



*2010 will mark a turning point in the evolution of the international space cooperation. It has begun with the U.S. President Barack Obama's decision to cancel NASA's Moon-bound Constellation program and to foster new commercial space transportation services. This path presents both opportunities and challenges. In fact, NASA's proposed 2011 budget reaffirms the U.S. focus on making maximum use of the international space station (ISS) as a technology test bed and scientific laboratory.*

*The Head of the ESA, Mr. Dordain, endorsed the new direction proposed for NASA, saying a firmer U.S. commitment to the station, with a perspective now of 2020 or later, and space-based Earth science would further tighten trans-Atlantic cooperation, with a renewed focus on climate change and Earth observation. At the same time, other nations, such as China, India and South Korea, could be invited to join the station partnership.*

*The ECSL will follow this new spirit of cooperation from the perspective of space law, which, as all the social phenomena, is deeply affected by the political and economic environment. At the same time, it will also consolidate its core educational activities. Looking at the work accomplished by the ECSL in 2009, I would like to highlight the main events, which involved two European Universities as "new" ECSL partners.*

*The European Rounds of the Manfred Lachs Space Law Moot Court Competition took place at the School of Law, Economics & Politics, of the National & Capodistrian University of Athens, Greece, in April 2009, with nine teams registered. The University of Strathclyde, Scotland, represented the European Region at the World Final, which took place during the 60th IAC in Daejeon, South Korea, and met the National Law School of India University, India, which won the Final Competition.*

*The Faculty of Law of the University Nova of Lisbon hosted the 18th edition of the ECSL two-weeks Summer Course on Space Law and Policy, which took place in September, gathering 35 students from 15 different countries. The cooperation with the local team was of paramount importance to achieve high-level results.*

*The second group of events included the traditional Vienna Space Law Symposium at the 48th Session of the COPUOS Legal Subcommittee, organized in cooperation with the IISL, and the second meeting of the UNIDROIT Steering Committee to build consensus around the draft Space Assets Protocol, held in May 2009, under the auspices of the ECSL. In the light of the results achieved in Paris, the intergovernmental Committee was able to resume its work in Rome, in December 2009, and to reach a notable progress towards the completion of the draft Protocol and the convening of the final diplomatic conference.*

*Finally, the ECSL Board was renewed in October 2009 showing clear signs of continuity. On behalf of the Board, I am happy to express our gratitude to the ECSL members who confirmed their support.*

**Sergio Marchisio**  
ECSL Chairman



5



7

## CONTENTS

I.	<i>A word from the ECSL Chairman, Pr. Sergio Marchisio</i>	1
II.	<i>Report on the ECSL Meeting of the General Assembly</i>	3
III.	<i>Report on the 2009 IISL/ECSL Symposium/ 30th ANNIVERSARY OF THE “MOON AGREEMENT”: RETROSPECT AND PROSPECTS, by Juan Manuel de Faramiñán</i>	3
IV.	<i>European and International Rounds of the Manfred Lachs Space Law Moot Court Competition</i>	5
	A. <i>Semi-F photos</i>	5
	B. <i>Final Daejon/Korea photos</i>	6
V.	<i>Report on the 18th edition of the ECSL Summer Course on Space Law and Policy in Lisbon, Portugal</i>	6
VI.	<i>Note about Teheran’s Workshop, 11/2009, by A.Kerrest</i>	8
VII.	<i>The UNIDROIT Draft Protocol on space assets: towards the Diplomatic Conference? 14/ 05 / 2009, by S. Marchisio</i>	9
VIII.	<i>Entry into force of the EU Lisbon Treaty, by J-M de Faramiñán</i>	10
IX.	<i>Space Law – Telecommunication, Observation, Navigation, Defence, Exploration, preface by Ph. Achilléas</i>	13
X.	<i>Juan María López Aguilar, a pioneer in Space Law, by J-M de Faramiñán</i>	14
XI.	<i>Master in Institutional and Space Policies</i>	14
	<i>Calendar of the Majors Events 2010</i>	15

## II. Report on the ECSL Meeting of the General Assembly

### THE ECSL BIENNIAL GENERAL ASSEMBLY (TERM 2007-2009)

The Biennial General Assembly of the European Centre for Space Law took place on October 23<sup>rd</sup>, 2009, at the premises of the European Space Agency in Paris and held two sessions. It was an important meeting for several reasons and we would like to mention two of them.

