IS I.C.A.O. THE MODEL FOR AN INTERNATIONAL SPACE AGENCY ?

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Abstract

A question is raised as to whether the International Civil Aviation Organisation could be the model for a future Space Agency, and its structure and functions outlined. The need for a Space Agency is examined and the conclusion reached that this is a matter for the United Nations to determine, bearing in mind the existing legal treaties and international space-based organisations, and the extra costs of such a body, but that if such an Agency is considered to be desirable, it should be a new organisation, incorporating the U.N. Registry and certain functions of other international bodies such as ITU, INMARSAT, etc and not one adapted from ICAO.

Introduction

Just over 50 years ago, the International Civil Aviation Organisation was created by the Chicago Convention of 1944 as the leading world body for regulating civil aviation after the upheaval of the Second World War. How is it organised, and what does it achieve? The answers to these questions may help us to see whether it has any lessons for the international control of outer space.

It is true that much has already been achieved in space law since the early days of 1958 and 1959, when the Legal Committee on the Peaceful Uses of Outer Space first sat and reported to the U.N. General Assembly. We have a useful basic treaty, enacted in 1967, and several adjunct treaties which provide a framework for international co-operation and legal resort, although none provide for a central co-ordinating or regulating body. Moreover, technology is moving on and we still only have declarations of principles relating to direct broadcasting, remote sensing and the use of nuclear power sources in space.

Because we have not returned to the Moon in 25 years, and have not yet aimed to go to Mars, it is perhaps tempting to imagine that space science and usage has slowed down, but this is not the case, although in recent years it has been confined to less spectacular projects. Considerable activity is evident today, particularly in the field of communications and satellite services, including leasing and insurance, and launches by or on behalf of individual states, and since the range is global, any regulatory system must necessarily extend beyond national or regional organisations such as NASA and ESA. Do we need an agency to oversee all these activities?

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The Organisation

The International Civil Aviation Organisation (ICAO) was formed by the International Civil Aviation Convention, signed on the 7th December 1944 at Chicago to consist of an Assembly of all contracting states meeting annually (later amended to not less than once in 3 years), through their representatives and a permanent Council of 21 contracting states, increased in 1990 to 36, elected by the Assembly for three years, with adequate representation ensured for those of chief importance in air transport, and those making the largest contribution to facilities. A President is elected for 3 years, and decisions of the Council require a majority of the members. The powers and duties of the Assembly, apart from the usual formalities, include taking appropriate action on reports of the Council and delegating to the Council the powers and authority necessary to carry out the duties of the organisation.[1]

Under Article 44 of the Convention, the purpose of the organisation is described as being to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to, among other things, insure the safe and orderly growth of international civil aviation throughout the world. The principal duties of the Council are to carry out the directions of the Assembly, establish an Air Navigation Commission to advise on technical matters, request, collect and publish information on air navigation and operations, report infractions of the Convention to the Assembly and adopt international standards and recommended practices. In addition, the Council may conduct research and study into all aspects of air navigation and transport, and investigate any situation representing an obstacle to these aims.[2]

The Council has an annual budget voted by the Assembly, and the organisation may enter into arrangements within its jurisdiction with any international organisation set up to preserve peace. ICAO is, in fact, a Specialised Agency of the United Nations, based in Montreal, Canada, which came into being on the 4th April 1947, and has a judicial personality. Certain powers are given to the Council to consult in cases of inadequate airport standards, or even to take over and maintain such an airport at the request of a contracting state. The adoption of international standards and recommended practices is achieved by means of Annexes to the Chicago Convention, to which states undertake to adhere to the best of their ability.[3]

An Article enacted in 1980 provides that a state which is debarred from U.N. membership shall cease to be a member of ICAO.[4] Finally, in the case of disputes which cannot be settled by negotiation, the matter shall be settled by the Council, with an appeal to the International Court of Justice or an arbitral Tribunal in appropriate cases, or in default, to a single Arbitrator.[5]

Space Needs

Is such an organisation adaptable or relevant to spaceflight and the various space treaties?

Fewer states are involved in space activities, although their number is growing year by year. However, it is

certainly true that all states are becoming more interdependent, both economically and technologically. The world has shrunk, and a single function international body makes more sense than it did, even at the beginning of spaceflight in 1957. One of the advantages of an international space agency would be not so much to iron out economic differences between states, which would be impractical if not impossible, but to deal even-handedly with all states, and administer its services and regulations without fear or favour towards any one country.

There is a view among developing countries that Article 1 of the 1967 Treaty (which requires that the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries irrespective of their degree of economic or scientific development, and shall be the province of all mankind) is not only an appeal for international co-operation in space activities, but also implies an obligation to do so, and that this obligation has not so far been carried out.[6] Similarly, the Rapporteur of the Space Law Committee at the ILA Conference in Cairo in 1992 expressed the view that international co-operation in space is not merely an aspiration or ideal, but rather a legal obligation of a general nature. Needless to say, this strict interpretation does not enjoy the support of the United States and other developed countries so far as equal access or the establishment of a new legal regime are concerned, judging from the attitudes expressed in the full U.N. Committee on the Peaceful Uses of Outer Space during the discussions in 1992/3 on access to the benefits of space exploration, following discussion of this topic in the Legal Sub-Committee.[7]

Progress has been made in the last two years, but it remains to be seen if this is enough to consolidate support for a formal Space Agency with the necessary compulsions that its regulations must imply, especially at a time of increasing commercialisation in space activities.

