TITLE V

PROVISIONS RELATING TO THE RESEARCH CODE

Article 21

The Research Code is amended as follows:

1° Article L. 331-6 is drafted as follows:

"*Art. L. 331-6.* – I. – The President of the Centre National d'Etudes Spatiales shall exercise on behalf of the State the special Police for the exploitation of the facilities of the Guiana Space Centre, within a perimeter defined by the competent administrative authority. As such, it shall be in charge of a general mission of safeguard consisting in controlling the technical risks related to the preparation and carrying out of the launches from the Guiana Space Centre in order to ensure the protection of persons, property, public health and the environment, on the ground and during the flight, and it shall set out to this end the specific regulations applicable within the limits of the perimeter defined above.

"II. Under the authority of the Government representative in the *Département* of Guiana, the President of the Centre National d'Etudes Spatiales shall coordinate the implementation by companies and other entities settled in the perimeter defined in part I. above of measures taken in order to ensure the security of the facilities and of the activities undertaken therein, and shall verify that those companies and agencies fulfil their obligations in this respect.

"III. To the extent strictly necessary for the accomplishment of the missions set out in parts I. and II., the agents empowered by the President of the Centre National d'Etudes Spatiales have access to the land and premises used exclusively for professional purposes and occupied by the companies and agencies settled at the Guiana Space Centre in the perimeter defined in part I. above."

2°Articles L. 331-7 and L. 331-8 are inserted after Article L. 331-6 and are drafted as follows:

"*Art. L. 331-7.* – The President of the Centre National d'Etudes Spatiales may take for any space operation, by delegation of the administrative authority mentioned in Article 8 of the Act n° 2008-518 dated June 3rd relating to space operations, the necessary measures provided for in the same article to ensure the safety of persons and property, as well as the protection of public health and the environment."

"*Art. L. 331-8.* – A decree passed at the Council of State shall set forth the terms of application of the present chapter, particularly the conditions in which the President of the Centre National d'Etudes Spatiales may delegate its competence mentioned in Article L. 331-6."

TITLE VI

INTELLECTUAL PROPERTY

Article 22

I. – Article L. 611-1 of the Intellectual Property Code is completed by a paragraph drafted as follows:

"Unless otherwise provided in an international agreement to which France is a party, the provisions of the present article apply to the inventions made or used in outer space, including onto celestial bodies and into or onto space objects placed under national jurisdiction according to article VIII of the Treaty dated 27 January 1967 relating to Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other celestial bodies."

II. – Article L. 613-5 of the same Code is completed by an *e)* drafted as follows:

"*e)* To the objects intended to be launched in outer space brought onto the French territory."

TITLE VII

SPACE-BASED DATA

Article 23

Any primary space-based data operator undertaking in France an activity having certain technical characteristics defined in a decree passed at the Council of State must preliminarily declare it to the competent administrative authority.

These technical characteristics are related in particular to the resolution, location accuracy, observation frequency band and quality of the Earth observation data which are received or for which a satellite system is programmed.

Article 24

The competent administrative authority ascertains that the activity undertaken by the primary operators of space-based data does not harm fundamental interests of the Nation, particularly defence matters, foreign policy and international commitments of France.

To this end, it may at any time prescribe measures restraining the activity of the primary space-based data operators, which are necessary to safeguard these interests.

Article 25

Any primary space-based data operator undertaking an activity showing the technical characteristics mentioned in Article 23 shall be fined € 200 000 in the case:

1° it fails to proceed with the declaration mentioned in Article 23;

2° it fails to comply with the restriction measures taken pursuant to Article 24.

TITLE VIII

TRANSITORY AND FINAL PROVISIONS

Article 26

The present Act does not apply to the launching and guiding, for the needs of national defence, of vehicles which trajectory passes through outer space, in particular ballistic missiles.

The activities of the Ministry of Defence acting as primary space-based data operator are not subject to the provisions of Title VII.

Article 27

As they fall under the scope of a public mission assigned to the Centre National d'Etudes Spatiales after approval by the administrative authority pursuant to paragraph 4 of Article L. 331-2 of the Research Code, the operations of launching, returning to Earth, commanding or transfer of commanding of a space object are not subject to the provisions of Titles II and IV, and the Earth observation satellite activities and the reception of Earth observation data are not subject to the provisions of Title VII

Article 28

Article L. 331-2 of the Research Code is completed by an *f)*, a *g)* and an *h)* drafted as follows:

"*f)* To assist the Government in the definition of the technical regulations relating to space operations;

"*g)* To verify, by delegation of the minister in charge of space, that the systems and procedures implemented by the space operators comply with the technical regulation mentioned in paragraph *f)*;

"*h)* To hold the register of the space objects on behalf of the Government."

Article 29

Articles 16 and 17 of the present Act shall enter into force at the date of publication of the Finance Act setting out the minimum and the maximum amounts between which is included the amount beyond which the governmental guarantee is granted.

Article 30

The provisions of the present Act are applicable in New-Caledonia, in French Polynesia, in the Islands of Wallis and Futuna and in the French southern and Antarctic lands.

This Act shall be implemented as a State Act.

Paris, 3rd of June 2008

This is an unofficial translation of Japan's "Fundamental Act of Outer Space". It is being offered to the readership of the JOURNAL OF SPACE LAW as a convenience.[1]

FUNDAMENTAL ACT OF OUTER SPACE (LAW NO.43, 2008)

(Enacted on 21 May 2008 and entered into force on 27 August 2008)

INDEX

[1] Translated by Hiroshi Kiyohara, chief attorney, Musashi International Law Office, Tokyo. Mr. Kiyohara is admitted and licensed in Japan and the United States (New York and California). He served as an assistant judge for Tokyo District Court.

