

**REGISTRATION AND JURISDICTION ASPECTS
OF THE INTERNATIONAL SPACE STATION**

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**Registration aspects of the
International Space Station**

On the 29th of January of 1998 a new Intergovernmental Agreement (the IGA) was concluded among the Governments of Canada, Members States of the European Space Agency (ESA), Japan, the Russian Federation and the United States of America concerning cooperation on the civil International Space Station (ISS). Also four Memoranda of Understanding (the MOUs) were signed between NASA and the cooperating Agencies of the European Partner, Japan, Canada and the Russian Federation.

During the negotiation process the State-Partners of the ISS were faced with the dilemma: either to consider the ISS as a single space object, and its flight elements as «component parts» of this object, or to treat the ISS as a set of various integrated space objects.

If the first approach were accepted there would be only one registration of the ISS as a whole by one of the State-Partners. As it's known in the course of negotiations the State-Partners had agreed that the ISS would not be registered as a single space object. The IGA establishes that «each Partner shall register as space objects the flight elements listed in the Annex which it

provides» (art.5). This IGA provision corresponds to the Registration Convention of 1975 which imposes the duty on the States to register space objects launched into earth orbit. Over the last years special attention has been drawn to Registration Convention.¹ First of all one should discuss the ways to increase the number of ratifications and signatures of this Convention which is in this meaning the last in the list of instruments of space law. By 1999, it had been ratified by 39 and signed by 4 States. It must be pointed out that all the IGA Partner-States have ratified the Registration Convention.

The Registration Convention provides for the registration of a launched space object by international intergovernmental organization which conducts space activity. The organization shall maintain for these purposes an appropriate registry. The international organization is obliged to declare its acceptance of the rights and obligations provided for in the Registration Convention. Also the majority of the States members of the organization must be Parties to this Convention and to the Outer Space Treaty. (art.VII). In accordance with this provision ESA has, by the Declaration of the 2nd of January of 1979, accepted the rights and obligations contained in the Registration Convention. It was the first and till now unique international organization accepting the Registration Convention. During the October 1999 INTERSPUTNIK plans to accept this Convention. It

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seems to me that other international space organizations like INTELSAT, INMARSAT, EUTELSAT, EUMETSAT, ARABSAT and RASCOM must reconsider their position in regard to the Registration Convention. The Chairman of the Legal Subcommittee of the COPUOS in his report to UNISPACE III expressed the hope that all relevant international organizations that have not yet declared their acceptance of the rights and obligations provided for in the five international treaties governing outer space, would do so.²

The IGA specifies that the 11 European Partners have delegated the registration responsibility to ESA, acting on their behalf (art.5).

It's necessary to take into account that the possibility for the one ISS flight element to have more than one Partner of registry is precluded. Just for this reason when there are two launching states, they can agree among themselves who will be the state of registry. It's a real situation because among the ISS Partners only the USA is able to launch its ISS flight elements by its Orbiter STS without assistance from any other launching state. Thus, in other situations there will be always two or more launching states. Such situations are provided for by article II of the Registration Convention stating that where there are two or more launching States in respect of any space object, they shall jointly determine which one of them shall register the object.

Jurisdictional Aspects of the International Space Station

Our intention is to analyze the relation between registration of the ISS flight element by one of the Partners and the retention of its quasi-territorial jurisdiction over

that flight element and personal jurisdiction over its nationals in or on the ISS. As a rule, the national jurisdiction is, by means of registration, extended to the ISS flight element of one of the Partners. The Outer Space Treaty confirms that «A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof...» (art.VIII). In that way the Outer Space Treaty links registration of the space object with jurisdiction over it and over personnel thereof. In Outer Space Treaty the term jurisdiction is mentioned together with the term «control» which is understood as one of the jurisdiction's aspects meaning the ground command center functions which ensures the remote control of the space object movement, its normal functioning and the management of its crew activities.

