Lessons to be learned from Galileo?" Though Galileo, as the first space project led by the EU and ESA jointly, might at a superficial level show similar traits as GMES (the second such project), the speaker warned against making comparisons and drawing lessons too early or too easily. He considered that such lessons might especially arise from the experience with Galileo, so far with: intra-institutional issues (first in the EU Council, then amongst the ESA Member States, problems regarding financing arose; so co-ordinate early!), frequencies (start arranging for them well in advance!), public services (after all, that is what GMES is all about; so make sure the financing structure for those public services does not depend too much on private funding!), and access to and use of ground stations outside of Europe (which always takes a lot of time, so start early with the discussions here!).

His presentation was followed by that of Mr B.L. Smith of the Intellectual Property Rights (IPR) Department at Alcatel Space in Paris. Mr Smith spoke about "IPR Issues in Earth Observation". He explained the intricate details of the many forms of intellectual property rights which were protected by legal means (sometimes for over a century) by both national and, increasingly, European or even global legal instruments: copyrights,

patents, trademarks, etc. He then applied these various forms of IPR, and their legal consequences and ramifications, to the specifics of earth observation. His main conclusion can be summarised as: for IPR to "work" as a tool protecting the interests of earth observation satellite operators and/or data providers one would have to focus on copyrights as the most appropriate tool, and this would then require an "intellectual" effort to be part of the earth observation activity in order for the desired protection to be triggered.

The final speaker was Prof E. Busoletti, Principal of the Italian Delegation to, and Co-Chair of, the GEO Working Group on User Requirements, who spoke about "The Follow-on from the EO Summit of July 2003". He explained that the idea of GEO was born in the summer of 2003, triggered by the United States partly as an answer to the European GMES initiative, the former to be "operational" by 2010. As he pointed out, GEO was lacking the "S" of Security when compared to GMES, so that GMES only to the extent of the "E" can be seen as a European contribution to GEO. To reflect inter alia this conclusion, GEO has meanwhile been renamed GEOSS, a GEO System of Systems.

Both the morning and the afternoon sessions were rounded off by a discussion session, in which many further issues were brought to the table. Due to the customary informal format of the Practitioner's Forum, there are no proceedings or collection of presentations. However, those interested in more information about this meeting, or in the Practitioner's Forum in general, may contact Mr Alberto Marchini, Executive Secretary of ECSL and responsible once more for the excellent organisation of the Practitioner's Forum.

*Frans von der Dunk*



## The European Round of the Manfred Lachs Space Law Moot Competition

The "European Round of the Manfred Lachs Space Law Moot Competition" took place from 24 to 25 March 2004, at the ESA/ESTEC facilities in Noordwijk, the Netherlands.

This year's event was hosted by the ESA Erasmus Communication and User Centre which provided incredible state-of-the-art multimedia technology and an amazing television studio. The competition was broadcast (or as web users would say "streamed") live via the internet so that home universities of registered teams and other remote internauts could watch the pleadings of Palladia and Zirconia in real time. Journalists interviewed the teams at the end of each round in order to show students how the media business works, and the pressure the latter can exert on major public trials and events. Footage of the different rounds (except for the ones of the winning team to avoid revealing their arguments to possible rivals) are now available at <http://webiss.estec.esa.int/mootcourt/> as video-on-demand. This remarkable achievement will allow future teams to understand how the competition works, how to best defend their opinions and how to manage the stress when addressing a panel of judges: experience that will certainly pay off also in a future professional career.

The ECSL is immensely grateful to Mr J. Feustel-Buechl, Director of Human



*One of the two panels of judges, l to r: Prof A. Kerrest de Rozavel, Prof F. Lyall, Dr B. Schmidt-Tedd*

Spaceflight, Mr D. Isakeit, Head of the Erasmus User Centre and Communication Office, and to their wonderful team (Agnieszka Bartosiak, Paz Alcalde, Melanie Cowan, Iacopo Baroncini, Massimo Sabbatini, Markus Bauer and many more!!!) for their kindness towards all the participants and for their technical expertise. Thanks to all of them, the ECSL European Round of the Competition came closer to real life and students enjoyed a one-of-a-kind experience, which included a visit to 1:1 modules of the International Space Station and a laser show of the birth of life on planet Earth.