CHAPTER ONE

GENERAL PROVISIONS

(Purposes)

Article One

As we recognize that the significance of outer space exploitation and utilization (hereinafter referred to as "space use and exploitation") is increasing along with advancing science technologies and changing situations in and around our country, the purposes of this law shall be to promote in a planned and comprehensive manner the overall policies and measures concerning space use and exploitation; to contribute to improving our citizens' living standards and developing our economic society; and to dedicate to peace and welfare for all human beings in the world. We shall attain these purposes in line with the pacifist principle of the Japanese Constitution and in harmony with the environment. We also shall expand the roles space use and exploitation plays in our country by making and enforcing fundamental rules and principles concerning space use and exploitation; by clarifying responsibilities the government should take for space use and exploitation; by drafting the Outer Space Master Plan; and by establishing the Outer Space Exploitation Strategy Headquarters.

(Peaceful Use of Outer Space)

Article Two

Space use and exploitation shall be carried out in conformity with the pacifist principle of the Japanese Constitution and in accordance with outer space treaties and other international promises, including "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies."

(Improvement of Citizens' Living Standards)

Article Three

Space use and exploitation shall be carried out to improve our citizens' living standards; to form a safe and secured society; to remove any kind of threats to our lives, such as natural disasters and poverty; and to maintain peace and security in our homeland and the world.

(Industrial Development)

Article Four

Space use and exploitation shall be carried out for our country's space industries to enhance their technologies and to strengthen their international competitiveness. This shall be attained by implementing space use and exploitation in a planned and positive manner and by encouraging to smoothly set up businesses and to use and practice the results of research and development in space use and exploitation.

(Development of The Human Society)

Article Five

As we recognize that a collection of knowledge on outer space is an intellectual property for human beings, space use and exploitation shall be carried out to advance outer space science and to practice cutting-edge space use and exploitation. This will be able to realize mankind's dreams about outer space and to develop our human society.

(International Cooperation)

Article Six

Space use and exploitation shall be carried out to positively play our country's roles in the international society and to increase our country's interests therein by actively conducting diplomacy and international cooperation with regard to space use and exploitation.

(Consideration to Environment)

Article Seven

Space use and exploitation shall be carried out with careful consideration for effects on the environment which space use and exploitation can cause.

(The Government's Obligations)

Article Eight

The government shall formulate and implement comprehensive policies and measures concerning space use and exploitation in compliance with the fundamental principles mentioned from Article Two to Article Seven (hereinafter referred to as "the fundamental principles").

(Local Public Organizations' Efforts)

Article Nine

Local public organizations shall make efforts to formulate and implement their own policies and measures concerning space use and exploitation, which take advantage of features in their local areas. Their policies and measures shall comply with the fundamental principles and appropriately share burdens with the national government.

(Mutual Cooperation)

Article Ten

Mutual cooperation among the national government, local public organizations, universities, and private business entities will be able to efficiently promote space use and exploitation. Taking this into consideration, the national government shall take policies and measures necessary to strengthen the cooperation among these participants.

(Legislative and Other Measures)

Article Eleven

The national government shall take legislative, fiscal, taxational, and financial measures that are necessary to implement fundamental policies concerning space use and exploitation.

(Maintenance of Government Organizations)

Article Twelve

The national government shall make efforts to maintain its administrative organizations and to improve its administrative operations when it implements policies and measures concerning space use and exploitation.

CHAPTER TWO

FUNDAMENTAL POLICIES AND MEASURES

(Utilization of Artificial Satellites for Improving the People's Living Standard)

Article Thirteen

The national government shall take up policies and measures necessary to maintain and promote information communication networks, remote-sensing information systems, positioning information systems. These networks and systems shall be stable using artificial satellites in order to improve our citizens' living standards, to form a safe and secured society, and to remove any kind of threats to our lives, such as natural disasters and poverty.

(Peace and Security in Domestic and International Society)

Article Fourteen

The national government shall take up policies and measures necessary to promote space use and exploitation which helps us keep peace and security in our homeland and the whole world.

(Independent Launches of Artificial Satellites)

Article Fifteen

It is significant that our country has capacities to independently develop, launch, trace and operate artificial satellites. Recognizing this, the national government shall take up policies and measures necessary to promote research and development of machines (including components thereof) and technologies; to maintain launch sites and facilities; and to obtain frequencies our country may use in the course of space use and exploitation.

(Space Use and Exploitation Promoted by Private Business Entities)

Article Sixteen

Recognizing that private business entities play essential roles in space use and exploitation, the national government shall promote private business activities (including research and development) concerning space use and exploitation, and encourage our country's space industry and ancillary industries to enhance their technologies and international competitiveness. When the government carry out space use and exploitation by themselves, they need to make the most of abilities of private business entities and make a plan to purchase goods and services from the private sector. The national government also shall take up policies and measures necessary to maintain launch sites (i.e., locations from which a launch takes place) and any other facilities for experiments and research; to enable private business entities to make effective use of the results of research on space use and exploitation conducted by the government; to promote setting up businesses which use and practice the results of research on space use and exploitation; and to make it easier for the private sector to invest space industries in terms of taxes and finance.

(Maintenance and Improvement of Reliability)

Article Seventeen

Recognizing that it is significant to maintain and improve reliability of technologies concerning space use and exploitation,

the national government shall take up policies and measures necessary to promote basic research and develop fundamental technologies on space use and exploitation.

(Promotion of Cutting-Edge Space Use and Exploitation)

Article Eighteen

The national government shall take up policies and measures necessary to promote academic research concerning cutting-edge space use and exploitation, and space science including space exploration.

(Promotion of International Cooperation)

Article Nineteen

The national government shall positively play our country's roles in the field of space use and exploitation, and increase our country's interests in the international society. The national government also shall take up policies and measures necessary to strengthen international cooperation concerning space use and exploitation, such as forming an international league for research and development and sharing technologies with other countries, and to make our country's space use and exploitation understood more deeply by foreign countries.

(Protection of Environment)

Article Twenty

The national government shall take up policies and measures necessary to promote space use and exploitation in harmony with environment.

Section 2—The national government shall strive themselves to cooperate with other countries for protection of space environment.

(Development of Human Resources)

Article Twenty One

In order to promote space use and exploitation, the national government shall take up policies and measures necessary to maintain and develop human resources involved in space use and exploitation, intimately cooperating with universities and private business entities.