#### 1. RESULTS OF THE ELECTIONS FOR THE RENEWAL OF THE ECSL BOARD 2009

The ECSL Chairman recalled the Board that the counting of the votes was made the 22<sup>nd</sup> of October 2009, one day before the General Assembly, by a commission composed by two ESA staffs belonging to the Legal Department, namely Ms. Catherine Baudin and Mr. Marco Ferrazzani. He added that the ECSL Vice-Chairman, Mr. Armel Kerrest, the ECSL Executive Secretary, Ms. Melanie Vincent, and himself were present during the procedure as observers. Of 61 votes received, 58 were valid and has been taken into consideration. The results of the elections for the New Board for the term 2009-2012, as communicated to the General Assembly during the morning's meeting, were as follows: Philippe Achilleas (France); Elisabeth Back Impallomeni (Italy); Christian Brünner (Austria); Frans G. von Der Dunk (the Netherlands); Juan Manuel de Faramiñan Gilbert (Spain); Stephan

Hobe (Germany); Armel Kerrest (France); Sergio Marchisio (Italy) and Jean-François Mayence (Belgium). Apart from the elected Members, the new Board also included Mr. Chris De Cooker, Head of the ESA International Relations Department, appointed ESA Representative within the ECSL Board by the ESA Director General, Mr. Jean-Jacques Dordain. Mr. Marchisio emphasized that the results showed a clear desire of continuity.

#### 2. ECSL BIENNIAL GENERAL ASSEMBLY, OCTOBER 2009

Mr Marchisio referred to the issues tackled during the ECSL General Assembly held on October 23<sup>rd</sup>, 2009, at Hotel IBIS Cambronne, namely the elections of the ECSL Board, the NPOCs activity reports for the term 2007-2009 and the adoption of the amendments to the ECSL Charter.

One of the **main points of the amendments concerns the General Assembly which will be held every three years instead than every two years.**

The Board unanimously re-elected Mr. Sergio Marchisio as ECSL Chairman and Mr. Armel Kerrest as ECSL Vice-Chairman, for the term 2009-2012.

## III. 23/04/2009 ECSL/IISL Symposium at the 48th Session of the Legal Subcommittee of the United Nations Committee of the Peaceful Uses of Outer Space

### 30TH ANNIVERSARY OF THE "MOON AGREEMENT": RETROSPECT AND PROSPECTS

On the occasion of the 48th Session of the Legal Subcommittee of the United Nations Committee of the Peaceful Uses of Outer Space, the International Institute of Space Law

(IISL) and the European Centre for Space Law (ECSL) organised a Space Law Symposium 2009 related to the 30th Anniversary of the "Moon Agreement: Retrospect and Prospects". The sessions of the Symposium took place on Monday 23<sup>rd</sup> March 2009 and were celebrated in the United Nations Office for Outer Space Affairs in Vienna. These sessions were coordinated by Tanja Masson-Zwann (President of IISL), Corine Jorgenson (Secretary of IISL), Kai-Uwe Schrogl (Board of Directors of IISL) and Sergio Marchisio (President of ECSL).

They made a very good and selected Programme divided into four parts; with

Ms. Masson-Zwaan and Mr. Marchisio as Chairpersons, a History session, a Policy Aspects session, an Outlook session and a final part with the Concluding Remarks. Reports of national and international Space Law institutions were also included.

In the first session, we studied “The negotiation of the Moon Agreement”, by the Judge Helmut Türk, Vice-President of the International Tribunal on the Law of the Sea and “The Moon Agreement (a Perspective from Developing Countries)” by Jose Monserrat Filho, from the Brazilian Society of Space Law (Brazil). The second session was related to “The Status of Ratification and the Key Provisions” by Jean-François Mayence, from the Federal Science Policy Office (Belgium) and “The Common Heritage of Mankind Principle: the Moon and Lunar Resources” by Juan Manuel de Faramiñán Gilbert, from the University of Jaén (Spain). An Outlook was made in the third session by Susan Trepczynski, finalist in the World Finals of the Manfred Lachs Space Law Court Competition (USA) that was entitled “Is a New Look Necessary in the Age of Explorations and Exploitation?” and Mahulena Hofmann, from the University of Giessen (Germany) regarding “A look ahead: Planetary Exploration, Exploitation and Protection”.

Finally, Vladimir Kopal, from the Czech Republic, Chairman of the Legal Subcommittee (COPUOS), made some very interesting Concluding Remarks.

It is important to bear in mind that the Moon Treaty would apply to the Moon and to other celestial bodies within the Solar system, other than the Earth, including orbits around them or other different trajectories. The Treaty makes a declaration that the Moon should be used for the benefit of all States and all members of the international community.

The Moon Agreement was pondered and elaborated by the Legal Subcommittee from 1972 to 1979. The Agreement was adopted by the General Assembly in 1979 in Resolution 34/68.