As far as the competition is concerned, the team from the Leiden University - Axelle Cartier (Coach), Nathanael Horsley (agent/co-agent), Ioana Cristoiu (agent/co-agent), Taras Ploshchansky (back-up) - won the European Round and, therefore, assured itself a place at the world finals which will be held in Vancouver during the 55<sup>th</sup> International Astronautical Congress (4 to 8 October 2004). The ECSL recognises full credit to the work done by the team from the Leiden University, which also managed to reach the finals of the European Round last year, and wishes them "Good Luck!" for Vancouver! The Leiden team representing Europe will compete against the winner of the Americas Round (Georgetown University, U.S.A.) and the winner of the South-East Asia Round (Bangalore University, India). The year's case involves issues relevant to international responsibility and liability on-board the International Space Station (for more information, visit the official site of the competition at <http://www.spacemoot.org/>).

The European runner-up team was from the Institute of International Relations, Warsaw University - Jakub Ryzenko (Coach), Anna Burzykowska (agent), Anna Badurska (co-agent), Mercin Terlinkowski (back-up) - which also won the award for the Best Written Brief. The award for Best Oralist was awarded ex equo to Polina Tulupova (Moscow Institute of International



*The runner-up team from Warsaw University, Institute of International Relations, l to r: Anna Burzykowska (agent), Anna Badurska (co-agent)*





*The team from Leiden University receiving the 1st place award from Mr D. Isakeit (ESA)*

Relations, MGIMO University, Faculty of International Law) and to Nathanael Horsley (Institute of Air and Space Law, Leiden University).

The ECSL is very proud of this year's achievements. Eleven teams (Austria, Germany (2), Italy (2), The Netherlands, Poland, Russia, Spain, United Kingdom, and the International Space University) registered for the competition (although three teams had to drop out at the very last minute). This proves a growing interest in this kind of event, which allows

law students to put into practice their knowledge and to gain an important moot experience at the international level. We hope that this trend will be confirmed in the coming years.

The competition was followed by a symposium on "Legal Aspect of Commercial Utilisation of the International Space Station (ISS) - A Dutch Example", co-organised by the IIASL and Meijers Institute, held at Leiden University on 26 March.

*Alberto Marchini*



*The winning team from Leiden University, first row l to r: Taras Plushchansky (backup person), Axelle Cartier (Coach); second row l to r: Nathanael Horsley (agent/co-agent), Ioana Cristoiu (agent/co-agent)*

### ***The Leiden team, who are they?***

*Axelle Cartier (Paris I, McGill Institute of Air and Space Law, Leiden University) LL.M., is currently a PhD candidate in international air and space law at the IIASL. She is a member of the SFDAS, the ECSL and the IISL.*

*Ioana Cristoiu is a law graduate from the Université Libre de Bruxelles (U.L.B.). She developed an interest in space law while she was an internee in the framework of Space Research and Applications Department under the supervision of Mr Jean François Mayence, Legal Adviser and official representative at the Federal Office for Scientific, Technical and Cultural affairs Prime Minister's Office (OSTC). During her internship, she participated in intergovernmental meetings organised by the Belgian Delegation to the European Space Agency and to a bilateral informal meeting on the preparation of an international contract concerning a space mission. She also edited in 2002 a collection of Space Law texts, under the supervision of Professor Pierre Klein, Public International and Space law Professor at the U.L.B.*

*Nathanael Horsley's main focus in the LL.M. of the IIASL is on the legal aspect of advancing outer space commercialisation. Nathanael graduated with a Juris Doctor cum laude in 2003 from the University of Georgia School of Law, where he was also honoured with positions as Executive Articles Editor for the Georgia Journal of International and Comparative Law, member of the National Order of the Barristers, and member of the University of Georgia Mock Trial Board. He received a Certificate of European Union Law Studies cum laude from the Université Libre de Bruxelles, Institut d'Etudes Européennes in 2002.*

*Taras Plushchansky is an engineer who owned and operated his own construction firm Alpha Omega Structures and Service prior to his enrolment in the LL.M. of the IIASL. He graduated with a Bachelor of Arts (political science major, legal studies minor) with honours from Wayne State University (Detroit, Michigan).*

*Axelle Cartier*

## Report on the Symposium “Legal Aspects of Commercial Utilisation of the International Space Station (ISS) - A Dutch Example”

On 26 March 2004, the International Institute of Air and Space Law, as the Dutch National Point of Contact of EC SL, and the E.M. Meijers Institute at Leiden University, in co-operation with ESA/ESTEC, organised a one-day Symposium on “Legal Aspects of Commercial Utilisation of the International Space Station – A Dutch Example”.