(Promotion of Education)

Article Twenty Two

The national government shall take up policies and measures necessary to promote education and strengthen public relations concerning space use and exploitation, so as to deepen the citizens' appreciation and understanding of space use and exploitation.

(Information Control Regarding Space Use and Exploitation)

Article Twenty Three

Since space use and exploitation has unique characteristics, the national government shall take up policies and measures necessary to properly manage and control information regarding space use and exploitation.

CHAPTER THREE

OUTER SPACE MASTER PLAN

Article Twenty Four

The Outer Space Exploitation Strategy Headquarters shall formulate a fundamental plan concerning space use and exploitation (hereinafter referred to as the "Outer Space Master Plan"), in order to promote policies and measures concerning space use and exploitation in a planned and comprehensive manner.

Section 2—The Outer Space Master Plan shall contain:

a) basic directions with regard to promotion of space use and exploitation;

b) policies and measures concerning space use and exploitation which the national government shall carry out in a planned and comprehensive manner;

c) other than the preceding a) and b), whatever is necessary for the national government to promote the policies and measures concerning space use and exploitation in a planned and comprehensive manner.

Section 3—In principle, the Outer Space Master Plan shall establish concrete goals for the policies and measures described therein, and provide the time period for attaining the goals.

Section 4—When the Outer Space Master Plan has been formulated per Section 1 of this Article, the Outer Space Exploitation Strategy Headquarters shall officially announce it without delay via the Internet and any other appropriate means.

Section 5—The Outer Space Exploitation Strategy Headquarters, at an appropriate time, shall conduct a survey on progress toward the goals described in Section 3 of this Article, and shall officially announce the survey result via the Internet and any other appropriate means.

Section 6—Considering the progress in space use and exploitation as well as the effect of the policies and measures carried out by the national government with regard to space use and exploitation, the Outer Space Exploitation Strategy Headquarters, at an appropriate time, shall review the Outer Space Master Plan, and if necessary, make changes therein. Section 4 of this Article mutatis mutandis applies to the changes made in Outer Space Master Plan.

Section 7—In order to obtain funds necessary to smoothly operate the Outer Space Master Plan, the government shall, every fiscal year, make efforts to take necessary steps, such as formulating a budget for the Outer Space Master Plan, as far as the country's financial situation permits.

CHAPTER FOUR

OUTER SPACE EXPLOITATION STRATEGY HEADQUARTERS

(Establishment)

Article Twenty Five

The Outer Space Exploitation Strategy Headquarters (hereinafter referred to as "the Headquarters") shall be established in the Cabinet so as to promote in a planned and comprehensive manner policies and measures concerning space use and exploitation.

(The Headquarters' Missions)

Article Twenty Six

The missions of the Headquarters are listed below:

a) drafting the Outer Space Master Plan and promoting to carry it out; and,

b) researching and discussing significant policies and measures concerning space use and exploitation other than Outer Space Master Plan, and promoting and arranging to carry them out.

(Composition)

Article Twenty Seven

The Headquarters is composed of the chief, deputy chiefs and other members of the Outer Space Exploitation Strategy Headquarters.

(The Chief of the Outer Space Exploitation Strategy Headquarters)

Article Twenty Eight

The Headquarters is headed by the chief of the Outer Space Exploitation Strategy Headquarters (hereinafter referred to as "the Chief"). The Prime Minister is assigned as the Chief.

Section 2—The Chief shall oversee all activities of the Headquarters, and direct and supervise its officials.

(Deputy Chiefs of the Outer Space Exploitation Strategy Headquarters)

Article Twenty Nine

The Headquarters has deputy chiefs of the Outer Space Exploitation Strategy Headquarters (hereinafter referred to as "the Deputy Chiefs"). Both the Chief Cabinet Secretary and the Minister of Outer Space Exploitation (i.e., a minister appointed by the Prime Minister who is in charge of assisting the Prime Minister with regard to space use and exploitation) are assigned as the Deputy Chiefs.

Section 2—The Deputy Chiefs shall assist the Chief.

(Members of the Outer Space Exploitation Strategy Headquarters)

Article Thirty

The Headquarters has members of the Outer Space Exploitation Strategy Headquarters (hereinafter referred to as "Members").

Section 2—Every minister of the Cabinet other than the Chief and the Deputy Chiefs is assigned as a Member.

(Documents Submission and Other Cooperation)

Article Thirty One

The Headquarters may call for documents, advice, explanation, and other cooperation which the Headquarters finds necessary for its missions, to affiliated government agencies, local public organizations, chiefs of independent administrative institutions which are stipulated by Independent Administrative Institutions Act (Law No. 103, 1999), and representatives of government-affiliated corporations established by or under specific laws which are governed by Article 4, Section 15 of General Affairs Ministry Act (Law No. 91, 1999).

Section 2—The Headquarters may call for cooperation which it finds particularly essential for its missions, to anyone other than entities listed in the previous section.

(Affairs)

Article Thirty Two

The Cabinet Secretariat conducts affairs of the Headquarters, and assistant deputy chief cabinet secretaries are assigned to direct the affairs.

(The Chief Minister)

Article Thirty Three

The Prime Minister is the chief minister who Cabinet Act (Law No.5, 1947) provides is in charge of affairs and activities of the Headquarters.

(Cabinet Orders)

Article Thirty Four

Cabinet orders may, if necessary, stipulate affairs and activities of the Headquarters other than those provided by this law.

CHAPTER FIVE

IMPROVEMENT OF LEGAL SYSTEMS CONCERNING OUTER SPACE ACTIVITIES

Article Thirty Five

The government shall improve legal systems in a planned, speedy and comprehensive manner by enacting laws regulating outer space activities and laws necessary to perform treaties and other international promises concerning space use and exploitation.

Section 2—The legal systems in the previous section shall be helpful to increase our country's interests in the interna-

tional society and to promote space use and exploitation in the private business sector.

Supplementary Provisions

(Date of Enforcement)

Article One

This law shall be enforced on the day designated by a government ordinance within three months from the day of this law's promulgation.

(Enacting Laws for The Cabinet Office to Conduct Secretarial Affairs of The Headquarters)

Article Two

Approximately one year after this law is enforced, the government shall enact laws and take other necessary steps so that the Cabinet Office can conduct secretarial affairs of the Headquarters.

