

THE NEW GLOBAL GOVERNANCE DIALOGUE ON INTERNATIONAL COMMUNICATIONS AND OUTER SPACE

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Abstract¹

The international stage seems to be experiencing a slow implosion of its structures by means of forces that have developed from within, apparently beyond the control of traditional states and public organizations. The Internet could be a driving force behind this phenomenon, including its Outer Space dimension. Among its various impacts is the gradual appearance of non-state institutions that freely organize their own relationship with their members, on a worldwide basis. These new types of cross-border and cross-nation relationships have a direct impact on traditional members of the international stage: nation states and public international institutions. Taking a few of these non-governmental organizations as examples, this paper examines a few instances whereby quasi legally-binding decisions were taken by non-elected private bodies on matters that have an impact on

public life and may even impose their effects on public bodies, such as nation states and public international organizations. In other words, a new international legal environment is slowly shaping up in front of us in the field of international communications and Outer Space, tailored by public and private bodies.

Introduction

A new governance dialogue is slowly shaping international communications and their Outer Space dimension. The development of NGOs in almost every field of international affairs has become commonplace. This phenomenon came under public scrutiny in the 1980s. But it was not until the mid 1990s that it gained momentum, with them showing up in the communications field. NGOs developed in parallel with the deregulation trend that affected monopolies in North America in the early 1980s and in Western Europe in the mid- to late 1990s, especially in the telecommunications field. Both trends were then topped by the new concept of Global Information Society, first in the US, and immediately afterwards in the EU. These long-term development trends affected many communities in the world, particularly in the industrialized world. This entailed many consequences in terms of altering the regular

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exercise of government. This paper presents a few personal comments elaborated from various fields of thoughts, legal, financial and political. We will look first at the leveling impact this trend exercised on the various actors of the global governance dialogue, and then at the creation of de facto self-regulating bodies that appeared in order to perform standard regulatory-making functions, while traditional authorities are still in place.

I – New means of communication create a general leveling off of a multitude of actors on the international stage

A – A redistribution of roles

With the development of the Internet, governments, public organizations, private corporations and ordinary citizens are being brought to a new level of relationship, both political and legal. We could at first anticipate a loss of prestige by traditional authorities, and also a loss of power, but this may not necessarily happen with each participant, whether a public or private entity being in a position to satisfy its own needs.

Government and public bodies (national and international) are moving towards e-government, meaning more transparency in handling public affairs. In the wake of the US Administration that must be commended for the easy access policy it has been developing during the last three to five years, public administrations of many countries around the world have followed suit and developed their own e-government portals, though not all with the same success.²

Corporations have moved towards e-business with business exchange platforms, not only in their public and client relations but more generally with the globalization of their business relations. This is also a recent trend for which accounts are quite mitigated in the evaluation of the trend itself. But this trend militates in favour of globalization and the blurring of distinctions between traditional actors of the political and business stages.

Ordinary citizens have also moved towards a type of planetary self-expression and conscience, and tend to exercise a checks-and-balances type of political control over both government-elected officials and corporate self-designated office holders. Provided they have the capability to do so, ordinary citizens are raising themselves as a third party willing to play with established actors such as governments and private corporations. For example, we recently had corporate governance campaigners asking Amazon's directors to justify their re-election on the board of the online retailer.³ The election process that was put in place and at work in October 2000 with the At-Large-Membership elections is another illustration that ensures representation of all Internet-users and that, by way of consequence, also ensures the political legitimization of the Internet Corporation for Assigned Names and Numbers (ICANN). This could be the first-ever example of self-governance in an extended and non-political context, followed soon afterwards, in April 2001, by a Conference on the Internet governance topic organized by two private foundations in Berlin (Germany).⁴

² *World Internet Forum pulled*, Financial Times Information Technology online service, 13 November 2000. This conference was devoted to "e-government", but its organizers eventually canceled it because of a lack of interest.

³ *Amazon directors asked to justify places on the board*, Financial Times – Internet & E-commerce online section, 1 May 2001.