As an intergovernmental organisation, ESA cannot simply exercise jurisdiction, in any comprehensive sense of the word, on-board the ESA-registered module of the ISS. Therefore, special solutions will have to be – and, to some extent, already have been or are being – devised, in the last resort referring back to the national jurisdictions of individual Member States. This issue is of particular relevance in view of the intended partial commercial utilisation of the ISS. From the perspective of private entities (possibly interested in commercial activities) legal issues regarding intellectual property rights protection, possible liability claims and contracts to be concluded, are of major importance. In many respects, such legal issues are dealt with by national legislation, even if ESA rules provide at least the framework when it comes to relevant ISS activities. From this perspective, the Symposium mainly focused on the potential application of relevant Dutch national law to the key issues mentioned.

The Symposium was opened with welcoming words by Prof R.A. Lawson, on behalf of Leiden University and the Meijers Institute, and Mr R.P. Veldhuyzen, Head of Programme Policy Division, Directorate of Human Space Flight, ESTEC. The morning session, chaired by Judge V.S. Vereshchetin, Judge at the International Court of Justice in The Hague, began with a focus on the international legal framework as provided by the IGA and the relevant ESA policies and rules within the wider framework of international space law.

The first speaker was Mr Veldhuyzen whose topic was “The ISS Legal Framework and Commercial Utilisation of the ISS – General Introduction”. He provided an overview of the history of the

ISS, and the Intergovernmental Agreement (IGA) and attendant Memoranda of Understanding (MOU's). He pointed out that the IGA, as such, did not yet refer to commercial utilisation, though its provisions on registration, jurisdiction, mutual consultation of the parties and the utilisation of the various modules provided the parameters within which any commercial utilisation would have to take place. Such commercialisation was mainly envisaged in five sectors:

- advertising, sponsorship and branding,
- entertainment,
- research and development,
- merchandising, and
- space travel and tourism.

The second speaker, Mr M. Belingeri, Head of Commercialisation Division, Directorate of Human Space Flight, ESTEC, went into further detail when speaking about “The Outlook for Commercial Utilisation of the ISS: an ESA Perspective”. He approached the ISS as an innovative infrastructure potentially offering new sources of competitive advantages for industry, in particular referring to the use of microgravity for the development of pharmaceuticals and new materials, for new food products (dealing with an Italian food programme MEDIET), and for new medical instruments.

The third speaker, Mr A. Farand of ESA's Legal Department in Paris, dealt with “The European Space Agency's Approach to Jurisdiction and Liability Issues on Board the ISS”. He pointed out that additional agreements were indeed necessary to take care of commercial utilisation activities, with a crucial role for the respective ISS partner which, he stressed, in doing so is making use of a right. Furthermore, he pointed out the fact that most ISS commercial activities have both an ‘on-board’ component, governed by the ISS legal framework, and commercial/terrestrial components, governed by law and regulation within a given state. Finally, he discussed the current liability situation at some length, emphasising the need for further refinement.

Ms. J. Wheeler, also of ESA's Legal Department in Paris, then spoke about “The IGA and ESA: Protecting Intellectual Property Rights in the Context of ISS Activities”. She explained the traditional focus of IPR-protection on the *lex loci*, which was precisely where the ISS required special arrangements in elaboration of the relevant Article in the IGA. She pointed out some inconsistencies as to how various partner states have implemented the IGA in their own territories. As to the ISS brand, in this regard she suggested to establish, in addition to a global trademark for the ISS, several regional trademarks.

During the afternoon session, which was chaired by Prof J.A. Nieuwenhuis of Leiden University, the Symposium tackled Dutch national law as it deals with these key issues, in order to clarify to what extent the application of this example (of applying national law to ISS activities) would accommodate or complicate opportunities for private companies to undertake commercial projects on-board the ISS.

The first speaker was Prof P.P.C. Haanappel of the Leiden Institute, whose topic was “The Application of Earthly Property, Contract and Tort Law to the ISS: the Dutch Example”. He considered the problem as such not to be a new one, although it had become a little more complicated because of the European character of the ESA module and the recent developments in commercial utilisation. He concluded that in this respect a gap existed in the current legal framework and proposed the consideration of a Protocol to the IGA providing for a default reference to specific national law in the case of commercial disputes. His final remark pertained to the issue of objects manufactured on-board the ISS and how property law should, or would, operate in this regard.