(Reviewing the Japan Aerospace Exploration Agency)

Article Three

Approximately one year after this law is enforced, the government shall review the aims, functions and structures of the Japan Aerospace Exploration Agency and other agencies conducing space use and exploitation.

(Reviewing Administrative Organizations for Promoting Space Use and Exploitation Policies Comprehensively and integratively)

Article Four

The government shall deliberate how administrative organizations should be for promoting space use and exploitation policies comprehensively and integratively, and take necessary steps accordingly.

Grounds for Submitting This Bill

In order to promote in a planned and comprehensive manner the overall policies and measures concerning space use and exploitation, it is necessary to establish and realize the fundamental principles, and to clarify the government's responsibilities for space use and exploitation. It is also necessary to draft the Outer Space Master Plan and to create the Outer Space Exploitation Strategy Headquarters. These are the grounds for submitting this bill.

Supplementary Resolutions

Resolutions Regarding Promotion of Space Use and Exploitation

As the Fundamental Act of Outer Space is enforced, the government need to take into the surest consideration the following subject matters:

Section 1—Space use and exploitation shall be based on the pacifism under the Japanese Constitution, and shall be carried out in harmony with outer space environments and in order to improve not only our citizens' living standards but also interests in the whole world.

Section 2—The Outer Space Exploitation Strategy Headquarters shall be established in the Cabinet. When the Headquarters, as a control center, promote in a planned and comprehensive manner policies and measures concerning space use and exploitation of our country, they shall make efforts to take enough opinions of space science experts and to have them reflected in the policies and measures.

Section 3—When the government set up the organization in the Cabinet Office which will conduct secretarial affairs of the Outer Space Exploitation Strategy Headquarters, they shall make efforts to promote strategically, comprehensively and integratively space use and exploitation policies, such as formulating the Outer Space Master Plan, enacting laws pertinent to space use and exploitation, and administering budgets for space use and exploitation.

In addition, the government should appoint as the head of the said organization a person who is free from special interests

of governmental organs, and able to make decisions from a broad view of things. Furthermore, the officials of the said organization shall not be appointed in favor of special governmental organs. Instead, they should be appointed widely and impartially from the Japan Aerospace Exploration Agency or other agencies, and private business entities conducing space use and exploitation.

Section 4—Before the organization in the Cabinet Office starts to conduct secretarial affairs of the Headquarters about one year after this law is enforced, the government shall deliberate from the future perspective how the said organization should be for promoting space use and exploitation policies comprehensively and integratively, and shall enact laws and take other necessary steps accordingly.

Besides, when the said organization in the Cabinet Office conducts secretarial affairs of the Headquarters, they shall do it integratively and strategically, keeping close contacts with relevant governmental organs.

Section 5—The Japan Aerospace Exploration Agency shall be administered in accordance with the Outer Space Master Plan, so as to realize the fundamental principles regarding outer space exploitation under this law. About one year after its enforcement, the government shall review the JAXA's aim, function, structure, scope of businesses, and ancillary administrative agencies, including the JAXA law.

In addition, around one year after this law takes effectiveness, the government shall study consolidation of some agencies pertinent to outer space exploitation.

Furthermore, the government shall study the aim and function of the Outer Space Exploitation Committee in relation to the Outer Space Exploitation Strategy Headquarters.

Section 6—In or around two years after this law is enforced, the government shall strive to enact laws regulating outer space activities in line with treaties and other international promises concerning space use and exploitation.

We, Committee on the Cabinet of House of Representatives and Committee on the Cabinet of House of Councilors, have resolved as mentioned above.

This is an unofficial translation of Iran's "Statute of the Iranian Space Agency". It is being offered to the readership of the JOURNAL OF SPACE LAW as a convenience.[1]

The Cabinet of the Islamic Republic of Iran in its meeting of June 11, 2005, according to proposal number 100/14310 dated 9 August 2004 of the Ministry of Communications and Information Technology and citing the Article 9 of the Law for Tasks and Authorizations of the Ministry of Communications and Information Technology approved on 10 December 2003 by the Parliament, passed the statute of the Iranian Space Agency as follows:

STATUTE OF THE IRANIAN SPACE AGENCY

Article 1- Aiming at implementing the approvals of the Space Supreme Council of Iran and the study, research, designing, engineering and conducting the issues of space service and remote sensing technologies, and strengthening the communication networks and space technology inside and out of the country, and collection of the sovereignty activities of the Iranian Remote Sensing Center and the Ministry of Communications and Information Technology, benefiting the facilities and human resource of the Department of Design, Engineering and Installation of Satellite Communications and Department of Maintenance of Satellite Communications both affiliated with

[1] Translated by Parviz Tarikhi (28 August 2008). The Persian version is available at http://www.itna.ir/archives/documents/010742.php. Mr. Tarikhi heads the Microwave Remote Sensing Department at the Mahdasht Satellite Receiving Station. He has been involved with the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) since 2000, including as second vice-chair and rapporteur in 2004-06 of the committee bureau. Since 2001 he has co-chaired Action Team number 1 of UNISPACE-III with the mission "to develop a comprehensive worldwide environmental monitoring strategy". From 2004-07 he conducted the Office for Specialized International Co-operation of the Iranian Space Agency. He is also a freelance journalist and technical writer. Some of Mr. Tarikhi's writings may be found on the National Center for Remote Sensing, Air, and Space Law's website blog at http://rescommunis.wordpress.com.

the Telecommunications Company of Iran, the Iranian Space Agency which is briefly referred to as "Agency" in this Statute, is established.

Article 2- As a legal entity, the Agency is a financially independent official foundation affiliated with the Ministry of Communications and Information Technology.

