

Some reflections on the role of Parliaments in the space field

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5. Recommendations for parliamentary action



Space: a key asset for Europe

- Space is an 'enabling tool':
 - It gives European decision-makers the ability to respond to critical challenges (climate change, global security,...)
 - It contributes to growth & employment
 - It provides technologies /services for the knowledge-based society
 - It increases the understanding of our planet and Universe
 - It contributes to European identity, cohesion and security, provides inspiration and motivation

Space: the UN legal framework

- Five UN treaties, several UNGA Resolutions, addressing general principles, liability, responsibility, registration, rescue, exploitation...
- Most EU members ratified the main instruments, but not all
 - Estonia, Latvia, Lithuania, Malta, Slovenia did not ratify the 1967 Outer Space Treaty
- ESA made a declaration of acceptance of 3 treaties, including Liability Convention
- EU has not...
 - This may be a problem now that the EU will own space assets

In addition to the UN texts

- There are also codes of conduct, guidelines, multilateral agreements, ...
 - ISS, Debris, Code of Conduct of the EU
- And recently national space legislation is being adopted by states to implement their obligations under the treaties
 - (Norway), Sweden, UK, Belgium, the Netherlands, France

'Space institutions' in Europe

- ESA and predecessors (since the sixties)
 - ESA has no regulatory power
- EU became interested more recently
- Member states differ
- Gradual 'rapprochement' and role division
ESA/EU, despite contradictory basic principles:
 - 'Juste retour' – fair competition

EU-ESA cooperation

- Galileo
- GMES
- Security issues
- In the future perhaps
Space tourism
 - ⊕ ESA: is following developments
 - ⊕ EU: discussions with FAA to include SoA; a role for EASA?



Other space actors in Europe

- In the Member states (of ESA and of EU)
 - Governmental actors (Space Agencies, ministries...)
 - National Parliaments, representing the citizens
 - Industry
- Other EU agencies and European IGO's may also become involved
 - EASA (EU Agency), Eurocontrol (EU is a member), in fields like space tourism, space traffic management...

2007: European Space Policy

- Common political framework for space activities in Europe
- Basic vision and strategy for the space sector
- Tackles issues like security and defense, access to space and exploration



EU law & space post-Lisbon

- Until Lisbon there was no reference to 'outer space' in treaties or secondary law
- TFEU codifies space competence for the 1st time
 - Title 1 - EU Competences
 - Art. 3 exclusive / Art. 4 shared / Art. 6 support competence
 - Only exclusive & shared allow for adoption of regulations/directives/decisions
 - Space is mentioned in Art. 4(3), i.e. 'shared', but not in list...

Art. 4(3)

- In the areas of research, technological development and **space**, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence **shall not result in Member States being prevented from exercising theirs.**
- Note: 'normal' shared competences (cf. transport) are 'subsidiary' (pre-emption principle), but for space, the competences of EU and MS 'co-exist'
 - Space = a '**parallel** competence'?

Article 189

- 1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space
- 2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council [...], 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 [ESA]
- 4. [...]

Some problem areas

- EU as owner of space assets may be held liable for damage under the space treaties
- Some member states have not ratified the UN treaties but may participate in space activity through the EU
- Many member states have not enacted national space legislation although space activity exists
- Space lacks visibility among European citizens, this has implications for acceptance of appropriate budget
- To avoid 'flags of convenience', there is a need for harmonisation of national laws, but EU action is forbidden under art. 189
- Risk of differing space tourism regulation within Europe, and between US & Europe, because of recent EASA positioning

Role for parliaments, and EISC

- Parliaments' responsibility is to ensure that space fulfills its promises to the citizens – how to realise this?
- In general:
 - Monitor EU's actions
 - Exercise control through budget process
 - Influence approval of contributions to ESA
 - Promote better 'PR' about space

And more specifically...

- Encourage States to ratify the UN treaties, and to enact national space legislation
- Network with other states to coordinate harmonisation of national space legislation, since the EU cannot do it...
- Push for the EU to declare acceptance of the UN treaties!!
- Lobby for an extension of EASA's mandate to cover suborbital flights and a *lex specialis* for suborbital flights similar to the one already existing in the US

A few words about the IISL

- Established in 1960
- Purposes/objectives:
 - Cooperate with int. organizations and nat. institutions
 - Foster development of space law
- Observer status at UNCOPUOS
- Annual Space law Colloquia during IAC
 - Also includes Parliamentary sessions



The IISL (2)

- Other conferences
 - Galloway Symposium, 2 Dec., Washington DC
 - IISL/ECSL Symposium at UNCOPUOS, Vienna, 28 March 2011 (definition/delimitation)
 - Other events in cooperation with e.g. ESPI, IAA
- Issues 'Statements' on relevant issues
- Publishes proceedings and other books
- Organises the Manfred Lachs Space Law Moot Court Competition for students
- Website: www.iislweb.org

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