The continuance of the Space Agency Forum following its formation in 1992 is a hopeful indicator of future co-operation, which has been supported by the Secretary-General of the U.N.[8] The General Assembly approval of a report in 1982 recommending the creation of a satellite monitoring agency originally suggested by France is a further indication that a centralisation of authority in space matters is likely to receive the backing of many, if not all, spacefaring countries. France has, incidentally, also called for the establishment of a launch notification centre, a task which would fall well within the competence of a projected space agency, but which falls outside the work of ICAO in relation to aircraft operations. It would also not be reasonable to expect ICAO in its present form to deal with such a contentious topic, for example, as space debris and its removal.

ICAO remains a body specialised in civil aviation, and has adopted a cautious approach over the years in considering any extension of its powers to include space activities. Spaceflight has developed independently of civil aviation, and so far no conflict has arisen between the two jurisdictions. It seems desirable that this separation should continue, and adaptation of ICAO and its constitution would not seem to be the best option.

The Space Agency

International co-operation at this level must extend beyond the mere co-operation of states in a single venture, such as the Agreement between the United States, ESA, Japan and Canada signed in 1988 to build a manned space station, although that Agreement does not seek to create a central organisation for the purpose.[9] However, such an organisation is envisaged, for the states involved, in the Recommendations of the First Asia Pacific Conference on Multilateral Co-operation in Space Technology and Applications, Bangkok, Thailand, adopted on 18th January 1994.[10] If an international space authority is thought to be desirable, it should be a new body which will incorporate the existing U.N. Registry established under the 1975 Registration Convention, Article III, and take over certain functions of other international bodies connected with space, including perhaps the allocation of orbits and radio frequencies. It should provide a focal centre for world space co-operation and facilitate the making of universal rules covering safety and good practice in space activities, which would apply equally to non-governmental bodies as required by Article VI of the 1967 Outer Space Treaty. In this respect, it would have a wider function that the individual organisations such as INMARSAT, EUTELSAT, ITU, etc. If a similar provision to that in Article 65 of the Chicago Convention were inserted, the new Agency could enter into agreements with other international bodies as may facilitate the work of the Agency, and thus widen its scope.

By combining certain functions of other space-related organisations, involving common services, particularly administration and some communications, it should be possible to reduce some of the costs which would otherwise arise in the creation of a new Agency. Its funding provision would have to be carefully considered, since the non-payment of dues to the United Nations is an ominous foretaste of possible default over time on the part of some signatory states, especially those out of sympathy with some of the aims or acts of the Agency. A provision in the Chicago Convention for suspension of the voting rights of any member which is in default of its financial obligations to the organisation has been used on a number of occasions.[11]

Conclusion

Any new body must command acceptance from the international community, and the need for it must be clearly identified, if not now then in years to come, but the ending of the Cold War and the recent US-Russian co-operation in the Mir-Shuttle missions provide one hopeful sign.

The extent of law-making and law enforcement powers of any Agency will have to be determined by the parties to any treaty setting up such an Agency, but it should not aim to be passive in all its functions, but actively promote the best interests of states engaged in the peaceful exploration of space, intervening where necessary to police infringements of

space law and its own regulations, with powers to do so, vested in a formal Council and Secretariat. This regime, if achieved, would contrast with ICAO, whose powers to influence states to comply with its recommendations are much more limited.

It will be for the U.N. to decide whether a Space Agency can better serve the interests of the world space community. bearing in mind the extra cost, than the present fragmented, but largely successful, structure of treaties and international organisations. However, it is important for lawyers to keep up with technology, if not to keep ahead of it. Warren Burger, the former Chief Justice of the United States, once remarked that law had not kept abreast of science. It seems desirable that we, in the still new field of space law, should take note, and seek to improve on that perception.

References

1. Convention on International Civil Aviation, Chicago, 1944, Arts 48-52.
2. Ibid. Arts 54 and 55.
3. Ibid. Art 37.
4. Ibid. Art 93 bis.
5. Ibid. Arts 84 and 85.
6. See on this, N.Jasentuliyana, Ensuring equal access to the benefits of space technologies for all countries, Space Policy, Vol 10, Number 1, February 1994 (Butterworth-Heinemann), page 9.
7. Ibid. Page 14.
8. Boutros Boutros-Ghali, International Co-operation in Space Activities for Enhancing Security in the post-Cold War Era, Report of the Secretary-General. A/48/221, page 16.
9. Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Co-operation in the detailed design, development, operation and utilisation of the permanently manned civil space station. (DIIIf) signed in Washington on 29th September 1988.
10. He Qizhi, Policy and Legal Implications of Asia-Pacific Space Co-operation, Air and Space Law, Vol XIX, Number 4/5, September 1994 p. 207 and Annexe at p. 210.
11. Chicago Convention, 1944, Art 62.