The final speaker of the afternoon session was Prof D.J.G. Visser, Leiden University, who spoke about “Dutch Intellectual Property Rights Law and the ISS”. He started by explaining that the IPR issues and problems encountered by the

commercial utilisation of the ISS were not new, but at least were new to space. He focused on the copyright type of IPR, pointing out the lack of protection for photos since originality is an important criterion for the application of copyright. He then discussed a few examples of intended or prospective activities on-board the ISS, as indicated in the distributed folder. He then gave some pointers how to solve such issues, i.e. by referring to various Dutch court cases and other legal decisions by adjacent legal fields, such as media or sports law. Both sessions were followed by a panel and a public discussion in which inter alia

guest panellists Prof A. Kerrest de Rozavel, University of Brittany, and Prof E. Back-Impallomeni, University of Padua, participated. Prof Kerrest de Rozavel in pointed out the need to be particularly careful in developing specific international commercial law and to make sure that the applicable rules of international space law, such as third-party liability, would not be interfered with. Prof Back-Impallomeni explained the specific Italian approach to such commercial issues in an international legal setting; Italy has a specific Code of International Private Law providing inter alia for the full-blown incorporation of relevant international conventions.

The Symposium was attended by some 60 participants, despite the fact that a bomb alert at Leiden Station a further 20 to alter their plans. It took place the day after the European Round of the Manfred Lachs Space Law Moot Court Competition organised by ECSL at ESTEC premises in Noordwijk; this year's moot court case dealt with issues of commercial utilisation of the ISS in a global setting.

*Frans von der Dunk*

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## **IISL/ECSL Space Law Symposium 2004: “New Developments and the Legal Framework Covering the Exploitation of the Resources of the Moon”**

The annual IISL/ECSL Space Law Symposium was held on the occasion of the 43rd Session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space on Monday, 29 March 2004, the first day of the Legal Subcommittee's session, in Vienna, Austria.

Prior to the Symposium numerous delegates from many different countries were invited to a lunch reception sponsored by IISL and ECSL. Ambassador Peter Jankowitsch, Chairman of the Supervisory Board of the Austrian Space Agency and Past Chair of COPUOS, had again agreed to chair the Symposium. His able leadership greatly contributed to the success of the event. Sergei Negoda of the UN Office of Outer Space Affairs served as rapporteur, and IISL Secretary Tanja Masson-Zwaan coordinated the programme. The speakers came from different regions (Europe, the USA, Asia Pacific) and backgrounds (legal practice, academia, space agency).

A solid overview entitled “Article II of the Outer Space Treaty, the Status of the Moon and Resulting Issues” was presented by Dr Leslie Tennen of Sterns & Tennen in Phoenix, Arizona. Dr Tennen argued that the non-appropriation principle is “under assault”: although a cornerstone of international space law, the doctrine embodied in Article II of the Outer Space Treaty and Article 11 of the Moon

Agreement is seen by some as an unwarranted intrusion on the rights of the private sector to conduct business in space. The opportunities for private enterprise in space abound, but the formula for success has, so far, been elusive. A disturbing trend has emerged whereby some view the shortest path to profit is by violating space law, especially Article II of the Outer Space Treaty. Dr Tennen gave an extensive overview of such “assaults”, of the solid legal framework to which Article II belongs, and of the political context in which it was adopted. He denounced the claims for abrogation of Article II and demonstrated that such abrogation would only have adverse effects, contrary to what proponents argue; the cost of doing business in space would increase, not decrease. Dr Tennen explained that a state cannot grant more authority to a private entity that which it possesses itself and, thus, cannot authorise private entities to “appropriate” (parts of) outer space or celestial bodies, just as it cannot privatise its nuclear testing procedures and license a private entity to conduct nuclear testing, contrary to the test ban treaty. He argued that the legal framework, including the requirement for states to authorise and supervise national activities in space, and the provisions regarding liability for damages, will ensure significant protection to private entities and will safeguard the future of space commerce rather than hamper it.

Prof Armel Kerrest, University of Western Brittany, France, then spoke about “Exploitation of the Resources of the High Sea and Antarctica: lessons for the Moon”. In his provocative speech, he explained the origins of the “common heritage of mankind” (CHM) concept, and the difference between “res communis” and “res nullius”. “Res communis” is a thing (res) which may be used by everybody and thus cannot be appropriated by anyone. Use is allowed as long as it does not impede somebody else's use. Consumable resources of the sea were initially thought to be unlimited; they were “res nullius”, things which belong to nobody and may be appropriated by anyone. However, when it became clear that the resources were not unlimited, they could not stay “res nullius”; they became the “common heritage of mankind”. For a common heritage to be exploited, international management is required. Only the owner of the resource - here mankind (or its representative) - may authorise an appropriation of a part of the common resource. Prof Kerrest gave some background on the history of the concept in view of the Law of the Sea and Antarctica. Moving to space law, he argued that since the Moon Agreement is accepted by so few states, we should consider mainly the Outer Space Treaty and customary law. He argued that the resources of outer space cannot be appropriated by any means (Article II OST) and since authorising the mining of consumable, non-renewable goods is a



way of appropriation, it is forbidden. A state may be held internationally responsible for this violation, and use on Earth of such a mineral or any product made from it will be illegal. Entrepreneurs are not likely to accept such a risk. Thus, if national appropriation is not possible, Prof Kerrest argued, then perhaps “international appropriation” would be the solution. Since the idea of an international body in charge of exploitation has not been proven successful, the only solution may be to use the CHM principle and declare the Moon the “common heritage of mankind”; the concept would enable “mankind” to authorise partial appropriation; this solution of “international appropriation” might, in his view, be the only possibility to legally mine the Moon.

