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Message from the Chair

Happy New Year Air & Space Law Committee Members!

I hope you all had a wonderful holiday season, and hopefully you were able to take a break.

On the Air & Space Law Committee’s 2017 agenda is an exciting CLE 1-hour Program on the integration of Unmanned Aircraft Systems (also known as drones or UAS) in the National Airspace Systems (NAS). This panel will be presented at the upcoming ABA YLD Spring Conference in Montreal, QC on May 5, 2017. This CLE will also be co-sponsored by the Homeland and National Security Committee. Here is a brief summary of the topic discussed: Unmanned aircraft systems (UAS) continue to become more prevalent in the national airspace system (NAS). The U.S. commercial drone sector is expected to create more than $80 billion in economic impact through 2025, creating thousands of jobs. With the FAA’s new rule for the commercial operations of small UAS (also called drones), which took effect on August 29, 2016, and the expected FAA Notice of Proposed Rulemaking for UAS operations over people, challenges and opportunities of regulating UAS is a primary concern for both the UAS industry, regulators, and aviation lawyers.

In line with our wish to collaborate with as many aviation and space organizations as possible, we hope to have panelists from McGill University, the International Civil Aviation Organization (ICAO), and the International Air Transport Association (IATA). I hope you will be able to attend! If you have any questions about this program, please do hesitate to contact the Committee’s Vice-Chairs or me.

As I previously expressed, we strive to help students, young professionals venture in this niche area, and we will continue to offer ways for you to get involve and meet practitioners. We believe the best way to do so is to connect our members with practicing attorneys or professionals from the aviation and space field. Thus, we are planning on two Meet & Greets this year. The first one will be held in Washington, DC in March, and we hope to take advantage of the Spring Conference in Montreal to organize a similar event to continue building the bridge between law students and young professionals, and aviation and space professionals and academics in the U.S. and Canada. Look out for list-serv communications to provide more details on these upcoming in-person events. Again, if you have any questions, feel free to send us an email.

Until then, thank you for being a member of the Air & Space Law Committee and we hope 2016 ended with a kiss landing and 2017 started with a smooth takeoff.

I look forward to hearing from you!

Best,
Philippine

Philippine Dumoulin
2016-2017 Chair
ABA YLD Air & Space Law Committee
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Alexander Simpson is an Attorney-Advisor at the U.S. Department of Transportation, Office of the Assistant General Counsel for Operations. In this role, he concentrates on economic and competition issues affecting airports and airlines.

Previously, he served for several years as an associate at Zuckert Scoutt & Rasenberger, LLP, where he worked on a wide variety of aviation and aerospace matters, including regulatory and licensing work for foreign air carriers, airport access issues at East Hampton Airport and Santa Monica Airport, aircraft transactions, and antitrust and government contract matters affecting the transportation industry. He is also one of this year’s Vice-Chairs of the ABA YLD Air & Space Law Committee.

Alexander is a graduate of Kenyon College and the University of Maryland School of Law. He began his legal career as a Law Clerk to Judge James Kenney on the Maryland Court of Special Appeals.
The Coming New World Order: Reconsidering the “Europe of Defense” for Space Activities
By Fanny Magalhaes Goçnalves

The European Union (EU) is a reflection of a long and fragile legal and political construction. At first, following economic purposes, it adopted directives and regulations on various issues such as immigration, education, and the common airspace. EU aerospace considerations are mostly known for their focus on safety, security, and environment. The European Space Agency (ESA), whose initiatives are defined in Article 2 of the ESA Convention\(^1\), concentrates its efforts on space observation, exploitation, and exploration, key subjects of European cooperation. Nevertheless, it is unusual to hear about the ‘Europe of Defense’\(^2\) for space activities and, more precisely, on cooperation, data sharing, and agreements defining the limits of joint military programs. Such initiatives are commonly undertaken under North Atlantic Treaty Organization (NATO) programs. The existence of the ‘Europe of Defense’ for space activities, despite being a flagship project developed by the French government, relies on a panel of European civil and military program proposals, enabling it to face current and future challenges specific to the EU.\(^3\)

Considering the global issues and the coming new world order, it appears necessary to reconsider the structure and agreements that initiated the ‘Europe of Defense’ project for space activities in order to ensure its future existence. The situation is complex and the current and future geopolitical order should be highlighted.

In June 2016, like a blow of a club, the people of the United Kingdom (UK) called by referendum to leave the EU. Despite the fact that the so called “Brexit” process is currently subject to an analysis by the Supreme Court of the UK in order to ascertain if the British Parliament has the power to reconsider such an initiative\(^4\), the future of the ‘Europe of Defense’ for space activities will be discussed, for the purpose of this short study, in a post-Brexit context. In addition to this unexpected political move in the UK, the landscape of international cooperation between the EU and the United States (U.S.) may face considerable changes. President-elect Donald J. Trump will officially become the 45th President of the United States on January 20, 2017. His expected political strategies remain unclear. However, he has already

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\(^1\) Convention for the establishment of a European Space Agency (CSE/CS(73)19, rev.7), 30 May 1975, (entered into force 30 October 1980) [ESA Convention]

\(^2\) The "Europe of Defense" ("Europe de la Défense") is a military program developed by the French government to create a European defense program. It includes the creation of European military forces and cooperation programs. The aim of such program is to take some distance from NATO the French government believing that the U.S. government does not want to get involved to defend European interests, especially after Kosovo, and many European States still fear the Federation of Russia. The "Europe of Defense" has been mainly developed for air, ground, and marine forces. Due to the costs of space defense, we can notice a trend to develop such program for space activities as well, especially with the collaboration between the European Defense Agency and the European Space Agency. This program can exist only if the State members are involved and support the programs of the EU.