Article 3- Agency's tasks and authorizations are as follows:

I. Pursuance and implementing the approvals of the Space Supreme Council,
II. Preparing and regulation of mid and long-term programs for country's space sector in cooperation with related institutions for proposing to the Space Supreme Council,
III. Study for policy making in designing, manufacturing, launching and using research and applied satellites and providing space services for proposing to the Space Supreme Council,
IV. Planning to conduct and develop of the peaceful uses of outer space and space technology, strengthening the national, regional and international communication networks by the state, cooperative and private sectors and monitoring their implementation at the framework of the policies approved by the Space Supreme Council,
V. Applied specific study, research and education in developing space science and technologies,
VI. Studying the requirements and implementing satellite and other space technology projects in the framework of the approvals of the Space Supreme Council,
VII. Contribution to the implementation of the regional and national satellite projects in the framework of the approvals of the Space Supreme Council,
VIII. Issuing the authorization for the space activities aiming at sustained and coordinated exploitation of space technologies and facilities including satellites, direct receiving and transmitting stations, and satellite control in the framework of the approvals of the Space Supreme Council,

IX. Cooperation with related clients for assessing the competence of non-governmental contractors and advisors for implementing space related executive and research issues in different parts of the country,
X. Representing, membership and attending related international and regional societies and unions aiming at protecting national interests in the framework of the regime's main policies and other laws and regulations,
XI. Implementing regional and international cooperation programs in space issues in the framework of the regime's main policies,
XII. Management and exploitation of satellite and orbital positions in coordination with responsible bodies and pursuing their international registration for optimum use of the space sources,
XIII. Preparing and formulating the regulations and statutes related to the tasks included in the Article 9 of the Law for Tasks and Authorizations of the Ministry of Communications and Information Technology approved in 2003, for proposing to the legal clients.
XIV. Establishing national archive and centralizing store, classification and updating of space data.

Nota Bene 1- The Agency is obliged to apply the highest capacity of the non-governmental sector in the framework of the policies of the Space Supreme Council for implementing its tasks and affairs.

Nota Bene 2- Distinguishing the security competence in the cases of the clauses VIII and IX in this Article will be the responsibility of the related clients.

Article 4- Agency's required credits will be provisioned and secured through the public funds and credits in the country's annual budget.

Nota Bene 1- The facilities, records, human resources and funds of the ongoing national and research projects in the Ministry of Communications and Information Technology is transferred to the Agency.

Nota Bene 2- By coordination of the Management and Planning Organization of Iran and in the framework of the annual budgets the Agency could use the assistance and other fund sources of the Ministry of Communications and Information Technology and its affiliated organizations and companies, and other institutions.

Article 5- The organizational chart of the Agency after formulating by the Agency and confirmation of the Management and Planning Organization of Iran will be effectual.

Article 6- The president of the Agency that is the Deputy Minister of Communications and Information Technology and the secretary of the Space Supreme Council at the same time, will be appointed by the Minister of Communications and Information Technology and will hold the highest executive position at the Agency.

Article 7- The president of the Agency is responsible for well implementing the affairs, protecting the rights, interests and assets of the Agency, and for managing the Agency and implementing the approvals of the Space Supreme Council will have full right and authorization in the framework of the regulations. He/she will represent the Agency before all legal authorities and real and legal entities with the right to depute the authorization to others, and he/she can delegate on his recognition and trust part of his/her authorization by the official notification to either of his/her deputies, managers or Agency's staff.

The Guardian Council according to the letter number 84/30/12612 dated 18 June 2005 passed this Statute.

Translated to English by: Parviz Tarikhi
10 July 2008

This is an unofficial translation of Iran's "Statute of the Iranian Space Agency". It is being offered to the readership of the JOURNAL OF SPACE LAW as a convenience.[1]

The Cabinet of the Islamic Republic of Iran in its meeting of June 16, 2008, according to proposal number 1/27560 dated 9 August 2007 of the Ministry of Communications and Information Technology and citing Article 9 of the Law for Tasks and Authorizations of the Ministry of Communications and Information Technology approved on December 10, 2003 by the Parliament of the Islamic Republic of Iran, passed the statute of the Iranian Space Agency as follows:

STATUTE OF THE IRANIAN SPACE AGENCY

Article 1- Aiming at implementing its legal tasks and the study, research, designing, engineering and conducting the issues of space service and remote sensing technologies, and strengthening the communication networks and space technology inside and out of the country, and collecting of the sovereignty activities of the Iranian Remote Sensing Center and the Ministry of Communications and Information Technology, benefiting the facilities and human resource of the Department of Design, Engineering and Installation of Satellite Communications and Department of Maintenance of Satellite Communications both affiliated with the Telecommunications Company of

[1] Translated by Parviz Tarikhi (28 August 2008). The Persian version is available at http://www.itna.ir/archives/documents/010742.php. Mr. Tarikhi heads the Microwave Remote Sensing Department at the Mahdasht Satellite Receiving Station. He has been involved with the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) since 2000, including as second vice-chair and rapporteur in 2004-06 of the committee bureau. Since 2001 he has co-chaired Action Team number 1 of UNISPACE-III with the mission "to develop a comprehensive worldwide environmental monitoring strategy". From 2004-07 he conducted the Office for Specialized International Co-operation of the Iranian Space Agency. He is also a freelance journalist and technical writer. Some of Mr. Tarikhi's writings may be found on the National Center for Remote Sensing, Air, and Space Law's website blog at http://rescommunis.wordpress.com.

Iran, the Iranian Space Agency which is briefly referred to as "Agency" in this Statute, is established.

Article 2- As a legal entity, the Agency is a financially independent official foundation affiliated with the Ministry of Communications and Information Technology and will be managed based on its specific financial and trade laws and regulations in the framework of the laws and regulations of the Islamic Republic of Iran.

Article 3- Agency's tasks and authorizations are as follows:

I. Implementing the study, research, designing, engineering and operating issues in the fields of space service technologies, remote sensing and strengthening the communications and space technology networks inside and outside of the country as well as the sovereignty tasks of the Iranian Remote Sensing Center and the Ministry of Communications and Information Technology,

II. Preparing and regulating the mid and long-term programs for country's space sector in cooperation with related institutions for proposing to the relevant referents,

III. Study for policy making in designing, manufacturing, launching and using research and applied satellites and providing space services for proposing to the legally cognizable referents,

IV. Doing research, designing, manufacturing and launch of the commercial, scientific and research satellites, and designing and establishing control center and launch of national satellites in cooperation with related institutions,

Nota Bene- The above said issues excluding launch and satellite control center could be implemented by the non-governmental sector in care of the Agency.

