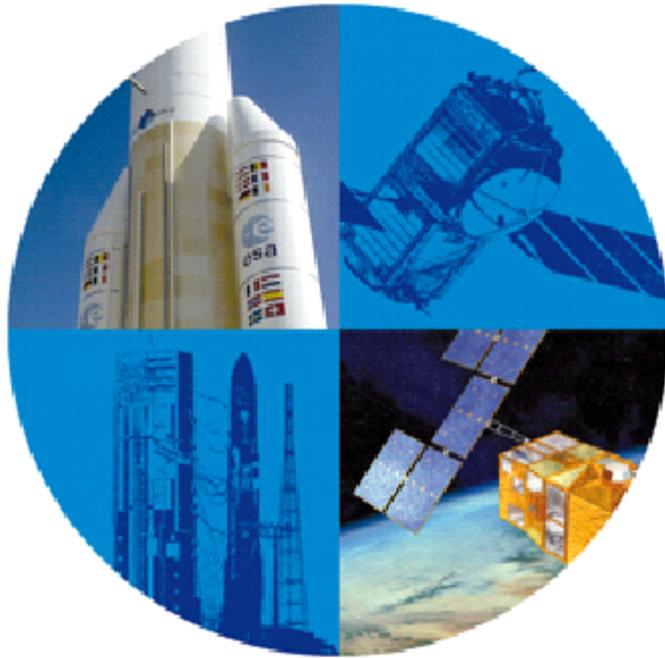


**Fifth Symposium @ Center for Space Law
Keio University MITA Campus, Tokyo**

International mechanisms for cooperation in the space sector

Panel discussion n° 5

International mechanisms for cooperation that will promote future space exploration



**EXPLORATION AND INDUSTRY
COLLABORATION:
THE FRENCH APPROACH**

Philippe Clerc
CNES' Head of legal and Regulatory Affairs
Deputy director

- **INTERNATIONAL LEGAL FRAMEWORK FOR PUBLIC PRIVATE COOPERATION IN THE SPACE SECTOR**
 - ◆ UN Space law vs International and European competition
- **GOVERNMENTAL REQUIREMENTS**
 - ◆ Regulation and licenses
- **AGENCY COOPERATION MECHANISMS AND THEIR TRANSLATION WITH INDUSTRY**
 - ◆ Bilateral, multilateral cooperation
 - ◆ European Space Agency and European Union (EU) framework
 - ◆ Implementation with industry
- **CONCLUSION : TOWARD NEW COOPERATION MECHANISM TO ASSOCIATE INDUSTRY**

INTERNATIONAL LEGAL FRAMEWORK FOR PUBLIC PRIVATE COOPERATION IN THE SPACE SECTOR

◆ 1967 OST Treaty

- Article VI governments have the responsibility to authorize and monitor private space activities: launching state endorse liability for national private space activities;
- Article 2 prohibits appropriation by States of Outer Space, Moon and other Celestial Body by any means: this prohibition is consequently applicable to the industry under such States' jurisdiction

◆ WTO & EU Competition law constraints on industry-government relations :

- Public procurement law
- Public aid law (grants, subsidies...)
- Principles of non discrimination and free access to the market... (for other contracts: PPP, Concessions)

GOVERNMENTAL REQUIREMENTS

- Any private space operation requires at least one specific governmental license or authorization. In France, in compliance with:
 - ◆ The 2008's French Space Operation Act regime:
Compliance with the "Technical Regulation for space systems and procedures" + French international commitments (in particular in the sector of security and defense), liability regime: on ground/Space, ceiling, waivers....
 - ◆ Export control
 - ◆ Frequency allocation national regulation:
 - ◆ Space based service providers licenses regime
 - ◆ Earth observation data dissemination control regime.

