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NON-LAWYERS' PERSPECTIVES ON THE MANFRED LACHS SPACE LAW MOOT COURT COMPETITION: RECOMMENDATIONS TO PROMOTE SPACE LAW EDUCATION

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ABSTRACT

The International Space University (ISU), with its 3I approach of international, interdisciplinary and intercultural education in the field of space, brings together students from all parts of the globe and from backgrounds as diverse as law, engineering, medicine and art. Similarly, the Manfred Lachs Space Law Moot Court Competition also brings together students from all over the world in the pursuit of space education. However, participants of the Lachs Moot are traditionally only students of international law. This paper describes the experience of a non-traditional team, composed of an astrophysicist, aerospace engineer and analytical chemist, representing ISU in the 2009 Lachs Moot. This paper recounts their journey to provide a means for non-lawyers to gain insight into legal thinking and further their relations with professional lawyers. It concludes with recommendations and suggestions for the organizers of the Lachs Moot, which seek to provide food for thought for the future of legal education and outreach.

INTRODUCTION

Inspiring and educating the next generation is a ceaseless challenge for all disciplines. This is especially true for the field of international space law. The United Nations (UN) has not produced any legally binding documents in this field since it established the five UN outer space treaties in the 1960s and 1970s. Moreover, there have been limited opportunities to apply these treaties in practice since their creation. This lack of activity makes it difficult to attract new minds into the field of international space law.

However, this trend of dormancy is likely to be reversed over the coming decades as more actors, both state and non-state, enter into the space arena. The international space law community established the Manfred Lachs Space Law Moot Court Competition (hereinafter the Competition) in order to inspire the next generation of space lawyers, as well as to prepare them for the challenges they will likely face in their future careers.

The Competition

The Competition is an annual event that takes place under the auspices of the International Institute of Space Law (IISL). Since its establishment in 1992, the Competition has

provided international law students with the opportunity to explore the niche of space law while practicing their debating skills in a formalized context. The purpose of the Competition is described in Article 1 of its Official Rules*:

The aims of the Manfred Lachs Space Law Moot Court Competition are to promote the interest in, involvement in and knowledge of space law among students by providing a fair and competitive environment for the exchange of thoughts and the deepening of understanding of space law.

Each year, space law experts compose a fictional space law case (hereinafter the Problem) and release it on the Competition's website.¹ Teams are invited to register for one of the three preliminary Regional Rounds, held in the Asia-Pacific, North America and Europe. Teams may be composed of two to three students and one coach.

The Written Memorials are the first phase of the Regional Rounds; during this phase, each team must study the Problem and submit Written Memorials, also known as briefs, for the Applicant and the Respondent.

The Oral Arguments are the second phase of the Regional Rounds; during this phase, teams within each region meet to defend their Written Memorials before a panel of judges. The winning team from each region advances to the World Finals, which are held in conjunction with the IISL Colloquium on the Law of Outer Space at the International Astronautical Congress (IAC).

Table 1 shows the timeline for the European Regional Rounds of the 2009 Competition, a typical representation of most years.

Table 1: European Regional Rounds Timeline

DATES	EVENT
Oct. 2009	Problem released on Competition's website
30 Jan. 2009	Registration deadline
13 Feb. 2009	Requests for clarifications to the Problem deadline
17 March 2009	Submission of Written Memorials
27-28 April 2009	European Regional Round (Athens, Greece)
12-16 Oct. 2009	World Finals at IAC (Daejeon, South Korea)

The International Space University Team

Participants of the Competition are almost exclusively students in international law. Non-law students are, however, allowed to participate in the Competition under Article 3 of its Official Rules:

The Competition is open to teams composed of students enrolled in Law Schools, Law Faculties or Law Departments. In addition, the Competition is open to teams composed of students enrolled in schools other than law where it can be demonstrated in writing...that space law or public international law forms a part of the teaching programme.

The International Space University (ISU) curriculum encompasses all aspects of the space sector, including space law. It provides an introduction to the general principles of outer space and telecommunications law, as well as the more commercial issues involved with space contracts, ITAR regulations, and intellectual property. Consequently, ISU students may participate in the Competition according to Article 3 of the Competition's Official Rules.

ISU does not qualify as formal legal training and the ISU team did not receive legal training prior to attending ISU; the team was composed of an astrophysicist (Megan Ansdell), aerospace engineer (Curtis Iwata) and analytical chemist (Axel Bergman). The team's only link to formal legal education was its coach (Timiebi Aganaba), who graduated from law school in 2008. Nevertheless, months of hard work culminated in

* International Institute of Space Law, *Manfred Lachs Space Law Moot Court Competition: Official Rules*, November 2005, <http://www.spacemoot.org/rules.htm>.

