

The Mexican Space Agency

By

J. H. Castro Villalobos*

Introduction

After a silence of more than 35 years, the Government of Mexico has taken an important step in resuming Mexican national space policy. On July 30, 2010, the Government published The Act Establishing the Mexican Space Agency ~~(Act)~~, ~~which.~~ ~~It~~ created the Mexican Space Agency MSA (MSA). The Government published the General Lines of Space Policy of Mexico (GLSP) on July 13, 2011.* With this, the lack of an official national space policy has finally ended. In 1977, the National Commission of Outer Space, which was created in 1962*, ceased operating.

The Legal Framework of Outer Space in Mexico

Mexico's Constitution does not refer explicitly to the legal framework governing outer space, nor does it contain provisions that clarify its legal accuracy. The Constitution states: "The national territory comprises the space above the national territory, to the extent and modalities that may be established

[?]* Member of the Mexican Foreign Service. Former Professor of International Law at the University of Iberoamericana. Member of the International Institute of Space Law. The author and Editor-in-Chief would like to acknowledge and thank Sr. Sergio Camacho for his translation assistance.

[?] Decreto EGRETO por el que se expide la Ley que crea la Agencia Espacial Mexicana ^[?] ~~which translates to~~ **"Decree through which the Law that creates the Mexican Space Agency MSA is issued"**, Diario Oficial de la Federación [DO], 30 de Junio de Official Gazette of the Federation, 30.06.2010 [hereinafter MSA Act].

[?] What is the Spanish translation of this title? Líneas Generales de la Política Espacial de México [General Lines of Space Policy of Mexico], Diario Oficial de la Federación [DO], 13 de Julio de Official Gazette of the Federation, 201113.07.2011.

[?] GALL, RUTH GALL, LAS ACTIVIDADES ESPACIALES EN MÉXICO: UNA VISIÓN CRÍTICA 74 (, FCE, México, 2nd ed. - Second Edition, FCE, México, 1991), p. 74.

in international law."* This provision only covers matters concerning Mexican national air space and constitutes a forwarding norm as it refers to another legal regulation, in this case international law.

Bearing in mind that Mexico is a Federal Republic, and therefore has the duality of federal and local law, it becomes necessary to determine which level of government should regulate the actions of the Mexican State for outer space. According to the principle that that which is not expressly reserved to the Federation is conferred to the individual Federal States*, it would appear to give local authorities the power to act in this area. However, there is also another applicable principle. That is, to always interpret a provision as in agreement with other relevant rules.* Applying this principle, it must be accepted that the power to act corresponds solely to the Federal Executive.* Based on the foregoing, according to Article 117, Section I of the Mexican Constitution*, it is clear that the individual Federal States lack international character. Furthermore, Article 89 of the Mexican Constitution authorizes the Federal Executive to preside over the Nation's international relations.* Consequently, although the Constitution does not expressly recognize the power of the Federation to act in the area of outer space, it must be understood as there are several correlated provisions that are applicable, as may be seen upon examining other Federal provisions. It is

[?] [Article , 27 section VI, Constitución Política de los Estados Unidos Mexicanos \[C.P.\], as amended, art. 27, §VI, Diario Oficial de la Federación \[DO\], 5 de Febrero de 1917 \(Mex.\) \[hereinafter Constitución\] Senado de la República, Edit. Porrúa, México, 2010, p. 32.](#)

[?] **NEED SOURCE** [Constitución, art. 24.](#)

[?] **NEED SOURCE** [Código Civil Federal \(1928\), art. 1854.](#)

[?] [Constitución, supra note 4, at Article 124, Constitución Política, note 4 p. 171.](#)

[?] [Id. at Article 117, section §I, ibid., p. 142.](#)

[?] [Id. at Article 89, Section §X, ibid, p. 94.](#)

obvious that operating in outer space is an international activity, so its treatment corresponds to international law and thus, it is within the scope of the powers of the Federation.*

Article 3 of the National Property Act determines what constitutes national property: "II. The goods of common use referred to in article 7 of this act"*. In turn, Article 7, paragraph I of the National Property Act states, that "the airspace located over the national territory, with the extension and modalities that the international law sets out"*** are goods of common use.

Article 36 of the Organic Law of Federal Public Administration contains the powers of the Ministry of Communications and Transport.** One of these powers is to grant concessions and permits to establish telecommunications and satellites systems (section III)*. This is the only reference of an activity clearly associated with outer space.