It was not until June 1984, that the fifth country, Austria, ratified the Agreement, allowing it to enter into force in July 1984.

In the Resolution 34/68 adopted by the General Assembly related to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, the United Nations reaffirmed the importance of international cooperation not only for the exploration and peaceful uses of outer space, including the Moon and other celestial bodies, but also for promoting the rule of law in this field of human endeavour.

Taking into account that the Moon and other celestial bodies should be exclusively used for peaceful purposes, the Agreement reaffirms and elaborates many of the provisions of the Outer Space Treaty applied to the earlier bodies. In that sense, their environments should not be disrupted and the United Nations should be informed of the location and purpose of any station established on these bodies. In addition, the Agreement provides that the Moon and its natural resources are the common heritage of mankind and, therefore an international regime should be established to govern the exploitation of such resources when such exploitation is about to become feasible. As of 1st January 2008, 13 States have been ratified, and another additional 4 have signed the Moon Agreement.

It also expresses a desire to prevent the Moon from becoming a source of international conflict. As follow-on to the Outer Space Treaty, the Moon Treaty is intended to establish a regime for the use of the Moon and other celestial bodies similar to that exists for the sea floor in the United Nations Convention on the Law of the Sea.

This Symposium was a very good opportunity to consider the new trends in the international community and, especially, in the development of the Space Law.

**Juan Manuel de Faramiñán Gilbert,**  
*Member of the Board of the  
European Centre for Space Law (ESA)*

## IV. Europeans and International Rounds of the Manfred Lachs Space Law Moot Court 2009



*Moot Court World Final: Judges and Teams.*

### A) European Round

#### EUROPEAN ROUNDS OF THE MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

*Faculty of Law of the University of Athens, Greece, 27-28 April 2009*

The European Rounds of the Manfred Lachs Space Law Moot Court Competition took place at the Faculty of Law of the University of Athens, Greece, from April 27 until April 28, 2009. There were nine teams registered from the following universities: the Catholic University of Leuven, Belgium, the University of Silesia, Poland, the Honourable Society of the Inner Temple, London, UK, the International Space University, Strasbourg, France, the University of Strathclyde, Scotland, UK, the University of Leiden, The Netherlands, the Catholic University of Lublin, Poland, the University of Aberdeen, Scotland, United Kingdom, and the University of Genoa, Italy. They all proved to have carried out excellent researches.

The judges who evaluated the written briefs were Ms. I. Zilioli, Ms. L. Ravillon and Ms. K. Nyman Metcalf.

The judges for the oral pleadings were Ms. E. Back Impallomeni, Ms. V. Iavicoli, Mr. V. Cassapoglou, Mr. C. De Cooker, Mr. R.

Oosterlinck, Mr. P. Achilleas, Mr. A. Kerrest and Mr. S. Marchisio.

The Timekeepers were Mr. Antonis Antonopoulos, Ms. Isavella Vasilogeorgi, Ms. Dimitra Papageorgiou and Ms. Artemisia Papadaki.

The results of the 2009 European Rounds of the Manfred Lachs Space Law Moot Court Competition were the following. The winner was the University of Strathclyde, Scotland (Ms. Emma Boffey, Ms. Laura Mackenzie, Mr. Stephen Donnelly and their coach Ms. Aimée Asante). The runner-up was the International Space University, France (Ms. Megan Ansdell, Mr. Axel Bergman Mr. Curtis Iwata and their coach Ms. Timiebi Aganaba). The best oralist was Mr. Stefano Gaggero. The best written briefs were assigned to the Catholic University of Leuven, Belgium.

The day before the Semi-Finals and the Regional Final, we visited the National Parliament.

The last day, after the Final, we visited to the Planetarium of Athens and watched a projection of a Digital Production. After that, we visited the Ancient Athens (Acropolis-Pnix-Agora) under the guidance of Mr. Vassilis

Cassapoglou, the Event Coordinator, and enjoyed the Goodbye Dinner in a Hellenic traditional tavern.

The ECSL takes advantage of this opportunity to thank Dr. Vassilis Cassapoglou, as well as the Sector of International Studies of the Faculty of Law, School of Law, Economics & Politics, National & Capodistrian University of Athens, the President of the Faculty of Law, Prof. Yannis Yiannidis, the Director of the Department of International Studies, Prof. Angelos Yokaris, the Dean of the School of Law, Economics & Politics, Prof. George Donatos and the Timekeepers, Mr. Antonis Antonopoulos, Ms. Isavella Vasilogorgi, Ms. Dimitra Papageorgiou and Ms. Artemisia Papadaki.

