REPORT OF THE DISCUSSIONS HELD AFTER THE SESSIONS OF THE 38TH COLLOQUIUM ON THE LAW OF OUTER SPACE

Discussions on all colloquium topics were held after the last session, and concerned the following issues:

Space Debris

Much of the discussions focussed on ILA Draft instrument on space debris. Concerning the definition of "space debris", Amb. Finch considered that "non-functional" is not appropriate because that could cover the back-up system of an operating satellite, which is certainly not debris. Instead, he proposed the use of the term "permanently non-functional". Dr. Perek agreed that the term "non-functional" in the Draft needs to be defined. He added that the term "abandoned satellites" is also inappropriate, because parts of those may still be used for other purposes, and suggested use of the word "useless". Mr von der Dunk held that it all depends on how one interprets the word "function", and that as long as an object has some sort of "function" it should obviously not be defined as debris. Prof. Wassenbergh proposed the term "non-operable". Dr Almond suggested to stick with the term "non-functional" in the Draft, which could then be elaborated in a separate Statement. Dr Perek welcomed any further comments and requested people to send suggestions to him in writing.
There was also some discussion as to the definition and content of the concept of "damage" caused by debris, and the absence of absolute liability for damage in the Draft, and Ms Gorove informed the attendants that the ILC has also discussed this problem and that its considerations could complement the discussions within the ILA. Also, the ICJ had created a Chamber for international environmental law in 1993, which could be interesting in terms of dispute settlement. Prof. Böckstiegel said that the ILA draft does contain a definition of "damage", and that the Draft addresses responsibility and liability in two different articles, like the space treaties. There is indeed no explicit provision for absolute liability. He stated that without any liability provision, there would be no motivation for States to sign the instrument. It was also noted that the burden of responsibility and liability should not only lie on States that launch or procure the launching, but must be shared with the owners of satellites, transponders leasers, and other subjects which directly benefit from artificial satellites. Amb. Finch observed that our attitude towards towards liability might have to evolve to reflect the current practical situation and he would be an advocate for absolute liability.
Finally, Dr Perek raised the important issue of abandonment, which had been addressed in the paper by L. Tennen and P. Sterns and in his own paper, and which in his view needs to be considered by lawyers in the near future. Prof. Böckstiegel commented that this issue had indeed not been addressed by the draft because it is a very complicated matter - both technically and legally.

Private commercial space activities

There was a lively debate on the question of private commercial space activities. Prof. Wassenbergh had proposed that (limited) liability should be placed with the operator of private commercial space transportation activities (i.e. not the state), while the state would be internationally responsible, and Prof. Lyall commented that primary liability should remain with the State, because it alone could bear the financial burden. If such liability were placed with the companies, they would all go bankrupt and escape liability... The UK Space Act tries to solve this issue by requesting satisfactory insurance before a licence is issued. So, internationally, the UK is liable, but, nationally, it will be able to get its money back via the insurance bought by the company. Dr Andem held the view that space law should remain in the domain of public international law, but Prof. Wassenbergh disagreed and insisted that private space law is needed. He also held that the current development of differing national laws is unsatisfactory, and that the introduction of limited liability, with those limits to be supplemented by the government in case of a calamity, is an absloute prerequisite for the developent of

private commercial space activities for the benefit of all.

Standards and Recommended Practices

Concerning Dr Jasentuliyana's proposal to introduce Standards and Recommended Practices as a flexible new way of space law making, Prof. Böckstiegel agreed that such "soft law", would be a suitable way to legislate rapidly changing technological developments, taking into account the obvious difficulties in reaching agreement on a new Convention to regulate specific aspects of space activities. Even though, he held that we should not stop trying to achieve new conventions. Prof. Wassenbergh, however, considered that the non-enforcement of ICAO standards is a problem and that such a problem must be avoided in the area of space activities. Dr. Jasentuliyana was confident that states would voluntarily act to comply with such measures.

International Space Agency

Dr Horsford insisted that his intention in presenting his paper was not to abolish the UNCOPUOS, but to raise the question of the need for another space agency. Prof.Rao was of the opinion that it was not the right time to establish an international space agency, and he did not see what its mandate should be.

Dr. E. Galloway pointed out that the question of establishing an international space agency was considered by the United Nations Ad Hoc Committee of the Peaceful uses of Outer Space at the very beginning of discussions on how to organize and manage international cooperation for outer space. The Ad Hoc Committee concluded in 1959 that an outer space agency "is not yet needed" but rather there was urgent need for coordination of existing functional institutions and resources; their jurisdictions could be expanded to take advantage of space technology in improving their functions. It was evident that immediate action was required by the ITU to allocate radio frequencies to space vehicles. It would not be realistic to dismantle major functions such as communications and meteorology, already operating effectively, and in even more areas than outer space, in order to establish a world agency with all that implied in terms of problems arising from funding, personnel, political and technical factors. Thus the pattern of international cooperation by coordinating space functions was identified, set in motion, and followed ever since as space functions expanded in many governmental and non governmental and private sector fields. We have developed a World Space System composed of a variety of institutions organized along functional lines, and these institutions have developed methods of coordination wherever necessary, so we must conclude there is no need for a super agency imposed above this System.

In concluding the Colloquium, IISL President Dr. N. Jasentuliyana mentioned some of the main issues that had come up during the Colloquium and that would require further consideration by the Institute:

- abandonment of space objects;
- defining the term "non-functional" in separate statements attached to the debris convention
- responsibility of states / liability of operators as lex ferenda;
- GPS and the possible involvement of ICAO in its regulation
- the need for the establishment of an international space agency
- successful introduction of SARPS as an alternative to treaties
- intellectual property rights, launch contracts, transfer of technology....

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