Prof Dr Stephan Hobe, Director of the Institute of Air and Space Law at the University of Cologne, Germany, and General Rapporteur of the ILA Space Law Committee, presented the “ILA Resolution 1/2002 with regard to the CHM principle in the Moon Agreement”. He gave an extensive overview of the history and deliberations of the ILA Space Law Committee leading to Resolution 1/2002. Special rapporteurs had been appointed in 2000 to report on the status of the major space treaties. When the reports were presented at the 70th ILA Conference in 2002, the Moon Agreement was given special attention, centering around the question of whether the concept should be recommended to be withdrawn or to be upheld. In the end, the consensus was that the concept does not, in principle, prohibit commercial

uses and only certain adjustments should be made to Article 11 of the Moon Agreement. The adjustments suggested by Resolution 1/2002 include:

- a licensing system by means of the national law of a state party whose non-governmental entities are interested in undertaking relevant commercial space activities,
- the setting up of guidelines for the licensing requirements, and
- international registration of licensed Moon activities.

Dr Hobe concluded that any kind of national appropriation of areas of the Moon is prohibited. States are even under a legal obligation to prevent the establishment of private claims to property in order to avoid their international legal responsibility. International space law as contained in Article II of the Outer Space Treaty as well as Article 11 para. 2 of the Moon Agreement exclude those activities from the scope of permitted activities in outer space by virtue of a treaty and customary law obligation.

Lastly, “The Moon Treaty: The Road Ahead” was the topic of a refreshing talk by Dr Rajeev Lochan, Assistant Scientific Secretary of ISRO, India. He gave the audience some scientific facts and figures about the Moon and recent missions, including those of Russia, the USA, Japan, China, ESA, as well as India’s first mission to the Moon, Chandrayaan-1. He then moved on to the Moon Agreement, listing in a positive way everything that it does permit, such as scientific investigation, removing of samples,

placement of personnel, stations etc.: in short, virtually everything a scientist would wish to do in order to know more and more about the moon and, therefore, about the Earth and our solar system. “Scientists could not have asked for more”. He then brought up the question of the Agreement’s review, as foreseen in its Article 18. Dr Lochan argued that the need for a serious revision must have been lingering in the minds of the authors of the treaty. The rapid pace of technological development would have made them realise that the legal framework shall not survive very far into the future and, therefore, a reconsideration was introduced into the treaty itself. It is clear in his view that enabling technology for commercial exploitation is around the corner and that exploitation of resources of the moon is inevitable. The treaty does provide a way for commercial exploitation in Article 11, although not perfect, and it does permit review and reconsideration. He therefore concluded as follows, “let us reengineer the treaty. Together. Quickly.”

Several delegates raised questions during the discussion session, after which Prof Sergio Marchisio, the newly elected Chairman of the UNCOPUOS Legal Subcommittee, thanked IISL and ECSL for organizing the symposium, and gave some concluding remarks. Ambassador Jankowitsch then closed the Symposium, expressing the hope that both organisations would be invited to continue the tradition in 2005.

*Tanja Masson-Zwaan*  
IISL Secretary /former ECSL Board  
Member

## Upcoming events

- 13th ECSL Summer Course on Space Law and Policy, University of Graz, School of Law, Austria, 6-17 September 2004
- 29 October 2004, Conference on (provisional title) “Legal and Ethical framework for Astronaut Activities in the International Space Station Era”, co-organised by the ECSL, the ESA Legal Department in cooperation with the UNESCO Commission on the Ethics of Scientific Knowledge and Technology (COMEST) and IDEST-Paris XI

Ms Rocio Caparros and Mr Alberto Marchini (ECSL) are working on the new, polished and user-friendly ECSL website which will hopefully be up and running by the end of June 2004. The new site will feature the ECSL legal database and will provide a wide variety of information: regular updates on ECSL activities, new initiatives, a calendar of events and much more! So stay tuned and keep an eye on <http://edms.esrin.esa.it/ecsl/>

## **UNCOPUOS - Legal Subcommittee**

### **43<sup>rd</sup> Meeting, Vienna, 29 March to 8 April 2004**

The following are some remarks concerning the 43rd UNCOPUOS, Legal Subcommittee meeting.

