

## LEGAL ASPECTS OF INMARSAT AND EUTELSAT SERVICES

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It was thirty-seven years ago, when as a young lawyer just called to the bar I participated in the first Colloquium on the Law of Outer Space in the Hague on August 29, 1958. In 1959-60, as a member of the second working group, I worked under the late Professor Verdross of Austria.<sup>1</sup> Today, I look back and cherish the memory of all those pioneers of space law, members of the original eleven groups who have passed away.

Turning now to the subject of my paper, I recall that some twenty years ago the question of direct satellite telecommunications was bedeviling states for more than a decade within and outside the United Nations and its Specialized Agencies.<sup>2</sup> To be sure, at that time this question manifested once more the deep split of opinion between the two superpowers, the United States and the Soviet Union, when it came to issues which might have disturbed the delicate balance of power, or jeopardize or weaken the principles on which the political and socio-economic system of these states was based.<sup>3</sup>

However, today, after 1991, with the end of the Cold War, such problems do not seem to arise anymore. We witness now a spirit of cooperation between states in outer space and in matters arising out of space exploration. Such a development would not have crossed the mind, a few years ago, of even the most optimistic of space lawyers. Therefore, the theme of our Congress, "Benefits of Space for Humanity", seems most appropriate.

Having said that, I hurry to add that unfortunately, the competition of states in the field of outer space has been replaced now by the competition between international

organizations and multinationals in the same field. The commercialization of outer space, and especially the extensive use of mobile satellite communication services, has led to an unprecedented competition in this field.

Thus, Inmarsat, the International Mobile Satellite Organization as it is called today<sup>4</sup>, which began operations in 1979, in order to compete with the new Satellite Personal Communication Services (S-PCS)<sup>5</sup>, which may be in operation by the year 2000 in Low Earth Orbit (LEO)<sup>6</sup>, like Motorola's Iridium system, Loral/Qualcomm's Globalstar system and TRW's Odyssey system, set up late in 1994 the Inmarsat-P Affiliate.<sup>7</sup> The legal nature of this Affiliate, as a subsidiary organ of Inmarsat<sup>8</sup>, and the question whether there is adequate separation between Inmarsat and the Affiliate are still under consideration.

On the other hand, in the European Union, on November 24, 1994, the Telecommunications Council approved a Resolution on access to the capacity of the space sector, in the context of liberalizing satellite communications.<sup>9</sup> The Commission plans to use its powers under the Treaty, which are articles 85-94 on the rules of competition, to eliminate restrictions in this area. The Council of the European Union agreed with this measure and it has asked the Member States to provide non-discriminatory access to the capacity of the space sector at national level.<sup>10</sup>

In the same Resolution, the Council points out that the networks, services and applications based on satellites can contribute to the rapid development of trans-European networks and the setting up of an information society. The Council felt that it is necessary to guarantee non-discriminatory access for all suppliers and users to the capacities of the space sector. It also felt that in order to complete the common market for satellite services it is necessary to introduce and encourage lawful competition among service providers.

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The Council also asked the Member States of the European Union to collaborate closely in the reform underway in inter-governmental organizations, such as Intelsat, Inmarsat and Eutelsat and in managing orbital frequency resources. Finally, in conformity with the rules laid down in the past by GATT and other international obligations, the Council asked the Commission of the E.U. to oversee the terms of access to the markets of third countries in order to ensure effective access.

It should also be mentioned that the Commission of the European Communities in November 1990 had adopted a Green Paper on a common approach in the field of satellite communications in the European Community, and that the Commission Directive 94/46 of October 13, 1994 called for a common market for satellite communication services and equipment.

Can we therefore conclude that the European Union is leading the way today towards a liberalization of services provided by telecommunication satellites and that it promotes a lawful and open competition between international organizations in this field?

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December 9, 1994; "Background to Inmarsat-P"; see also Inmarsat Facts, "Inmarsat's family of satellites" and "Maritime Communications". Bruce Nachman, "Reduced costs and increased profits using satellite communications on passenger ships and ferries", Thalassa '94, Piraeus, 1994. See also Inmarsat-P System Description, July 1995; Background Information: Inmarsat-P, July 1995.

<sup>8</sup> See Dion. M. Poulantzas, "The Interim Committee or 'Little Assembly'; a Subsidiary Organ of the General Assembly of the United Nations Organization", in Revue de Droit International, Geneva, No. 4, 1993, 251-259. The same: Les organes subsidiaires des organisations internationales, une théorie générale, Centre for Studies and Research in International Law and Relations, The Hague Academy of International Law, 1963, p.110.

<sup>9</sup> See "Texte du projet de Résolution du Conseil sur les frais terminaux en matière de télécommunications.

<sup>10</sup> See Commission Directive 94/46/EC of 13 October 1994

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<sup>1</sup> See Second Colloquium on the Law of Outer Space, 1959, p.IV

<sup>2</sup> See N.M. Poulantzas, "Direct satellite communications: recent legal developments", Proceedings of the Fifteenth Colloquium on the Law of Outer Space, 1972, pp.83-87.

<sup>3</sup> N.M. Poulantzas, "Direct satellite communications: a test for human rights attitudes", Proceedings of the Eighteenth Colloquium on the Law of Outer Space, 1976, pp.157-165.

<sup>4</sup> See G. Symeonidis, Executive Vice-President of Inmarsat, A call for national development, SUMMIT, September 1995, p.14 ff.

<sup>5</sup> See Inmarsat, Communications Unlimited.

<sup>6</sup> See Ocean Voice, Maritime information technology and electronic, September 1995.

<sup>7</sup> See Inmarsat News, "Governments from Fifty-Six countries endorse Inmarsat-P",