The IGA provides that each Partner shall retain jurisdiction and control over the flight element it registers... and over personnel in or on the Space Station who are its nationals. (art.5) The IGA combines quasi-territorial jurisdiction of each Partner over its flight element with personnel jurisdiction over their nationals regardless whether they are in or on the ISS.

When the USA launches its flight elements into outer space by means of the US Orbiter STS there is no problem with jurisdiction and control. One state possesses three qualities here: as launching state, the state of registry and the state retaining the jurisdiction and control over its flight elements. When Russia launches its flight elements by Proton or Soyuz launch vehicles

from Baikonur launch site in Kazakhstan, it will have the qualities of two launching states. The same situation will be with Canada, Japan and European Partners when they use the US Orbiter STS to launch their flight element into outer space. The problem of their jurisdiction during transportation by the US Orbiter STS is still discussed in space law doctrine. According to the international space law when the launch of the ISS flight element involves more than one launching state only one of them can derive the right from the Registration Convention to exercise its jurisdiction and control. But instead of an appropriate agreement the state concerned may exercise its right to jurisdiction on the basis of relevant provisions of the IGA.

The jurisdiction of the European Partners deserves special attention. As it is known, when the space activities are conducted by an international organization on whose registry space object is carried the States Members of this organization shall jointly determine which one of them shall retain jurisdiction over such space object and over its personnel because international organization is not sovereign entity and is unable to fulfill functions immanent to sovereign states. Dr F. Dunk in his last publication pays attention to the fact that the ESA «is an international intergovernmental organization not having any jurisdiction of its own which could be retained and exercised in outer space. Therefore, at this point any agreement relating to jurisdiction over a space object launched under ESA registration could only lead in practice to a member state applying and exercising its jurisdiction, not to any (exercise of) ESA jurisdiction.»³

The ESA Partners of the ISS have decided that jurisdiction and control over their flight element of the ISS shall be retained by each of them (art.5). Thus, it will be 11 quasi-territorial and personal jurisdictions over one European pressurized laboratory. May be eventually some practical arrangements among the ESA member states will be made to ensure the permanent jurisdiction and control over their flight elements. In connection with this it's important to note that European Partners shall entrust ESA with ownership over the elements it provides, as well as over any other equipment developed and funded under an ESA programme as a contribution to the Space Station, its operation or utilization.

(art.6.2) This corresponds to a common practice when the ownership rights over a space segment are enjoyed by international organizations of space communications. At the same time for purposes of intellectual property law in or on ESA-registered elements any European Partner State may deem the activity to have occurred within its territory. In this case the European Partner State exercises intellectual property jurisdiction concerning its protection.

The IGA together with the MOUs can be considered as an outstanding achievement in the progressive development of the rules establishing the legal regime of astronauts and regulating their space activities. These rules are aimed at regulating such areas as, for instance, civil matters which include the protection of intellectual property rights, the exchange of data and goods, the cross-waiver of liability which is essential for the purposes of protecting the activities

and relations among the ISS personnel. From the cross-waiver protection are excluded damage resulting from willful misconduct, claims for bodily injury and other impairment of health or death of natural person.

The IGA recognizes the right of each Partner to provide qualified personnel to serve on an equitable basis as a Space Station crew member.(art.11) Once completed the ISS will have a crew of seven members,the Russian Space Agency being allocated three crew members,the other Cooperating Agencies remaining four.

During Space Station assembly and verification,fully trained NASA and RSA crew members will participate in on-orbit assembly and system verification of the NASA and RSA-provided elements and other assigned flight element assembly and system verification tasks planned during that on-orbit period.To support these activities, the Bilateral Crew Operations Panel(BCOP) is established which coordinates any crew matters affecting only NASA and RSA in the assembly phase. The talks are conducted on the establishment of a NASA-RSA Interim Code of Conduct.It will be succeeded by the Space Station Code of Conduct which will,inter alia,establish a clear chain of command on-orbit;clear relationship between ground and on-orbit management;and management hierarchy;set forth standards for work and activities in space,and,as appropriate,on the ground;establish responsibilities with respect to elements and equipment;;set forth disciplinary regulations;establish physical and information security guidelines;and provide the Space

Station Commander with appropriate authority and responsibility,on behalf of all the partners,to enforce safety procedures,physical and information security procedures and crew rescue procedures for the Space Station.(art.11.8.MOUs between NASA and RSA)

The Space Station Code of Conduct will be accepted by each partner before it provides Space Station crew.The crew health matters will be oversighted by multilateral medical policy and space medicine Boards.