The ECSL also feels grateful to the National Parliament, Hotel Titania, the Faculty Club (Building "C. Palamas"), and to the institutions which sponsored the event, that is to say the Ministry of Culture, Hellas-Sat S.A., and the Evgenides Foundation for having hosted and sponsored the event.

#### **B) World final**

The University of Strathclyde, Scotland, UK; represented the European Region at the World Final of the Competition which took place

during the 60th International Astronautical Congress in Daejeon, Republic of Korea, on Thursday, October the 15th, 2009 at Solomon Law Park, Daejeon, Korea. Georgetown University, Washington DC, USA, had the highest score for the briefs and went directly to the Final Round. The University of Strathclyde, Scotland, UK and the National Law School of India University met in the Semi-Final on Tuesday, October, the 13th. The latter won the Semi-Final. Georgetown University and the National Law School of India University competed during the Final.

The National Law School of India University won the Competition. Georgetown University, received the Eilene Galloway Award for best brief whereas the National Law School of India University, obtained the Sterns and Tennen Award for best oralists.

The Final Round was judged by three members of the International Court of Justice (Judge Abdul Koroma, Judge Leonid Skotnikov and Judge Peter Tomka).

The European Regional Rounds of the Nineteenth Manfred Lachs Space Law Moot Court Competition 2010 will be held in April 2010. The semi finals and finals of the Manfred Lachs Space Law Moot Court International Round will take place during the 2010 IISL Colloquium in Praga, Czech Republic.

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## **v. Summer Course on Space Law and Policy, Universidade Nova de Lisboa, Portugal, 31 August- 11 September 2009**

The Eighteenth edition of the ECSL Summer Course on Space Law and Policy was organized by the European Centre for Space Law (ECSL) and the University of Lisbon, under the responsibility of Mr Da Cruz Vilaça, Mr. Nuno Piçarra and their colleagues. This event took place at Universidade Nova de Lisboa, Portugal, from 31 August to 11 September, 2009.

There were 35 students coming from 15 countries (Austria, Czech Republic, Italy,

Poland, Romania The Netherlands, Portugal, United Kingdom, Spain, Belgium, France, Brazil, Germany, Greece and Turkey) and who had 16 different nationalities (Austrian, German, Italian, British, Spanish, Belgian, Polish, French, Slovakian, Czech, Romanian, Dutch, Portuguese, Brazilian, Greek, Turkish). The students followed 41 hours of lectures on space law and policy issues given by 28 speakers who were either academicians or practitioners specialized in the space field.



Moreover, the students, divided into 8 teams, successfully solved a practical case: “Satellite Applications for the Benefit of European Citizens: Simulation of an International Call for Tenders”, with Prof. P. Achilléas, Director of the Institute of Space and Telecommunications Law (IDEST), Paris XI University, as coordinator.

This exercise, split into two parts (a written report and an oral presentation in front of a panel of space experts, namely Mr. P. Ferreira and Mr. P. Achilléas), gave the students the opportunity to put into practice the knowledge acquired at University and during the lessons. The preparation of the teams’ projects was supervised by 4 tutors (Julia Holdorf, German, Mathieu Bouquelle, Belgian, Charles-Edward Dumont, French and Stefano Spano, Italian). The tutors helped the students in their research and in their presentation. Their sense of organization, so useful for the students, has resulted in making the work of the students and the work in their favour intelligible, logical and clear. They proved to be outstanding tutors.

The winning team was Gama, composed by Ms. L. Louzensky, Ms M. Couto, Mr. de Oliveira Bittencourt Neto, Mr. Meier and Mr. Zannoni. At the end of the Course, the students took an exam which consisted in answering legal questions related to the lessons they attended during the two intense weeks.

The students thought that the course was a very interesting experience from the academic

as well as from the professional perspective. The course met their expectations: they all had the feeling to have learned a lot about space law.

As for the speakers, they were pleased by the good interaction between them and the students. They also enjoyed having in front of them students coming from different parts of the world.

The participants also appreciated that the ECSL interlocutors from the Faculty of Law of the University Nova of Lisbon, namely Prof. Nuño Piçarra and his colleagues, gave them the opportunity to visit Indra. Indra is a company responsible of the assembly of the antenna of the Galileo system, to meet people working for LusoSpace, a private Portuguese company which aimed at developing terrestrial applications and which designed, produced, tested, certified and delivered space hardware for satellites. The participants also made a boat tour on the Tagus River which offered them a panoramic view of the major parts of Lisbon, namely the Alfama and Belem Tower districts.

The ECSL Summer Course in the Faculty of Law of the University Nova of Lisbon would remain for all the participants an unforgettable experience.