1. The Legal Subcommittee elected Prof Marchisio (Italy), as Chairman of the Subcommittee (2004/2005) and approved the proposed agenda.
2. Among the four ordinary items, particular attention was given to the following:
  - a. status and application of the five United Nations treaties on outer space,
  - b. activities of the international organisations conducting space activities, and
  - c. definition/delimitation of outer space.
3. Three questions for discussion were pointed out: “nuclear power sources”, the draft preliminary (Unidroit) Space Assets Protocol, and the Unispace III+5 Report. A plan of work, states’ and international organisations’ practices on space objects registration, was added as an agenda item. The main results were:
  - a. On the recommendations of the corresponding working group, the Legal Subcommittee adopted a *draft Resolution on the launching state concept*, now going to the June COPUOS meeting and, thereafter, to the General Assembly for adoption. The Legal Subcommittee also approved the model letter prepared by the same working group addressed to states and international organisations, inviting them to sign, ratify, accede to the respective UN Space treaties, or to adopt declarations of acceptance.
  - b. *The role of international organisations in the promotion of space law* has been particularly underlined and recognised. A statement was made by the ILA representative (Prof S. Hobe) and a presentation of the ECSL activities, etc. given. Brazil announced that the next United Nations Workshop on Space Law will take place in Rio de Janeiro in November. Another conference should take place in Bangalore in early 2005 (date and content to be defined).
  - c. Several states and ESA presented their *registration practice of space objects*. The Secretariat produced a very interesting compilation to serve for the analysis that will be on the agenda of the Legal Subcommittee next year.
  - d. *Preliminary draft Unidroit Space Assets Protocol*. Two questions were examined: the possibility for the UN to serve as Authority of supervision -as described in the draft assets Protocol- and the relationship between space law and the Protocol. The first question being the most delicate one, no consensus was achieved. But, it was agreed to end this discussion during the 2005 meeting and for that purpose, an ad hoc inter-sessional consultation mechanism was set up. On the second question, the Subcommittee took note of the progress made during the first meeting of the governmental experts (Rome, 15-19 December 2003).
  - e. New items. Previous proposals were reiterated: a draft “global” convention; the legal aspects of space debris. As far as remote sensing principles were concerned, the Brazilian delegation made a substantial move in proposing the “analysis of current practices” of states and international organizations within the “Principles of 1986”. The proposal was considered as acceptable by the European group; nevertheless, consensus was not achieved.

## The University of Jaén: an Example for the Promotion of Space Law in Spain

For more than ten years, in the University of Jaén, several factors have made the spread of knowledge relating to space law possible. Thanks to the impulse that was given by the creation of the National Points of Contact (NPOCs) of the European Centre for Space Law (ECSL) of ESA, and the presence in Jaén of both students interested in learning, and professors motivated in teaching, the specialised material, the initiative was taken to insert (from a legal point of view) a specific chapter dedicated to outer space law in the general framework of International Public Law coursework.

While working through this material (approximately two weeks in length) during their degree work, students familiarise themselves with a new dimension of law and, often, become interested in pursuing the subject in more depth. The coursework includes the writing of reports and articles, as well as other space law-related assignments. At the end of their degree programme, students may elect to apply (with scholarship assistance) to the space law summer course organised by the ECSL in order to further their knowledge of the legal and political aspects of space law. Moreover, students who show an interest in practicing space law, have the option of preparing a practical case for defence in a simulacrum of an international court of justice: the Manfred Lachs Space Moot Court Competition. All these aspects have resulted in the consolidation of students who, after having experienced these extra-curricular activities, continue

their interest in space law and undertake research projects under the supervision of their professors.

The postgraduate research degree is a two-year "Qualified Advance Studies" programme which includes specialised space law subjects, e.g. "European Space Policy". Students are required to prepare an in depth thesis which is subsequently defended in a tribunal who judges their capacity for the future development of a doctoral thesis. Many of the Jaen students are now in this

The team of professors involved in space law matters comprise a research group known as "International Studies Alberico Gentili". The members are: Prof Juan Manuel de Faramiñán Gilbert (Supervisor), Prof Carmen Muñoz, Prof Víctor Gutiérrez, Prof Olga Martín and Prof Rocío Caparrós. All of us have been involved with innovative research centres, universities and institutions world-wide, such as ESA/ESTEC, the University of Paris XI (Jean Monnet Faculty) and McGill University in Canada. Besides supporting research in space law, the group is also developing three R&D projects: two for the Spanish Ministry of Science and Technology and one for the Instituto de Estudios Giennenses. Moreover, it has received financial support to assemble its own collection of space-related literature for use by both faculty and students.