In summary, activities related to outer space fall within Federal legislation and it is up to Congress to legislate in this area. The Federal Executive is responsible for implementing and executing the corresponding policies.

[?] [Id. at art. Article 27, Section §VI, Constitución Política, p.32.](#)

[?] [Nueva Ley General de Bienes Nacionales \[NationalPropertyAct\], Diario Oficial de la Federación \[DO\], el 20 de Mayo de 2004, Porrúa, México, 2004, p. atart. 3104.](#)

[?] [Id. at art. 7](#)

[?] [Ley Orgánica de la Administración Pública Federal \[Organic Law of the Federal Civil Service\], Diario Oficial de la Federación \[DO\], el 29 de Diciembre de 1976, at Porrúa, México, pp. 1550.](#)

[?] [Ley Orgánica de la Administración Pública Federal \[OrganicLaw of the Federal Civil Service\], Diario Oficial de la Federación \[DO\], el 29 de Diciembre de 1976, at art. 36.](#)

[?] [Id. Ley Orgánica de la Administración Pública Federal, Porrúa, México, pp. 1550.](#)

[?] [#idem-Id.](#)

The Mexican Space Agency MSA

The MSA has the legal character of a decentralized public agency with its own legal disposition and technical and managerial autonomy (Art. 1)*. It stands out that the MSA is a public organization but with its autonomy restricted to technical and administrative matters.*

Under the Law that creates the Mexican Space Agency, the MSA is directed to formulate and propose the General Lines of the Mexican Space Policy and the National Programme of Space Activities (Art.2.I)*; to develop scientific-technological competence (Art.2.IV)*; to promote the development of space systems (Art.2. V.)*; to serve as an instrument of the authority of the State in this sector (Art. 2. VIII)*; to ensure and preserve public interest; and, the protection of the population in matters of development, security, peace and the prevention of national security problems (Art. 2. X) *.

Under Article 2.I the MSA will be responsible for formulating and proposing to the Ministry of Communications and Transport the General Lines of Mexican

[?] MSA Act, *supra* note 1, at art. 1 Official Gazette, No. 22, p. 4.

[?] L. L. Cahuich Campos, L.L., “*Agencia Espacial Mexicana [Mexican Space Agency]*”, in RAUL ALVA GARCÍA, R., ET AL., *50 AÑOS DE CIENCIAS Y TECNOLOGÍA AEROSPAIAL* 27 (Universidad Autónoma Metropolitana UAM, México, Mar. 21, 2009), p. 27; Norma Ávila Jiménez, Norma, “*La Agencia Espacial Mexicana [The Mexican Space Agency]*”, La Jornada Semanal [Please translate this journal into English] Sunday edition of newspaper La Jornada 12 (Oct. 8, México, 8.10.2006), p. 12.

[?] MSA Act, *supra* note 1, Official Gazette, No. 22, p. 1 at art. 2.1.

[?] *Id.* at art.2(IV).

[?] *Id.* at art.2(V) -*ibidem*.

[?] *Id.* at art.2(VIII) -*ibidem*.

[?] *Id.* at art.2(X) -*ibidem*.

space policy and the National Programme of Space Activities*. This means that the two most important instruments of the MSA, the General Lines of Space Policy and the space programme are to be submitted to the authority of the Government for approval. This implies, of course, that the MSA cannot establish policies or programmes unless the Government endorses them.

The provisions of paragraph Art. 2. VIII which refer to the fact that the MSA will serve "as an instrument of authority of the State" in the space sector* reaffirms the tendency of increased participation by the private sector as is also seen in the case of the space powers. Article 3 of the Act Establishing the MSA refers to the instruments of Space Policy of Mexico.* Among them, number 3. IV stands out for its importance and refers to "negotiations, agreements and international treaties" in matters related to outer space.* This means that Mexico will now, by law, place a greater significance on international agreements that will be signed as a form of international cooperation to strengthen Mexico's development in the field.

Article 4 of the same law, indicates the main functions of the MSA.* Among the more important to be noted are promoting the development of space activities to broaden the Nation's competence in space matters as well as in the aviation industry, telecommunications, as well as space science and technology

[?](#) *Id. at art.2*Art. 2:(I), Mexican Space MSA, Official Gazette, No. 22, p. 1.