The Nineteenth ECSL Summer Course on Space Law and Policy will be held in September 2010, date and place to be decided and we all hope it will be as satisfying as it was in Lisbon.

## vi. Teheran's Workshop

### UNITED NATIONS/ISLAMIC REPUBLIC OF IRAN WORKSHOP ON SPACE LAW

#### "ROLE OF INTERNATIONAL SPACE LAW IN THE DEVELOPMENT AND STRENGTHENING OF INTERNATIONAL AND REGIONAL COOPERATION IN THE PEACEFUL EXPLORATION AND USE OF OUTER SPACE"

Following the decision of the UN General Assembly, proposed by consensus by the UN COPUOS, took place on November 8-11 2009 in Tehran a workshop jointly organized by the United Nations Office of Outer Space and the Islamic Republic of Iran.

During three days of intensive work, presentations were made by Iranian and foreign specialists among them members of the board of ECSL and ECSL members, interesting discussions followed these presentations. In the attendance were many Iranian and foreign participants and many students from the Tehran universities.

On Sunday the 8<sup>th</sup> in the morning took place the welcome addresses and keynote speeches. In the afternoon was presented "The International legal framework governing space activities: current status and trends", under the chairmanship of Mr. Safavi Hemani by Mr Talebzadeh, Mr Cassapoglou, Mr Chitasombat, and Mr Marchisio. A paper by Pr. V. Kopal was presented because of his impossibility to join.

On Monday the 9<sup>th</sup> the same subject was continued under the chairmanship of Mr Bolandi by Ms M. Williams, Ms. Gabrynowicz and Mr. Larsen.

The second session took place on Monday the 9<sup>th</sup> and Tuesday the 10<sup>th</sup> under the

chairmanship of our Chairman Mr Marchisio on "National legislation and policies governing space activities" with the interventions of Mr Hedman, Mr Hobe, Mr Schrogl, Mr Kerrest, Mr Jalayerian, Ms Malysheva, Ms Gabrynowicz and Mr Marchisio. A paper of Ms Marboe and Mr Hedman was presented by Mr Hedman. The third session on "Trends and prospects of the development of international space law" began on Tuesday afternoon under the chairmanship of Mr. Tavakoli by Mr Venet, Mr Kerrest and Mr Cassapoglou.

Session four followed under the chairmanship of Mr Tabeshian on "Mechanisms for international and regional cooperation in the exploration and use of outer space" by Ms Masson-Zwaan and Mr Zhang Wei.

On Wednesday the 11<sup>th</sup> of November under the chairmanship of Ms Masson-Zwaan the "promotion of education in space law" was considered by Ms Aminzadeh and Ms Rodrigues. A round table followed with Ms. Malysheva, Ms Gabrynowicz, Ms Williams, Mr. Shaft, Mr Marchisio and Mr Kerrest.

Session 6 was used for recommendations observations and conclusions of the workshop under the chairmanship of Mr Talebzadeh and Mr Hedman. An interesting report was discussed and approved by consensus. It will be published by OOSA.

Participants praised the exceptional quality of the organization and warmth welcome by the hosting authorities.

**A. Kerrest**  
*ECSL Vice Chairman*

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## VII. The UNIDROIT Draft Protocol on space assets: towards the Diplomatic Conference?

The year 2009 saw a watershed in the development of the draft Protocol on Space Assets with the decision by the UNIDROIT Secretariat to reconvene the Committee of governmental experts, in the light of completion of the intersessional work on certain key outstanding issues. The third session of the Committee was held in Rome from 7 to 11 December 2009. This solution was possible thanks to the progress made by the Steering Committee, which met in Paris, at the kind invitation of the European Centre for Space Law (E.C.S.L.), on 14 and 15 May 2009. The Steering Committee reached two main conclusions. First, it recommended that, in the light of the emerging trend toward the asset-based financing of high-value components, components be covered by the future Protocol, albeit only those capable of “independent ownership, use or control”. Secondly, it recommended that, in so far as the transfer of related rights only materialised in the rarest of circumstances, it would be inappropriate for the future Protocol to provide for the extension of the Cape Town Convention as applied to space assets to such rights and that it would be sufficient for it to impose a duty on a defaulting debtor/assignor to co-operate, to the fullest extent possible, in either the transfer of a

licence to a creditor/assignee or, where this was not permitted, the termination of its own licence and the procuring of a new licence for the creditor/assignee. The Steering Committee also approved some recommendations on public service.