\(^3\) France, France Diplomatie, L’Europe de la Défense, (November 2014), online: <www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/defense-et-securite/l-europe-de-la-defense/>

showed his intention to establish close ties with the Russian Federation. As a result, not only may the future of NATO create an internal conflict of interests, but also the ‘Europe of Defense’ may be forced to take form. Under President Barack Obama’s Administration, the U.S. Government demonstrated its intention to focus on a new strategic pivot for its defense activities, mainly in the Asia-Pacific region. The support of U.S. for defense activities was still strong in the context of the Ukrainian conflict. This trend is now likely to change.

We notice a political and legal vortex that the ‘Europe of Defense’ for space activities will create. In recent years, joint space programs between the ESA and the European Defense Agency (EDA) have been developed. It can be explained by an increasing number of dual space activities but also the need for the EU and its Member States to stay united, ensuring its role as a global player. Such initiatives have been recognized and promoted in the Lisbon treaty.

Article 189 of Title XIX on ‘Research and Technological development and Space’ of the Lisbon Treaty reads as follows:

“1. To promote […] the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives […]

2. To contribute to attaining the objectives referred in paragraph 1, the European Parliament and the Council […] shall establish the necessary measures, which may take the form of a European space programme […]”

Each European country cannot face the competition in space activities individually. This does not only apply to the U.S...; the Chinese and Russian space programs also have a significant budget to defend their own interests, which are different from those in Europe. It is crucial to define a mutual defense interest and foster the cooperation to ensure the European leadership. It is not a question of loss of sovereignty, but rather working together on maintaining a fragile peace in the EU.

The geopolitical risks are real and the European partners should come together and focus their activities on collectively facing the coming challenges. The issue of cybersecurity, immigration due to conflict and environmental changes, unstable governments, and control over space, sea, and European territories are all examples of what could be defined as a mutual interest. “Brexit” is to be taken into consideration when discussing the EU's safety or security. Leaving the boat and its crew in raging waters does not save the rest of the crew from drowning.

There are two possible outcomes. In the first case, the UK would completely leave the EU. Michel Barnier, EU’s Chief Brexit negotiator, insisted the British government not have an

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6 The Foreign Policy Initiative, “The Obama Administration's Pivot to Asia,” online: The Foreign Policy Initiative <www.foreignpolicyi.org/content/obama-administrations-pivot-asia>.

7 “Claude-France Arnould, Chief Executive of the European Defence Agency: ‘Space is now embedded in practically everything we do’”, ESA, (22 July 2013), online : ESA <www.esa.int/About_Us/Jean-Jacques_Dordain/Claude-France_Arnould_Chief_Executive_of_the_European_Defence_Agency_Space_is_now_embedded_in_practically_everything_we_do>

opportunity to keep the European economic advantages as soon as it decides to initiate negotiations. In such a case, the French and German governments, two main investors in the ‘Europe of Defense’ for space activities, will have to reconsider the terms of the project and undertake a new cooperation process with other partners, defending its importance. A second situation would occur if EU Member States and the UK initiate a recast of the ‘Europe of Defense’ project. The latter option seems more feasible in the current context where the relations between Theresa May’s government and the Trump Administration do not seem at their best. In addition, France, the UK, Germany, and Italy dominate the weapons industry in Europe, and ending the European defense program would have serious economic repercussions. Indeed, aerospace companies such as Airbus Group\(^9\), and MBDA\(^10\), genuine European partnerships would become collateral victims. Now, we must keep an eye on the next presidential elections in France, which may split the EU and its programs even further.

\*The views and opinions expressed are those of the author alone and do not reflect the position of any affiliated organization. Responsibility for the information expressed lies strictly with the author.

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\(^9\)“Airbus Group”, Zone Bourse, online : Zone Bourse <www.zonebourse.com/AIRBUS-GROUP-4637/societe/>

Upcoming Aviation and Space Law Events:


- January 24, 2017 (Washington, DC) ABA Forum on Air & Space Law Update Conference: [http://www.americanbar.org/groups/air_space/events_cle.html](http://www.americanbar.org/groups/air_space/events_cle.html)


- February 7, 2017 (Washington, DC) 20th Annual FAA Commercial Space Transportation Conference


- February 17, 2017 (Oslo, Norway) Norwegian NPOC Space Law & Policy Seminar: [https://indico.esa.int/indico/event/184/](https://indico.esa.int/indico/event/184/)


- March 17-18, 2017 (Paris, France) European Center for Space Law Practitioners Forum and Young Lawyers Symposium on Space Law


- April 3-6, 2017 (Colorado Springs, CO) Space Symposium: [https://www.spacesymposium.org/](https://www.spacesymposium.org/)


- May 8-11, 2017 (Dallas, TX) XPONENTIAL AUVSI: [http://xponential.org/xponential2017/Public/Enter.aspx](http://xponential.org/xponential2017/Public/Enter.aspx)


YLD News and Announcements

American Bar Association
2017 Spring Conference
Montreal, QC
May 3-5, 2017
For more information and to register go to: http://www.americanbar.org/calendar/annual.html