⁴ *Wer regiert das Internet?* Conference Announcement, TKR News, 24 January 2001. This conference was organized by the Bertelsmann and Friedrich Ebert Foundations.

B – Technology fuels this redefinition of roles

1) Specific functions may be attributed to space-based assets so that they may participate in the development of new services

Of crucial importance is the Internet backbone and international access to this backbone. Almost all major satellite operators have been working during the last two or three years on offering such services to their customers and prospects have never looked so good, with an expectation of rapid growth as a consequence of the expected appearance of Ka-band satellites around 2003.⁵ This presupposes that the satellite industry is able to co-operate with other types of infrastructures and possibly be viewed by them as being complementary.⁶ Satellites, then, can be seen as being an addition to terrestrial networks, especially to global fiber-optic networks. They will take advantage of the development of 3rd generation multimedia systems also called Universal Mobile Telecommunications Systems (UMTS), for which huge investments have already been expensed through the auctioning process of dedicated frequencies. They will offer a variety of services such as: information services, e-mail, Internet access, voice telephony, video telephony, video conferencing and file transfer. However, we must recall that these services require extremely large financial outlays and their investment pattern is quite different from standard services in that (i) they must be expensed all at once, and (ii)

⁵ According to Irwin Communications Inc., the market for space-based Internet content delivery is expected to grow from \$53 million in 2000 to \$2.48 billion in 2004, while total Internet delivery network market is forecasted to grow from \$264 million in 2000 to \$6.2 billion in 2004. *Study predicts Growth in Satellite Internet Business*, Space News, April 2, 2001, p. 2.

⁶ John T. Feneley, *Satellite Industry: A New Direction for the Internet Services*. IAF-99-M.5.04, 50th International Astronautical Congress, 4-8 Oct. 1999, Amsterdam, The Netherlands.

revenues will come much later, not in a gradual manner like in the case of terrestrial infrastructure.⁷

As to constellations of satellites proposing broadband services, there is strong pressure to rely on a set of systems envisioned for the coming years, in the wake of the recent commercial failure of several mobile communication satellite systems. Many constraints must be addressed so that they will succeed, such as their capacity to compete with terrestrial delivery systems, their aptitude to transform the non-GSO technical feasibility (proven operational by the failed LEOs) into a commercial success, and also pressures on the Ku-band of the standard GSO systems to move to Ka and even Q and V bands.⁸

These new communication means are expected to alleviate traditional development problems of societies, whether new or traditional. Economic development may certainly benefit from these new communication means, but negative effects may also be fostered by these new communication means. One only needs to think of the proliferation of network viruses, at a rate of at least a major one every month. Who are the prolific creators of those worms that corrupt our new communication means? Who are those pirates who are smart enough to sneak into our intimate exchanges with partners all around the world? The new

⁷ F. Mini, M. Spagnolo, G. Olivieri, *Satellite UMTS: a New Opportunity for Satellite Communications*. IAF-00-M.3.02. 51th International Astronautical Congress, 2-6 October. Rio de Janeiro (Brazil). Market projections for these new services are phenomenal, jumping from 426 million in 2000 to 1,730 million in 2010, for our whole planet. About the difficulties that round up the whole economic equation and the fact that the type of (big or small) satellite system does not account for the failure of past mobile phone satellite systems, see: P.A. Salin, *From Big Leo Satellite Ventures to Smaller Satellite Systems: Lessons to be Learnt in an Apparently Evanescent Market*, ISU 6th International Symposium, 21-23 May 2001, Strasbourg (France).