There were a number of proposals tabled both by Governments and individuals before the Committee of governmental experts and the Drafting Committee began the task of revising the draft Protocol. It was agreed that the Informal Working Group established by the Committee of governmental experts on default remedies in relation to components, which was not able to complete its work during the session, should continue to work informally with a view to agreeing on a proposal that might be laid before the Committee of governmental experts at its following session. While no decision had been taken on this matter, we would hope that the fourth, and last, session of the Committee would be convened the week 3/7 May 2010, paving the way towards the final Diplomatic Conference.

**Sergio Marchisio**  
*ECSL Chairman*

## VIII. Entry into force of The EU Lisbon Treaty

### A NEW ERA IN THE EUROPEAN SPACE COOPERATION (?)

On December 1, 2009, the Treaty of Lisbon entered into force. This treaty amends the two existing treaties on the European Union and establishing the European Community. Apart from the remarkable fact that the European Union remains from then on as the unique international legal entity, in substitution of the European Community, the new Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) bring deep changes in the exercise of powers within the European Union.

Among those changes, the representative institutions and organs of the Union are particularly concerned: the designation of a President of the European Council, of a European Union's High representative, but also the establishment of the European Council as a distinct legal body of the Union are substantial modifications with regard to the past. The future will certainly show how those new institutions and mechanisms will work together in their respective fields of competence. The new role of external institutions, such as the national parliaments, will also constitute a challenge, not only for the European Parliament, but also for the Council. This multi-voices Europe will definitely need to find its marks before achieving a smooth and effective running. Obviously, it will also be interesting to see how each of the European Union's organs will make outer space a strategic priority for Europe.

Among the substantial changes brought by the Lisbon Treaty, new areas of competence for the Union are opening a new era of cooperation

between Member States and with the rest of the world. This is particularly true for outer space: indeed, new **Article 189 TFEU** defines the new competence of the Union in the field of the use and the exploration of outer space.

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

*2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.*

*3. The Union shall establish any appropriate relations with the European Space Agency.*

*4. This Article shall be without prejudice to the other provisions of this Title.*

(emphasis added)

To understand the exact nature of the new EU space competence, Article 189 TFEU must be complemented by **Article 4 TFEU**, which reads:

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

Discussions are still ongoing on which category this new competence is belonging to. It seems to correspond to the definition of *shared competences*<sup>1</sup> to the extent that EU and its Member States both have the prerogative to initiate actions in the field of space activities. Nevertheless, an important element of the definition of this type of competence is explicitly excluded: the fact that, as soon the shared competence is exercised by the Union, it cannot be exercised anymore by Member States. Actually, Article 189 provides for a *parallel competence*, which has to be implemented in intelligence between EU and the Member States. The ultimate goal is to provide the Union with the means to define and implement its own space programmes and activities beside the national space programmes. The reference to the European Space Policy and to the European Space Programme (as a legislative tool) shows the willingness to offer the benefit of space systems and applications as a possible response to Europe's policies in various areas, from agriculture to security, from transport to environment.

The debate whether the European Union's space competence pre-existed the entry into force of the Lisbon Treaty has become rather theoretical. It seems sensible to consider that the space competence could be deduced from several provisions of the former EU Treaties, notably the general competence in Research and Development, or in various areas of policies where space applications could provide support infrastructures or services. Anyway, the European Commission had already included outer space *de facto* as one of its competences, just by initiating projects such as Galileo or concluding a framework agreement with ESA. It is no coincidence that the Agency is recognised as partner of the Union by the new Treaty itself.

Explaining the exact content and effects of Article 189 TFEU remains however a difficult task at this time. This is due to the notions and actions used by this new provision in describing the role and competences of the Union. First, it is said that the European Union must draw up a European Space Policy. *To that end*, it may *promote* joint initiatives, *support* R&D and *coordinate* efforts in outer space. This sentence may sound odd since promotion, support and coordination measures as mentioned in Article 189, §1, TFEU are usually the result of the implementation of a policy rather than the means to draw up such a policy. Now, the *coordination of efforts*, as mentioned in paragraph 1, has to be well understood, especially with regard to paragraph 2 which excludes any harmonization legislative measures to be adopted by the Union towards the Member States. This means for instance that the European Space Programme, as a legislative instrument of the Union, cannot impose any objectives or requirements which would limit the prerogatives of Member States in defining and implementing their own space programmes. Any coordination must therefore take place within the cooperative (non-binding) intergovernmental framework provided by the European Space Policy. It is a fact that the maintenance and the development of Europe's space capacity at this stage essentially depends on national efforts, either through ESA or through national programmes. Member States are recognised as the third pillar of the European Space Policy.

The idea of integrating national initiatives and projects at the European level is not new: this is the purpose of Annex IV to the ESA Convention (which encourages Member States to open their national programmes

<sup>1</sup> As defined by Article 2, §2, TFEU.

towards other Member States through ESA) and, to a smaller extent, of Article IX of the ESA Convention, which foresees the use of ESA facilities by all Member States for the purpose of their respective national programmes.