The space medicine has gained a wide experience in determining compatibility of the crew members during long time space flights. Therefore, the problem of criminal jurisdiction of the ISS Partner States seems to be rather far from reality. From purely theoretical point of view the novelty and a path of the solution of this problem ,doubtlessly, merits attention.

In accordance with the IGA(art.22) «1.The Partner States may exercise criminal jurisdiction over personnel in or on any flight element who are their respective nationals.

2.In a case involving misconduct on orbit that: (a)affects the life or safety of a national of another Partner State,or (b)occurs in or on or causes damage to the flight element of another Partner State,the Partner State whose national is alleged perpetrator shall,at the request of any affected Partner State,consult with such State concerning their respective prosecutorial interests.An affected Partner State may,following such consultation,exercise criminal jurisdiction over the alleged

perpetrator provided that within 90 days of the date of such consultation or within such other period as may be mutually agreed, the Partner State whose national is the alleged perpetrator either;

(1) concurs in such exercise of criminal jurisdiction or

(2) falls to provide assurances that it will submit the case to its competent authorities for the purpose of prosecution.

3. If a Partner State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Partner State with which it has no extradition treaty, it may at its option consider the Agreement as the legal basis for extradition in respect of the alleged misconduct on orbit. Extradition shall be subject to procedural provisions and the other conditions of the law of the requested Partner State.

4. Each Partner State shall, subject to its national law and regulations, afford the other Partners assistance in connection with alleged misconduct on orbit.

5. This article is not intended to limit the authorities and procedures for the maintenance of order and the conduct of crew activities in or on the Space Station which shall be established in the Code of Conduct pursuant to Article 11, and the Code of Conduct is not intended to limit the application of this Article.»

Thus, the primary basis for exercising criminal jurisdiction is the nationality of the alleged perpetrator. The exercise of criminal jurisdiction by an affected Partner State is conditional on its consulting with the State of nationality of an alleged perpetrator. Dr. A. Farrand remembers a number of issues relating to the exercise of criminal

jurisdictions which were extensively discussed in the course of drafting and redrafting the IGA. As one of these issues was envisaged the possibility of establishing an outright obligation on the State of landing to take appropriate means to ensure the immediate return of the alleged perpetrator to his or her State of nationality.⁴

In general, from the point of view of legal regime governing the Space Station cooperation the IGA and MOUs may be regarded as a valuable implementation of the international space law rules. The issues of registration and jurisdiction in the IGA and MOUs, in my opinion, can serve as an evidence of progressive development of the respective space law rules.

As far as the ISS and the basic rules regulating the Partners cooperation are concerned, we may confidently say that international space law has stepped into the 21st century.

¹See M. Benko, K. U. Schrogl, *The European Initiative in the UNCOPUOS Legal Subcommittee to improve the Registration Convention* (1998) 41 Proc. IISL 58-64

²See THIRD UNITED NATIONS CONFERENCE ON THE EXPLORATION AND PEACEFUL USES OF OUTER SPACE A/conf.184/4.6 April 1999 p.17

³See Frans G. von der Dunk, *Private enterprise and public interest in the European «spacecape»*. Leiden 1998 p.237

⁴See Andre Farrand, *The Astronaut in the Space Station Era*, in: G. Lafferandier and Daphne Crowther (eds), *Outlook on Space Law over the next 30 Years*. Kluwer Law International, Printed in the Netherlands, 1997, 156