[?](#) *Id. at art.2*(Art. 2.VIII), MSA, Official Gazette, Ibid.

[?](#) *Id. at art.*Art. 3, MSA, Official Gazette, No. 22, p. 2.

[?](#) *Id. at art.3*(IV)-Art. 4, MSA, Official Gazette, No. 22, p. 2.

[?](#) *Id. at art. 4.* Ibidem.

applications*. Reference is also made to the "promotion of signing bilateral and multilateral international treaties" * as well as to the important role of advising the Federal Government on its implementation and interpretation of related international documents on outer space*. Providing treaty advice and interpretation of international documents is among the most important legal functions of the MSA. Other legal functions of the MSA are those relating to conducting investigations and giving legal opinions on the subject of outer space (X)*.

Article 5 of the same law sets out the powers of the MSA.* Notable among these are the ones relating to disseminating provisions contained in the Constitution, in the Law that created the MSA and in international treaties already ratified by Mexico regarding outer space (III)*. Additional powers include providing advice and resolving queries regarding concessions, permits, and authorizations for using, developing, and applying space technologies (V)*. The MSA is also responsible for establishing the Mexican position on space matters (VII)*.

Organization and operation

[?] *Id. at art. Art. 4-(III), MSA, Official Gazette, No. 22, p. 2.*

[?] *Id. at art.4 (Art. 4, VI), MSA, Official Gazette, No. 22, p. 2.*

[?] *Ibidem-Id.*

[?] *Id. at art.4 Art. 4,(X), MSA, Official Gazette, Ibid, p. 3.*

[?] *Id. at art. Art. 5. MSA, Official Gazette, No. 22, op. cit, p.3.*

[?] *Id. at art. Art. 5-(II), MSA, Official Gazette, No. 22, op. cit. p.3.*

[?] *Id. at art.5(V).*

[?] *Id. at art. Art. 5(-VII), MSA, Official Gazette, ibid.*

Article 6 states that the MSA will have the following components: (a) an Executive Board; (b) a General Directorate, (c) an Oversight body and (d) technical and administrative departments. *

The governing body of the MSA is the Governing Board that is comprised of 15 members, the majority being officials from the Federal Government.*Accordingly, the President of the Board shall be the Minister of Communications and Transport and will include members from six other ministries at the rank of Under Secretary (Internal Affairs, Foreign Affairs, Public Education, Finance and Public Credit, National Defense and Navy) and the National Institute of Statistics and Geography. Other members belong to educational and academic institutions: the National Council for Science and Technology, the National Autonomous University of Mexico, the National Polytechnic Institute, the Mexican Academy of Sciences, the Academy of Engineering, the National Academy of Medicine, the National Association of Universities and the National Institute of Statistics and Geography. *

It is noteworthy that the Executive Board does not contain any member from the related industrial sectors in the fields with which the MSA will deal, particularly bearing in mind that the projects to be undertaken are to be carried out to some extent with funds from the private sector. Such is happening in the case of the current space powers. Similarly, among the great omissions is the Institute of Geophysics of the National University. In the past, this was one of the

[?](#) *Id. at art. Art. 6. MSA, Official Gazette, No. 22, op. cit. p. 4.*

[?](#) *Id. at art. 7 Art. 7. MSA, Official Gazette, No. 22, op. cit. p. 4.*

[?](#) *ibidem-Id.*

few Mexican institutions that maintained activities and research in matters of outer space.

Among the functions of the Governing Board referred to in Article 9, are proposing actions that ensure compliance with treaties, international conventions and agreements signed and ratified by Mexico regarding outer space^(IV).* Another significant function is to approve the reports of the Director General^(VI).*

IV. The Director

The Director of the MSA shall be appointed by the Federal Executive, and shall hold office for four years and may be reelected only once.* Among the requirements to be Director is experience in technical and space matters; having held posts of "high-level decision-making" for at least five years^(Art. 10).* The most important function of the Director General relates to developing the National Programme of Space Activities and submitting it for the approval of the Governing Board^(Art. 12).*

Finally, the MSA will administer its property in accordance with the applicable legal provisions and the programmes and budgets that it develops annually and are approved by the Governing Board^(Art. 16).* In accordance

[?] *Id. at art. Art. 9(-IV).* MSA, Official Gazette, No. 22, op. cit. p. 5.

[?] *Id. at art. Art. 9. (VI).* MSA, Official Gazette, No. 22, op. cit. p. 5.