⁸ Michael Quigley, *Non-GSO Satellite Constellations for Broadband Communications*, IAF-00-M.4.04. 51th IAC. 2-6 October 2000, Rio de Janeiro (Brazil).

global communications dialogue, with its positive side also carries its share of pestilence and we, as public or private entities, must take care of that dimension, the co-habitation of the good and the evil.⁹

II – The regulatory function of these new communication means is ensured by sui-generis bodies that move towards network governance

A – Governments intend to adapt themselves to a totally new networking environment

Governments still maintain restrictions that seem to be outdated: for example, the various licensing regimes that hamper the development of pan-European satellite systems in the EU and the lack of technical protocols that would harmonize the use of satellite terminals, in spite of several EU directives that constrain Member States to effectively take such measures. The topic of the one-shop-licensing authority has been debated for the last several years in the EU, but we have not yet arrived at the finish line.¹⁰ As a consequence, according to Romain Bausch of SES Astra, “it would not be possible to start today a StarBand or a DirecWay type of system in Europe”. The EU Commissioner responsible for the Information Society program again publicly acknowledged his commitment to the removal of these regulatory hurdles, but we should not be in too much of a hurry to see it happen in the near future.

They also intend to take part in the fast deployment of new activities. Consider the un-welcomed proposal of the taxation of e-

activities, which scared the private parties that have developed by themselves the Internet galaxy and shared its benefits with a multitude of willing partners. They believe that such intervention of the taxation power of the State will hamper the development of new services. But one wonders how this same Internet network could have developed without the help and support of the State when it was in its infancy? Then, isn't the State right in showing up again in order to harvest whatever benefits it can reap from the development of systems it supported.

They may even delegate a few of their powers to new organizations that slowly substitute themselves in place of them. The WTO may be looked at as such an international organization, slowly substituting itself for traditional state authority and putting in place a governance structure of the international trading system. It then reinforces this “a-national” tendency that new networks have to blur the personal connection that individuals have with traditional societies. The governance that the WTO exercises stems from the fact that it exercises authority on the international stage without possessing state authority and without depending on an organizational council like at the United Nations. But the independence of mind that the WTO should display is sometimes criticized because of a perceived bias in favour of the interests of large corporations. At any rate we may say that the WTO stands half-way between the traditional states-controlled international organization and a new form of international organization that certainly derives its powers from its member states and acts with much freedom afterwards.

Another example helps us go further in this understanding of new relationship between public authorities and private bodies that

⁹ The latest edition of web worms is NIMDA: see: <http://symantec.com/> file under w32.Nimda.A@mm. It corrupts your e-mail as it happened to me recently!

¹⁰ Peter B. de Selding, *European Operators Decry Red Tape for Satellite Terminals*, Space News, July 16, 2001, p. 8.

enjoy a quasi-public authority in the new global governance dialogue. It comes from the Internet NGO galaxy. It is interesting to recall that in the highly debated issue of domain names, there is a close relationship between a state administration that legally authorizes a private company to exert monopoly rights on certain domain names.¹¹ And it is one of these same private governance-making bodies that denied a public international institution, the World Health Organization, the right to create its own special Internet address.¹²

B – The question of the auto-regulatory power and of the legitimacy of these new actors that behave like public authorities

The Napster.com story that we have all heard so much about recently caught the attention of experts, among them Professor Lucien Rapp who engineered a report to the Council of Europe about one year ago on what he calls the Napsterization of the European content industry.¹³ In its conclusions, the report mentions the “difficulty to maintain restrictive rules in an economy of exchange where the goods are immaterial”. It states further that “the effect of convergence are incompatible with the retention of specific applications for communications infrastructure and service ... Forms of protection based on a system of intellectual property ... are in fact fast becoming obstacles to the free flow of exchange ... in a context of unfettered capitalism.”

¹¹ *VeriSign keeps dot-com monopoly*. Totaltele online newsservice, 22 May 2001. The arrangement goes this way: VeriSign, a California-registered company, made a deal with ICANN to retain control on the “.com” web domain, with the formal approval of the US Department of Commerce. But it had to give up control of “.org”.

¹² *WHO urges new web address for vetted sites*. Financial Times Information Technology online service, 13 November 2000. ICANN chose seven new domain names out of 44, excluding the one proposed by the WHO. FT-IT, 19 November 2000.

