# REPORT OF THE DISCUSSIONS HELD AFTER THE SESSIONS OF THE 40th COLLOQUIUM ON THE LAW OF OUTER SPACE

## SESSION 1
## BACKGROUND AND HISTORY OF THE OUTER SPACE TREATY

In the course of the discussions which followed the presentation of the papers, the following issues were addressed, most of which were related to the future of the Moon Agreement:

- To the question why developing countries have not taken more interest in the implementation of the Moon Agreement, *Mr Jasentuliyana* replied that not much more could be done as long as the Agreement wasn't ratified and implemented by the most interested states, which is unlikely unless some of the treaty's most «sensitive» and ambiguous provisions were modified. Mr. Jasentuliyana also drew a parallel between the Moon Agreement and the Convention on the Law of the Sea which was belatedly ratified by industrialised states - after the text of the Convention was amended.
- As to what amendments would be necessary for the Moon Agreement to be revived, *Mr von der Dunk* argued that if the provision regarding the common heritage of mankind were purely and simply deleted, perhaps the industrialised states would accept to ratify the Moon Agreement .
- *Mr. J. Monserrat* (Brazil) wondered whether it is judicious or even possible to modify the Agreement, or whether one should just let space activities take their course without the benefit of a Moon treaty, and Amb. Jankowitsch (OECD/Austria) argued that rules are necessary to ensure the orderly development of space activities. Of course, we should proceed by steering a middle course between elaborating and implementing legal rules and letting the intervening parties compete with each other in conformity with the rules, as competition is necessary to encourage the further developent of space activities.

## SESSION 2
## CONCEPTS OF SPACE LAW AND THE OUTER SPACE TREATY

- *Prof.Christol* (USA) commented on the paper by *Dr Terekhov* (Russia), and recalled the numerous discussions about the consensus decision making process in the UN, and one of the first papers on that topic, written by Dr. E. Galloway. He held that the discussions about the choice to use "shall" or "should" are interesting, but agreed with the author's conclusion that they are not useful to define the legal status of a document.
- *Mr.White* (USA) enquired about the necessity for more precise international regulation for the exploitation of space resources. *Mr. von der Dunk* (Netherlands) argued that, in the light of growing private activity in this field, and considering the delays in international law-making, it might be better if States would formulate rules at national level to control these activities.
- With regard to *Prof.Kerrest*'s paper and the terminological problems of defining "responsibility" and "liability", *Mr Wirin* (USA) claimed a sense of "majesty" for the concept of responsibility in the Outer Space Treaty. He underlined a possible distinction between responsibility connected to the future and liability connected, instead, to the past, but, in his opinion, the most important concept is the "sense of responsibility" of each State for activities, official or private, in outer space.
- *Ms K. Gorove* (USA) commented on *Mr Poulantzas'* proposal to entrust a Chamber of the ICJ with the settlement of space law disputes, and recalled that in 1993 a Environmental Law Chamber had been created, and that this had possibly precluded the establishment of a special Environmental Court.
- Finally, *Judge A.Koroma* of the International Court of Justice underlined the interest of the themes dealt with by the various papers. Regarding the creation of an "Outer Space Chamber", he argued that the ICJ would certainely examine the matter if the need for such a chamber arose. He reminded that the Court would consider the entire spectrum of international law, and not limit its considerations to space law.

## SESSION 3
## APPLICATIONS & IMPLEMENTATION OF THE OUTER SPACE TREATY

- *Prof. C.Q. Christol* (USA) found some useful suggestions in *Mr. B. Smith's* presentation on "Problems and Realities in Applying the Provisions of the Outer Space Treaty to Intellectual Property Issues", and wondered whether they might be worthy of consideration by UNISPACE III. He then asked whether Mr. Smith considered that Article VI of the Outer Space Treaty, providing for authorization and control, and violation of the substantive provisions of the Outer Space Treaty by TRW's patent had ever impeded science, to which the answer was "no". *Prof. K.H. Böckstiegel* (Germany) wondered whether the Outer Space Treaty, by presuming and even establishing the free use of outer space, had not already been violated as such by the United States' legislative actions, to which Mr. Smith answered with an emphatic "yes". *Dr. Doyle* finally pointed at the analogy - to some extent - of the patent to ITU's allocation of certain slots and orbits to states, which

was however an allocation occurring at the international level by an intergovernmental body with almost global membership.

- Regarding the paper "Mars 96 Planetary Protection Program and Implementations for Mars Environment Preservation", *Dr. L.I. Tennen* (USA) asked the author whether the mission involved life protection experiments on board, to which *Mr. Debus* answered "no", inter alia because the decontamination required resulted (hopefully!) in an environment impossible for sustaining any life.