[?] *Id. at art. Art. 10.* MSA, Official Gazette, No. 22, op. cit. p. 5.

[?] *Id. at art. Art. 10.(II).* MSA, Official Gazette No. 22, op. cit. p. 5.

[?] *Id. at art. Art. 12(-I).* MSA, Official Gazette, No. 22, op. cit. p. 5.

[?] *Id. at art. Art. 16.* MSA, Official Gazette, No. 22, op. cit. p. 6.

with the Third Transitional Article, the Governing Board will formulate the General Lines of the Space Policy of Mexico that the MSA will develop.*

V. General Lines of Space Policy

With the adoption of the General Lines of Space Policy it is intended that space policy will be a State policy and therefore not subject to changes in the government administrations. In the past, changes in Mexican governments have resulted in changes in all institutional policies.

The GLSP will pay attention to public interest and will seek to conform outer space programmes intended to address areas such as information, science and technology.*The MSA will be called to develop projects, train technical and scientific staff and create the infrastructure necessary for space exploration on an institutional basis and with a multidisciplinary nature.* Moreover, the participation of the industrial sector in the creation of the projects that are developed must be taken into account. In this regard, the MSA must prioritize its activities in coordinating functions in the fields of science, technology and industry in the development of initiatives that have been created.*

Articulating the relationship of the public and private sectors in the areas of outer space activities will be a focal point of the MSA's work. Its resources will have to come, to a great extent from the private sector and to the extent that the

[?](#) [Id. at Art. Third Transitional, Official Gazette, No. 22, op. cit. p. 7, p. 7.](#)

[?](#) [General Lines of Space Policy of Mexico, supra note 2 Official Gazette of Federation, Volume DCXCIV, No. 9, México, p. 3, at 3.](#)

[?](#) [Id. Official Gazette, No. 9, op. cit. p. at 5.](#)

[?](#) [Ibidem Id.](#)

private sector will receive the benefits that an intelligently conceived space policy brings with its development. To make MSA activities solely depend on Government funds, there will have to be a determination that its work is limited to the ability to successfully establish a national outer space activity. Another objective of the MSA will be to stimulate a self-sustaining space industry with a competitive technological capacity.

There will be considerable resources to support scientific and technological research in universities and educational centers. In this sense, the MSA will serve as an agent in order that the resources flow to the learning centers. Establishing the benefits of an adequate space policy will entail curricula reforms at all levels. Another objective will be to prioritize national space policy in accord with human development, peace and international security. This principle has already been applied to the regulation Mexico's actions in international outer space organizations.

Finally, strengthening the policy of international cooperation with the main space investigation centers world-wide will result in establishing an actual State policy. This will surely take years but it is an important step in the right direction. The existence of a Mexican space policy and the Mexican Space [Agency \(MSA\)](#) will also encourage the study of legal issues regarding outer space. *

[?] The Mexican legal doctrine has been interested in Outer Space for many years. *See e.g., WE REFER SOME GENERAL WORKS: MODESTO SEARA VÁZQUEZ, M., INTRODUCCIÓN AL DERECHO INTERNACIONAL CÓSMICO [PLEASE TRANSLATE TITLE INTO ENGLISH] INTRODUCTION TO INTERNATIONAL LAW COSMIC* (Escuela Nacional de Ciencias Políticas y Sociales México, (1961); MIGUEL ALEMÁN, M., *LOS SECRETOS Y LAS LEYES EN EL ESPACIO [SECRETS AND LAWS IN SPACE]*, (Editorial Helio-México México, (1962); ABELARDO ROJAS ROLDAN, A., *NOTAS SOBRE DERECHO ESPACIAL [NOTES ON SPACE LAW]*, (Lex, México (1969); ANTONIO FRANCOZ RIGALT, A., *DERECHO AEROSPAZIAL [AIR AND SPACE LAW]*, (Editorial Porrúa, México, (1981); JOSÉ LUIS ÁLVAREZ HERNÁNDEZ, J. L., *DERECHO ESPACIAL [SPACE LAW]*, (México, (2006); and MODESTO SEARA VÁZQUEZ, M., *DERECHO Y POLÍTICA*

EN EL ESPACIO CÓSMICO [LAW AND POLICY IN THE COSMIC SPACE] (-, Second 2nd ed. Edition, México, (1986).