AGENCY COOPERATION MECHANISMS 1/3

- ◆ Bilateral & multilateral agreements between governments and their space agencies
 - Common features: best effort obligation - no exchange of funds (contribution in bulk) - civil purpose - not adapted for technology transfer – confidentiality – allocation of responsibilities between agencies on given technical work packages : interface coordination (steering committee) – no guaranty in case of failure in space – cross waivers of claims
 - open data policy except for prime investigators (PI) - settlement of dispute between the parties
 - For program achievement, each agency has full sovereignty to enter in contract with the industry according to it own rules:
see slide hereafter “ implementation with industry”

◆ The European Space Agency (ESA) framework

- A permanent cooperative organization with legal personality: An ESA' program decision = international treaty, without necessity of ratification.
- Framework well adapted for:
 - Voluntary cooperation through its optional programs
 - for development of civil programs and upstream development
- Capacity to enter in specific international agreements (cooperation or contracts):
 - On behalf of its states-members or their industry
 - With its Member States (for instrument contributions)
 - Delegation of tasks to national space agencies ...

ESA is a flexible and efficient organization to undertake ambitious Space cooperation in relation with Industry

AGENCY COOPERATION MECHANISMS (2/3)

✦ The European Unions framework (Lisbon Treaty)

- Article 4.3 : an EU's capacity in space policy and programs as a specific "shared competence" with its Member States (MS) : i.e. a parallel competence
- Article 189 allows UE to design and implement a European space program and calls for a development of appropriate relationship with ESA.
- However, art. 189 deprives UE of legal capacity to harmonize MS' national space legislations.
- Framework well adapted for:
 - The assessment of needs of the user's communities and consequently:
 - Space application programs
 - for operational and recurrent exploitation programs
- No specific internal technical capacity
- Legal instruments : R&TD Framework program (EUFT art. 180...) – Decision of the European council and parliament under initial proposal of the European Commission (Galileo, Copernicus) - Commission financial rules for procurement...

UE provides a political and integrated dimension to European space efforts

IMPLEMENTATION WITH INDUSTRY

- ◆ A top down approach from public organization to industry
 - Procurement (80% of CNES budget)
 - Grants (UE FP)
 - Creation of subsidiaries or public service delegation to stimulate the market
 - Partnership with industry in basic R&D
 - Private Public Partnership (PPP) : not frequently used by space agency
 - Limitation by “competition law”: except for basic or upstream technology or basic research agreement , cooperation with other public organization for a general interest mission, purchase regimes organized through international governmental agreement (ESA framework), defense systems

- ◆ European Space Agency : ESA standard contract, guarantees geographical return for national industry

- ◆ European Union (EU) framework (also applied by CNES for its programs) open competition for the European industry – no optional program (despite Treaty art. 185)

CONCLUSION : TOWARD NEW COOPERATION MECHANISMS TO ASSOCIATE INDUSTRY (1/2)

- Nor U.N Treaties on Space activities than ITU mechanisms were designed to facilitate an independent access to space activities on behalf of the private sector
- Competition law limits Space Agency's ability to support industry initiative (in other words penalize the bottom up approach)
- Space Policy' design & implementation still under the lead of governmental space agencies (top down approach), even at the international level (CEOS, GEOS, COSPAR, IADC, Internal Charter on Space and Major Disaster), but not so exclusively...

CONCLUSION : TOWARD NEW COOPERATION MECHANISMS TO ASSOCIATE INDUSTRY (2/2)

- However, new mechanisms have been recently created to facilitate cooperation with industry.
In France :
 - **The “Avenir” (Future) Investment Program (PIA)** to foster industry competitiveness extended to space projects - CNES as facilitator and contract officer on behalf Government
 - **Co-Space** : an high level committee initiated by the minister in charge of space affairs, between ministers, CNES and industry in order to associate the latest to the design of new space policy and programs.
 - **The “Collective for Space Care”**, initiated by CNES in March 2014, unites on a voluntary basis space operators and partners who jointly acknowledge responsibility for complying with international treaties and principle pertaining to space matters, compliant with applicable Space legislations and applying the best practices derived from them;
 - This collective could also serves as a consultation forum to prepare next evolution of the space law;

Thank you for your attention, any questions ?