V. Planning to conduct and develop the peaceful uses of outer space, celestial bodies, astronomy and space technology, strengthening the national, regional and international communication networks by the state,

cooperative and private sectors and monitoring their implementation in the framework of the major policies of the country,

VI. Study, research, technology development and applied specific education in developing space science and technologies,

VII. Studying the requirements and implementing satellite and other space technology projects in the framework of the related laws and regulations,

VIII. Contribution to the implementation of the national, regional and international satellite projects in the framework of the major policies of the regime and other related laws and regulations,

IX. Implementing the allotted sovereignty tasks through providing space sector signal (including voice, image and data) for the land sector applicants, issuing authorization for the activities in space aiming at integral management of the country's space sector and sustained and coordinated exploitation of space technologies and facilities including satellites, network of private or national satellites (including satellite mobile), direct receiving and transmitting stations, and satellite control in the framework of the related rules and regulations,

X. Getting the approved tariffs for offering space services and issuing the authorization for activity in space,

XI. Assessing the competence of non-governmental contractors and advisors for implementing space related executive and research issues in different parts of the country in the framework of related laws and regulations,

XII. Representing, membership and attending related international and regional societies and unions aiming at protecting national interests in the framework of the regime's major policies and other laws and regulations,

XIII. Implementing regional and international cooperation programs in space issues in the framework of the regime's major policies,

XIV. Management and exploitation of satellite and orbital positions in coordination with responsible bodies and pursuing their international registration for optimum use of space sources,

XV. Study and planning for securing the space sector needs of the country's whole satellite networks for providing satellite services through the national, regional and international satellites in the framework of the laws and regulations,

XVI. Preparing and formulating the regulations and statutes related to the tasks included in the article 9 of the Law for Tasks and Authorizations of the Ministry of Communications and Information Technology approved in 2003, for proposing to the legal referents for approval,

XVII. Establishing national archive and centralizing store, classification and updating of space data.

Nota Bene 1- The Agency is obliged to apply the highest capacity of the non-governmental sector in the framework of the major policies of the regime for implementing its tasks and affairs.

Nota Bene 2- Distinguishing the security competence in the cases of the clauses IX and XI in this article will be the responsibility of the related referents.

Nota Bene 3- The Agency is authorized to proceed for establishing space research centers and firms with the endorsement of the Council for Development of Higher Education in the framework of the laws and regulations.

Nota Bene 4- Regarding the clause X, the Agency is obliged to act based on the rates approved by the Cabinet and settle the funds to the public revenue account (near the General Treasurer).

Article 4- Agency's required credits will be provisioned and secured through the public funds and credits in the country's annual budget and will be expended in the framework of the Agency's specific statutes subject of the article 2 of this Statute and other related laws and regulations.

Nota Bene- In coordination of the Planning and Strategic Monitoring Deputyship of the President of the Islamic Republic

of Iran and in the framework of the annual budgets, the Agency is authorized to use the financial allowance and other trust funds of the Ministry of Communications and Information Technology and its affiliated organizations and firms and other institutions.

Article 5- In implementing clause 10 of article 68 of the Law for Management of Country Service approved in 2007, the Agency in coordination of the Management and Human Assets Development Deputyship of the President of the Islamic Republic of Iran is authorized to make necessary superior payments with the endorsement of the Cabinet to draw and retain appropriate human resources for the specialized and managerial positions.

Article 6- The organizational chart of the Agency after formulating by the Agency and confirmation of the Management and Human Assets Development Deputyship of the President of the Islamic Republic of Iran will be effectual.

Article 6- The president of the Agency that is the Deputy Minister of Communications and Information Technology will be appointed by the above-mentioned Minister and will hold the highest executive position at the Agency.

Article 7- The president of the Agency is responsible for well implementing the affairs, protecting the rights, interests and assets of the Agency, and for managing the Agency will have full right and authorization in the framework of the regulations. He/she will represent the Agency before all legal authorities and real and legal entities with the right to depute the authorization to others, and he/she can delegate on his recognition part of his/her authorization by the official notification to either of his/her deputies, managers or Agency's staff.

The Guardian Council of the Constitution of the Islamic Republic of Iran according to letter number 87/30/27483 dated 2 July 2008 passed this Statute.

The Ministry of Communications and Information Technology is noticed of this approval through letter number 62999 T 38571 H on July 15, 2008.

CASENOTE

THE PRIVATIZATION OF PUBLIC POLICY: *EOSAT V. NASA* AND THE APPLICATION OF ANTITRUST LIABILITY TO FEDERALLY-SUPPORTED MONOPOLIES

Jason A. Crook[*]

INTRODUCTION

Throughout the course of history, political sovereigns have recognized the importance of private enterprise in advancing policy objectives and national development. From the quest to find a better method of food preservation for Napoleon's army to the latest advances in remote sensing, political institutions have rewarded those who produce items or provide services which advance society and the quality of life.[1] While the protection offered by a patent or copyright may entice an entity to invest

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[1] As early as the Fifteenth Century, the Venetian Government recognized the need to provide inventors with a limited form of protection against those who would misappropriate their ideas. As the Patent Statute of 1474 held:

> It being forbidden to every other person in any of our territories and towns to make any further device conforming with and similar to said one, without the consent and license of the author, for the term of 10 years. And if anyone builds it in violation hereof, the aforesaid author and inventor shall be entitled to have him summoned before any magistrate of this City, by which magistrate the said infringer shall be constrained to pay him hundred ducats; and the device shall be destroyed at once.

DONALD S. CHISUM ET AL., PRINCIPLES OF PATENT LAW 11 (2004).

some amount of time and effort into a prospective venture, governments have realized since the early Seventeenth Century the significant additional effects which can accrue when a firm is granted monopolistic power.[2] Cost savings can be maximized through economies of scale, duplicative waste can be reduced, and the overall return to the State can be increased beyond what is produced by competition. At its essence, the privatization of public policy through a grant of monopoly can be seen as symbolizing the perceived value and national importance of a centralized activity undisturbed by competition.