¹³ Lucien Rapp, *The ‘napsterization’ of the European content industry – a scenario for 2005*, The journal of policy, regulation and strategy for telecommunications information and media, December 2000, pp. 551-572.

But can we be surprised that there is a panoply of legal instruments that are constantly being used with the express purpose to ascertaining private domination of a world that has apparently expanded to include the whole planet but has actually shrunk in terms of new opportunities, including the expulsion of one-time competitors. Are we not, almost all of us, using the same computer operating system, because competition has been killed? When one takes into consideration “the close connection that exists between privatization (of the space communications business) and militarization, which is completed by a connection between militarization and exacerbated commercial competition”,¹⁴ one may legitimately be worried to see the evolution of the “new global governance dialogue” and question whether there is a “dialogue” and what type of “dialogue” it is.

In a somewhat connected registry, the recent heinous terrorist attacks in New York City and Washington may have reminded us of the necessity to sustain traditional public authorities in functions that go far beyond what private bodies may undertake, such as territory security, armed forces support and, more generally, functions that are related to security concerns. This being said, we should not forget that this may contradict the recent trend to externalize what, in former times, were considered to be essential public functions, for example the transfer of government logistics functions to civilian systems operators, such as certain communications by satellites within the armed forces.

On top of these considerations, we believe a world authority in space-related affairs remains a necessity, be it totally public, or a

¹⁴ P. A. Salin, *Privatization and militarization in the space business environment*, Space Policy, vol. 17, February 2001, pp. 19-26.

mix of public and private interests. As far as international communications issues are concerned, there is a need for an international regulator. We have been supporting this proposal for some time already in a variety of publications and fully concur with Professor Lyall when he simply states the five main reasons that foster the creation of an international authority that would act beyond ITU's level: (i) the law of profit maximization is not suited to public service missions, (ii) private corporations tend to build up dominant positions in markets, (iii) States seek to secure the interests of their own nationals, (iv) there is insufficient separation between the technical supervision and facilitation of international telecommunications and the politics and economics involved, and (v) delegations at ITU conferences may devote their time and efforts to a part of the agenda of a conference in such a way that may distort the whole conference. In the end, we must make up our minds as to the best way to achieve the provision of global telecommunications by satellite.

Even with a transcendent approach, we must encourage the thinking process that UNESCO has started on the topic of space policy ethics.¹⁵ While Outer Space certainly entails many benefits for the human race, there are also many risks that may reduce the impact of those many benefits, such as the use of nuclear energy sources, unbridled electronic surveillance, encroachments on individual freedom and on cultural diversity and, not least, the acceptability of messages transmitted via the NTIC. This report is a remarkable and, possibly first ever, in-depth study of non-technical issues related to the development of outer space activity with an approach using a moral principle for action.

¹⁵ Alain Pompidou, *The Ethics of Space Policy*, Report published by the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), July 2000.

Conclusion:

It has become trivial to say that we are at the doorstep of a new society, a new era, etc. The truth is that even if the start of the new millennium has encouraged everybody to fantasize about how special it is, we must observe that not much has changed. While new actors are at play, traditional ones still exist and clearly intend to shape society as they are used to doing, with a ferociously protective look towards their own interests. It is early to typify the developments we see in our everyday lives and we may need to be more deeply involved in this new era to clearly take notice of the features of that evolution. Unfortunately for those who recently were deeply hurt and scarified in their own flesh, these terrible events have reminded us that we must persevere in conducting the global governance dialogue between peoples, nations and cultures. Otherwise, we will destroy ourselves. Outer Space is our last frontier, not a Far West, neither a much fantasized-about kind of Eldorado. It does not belong to any nation, whatever its size, power or wealth, nor to anybody in a particular tenure. Huge financial investments must be made for the sake of humanity and benefits must be shared by all, not only by a few shareowners, simply because there is nothing to own in Outer Space. Only in that respect will future generations be able to testify that with this new millennium, an authentic "new governance dialogue" really took place and changed the face of the Earth.