The EU Constitutional Treaty and Space: Towards EU Jurisdiction on Board a Space Station?

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1. Introduction

On 18 June 2004, the Heads of State and Government of the European Union unanimously agreed upon the conclusion of a Constitutional Treaty (CT) for the European Union (EU). This Treaty was formally signed on 29 October 2004 in Rome. Since the negative outcome of the referenda in France and the Netherlands, the fortune of the CT is uncertain. With regard to the current attempts to revive the constitution process and the fact that the CT-provisions relevant to this article were not disputed in the course of the ratification procedure, this article shall nevertheless analyse the implications of an eventual entry into force of the CT. The Constitutional Treaty will replace the existing Treaties founding the European Union and the European Community and create one single legal personality, the European Union. For the first time, the Constitutional
Treaty contains in its Articles I-14, paragraph 3, and III-254 an explicit reference to outer space. It is thus evident that the eventual entry into force of these provisions will require a redefinition of the European Union’s role in space.\textsuperscript{5}

This article will analyse some of the consequences of the Constitutional Treaty on questions concerning the jurisdiction on board space stations, in particular the International Space Station (ISS). Will, one day, the European Union be able to exercise jurisdiction on board a space station?

2. General aspects

The term jurisdiction in general refers to the lawful power of a State to act and hence its power to decide whether and, if so, how to act.\textsuperscript{6} A State exercises its jurisdiction by establishing rules and making legally binding decisions (including judicial decisions) and by actually implementing and enforcing these rules and decisions.\textsuperscript{7} The jurisdiction of a State concerning a certain issue is usually based either on its defined territory or on its permanent population.\textsuperscript{8} In principle, a State has jurisdiction over all persons, property and activities in its territory as well as over its nationals, wherever they may be.\textsuperscript{9}

In outer space, due to the principle of non-appropriation,\textsuperscript{10} a spacecraft cannot be attributed to a certain State based upon the principle of territoriality. The jurisdiction over a given spacecraft therefore has to be determined differently. Article VIII(1) of the Outer Space Treaty provides that a State “on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object”.\textsuperscript{11} Detailed arrangements for the registration of spacecraft as legal basis for the attribution of jurisdiction on board are contained in the 1976 Registration Convention. Article II(1.1) of the Registration Convention prescribes the registration of space objects which are launched into earth orbit or beyond in an appropriate national registry by the launching State. According to Article I(a) of the Registration Convention, the term launching State refers to

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\textsuperscript{8} Oxman, \textit{supra} note 6, 56.

\textsuperscript{9} Oxman, \textit{supra} note 6, 56.

\textsuperscript{10} Cf. Art. II, Outer Space Treaty.