- With regard to the paper by *Mr. Y. Hashimoto* on "The Legality of Military Observation from Outer Space", *Prof. G. Gal* (Hungary) generally agreed with the observation that military reconnaissance has been allowed, and pointed inter alia to the ABM Treaty in this respect. He then, however, asked to what extent such a bilateral treaty could legalize as such the military activities under consideration. Also, he wondered to what extent the provision by a third state of important data to one if the parties in an armed conflict could be considered legal or illegal. *Mr. Hashimoto* replied firstly that bilateral agreements, while as such of course not binding upon third states, could considerably contribute to the establishment of relevant customary law, particularly if it involved the two most important states from the perspective of global military power and any global treaty on the subject was absent. Secondly, he pointed out that the non-discrimination-requirement made one-sided provision of reconnaissance data in an armed conflict illegal.

- The paper by *Prof. A. Kerrest* (France) on "Launching Spacecraft from the Sea and the Outer Space Treaty: the Sea Launch Project" raised an interesting and heated discussion. *Mr. W. Wirin* (USA) proposed to have the slide showing the list of states involved in Sea Launched again on the overhead projector, and then to ask the audience to 'vote' off-hand, at each particular state, whether the involvement of that state in Sea Launch would suffice for qualifying it as a launching state for cases of damage arising as a consequence of Sea Launch operations. This was done, and if the ensuing 'vote' did one thing, it was confirming that amongst space lawyers little agreement exists so far on the precise scope of the term 'launching state' for liability purposes. *Prof. Christol* asked what the legal relevance of Long Beach being the 'home-port' of the Sea Launch venture would be, to which *Prof. Kerrest* answered that it would be the flag of ship and launch platform which would count under international law. Yet, the 'vote' just taken confirmed that nevertheless even this form of involvement was interpreted by some to make (in this case) the United States a 'launching state'.

- Commenting on the paper by *Prof. P.B. Larsen* (USA) on "Legal Issues in Augmentation of Global Navigation Satellite Systems (GNSS)", *Dr. E. Galloway* (USA) wondered whether the ITU (or another global institution similar to it) would not present the best option for arriving at a coherent international legal regime for these operations. *Prof. Larsen* agreed that ITU had some role to play, but considered the analogy with remote sensing as dealt with at the international level more adequate. Dr. Galloway reiterated, that one overarching international authority with the necessary expertise would be required to realize an internationally workable environment for future GNSS. In addition, *Mr. Kinnell* of INMARSAT pointed out that legal issues regarding either the use of EGNOS, or WAAS, or both, were already being discussed within INMARSAT amongst other fora. Finally, *Mr. F.G. von der Dunk* answered the question of Dr. Galloway in some more detail, by pointing out that within the multiple discussions being presently undertaken on the operational GNSS systems and the augmentation systems, as well as on future systems and a coherent global regime therefore, a prominent topic was that of establishing a separate global GNSS Agency which should guarantee a just and workable balance between the various interests involved.

## SESSION 4
## THE FUTURE APPLICATIONS OF THE OUTER SPACE TREATY

- *Prof. S. Gorove* (USA) asked whether the definition of (aero-) space-object (in particular with regard to the Aerospace plane) will remain an issue for discussion within the Legal Sub-Committee of UNCOPUOS. *Dr. Schrogl* answered that this topic, which had been put forward by the SU, mainly in view of specific questions regarding the Buran-project and the necessity to approach the landing site through the airspace of third states, has been discussed within the framework of the delimitation-item. Several delegations were of the opinion that no special passage right should be created for such aerospace-objects. Although the Buran project has been terminated, the topic is likely to remain under discussion, if only because in UNCOPUOS-practice the removal of topics is much more difficult than the addition of new topics. *Judge V. Vereshchetin* (ICJ/Russia) later stipulated that the original proposal did not only relate to the Buran-project, but to various other planned systems as well. Also, he added, the Buran project is not dead, it just does not exist anymore, and other projects are under way.

- *Prof. C. Christol* asked Dr. Perek's opinion on the issue of space objects which had become debris and the procedure which had to be followed to determine as such, and, what to do with these objects that were no longer space objects. *Dr. L. Perek* answered that fragments should be separated from objects. This however, poses no major problem. Much can be done through the use of tracking systems, as there are technical ways to determine whether one deals with a fragment or an entire object. The bigger problem is to determine which satellites have ceased to be active. In fact, this is a question to which only the owner knows the answer. This will have to be solved through means of the Registration Convention. Dr. Perek had noted the difference between his approach and the approach suggested by dr. Hoskova, which he attributed to different points of departure. He suggested they work together in order to try to reach a common position.

- *Mr White Jr.* asked Ms. Cramer whether materials to be found on the surface of the Moon were evenly distributed or concentrated in certain specific areas only, since this could be of relevance to the issue of property rights. *Ms. Cramer* answered that the most relevant material, Helium 3, is evenly distributed over the surface of the Moon.

- The last question was from *Mr F. Smith* (UK) who had noticed that the discussion on property rights mostly concerned the Moon, and he wondered what the situation was with respect to asteroids. *Ms. Cramer* replied that there has been mention of plans to claim passing asteroids with the prospect of their exploitation.

*Session Rapporteurs:*
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