¹ International Institute of Space Law, *Manfred Lachs Space Law Moot Court Competition*, www.spacemoot.org.

a positive experience for the ISU team members, who reached the finals of the European Regional Rounds and was beaten in the end by seasoned mooting team from Glasgow, Scotland.

The 2009 Problem

The 2009 Problem, entitled *Case concerning the Deployment and Use of Force in Low Earth Orbit (Telesto v Fornjot)*, was remarkably complex. As the title suggests, the case focused mostly on the legality of space militarization and weaponization, but also touched on other issues such as the rescue and return of astronauts, the delimitation of outer space and espionage. The full Problem can be found on the Competition's website.¹¹

Paper Outline and Purpose

This paper describes the experiences of the ISU team members during the 2009 European Regional Rounds, with the aim of providing non-lawyers' perspectives of the Competition that can be used as a guide for future participants with limited legal backgrounds. The paper concludes with some recommendations for the organizers of the Competition, which are meant to advance legal education and outreach and enrich the mooting experience for students, coaches and judges alike.

THE WRITTEN MEMORIALS

Each team must submit Written Memorials, also known as briefs, for both the Applicant and the Respondent. They must be addressed to the International Court of Justice (ICJ) and must not identify the team, its members or the institution they represent. Only the students may contribute to the research, drafting and editing of the Written Memorials; the coach may only guide students in their experience and cannot contribute directly.

Preparation

The ISU team began working on the Written Memorials by reading and discussing the Problem together. As the team began their research, it became clear that they would not be

able to compose the Written Memorials on top of their existing academic obligations to ISU; the Written Memorials had to be completed during Module 3 of the ISU program, which is the busiest two months of the ISU academic year. During this time, ISU students are expected to attend roughly twenty hours of lectures per week, complete three group assignments, sit eight hours of examinations, and complete an independent research report. Consequently, the team decided that one of the ISU team members would take a leadership role by making the Written Memorials the topic of his or her independent research report. Due to her particular interest in space law, Ms. Ansdell was elected for this task.

Writing

Although the ISU Masters program serves as an introduction to space law, it does not qualify as formal legal training. ISU lectures on space law explain the five UN outer space treaties, the International Telecommunications Union (ITU) and other legal issues concerning space commerce such as intellectual property rights. Students also participate in workshops where short, fictional cases are given to the class as a framework for discussion on the applicability of the space laws learned in the lectures. These workshops allow ISU students to gain insight into legal thinking and how to structure legal arguments.

As no lectures at ISU are dedicated to the broader subject of international law, the ISU team had to perform considerable background research in areas of public international law, such as air law and the law of armed conflict. The ISU library was an indispensable resource while composing the Written Memorials; it houses works by renowned scholars of public international law and space law, such as those by Ian Brownlie and Bin Cheng. In particular, the most useful resources were the IISL Proceedings of the Colloquia on the Law of Outer Space, which are published annually and include the winning Written Memorials of that year's Competition. Analyzing the winning Written Memorials of previous Competitions was the most beneficial technique for gaining insight into legal writing and argumentation. For example, they illustrated which sources of law carried more weight than others in space law arguments. However, it must be noted that although the IISL Proceedings are valuable resources for first-time space law mooters, they are difficult to find in

¹¹ International Institute of Space Law, *Case concerning the Deployment and Use of Force in Low Earth Orbit (Fornjot v Telesto)*, 2009 Manfred Lachs Space Law Moot Court Competition, www.spacemoot.org.

public libraries and are too expensive to buy individually.

Ms. Ansdell researched and wrote the Written Memorials as she worked through the Problem, addressing each argument as it came up. Preferably, each argument would have been discussed and debated amongst the teammates. This process of group deliberation would have resulted in stronger arguments, as well as more opportunities for the team to develop its legal skills. However, this was not possible due to time constraints and the intense ISU workload during this time.

THE ORAL ARGUMENTS

Teams meet at their respective Regional Rounds to orally defend their Written Memorials to a panel of judges. These Oral Arguments must be addressed to the International Court of Justice (ICJ) and last no more than 45 minutes for each side. Each team may divide this time as desired between presentation, rebuttal or surrebuttal, and questions from the bench.