In 1992, Congress found that although "[t]he national interest of the United States [lay] in maintaining international leadership in satellite land remote sensing . . . funding and organizational uncertainties over the past several years ha[d] placed its future [leadership] in doubt . . ."[3] To resolve this dilemma, Congress passed the Land Remote Sensing Policy Act of 1992. In passing the Act, it affirmed that "commercialization of land remote sensing should remain a long-term goal of United States policy" but recognized that "[f]ull commercialization . . . cannot be achieved within the foreseeable future . . . ."[4] To bridge the gap between national policy and economic reality, Congress provided that the Department of Defense and NASA would "be responsible for the management of the *Landsat* program" including the funding and launch of the *Landsat* system, while a private contractor would be hired for the program's actual operation.[5] The desire for fiscal discipline and the concomitant goal of maintaining leadership in remote sensing thus re-

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[2] GLENN J. AMES, THE GLOBE ENCOMPASSED: THE AGE OF EUROPEAN DISCOVERY, 1500-1700 102-03 (2008). Following its establishment in 1602, the Dutch East India Company was granted an initial twenty-one year monopoly by the States-General of the Netherlands to conduct colonization activities in Asia. Under this public grant of private monopoly, the company was empowered to wage war, coin money, and negotiate treaties. *Id.*

[3] Land Remote Sensing Policy Act of 1992, 15 U.S.C. § 5601 (1992).

[4] *Id.* As a reflection of the strength of the privatization movement, Congress stated that "the United States Government should adopt a data policy . . . which allows competition within the private sector for distribution of unenhanced data and value-added services" so that "development of the remote sensing market and the provision of commercial value-added services . . . should remain exclusively the function of the private sector." *Id.*

[5] *Id.* at § 5611(a-d) (1992).

quired the *Landsat* system to be operated by a private contractor occupying a federally-supported monopoly position.

THE HISTORY OF LANDSAT

In September 1969, the *Landsat* program was initiated as a joint development between NASA and the U.S. Geological Survey.[6] Built to orbit the Earth every ninety-nine minutes at an altitude of approximately 700 kilometers (435 miles), each of the satellites in the *Landsat* system operates by capturing images of selected locations and then relaying this information to receiving stations scattered across the world.[7] In its first twenty years of operation, the *Landsat* system collected over three million images which were used in everything from "oil and mineral exploration, crop assessments, land-use planning, [and] environmental management [to] map-making."[8] As technology has improved, each subsequent satellite has carried increasingly-sophisticated instruments capable of providing greater detail and enhanced functionality.[9]

Motivated by the need to decrease direct governmental expenditures and in anticipation of the *perceived* commercial demand for *Landsat* data, Congress passed the Land Remote Sensing Commercialization Act in 1984.[10] This act "authorized

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[6] H.R. Rep. No. 102-539, at 6 (1992).

[7] *Id.*

[8] *Id.* at 13.

[9] *See supra* note 5.

[10] Pub. L. No. 98-365, 98 Stat. 451. This anticipated commercial demand ultimately turned out to be little better than conjecture, as one report by the Office of Technology Assessment stated that "[u]ntil the market expands substantially, and more efficient spacecraft are developed and deployed, it could cost the Federal Government as much to subsidize a private owner as to continue operating the system itself." Joanne Irene Gabrynowicz, *The Perils of Landsat from Grassroots to Globalization: A Comprehensive Review of US Remote Sensing Law with a Few Thought for the Future*, 6 CHI. J. INT'L L. 45, 54 n.28 (2005). Quoting Gabrynowicz further, "EOSAT was bound by a broad application of the nondiscriminatory access policy, which required making the data available to all who requested it. However, the company interpreted that to mean it had to charge the same price for all users turning nondiscriminatory access into nondiscriminatory pricing. The practical result was the same high prices were charged to all. The per image price rose from hundreds to thousands of dollars, virtually eliminating start-up value added companies, academia and developing nations as users." *Id.* This loss of a ready customer base thus contributed even further to the erosion of the program's commercial viability.

the Department of Commerce to select a contractor to operate the *Landsat* system and . . . required system operators to make unenhanced remote-sensing data available to all users on a nondiscriminatory basis . . . ."[11] Under the terms of the agreement, the contractor would "assume responsibility for marketing and distributing existing *Landsat* data, [would operate] *Landsats 4* and *5*, and [would build] two new [*Landsat*] spacecraft[.]"[12] After a competitive bidding process, EOSAT[13] was awarded the contract.[14]

With the passage of the Land Remote Sensing Policy Act of 1992, Congress repealed the 1984 Act and delegated the Government's contractual authority to the *Landsat* Program Management.[15] Empowered by legislative mandate to seek preferential pricing for Government agencies and affiliated users, the LPM was given thirty days after LRSPA's enactment to "enter into negotiations with the *Landsat 6* contractor [EOSAT] to formalize an arrangement with respect to pricing, distribution, acquisition, archiving, and availability of unenhanced data for which the *Landsat 6* contractor ha[d] responsibility under its contract."[16] In the event a satisfactory agreement could not be reached, the LPM's member agencies (NASA and the Department of Defense) were to jointly certify this determination to Congress along with a recommendation on how to proceed.[17]

After months of unsuccessful negotiation, the LPM sent EOSAT a draft copy of the letter it was considering submitting to Congress.[18] While recognizing their disagreement on some issues, the LPM negotiation team had also "been instructed to make one more attempt to reach [an] agreement" with EOSAT.[19]

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[11] H.R. Rep. No. 102-539, at 9 (1992).

[12] *Id.*

[13] EOSAT, or Earth Observation Satellite Company, was formed as a joint venture between Martin Marietta and Hughes Aircraft Company. (Stipulation of Facts, at 1. On file with the JOURNAL OF SPACE LAW).

[14] *See supra* note 10.

[15] *See* 15 U.S.C. § 5601 *et seq.* (1992).

[16] *Id.* at § 5613(a) (1992).

