This article from International Institute of Space Law is published by Eleven international publishing and made available to anonieme bezoeker

REPORT OF THE DISCUSSIONS HELD AFTER THE 4 SESSIONS OF THE 37TH COLLOQUIUM ON THE LAW OF OUTER SPACE

The topic of the first session of the Colloquium was *New Legal Developments in Satellite Communications*. In the *discussions* that followed the presentation of the papers, *Dr. Nilson* was invited by the Chairman to give a short presentation on the Tongasat System. Currently four orbital positions of Tonga are used by satellite operators and Tongasat registered seven positions with the ITU. The original filing of Tonga was for 36 positions. Mr. Nilson shortly discussed the problems with the Indonesian occupation of a Tongasat slot and the potential APSTAR-1 interference with Japan and Russia satellite systems. The APSTAR-1 problem was solved in August this year by leasing a Tonga slot to APSTAR. Mr. Nilson wondered why the Tonga applications received such widespread criticism from the world community and compared the actions of some other states. Mr. Nilson's conclusion was that the ITU had been extremely helpful in solving the disputes which did arise with Tongasat but that in view of the non-enforceability of ITU decisions, interested parties have to resolve their conflicts amicably. *Prof. Lyall* commented that the ITU was originally established by and for states and that the privatization of telecommunication operators requires a reorientation of this concept. *Dr. Nilson* agreed that operators are now typically private companies. *Dr. Meyerhoff* again explained the mission of the ITU, i.e. to prevent radio interference and to fulfill the need for international coordination procedures. He added that at this moment there is no scarcity of capacity for satellite communications.

Prof. Lyall wondered how APSTAR acquired its license to operate a satellite system, if it is a Hong Kong based company that normally should have applied for a license under the UK Space Act of 1986. He also wondered whether a situation was evolving comparable to flags of convenience as states might license use of orbital positions but be unable properly to supervise what was done by licensees.

Dr. Doyle then considered that today the basic shortcoming of the telecommunications administration is the lack of planning. In this view, planning must involve the following aspects: (1) ITU roles in allocating, signaling codes, operational standards etc., and (2) national administrations assign frequencies to specific users, grant licenses and police the users.* *Dr. Meyerhoff* stated that planning of paper systems causes problems and that registration should happen on a first come first serve basis. This, however, may raise accommodation problems for the systems that will come afterwards. *Dr. Doyle* proposed to use MPM's to solve these problems and put a time limit on paper registrations. *Dr. Nilson* added that MSS and FSS frequencies are not planned by the WARCs.

Dr. Meyerhoff concluded the discussion by saying that the frequency spectrum should be considered a resource and that the ITU mechanism is a means of attributing this resource which can be used commercially.

In the discussion of the second session, whose topic was *Definitional Issues in Space Law, Dr. He Qizhi* noted in response to Prof. Böckstiegel's papers that the key term "procure" had not been interpereted when speaking of a definition of the launching state. He proposed a hypothetical situation and said that he preferred a broad interpretation of the term "procure."

Mr. von der Dunk inquired whether the launch vehicle [in reference to aerospace planes] could be considered to be part of a space object. *Prof. Gorove* answered that such a launch vehicle would be considered to be a space object only in the case of an attempted launch.

Mr. Meyerhoff inquired whether the ownership of satellite had any relevance to the definition of space

This article from International Institute of Space Law is published by Eleven international publishing and made available to anonieme bezoeker

object. *Prof. Gorove* replied that ownership has no relevance since the satellite is classified as a space object as long as it is in outer space. Additionally, an object is considered to be a space object during temporary stopovers on the moon that are not indefinite in duration.

Mr. Kaplan, when called upon by Dr. Jasentuliyana to present his views on the progress made since the sixties in these sessions, expressed his consternation that no progress had been made on the establishment of an international space organization equivalent to the ICAO in air law. Additionally, he supported Prof. Kopal's distinction between unidentifiable and other debris. In conjunction with this opinion, he supported special legislation on space debris. As a final note, he stated that activities simply took off without any mention of peaceful use and that it is senseless that a similar situation be repeated or allowed to continue with regard to space debris.

Prof. Gorove commented on Prof. Kopal's distinction regarding unidentifiable space objects. he conceded that with technology developments, the ability to determine the origins of space debris will be greatly enhanced. In this context, it is important that the law keep abreast of this development, lest it fall behind and thus complicate liability issues. *Mr. Smith* asked whether an object ceases to be a space object when abandoned on the moon. *Mr. von der Dunk* took up the question by stating that the appropriate state is responsible for the activity in accordance with its control duties. *Mr. Wirin* added there appears to be some confusion as to the application of the Liability Convention in these matters.

In the short discussion that concerned the 3rd session on *Liability in Commercial Space Activityes Dr. He Qizhi* mentioned that he welcomed the trend toward greater trade on the part of the US. He noted the view of the author that the vacillation of US policy concerning launches by China is tied to the US policies on the MTCR and human rights concerns, and pointed out a legal instrument on the MTCR was recently signed by the US and China, so that this issue is solved. On the matter of human rights, Dr. He stated that although this was not the proper forum to deal with this issue, he wanted to stress that the development of cooperation between the two states will bring great benefit not only to the relations between the two powers but also to the peace and security of the world.

Finally, in the discussion on *Other Legal Matters, Dr. Doyle*, commenting on Dr. Heidmann's proposal for a radio-quiet lunar far side observatory suggested to publish a specific, technical proposal taking into account the experience obtained by existing radio astronomy fixed facility operators. Next step would be informal consultations in the ITU and then formal application sponsored by an administration to ITU for registration and recognition. In order to establish priority of right of the far side facility, it would be necessary to activate and complete an international registration procedure with the ITU and to have the facility identified in the international radio frequency mechanism. Dr. Doyle suggested also the submission of this project proposal to ICSU/COSPAR, the IAA and the IAU. All these steps would create a historical precedence and provide for information in the near future when space activities will be undertaken on the moon.

In respect of the increase of space debris and reluctance of some space faring nations to establish counter measures, *Dr. Jasentuliyana* proposed the establishment of a permanent standards and recommended practices as new types of regulatory instruments to supplement treaties and principles on space law. He called for international co-operation in the transfer of information for such technical standards, which are classified in some countries like the United States. *Dr. Perek* suggested that such a group should communicate with the space industry, take into account the work done by

This article from International Institute of Space Law is published by Eleven international publishing and made available to anonieme bezoeker

COPUOS, but be independent of its decisions. Also a UN database available to all countries should be established containing information on space object orbital parameters and space debris. *Dr. Jasentuliyana* further mentioned the IISL/ECSL symposium to be held during the 1995 COPUOS Legal Subcommittee session. In this context, Prof. Böckstiegel reminded of the ILA draft on space debris and outlined the gap between the awareness of the scientific community and the reluctance of policy makers in Germany.

Note:

Official Review of the Moon Agreement was a matter of interest, but action by the United Nations occurred after this Colloquium. On December 9, 1994 the United Nations General Assembly adopted Resolution 49/34 on International Cooperation in the Peaceful Uses of Outer Space, Including the Question of the Review of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. Paragraph 42 notes the recommendation of the Committee on the Peaceful Uses of Outer Space that "the General Assembly at its current session, in considering whether to revise the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, should take no action at the present time."

Tanja L. Masson-Zwaan
IISL Secretary/Colloquium Coordinator