Preparation

The ISU team split their Oral Arguments into four parts; the Applicant and the Respondent were each split into Agent and Co-Agent parts. Because Ms. Ansdell wrote the Written Memorials and had the most comprehension of the team's arguments, she assumed the role of Agent for both the Applicant and the Respondent. Meanwhile, Mr. Iwata took the role of Co-Agent for Respondent and Mr. Bergman took the role of Co-Agent for the Applicant. Ms. Ansdell was also responsible for the rebuttal and surrebuttal for both the Applicant and the Respondent.

This strategy was efficient because it allowed the team members to focus on the specific areas of law pertinent to their submissions. However, this approach also had several drawbacks. Firstly, it undermined the educational objective of the Competition, which is to expose students to the breadth of space law while also teaching them the complexity and depth of each issue. By specializing, this comprehensiveness is lost. Secondly, there are unforeseen events that can prevent team members from attending the Oral Arguments, such as unexpected sickness or injury. This was the case for two teams in the

2009 European Regional Rounds, which exemplified the importance of each team member being familiar with all of the team's arguments. Thirdly, the judges may ask questions pertaining to any part of the case, so participants must be prepared to answer these questions regardless of whether or not he or she was responsible for speaking about it. Indeed, the presiding judge, professor Elisabeth Back Impallomeni, advised against allocating the arguments in this way during a post-Competition conversation.

Becoming accustomed to court etiquette proved to be more difficult than expected for the ISU team; addressing the Court as "Your Excellencies" and starting sentences with phrases such as "If it pleases the court" had to be practiced in order to sound natural. Videos of various international moot competitions, such as those found on www.YouTube.com, were useful guides when preparing for the Oral Arguments. The video of the 2008 Lachs Moot World Finals on the IISL website[§] was the best resource.

The ISU Resident Faculty does not include any lawyers. Due to this limitation in human resources, the ISU team had only one practice session in front of an audience other than their coach. This audience was composed of fellow students, faculty members and visiting staff. Although this audience provided some helpful comments, practice in front of experienced space lawyers would have been valuable.

Oral Competition

During the Oral Arguments, the ISU team members benefited from their extensive experience in public speaking, which is an integral part of the ISU curriculum. Students give many presentations during their time at ISU; at the end of each presentation, the ISU Resident Faculty poses penetrating questions relating to their professional backgrounds, which cover technical, business, economic and legal sectors. These experiences provided the ISU team with the ability to maintain confidence and

[§] International Institute of Space Law, *Case Concerning the Continued Provision of Lifeline Satellite Services to Countries in the Face of Satellite Operator Insolvency (Concordia & Landia v Usurpia)*, 2008 Manfred Lachs Space Law Moot Court Competition, <http://www.iislweb.org/html/2008moot.html>.

composure while answering questions from the bench during the Oral Arguments. Indeed, the other teams often commented on the ability of the ISU team to maintain a calm appearance. This compensated for the team's lack of moot experience and legal training.

Despite this apparent calm under pressure, the ISU team's style was scripted and lacked the natural flow of ideas that seemed to come instinctively from more seasoned mooters, especially the aspiring barristers. Although this was simply a variation in presentation style, it was noticeably different from most of the other teams. The ISU team was particularly impressed with a talented competitor from Italy who, despite being a non-native English speaker, was able to present his arguments in a thought-provoking way and to respond to judges' questions without appearing rushed. It was no surprise when he was named "Best Orator" of the 2009 European Regional Round.

The ISU team was unaware of several rules of the Court due to their lack of formal legal training. For example, there was a situation in the Problem where a space-based warning system mistook a manned spacecraft as an ICBM and alerted ground-based missiles that destroyed it upon reentry, killing everyone onboard. The ISU team argued that the design of the space-based warning system was grossly negligent. This argument was supported by an interview with a technical expert in the field of space-based tracking and surveillance systems at the Northrop Grumman Corporation, who attested that such a system should be able to tell the difference between a manned spacecraft and an ICBM. Due to the ISU team's scientific background, it seemed reasonable to base an argument off of technical facts. However, what the ISU team did not realize was that this could be labeled as "hearsay" and rejected by the Court.

It would also have been helpful to review the Written Memorials and the Oral Arguments with an expert of international law. There are implicit knowledge and nuances shared among practitioners, which cannot be gleaned from written text. Not knowing these finer details proved to be one of the weaknesses of the ISU team. For example, the ISU team used the *Caroline* case<sup>¹ to justify the legality of

preemptive self-defense because it is commonly quoted in the literature. However, when the case was used during the Oral Arguments, the team quickly discovered that it is actually very controversial and has little legal weight in the eyes of most judges.