I wish to emphasise our close relationship with the World Commission on the Ethics of Scientific Knowledge and Technology

(COMEST) UNESCO, created in 1998 to formulate ethical principles that provide non-economic criteria for decision-makers, concerning sensitive areas like outer space exploration and technology. Evidence of this a meeting held in Jaén from 25 to 26 June 2003, which addressed, among other topics, "the ethics of astronauts in outer space".

In keeping with our interests, and taking into account that we are the first university in Spain dedicated to space law, we have hosted well-known events, such as the "Exposition and Seminar about Outer Space Activities in Europe", (5 to 15 March 2002) and the "11th Manfred Lachs Moot Court Competition". We also organised the ordinary session of the COMEST Sub-Commission on the Ethics of Outer Space, (25 to 26 June 2003). During our meetings, we normally enjoy the assistance of highly qualified professionals, such as Mr Gabriel Lafferranderie, ECSL Chairman and Mr Pedro Duque, ESA Astronaut.

We are very proud that the University of Jaén has become a focal point in Europe for those students, researchers, practitioners and professionals wishing to study space law. With our initiatives, the space community will be a well-recognised dimension where borders between countries will no longer exist and cultural exchange will become a reality.

*Juan Manuel de Faramiñán Gilbert*  
Professor at the University of Jaén and  
ECSL Board Member

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## ESA-EU Project Legal Framework for a Coherent Future Structure of European Space Activities

The institutional setting for European space activities is in the midst of major changes. The impact of recent events, like the adoption of the White Paper on Space by the European Commission, the presentation of Agenda 2007 by the ESA Secretary General and the conclusion of a framework agreement between ESA and the EU, has yet to be evaluated. Moreover, the envisaged EU Constitution which, for the first time, will contain a

provision granting space-related competence, might once again change the institutional setting once it enters into force.

It is against this backdrop that the Institute for Air and Space Law of the University of Cologne is carrying out its research project "Legal framework for a coherent future structure of European Space Activities". The project is directed by Prof Stephan

Hobe, Director of the Institute of Air and Space Law of the University of Cologne, and supported by the German Federal Ministry of Education and Research (BMBF) and the German Aerospace Centre (DLR). The research project aims at analysing the legal implications of the above mentioned institutional realignments of the European space sector and proposing scenarios for a coherent and efficient institutional architecture for



European space activities. The results of the research project shall be published in an extensive research report. This report is expected to be completed in May 2005. The results will be presented in 2005 at the Closing Conference of Project 2001 Plus, a joint initiative by the Institute and the DLR, bringing together experts from all over the world to discuss current issues of air and space law.

### Historical Background

A first part of the research project will trace the history of the relationship between ESA and the European Union (EU). When ESA was founded as the organisation for European cooperation in space, a European Community involvement in space was not yet envisaged. Since its inception, the EU has shown increasing interest in the space field. This development has been based on two major components. Firstly, space applications have evolved to become indispensable instruments in many policy fields of the EU, e.g. the application of remote sensing data for environmental or agricultural purposes. Secondly, the EU has obtained new space-related competencies, e.g. the Single European Act, which introduces a new EU competency in the area of research and development.

This development has brought about the need for cooperation between ESA and the EU. The research report will demonstrate the gradual evolution of this cooperation from first consultations to large joint projects like Galileo and GMES and, finally, to the conclusion of a Framework Agreement between ESA and the EU in late 2003.

### Institutional Issues

Part two of the research report will deal with institutional issues concerning a closer cooperation between ESA and the EU. In order to establish a coherent and efficient institutional structure, a clear distribution of competencies and a transparent decision-making process will have to be developed. In this context, particular attention has to be paid to the elaboration of a comprehensive European space policy, thereby better coordinating the demand for space applications of the various European stakeholders with the provision of the respective technical solutions.

The research report will examine how the current legal framework, especially the

Framework Agreement concluded between ESA and the EU, can contribute to the enhancement of the institutional structure in this respect. But the research report will also throw a glance into the future. With the envisaged inclusion of Art. III-155 in the EU Constitution, the relationship between ESA and the EU might be in need of redefinition. The research report shall work out the exact scope of the envisaged EU space competence, if any, and identify the possible models for a redefinition of the relationship between ESA and the EU.

### Industrial Policies

Part three of the research report will deal with the compatibility of ESA's and the EU's material rules, especially concerning their industrial policies.