Article 189, §2 TFEU, has already inspired a lot of comments. Many of them were related to national space legislations. But the sentence according to which the legislative action of the EU cannot aim at the harmonization of *the laws and regulations* of the Member States must not be understood only in connection with space legislation *sensu stricto*. As a matter of fact, the national laws and regulations addressed by Article 189, §2, may cover a wide range of legislative or regulatory instruments, from Earth observation data dissemination to radio frequencies allocation, from intellectual property rights to the establishment of a national space agency... All it says is that the EU space competence of Article 189 doesn't justify any harmonization measure from the Union. That being said, it would be wrong to consider that the regulation of the space sector would remain out of the scope of the EU competences. Space activities, be they R&D, operation licensing, data commercialisation or data protection, are subject to EU law under other chapters and sections of the Treaty: market regulation, competition, State aid, telecommunications, freedom of establishment, etc. This point of view has been expressed by the European Commission in order to bring more clarity to the scope and the implementation of Article 189 TFEU. In an information note<sup>2</sup> addressed to the High Level Space Policy Group (an informal meeting of ESA Member States and EU Member States under the co-chair of the European Commission and ESA Director General), the Commission has expressed its own understanding of Article 189 TFEU. According to this understanding, space is defined as a *shared competence*, giving the Commission

a mandate to exercise its right of initiative. The exclusion of legal harmonization should not be viewed as exclusive of space policies, as this wording appears in other various provisions of the Treaty. Finally, “[Article 189 TFEU] is without prejudice to other provisions of the Treaty, such as those regarding the approximation of laws which have as their purpose the establishment and functioning of the internal market (Article 114 of the TFEU), which may be relevant to space products or services”.

Now the question remains to which extent would the regulatory competences of the European Union go as far as the implementation of the UN Outer Space Treaties is concerned (for instance, what about a harmonization of the operator's licensing conditions? the State's liability guarantee? the registration of satellites, etc.)<sup>3</sup>. For the moment, there seems to be no intention from the European Commission to take actions in this field, although with instruments such as the INSPIRE Directive<sup>4</sup> on geospatial data or the Council's regulation establishing the GNSS Supervisory Authority<sup>5</sup>, the Union has already adopted instruments which have a direct and substantial impact on the space sector. *Que será, será...*

**Jean-François Mayence**

*Head of the Legal Unit “International Relations”  
Belgian Federal Office for Science Policy  
Praktijklector at University of Leuven*

<sup>2</sup> European Commission / DG Enterprise and Industry – HSPG 22-2009 dated December 1, 2009  
<sup>3</sup> The question whether the European Union should become an accepting party to the UN outer space treaties allowing such a procedure, has been asked to the Commission. Further considerations of this question are not excluded, as it would allow, for instance, the European Union to register its own satellites and would constitute a strong political sign towards the international community.  
<sup>4</sup> 2007/2/EC  
<sup>5</sup> EC 1321/2004 as amended by EC 1942/2006

## IX. **Space Law – Telecommunication, Observation, Navigation, Defence, Exploration, preface by Ph. Achilléas**

*Space Law – Telecommunication, Observation, Navigation, Defence, Exploration*

Under the supervision of Philippe ACHILLEAS, this work collects the contributions of Sabine Akbar, Anton-Maria Battesti, Steve Bochinger, Philippe Clerc, André Farand, Marco Ferrazzani, Cécile Gaubert, Arnaud Idiart, Armel Kerrest, Sergio Marchisio, Jean-François Mayence, Laurence Ravillon, Bernard Théry, Caroline Videlier-Gutmann, Grégoire Weigel.

50 years after the launch of the first satellite Sputnik, we are on the verge of experiencing a new space conquest marked by the scheduled installation of bases on the Moon and Mars: Space has never seemed closer to citizens. Next to what have become ordinary and contemporary applications (such as telecommunications, television, positioning, observation...), space tourism is a subject to be developed. Whereas the space community and governments insist on the scientific, economical and societal effects of the exploration and use of this international zone, Outer Space has always aroused rivalries between superpowers and may well become the scene of a war in orbit.

Law regulates all space activities especially through control and regulation mechanisms as well as through specific contract practice.

In times when many states follow the American example by providing themselves with specific legislation (such as the 2008 French law on space operations), this book combines a presentation and a unique analysis of the legal framework of space activities, by those working in the heart of the elaboration and enforcement of this complex and ever evolving law.