RECOMMENDATIONS

Enhancing the Educational Experience

The Lachs Moot is an effective educational tool. However, the ISU team felt that there were several educational opportunities that were missed, but which can be gained easily with some minor changes in logistics. For instance, Article 6 of the Official Rules of the Competition is dedicated to explaining how the Written Memorials are scored. It explains in detail about how the Board of Review is established, who is allowed to be on it, and how its members score the Written Memorials. Furthermore, Paragraph 3 of Article 6 of the Official Rules states that scores must be kept on "official scoring sheets". However, participants of the Competition never get to see their marked memorials or even a final score. Considering the amount of time spent preparing for the Competition, the participants would benefit greatly from the judges' feedback. It is recommended that scored Written Memorials are returned to the teams immediately after the Oral Arguments. The promptness of their return is important so that the case is still fresh in the participants' minds. Also, any comments on the Oral Arguments, or a short debriefing with each team, is recommended to be given by one or more of the judges.

The Competition brings together a panel of judges composed of the most veteran experts in space law. This is a great opportunity to transfer valuable knowledge between generations. One suggestion is to organize a short de-briefing after the final round of the Regional Rounds where students and judges can discuss the Problem. A discussion on the history, current status and future evolution of space law would also allow students to gain insight into the various topics concerning the leaders in space law, some of whom have a unique historical perspective as they have aided in the development of the field since its beginnings in the 1960s and 1970s. This ability to converse with those who have been around since the beginning is a unique

<sup>¹ Caroline Incident, 19 B.F.S.P. 1129, 1128.

characteristic of space law and should not be taken for granted; soon it will not be possible to connect the creators of space law with its next generation.

Finally, proper improvements can only be made with feedback from the participants. Organizers should conduct surveys at the end of the Regional Rounds to check if the students gained the education and inspiration that the Competition strives to impart on the next generation.

Technical Accuracy

One of the aims of the Competitions is to train future space lawyers by presenting them with problems they may encounter in their future professional careers. However, the ISU team found that some aspects of the Problem were physically impossible. For instance, in the 2009 Problem, space debris from an explosion of a manned reusable launch vehicle called the *Janus* destroys two global positioning and navigation satellites.** The probability of this happening is near zero because the *Janus* was destroyed at 100 km altitude but global positioning and navigation satellites orbit the Earth at altitudes of over 20,000 km and at speeds of roughly 14,000 km/hr. This makes it highly improbable that debris from the *Janus* struck two global positioning and navigation satellites the same day it was destroyed. It is recommended that a technical expert check the Problem to ensure all events are physically possible and probable.

Enforcing the Rules

Participants of the Competition are not allowed to divulge the institution that they represent. From the point of view of the ISU team, this is an important rule; knowing that the ISU team had no formal legal training could have been a major advantage for other teams as this information could have been easily be used against the ISU team during the Oral Arguments, especially during rebuttal and surrebuttal.

Despite this rule, one of the first questions asked by many teams at the European Regional Rounds was “what law school are you from?” This was a

hard question to avoid when it was continually brought up in conversation. It is therefore recommended that the judges and organizers of the Competition reiterate at the beginning of the Regional Rounds that it is inappropriate for teams to reveal, or ask others to reveal, the institution that they represent.

CONCLUSIONS

The ISU team members thoroughly enjoyed their first moot experience. The team was impressed by the caliber of both the competitors and the judges in the European Regional Rounds. It seemed that all participants found the experience enriching and valuable regardless of their future career paths.

However, students must be willing to allocate the proper amount of time to prepare for the Competition. This is especially true for non-law students because they begin with a disadvantage in terms of basic legal skills, contacts and general knowledge. That being said, the ISU team proved that success is possible despite these disadvantages and that the Lachs Moot is an effective tool for legal outreach and education because it can be used to educate and inspire both law and non-law students. For instance, it convinced Ms. Ansdell to pursue a career in space law and policy; she is currently attending the Space Policy Institute at the George Washington University in Washington, DC.

The success of the ISU team also signifies the fulfillment of ISU’s educational goals. ISU was created with the mission of providing its students with a comprehensive knowledge of the space sector, as well as a skill set to help them tackle any challenges they may experience in the future as members of the space community. As was illustrated in this paper, the ISU experience granted the ISU team with the skills and knowledge necessary for them to succeed in the Lachs Moot.

** International Institute of Space law, *Case concerning the Deployment and Use of Force in Low Earth Orbit (Fornjot v Telesto)*, paragraph 20, 2009 Manfred Lachs Space Law Moot Court Competition, www.spacemoot.org.