The industrial policy of ESA will be portrayed in detail, followed by a presentation of the EU's industrial policy. In a next step, the relationship between the EU Treaty and the ESA Convention under public international law, will be discussed. Problems arise especially concerning the 13 states which are members of both organisations.

Having established the legal relationship between the ESA Convention and the EU Treaty, their compatibility will be examined in more detail. The main question is whether the Member States currently infringe upon either the ESA Convention and the EU Treaty by participating in both organisations. Then, the impact of a closer cooperation between the two will be scrutinised.

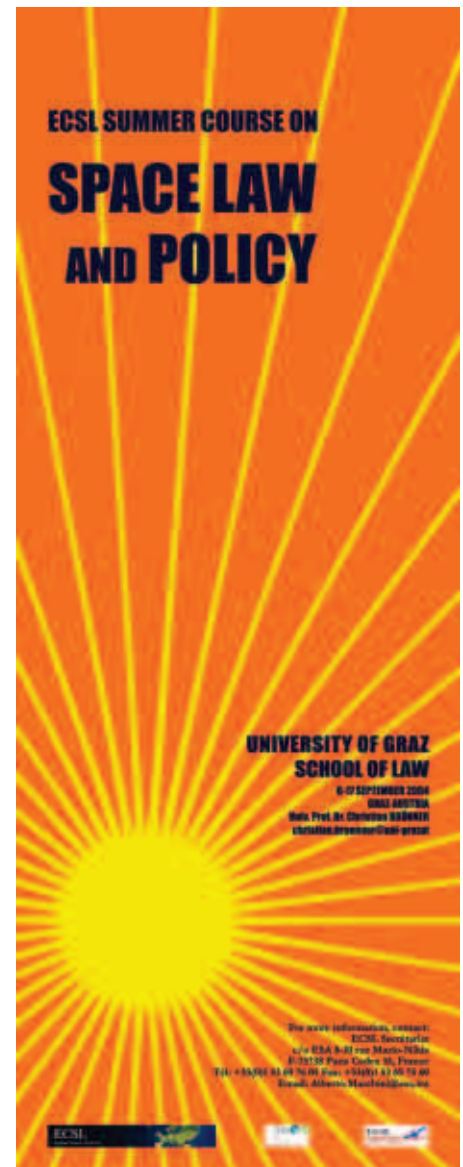
Finally, if an incompatibility between provisions of the Treaties concerned is established, part three of the report will suggest solutions on how this incompatibility can be corrected.

### Conclusion

The research project will thus elaborate the legal aspects of further cooperation between ESA and the EU. It aims at providing guidelines for European stakeholders in the continuing process of institutional realignment.

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## Legal and Ethical Framework for Astronauts' Activities in the International Space Station Era

Astronauts have played, and will certainly continue to play, a pivotal role in the human quest to unveil the secrets of life on Earth, exposing their own life to enormous dangers. These risks will certainly increase in relation to the growth of activities towards, and on-board, the International Space Station, and considering the numerous missions planned for outer space (manned mission to the Moon, to Mars, etc.) in the coming years in order to help in the preservation of life on Earth.

Indeed, our society has greatly benefited from astronauts' endeavours. They have always carried out their missions as "envoys of mankind in outer space", as spelled out in the UN treaties, with courage and total commitment.

Astronaut activities, however, challenge us: they pose delicate ethical questions and, at the same time, they take place within a complex, international legal framework. These two dimensions deserve a thorough discussion and a deep analysis. Moreover, recent developments in technology, and

ambitious national and international projects for future exploration of space, confirm the need for such a debate.

For these reasons, the ECSL, the ESA Legal Department (in cooperation with the UNESCO Commission on the Ethics of Scientific Knowledge and Technology (COMEST)) and IDEST-University of Paris Sud XI, are organising a one-day conference under the provisional title: "Legal and Ethical framework for Astronauts' Activities in the International Space Station Era", scheduled for 29 October 2004, at the UNESCO premises in Paris.

The basic idea of the conference (organizational details will be finalised in the coming weeks) is that four main topics will be addressed from both a legal perspective and from an ethical one. The ECSL and the ESA Legal Department will be responsible for the former perspective and IDEST for the latter. Once identified, the legal and ethical experts will establish an active dialogue to guarantee that their approaches be harmonised.

In order to really focus on astronauts' needs, expectations and possible concerns, some "questions & answers" sessions will be organised between the experts and the astronauts in order to facilitate their exchange of views in the months to come. The proceedings of the conference will be published.

The event will take place at the UNESCO premises in Paris and, for the time being, the maximum number of participants is set at 150. A registration form will be sent out in June.

For more information, you can contact the ECSL Secretariat:  
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*Alberto Marchini*

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