[17] *Id.* at § 5613(b) (1992).

[18] Stipulation of Facts, at 10. On file with the JOURNAL OF SPACE LAW.

[19] *Id.*

Two weeks later, the launch of *Landsat 6* failed.[20] Two days after that, EOSAT accepted the LPM's Statement of Principles.[21] On April 11, 1994, EOSAT and LPM signed a revised document ("Provisions for *Landsat 4* and *5* Operations") which allowed EOSAT to continue operating the *Landsat* system through the satellites' practical demise in exchange for the Government receiving a price discount on all *Landsat* data services.[22]

On May 5, 1994 by Presidential Directive, the Secretary of Commerce and the Secretary of the Interior were appointed to the LPM while the Secretary of Defense was removed.[23] Shortly after its appointment, the Department of Commerce became concerned that under the Competition in Contracting Act[24] the LPM could not enter into a sole-source contract extension with EOSAT and that it would have to solicit competitive offers.[25] On November 7, 1994, the Department issued a Commerce Business Daily Notice "announcing that it intended to enter into a sole-source contract extension with EOSAT" and that "interested parties" should notify the Department if they wished to be considered for competitive procurement.[26] EOSAT filed an agency protest against this but was advised that other parties had responded and that upon those expressions of interest, the Department intended to proceed with a competitive procurement.[27]

EOSAT then filed suit against the Department of Commerce and NASA alleging that it was properly entitled to the

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[20] *Id.* at 11.

[21] *Id.* at 12.

[22] *Id.* This agreement reflected a distinct policy shift away from the 1984 Act's mandate of making unenhanced *Landsat* data "available to all users on a nondiscriminatory basis . . ." *See supra* note 10. After the agreement, the Government data rate was reduced from $4,400 per transaction to $3,500 for the following year and $2,500 after that. Per-scene prices were also reduced to $70 instead of the $280 regular users would pay. *Id.* at 12-13.

[23] Stipulation of Facts, at 13. On file with the JOURNAL OF SPACE LAW. The Department of Commerce had previously been involved with the *Landsat* program under the 1984 Act, but had been removed from active participation under the LRSPA. As such, the Presidential Directive represented a re-appointment to its earlier role. *Id.*

[24] 41 U.S.C. § 251 (1994).

[25] *See supra* note 18, at 15.

[26] *Id.* at 16-17.

[27] *Id.*

sole-source *Landsat* contract under the terms of the LRSPA and the parties' April 11 agreement.[28] Shortly thereafter, Earth Satellite Corporation (EarthSat) was granted leave to intervene in the lawsuit as a party defendant.[29] While supporting the Government's position that EOSAT was not entitled to a sole-source contract,[30] EarthSat also brought an antitrust action against the company.[31] While the contractual claim against the Government could easily warrant a separate discussion, the antitrust matter is of far greater interest and thus receives the focus of this analysis.

EOSAT v. NASA

Although it would ultimately settle out of court, the case against EOSAT offers a rare glimpse into the antitrust liability of a federally-supported monopoly. Because the parties resolved their differences before an opinion could be rendered, it is uncertain how a court would have applied the antitrust laws to their arguments and what outcome it would have reached. Complicating things further, antitrust as a discipline has progressed substantially since the mid-1990s, so how the case would have been decided then may very well be different from how it would be decided today. Still, an analysis of the case from the present perspective is useful simply because the opportunities to evaluate the potential antitrust liability of a federally-supported monopoly are infrequent at best. Although styled primarily as a case against the Government, the true dispute worth analyzing is between EOSAT and EarthSat.

A. The EOSAT Contract in Brief

Before turning to the antitrust disagreement between EOSAT and EarthSat, it is important to establish a basic un-

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[28] *Id.* at 17.

[29] Order Granting Motion to Intervene (Feb. 15, 1995). On file with the JOURNAL OF SPACE LAW.

[30] Mem. in Support of Defendants' Mot. Summ. J. (Feb. 2, 1995). On file with the JOURNAL OF SPACE LAW.

[31] Counterclaim Against EOSAT (Feb. 24, 1995). On file with the JOURNAL OF SPACE LAW.

derstanding of the underlying contract dispute and the statutory interpretations which gave rise to the lawsuit in the first place. Recognizing that an entirely separate analysis could be written on the merits of the EOSAT-LPM agreement alone—particularly from an administrative law viewpoint—this is not intended to be an exhaustive foray into the intricate world of government procurement, but rather a brief overview of the circumstances leading to the EOSAT contract as it existed at the time of the dispute.

As previously mentioned, EOSAT was originally awarded the *Landsat* contract after a competitive bidding process hosted in the wake of the 1984 LRSCA's passage.[32] This contract allowed EOSAT to operate the *Landsat* system and to have responsibility for marketing and distributing all existing *Landsat* data.[33] In 1992, Congress repealed the Commercialization Act and replaced it with the aforementioned LRSPA which realigned the Government's contractual approval mechanism to the *Landsat* Program Management.[34] With this restructuring, the LPM was empowered to formalize a new arrangement with EOSAT or in the event of a stalemate, to provide its recommendation to Congress on how to proceed.[35]

After the appointment of the Department of Commerce, concerns were raised about the LPM's ability to enter into an indefinite contract extension with EOSAT in light of the Competition in Contracting Act's policy of disfavoring these types of agreements in favor of full and open competition.[36] In support of the Government's Motion for Summary Judgment, the argu-

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[32] *See supra* note 10.

[33] *Id.* Additionally, this contract had to "assure data continuity for six years, and provide that unenhanced data would be offered and sold on a nondiscriminatory basis. It could allow the contractor to use government civil space assets on a space available basis and at its own expense for a commercial system. The contract could not contain guaranteed data purchases from the Federal Government although the government could allow loans, loan guarantees, or payments to provide data continuity for six years. Marketing incentives were available by permitting a sliding scale that would decrease payments made by the contractor to the government for any services and hardware provided to it as sales levels increased." Gabrynowicz, *supra* note 10, 6 CHI. J. INT'L L. at 57-58.

[34] *See supra* note 15.

[35] *Id.*

[36] *See supra* note 24.