Having exposed the economical, political and legal context of exploration and use of space, the book focuses on a detailed study of the law relative to emblematical applications and activities: launchers, manned flights, natural resource exploitation, satellite communications, Earth surveillance, and militarization. What is more, these topics are broached from a pluridisciplinary angle in order to encompass every branch of the law (international and national law, public and private law) to offer a complete understanding of the enforced rules of contemporary and future activities.

## x. Juan María López Aguilar, a pioneer in Space Law

Some days away Juan María López Aguilar y Pérez Griffo, Consul General, passed away in the city of Montevideo. I meet Juan Maria through a common friend, the jurist Gabriel Lafferranderie, in the framework of the launching of the National Points of Contacts (NPOC) at the European Centre of Space Law (ECSL) of the European Space Agency (ESA). Gabriel Lafferranderie put me in contact with him indicating me that he was the right person to establish a NPOC in Spain. Following his advise I interviewed with Juan María in Madrid in 1992.

With the ability and effectiveness that were characteristic of him, he provided, in few months, everything that was necessary to establish the Spanish Centre for Space Law, based in the Diplomatic School of Madrid. We managed to establish the functioning models and Juan María was appointed as Secretary General of the Spanish Centre. He performed effectively

and made the Centre achieve visibility in the context of space activities. He also developed a highly important role as representative of the Ministry of Foreign Affairs and Cooperation in the framework of the European Space Agency.

His work will always be remembered for the inherent capacity of Juan María to make everything, not only easy, but enjoyable. From those days a solid friendship grew among us, in which our common interest for Space Law joined us in even more activities and conferences which we did together. We can assert that Juan María was a pioneer of Space Law, and personally I feel proud of have been thanked with his friendship.

**Juan Manuel de Faramiñán Gilbert**

*Professor at the University of Jaén (Spain) and member of the Spanish Centre for Space Law*

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## xi. Master in Institutional and Space Policies

The Italian Society for International Organization (SIOI), the Italian Space Agency (ASI) and CNR's Institute for International Juridical Studies (ISGI-CNR) are the organizers of the Master's degree in Institutions and Space Policies. The master's degree course aims at having students acquire a specialist preparation and practical-professional training in the field of institutions and space policies in particular but not exclusively referring to juridical, political and economic discussions on the themes of exploration and use of outer space.

A significant part of the programme will be dedicated to European space policy, in particular with reference to the role of the European Space Agency (ESA) and to the European programmes on satellite navigation GALILEO and Earth observation GMES developed in cooperation with the European Union.

### **MASTER'S DEGREE PROGRAMME**

The master's degree is made up of 200 hours of teaching activity and 200 hours of individual study (for a total of 400 hours).

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There are mid-term and final exams. From 15 February to 13 July 2010, Mondays and Tuesdays from 14.00 - 18.00 (8 hours weekly). Visits to national and international space agencies are also scheduled.

The final thesis will be disputed in June 2010.

A three-month internship at international organizations or institutions, administrations

or public agencies, private associations and industries will follow the completion of the training period.

#### LOCATION

The teaching and administrative location is at SIOI, Palazzetto di Venezia, Piazza San Marco, 51, Rome.

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## Calendar of Major Events 2010

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For regular updates, please check ECSL website:  
[www.esa.int/specials/ECSL](http://www.esa.int/specials/ECSL)

### Friday, 19 March 2010

Paris, ESA Headquarters:  
ECSL Practitioners' Forum, "Galileo: current legal issues"

### 22 March to 1st April 2010

Vienna, Austria:  
IISL/ECSL Symposium at the 49th Session of the Legal Subcommittee

### 29 and 30 of April 2010

Manfred Lachs Space Law Moot Court:  
Competition: European Regional Rounds, 29 and 30 of April 2010, at the Deák Ferenc Faculty

of Law and Political Sciences of Zéchenyi István University in Győr Hungary.

### 31 May 2010:

59th ECSL Board Meeting in Rome, Italy.

### September 2010:

19th ECSL Summer Course on Space Law and Policy, from August 30 to September 10; 2010 in the Law Faculty of Jaén, Spain.

### September 2010:

Monday 27 September - Friday 01 October 2010  
19th World Finals of the Manfred Lachs Space Law Moot Court Competition, Prague, Czech Republic.

## **A simple e-mail to keep us informed!**

Dear ECSL Members, we kindly ask you to promptly send us an e-mail (**[raphael.milchberg@esa.int](mailto:raphael.milchberg@esa.int)**) whenever you change your address or contact details.

In this way, you will help us to keep the ECSL database always updated, avoiding envelopes to be returned to us and therefore, reducing our expenditures.  
*Thank you!*

Raphaël Milchberg  
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