# *Space Law and Commercialization: Overview of the Current Law in the Light of New Commercial Developments*

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A presentation for the 2000 IISL/ECSL Symposium on
LEGAL ASPECTS OF COMMERCIALIZATION OF SPACE ACTIVITIES

The effectiveness, extent, and robustness of space law are being challenged now as much as, if not more than, they have been in all the decades since the launch of Sputnik-1. The United Nations Committee on the Peaceful Uses of Outer Space and its permanent Sub-committees have made profound and lasting contributions to the framework and the substance of space law as we know it today. But the cast of actors keeps growing. The extent and complexity of national and international programs for use of space are growing. So, it is not time for space lawyers to rest on their laurels. Much work is yet to be done.

It is not necessary for me to bring before this audience a recitation of the items on the working agenda of the UNCOPUOS and its Subcommittees. You know that work well, and far better than I do. But I think it is useful to consider what is and is not done by bodies with significant regulatory roles to play in the area of space activities.

In the past twenty years there have been two major foci of dynamic activity relating to law affecting commercial uses of outer space. The first of these is in Geneva, Switzerland. It centers on the International Telecommunication Union. The second is more scattered. It is in the capitals of countries engaging with increasing frequency and intensity in the commercial uses of outer space. You will hear comments today on developments in space launch services, telecommunication and broadcasting services, and remote sensing. We might have added to that list global navigation, operation of the global inter-net, atmospheric investigations, cartography, and other activities, but the examples discussed here today make the point clearly that commercialization of space is expanding and becoming more complex.

When one takes a step backward to pause and survey the entire field of activity in outer space, one is impressed by the variety of national governmental responses concerning these activities. Where some governments have established volumes of detailed laws and regulations related to space commercialization, many other governments have little more than occasional executive instruments or policy statements setting forth one or another policy relevant to a space use in a given country. And between these extremes there are many varying levels of developed law and policy in different countries.

Some countries have adopted inclusive legislation setting forth integrated national policies relating to space. Some have established a national space agency. Other countries

authorize selected program activities to be carried out through existing agencies. They stop short of creating new executing agencies. Still others have barely addressed space activities through their legislation and only occasional policy declarations are used. In Europe, there is a dynamic, constructive, progressive regional organization of governments which pools the resources of several governments to accomplish joint developmental programs which no one of the governments could sustain alone. The variety of organizational and legislative approaches is truly remarkable, considering the global inclusivity of many of the prevailing space programs. What does all this mean?

Each nation finds, in time, its own appropriate level of involvement in and use of space activities. There is no universal standard and there is no minimum requirement. Each nation is free to choose in which programs and to what extent it will participate. Today, as the global market for services becomes more robust and competition among national and regional systems becomes more prevalent, two major approaches suggest themselves. With one approach we can seek to anticipate the needs of the world market and attempt to establish global standards, regulations and guidelines to pace and control that market. Using a second approach, we can avoid imposing artificial restraint on the competitive market and let the users determine which providers will survive and under what terms and conditions. I believe that neither approach, alone, is correct or sufficient.

Let me take you back to the ITU, in Geneva, for a few moments. I said that there was a focus of activity there relating to development of space law during the past two decades. An enormous amount of energy was expended by national delegations to restructure the ITU, to reconsider its basic charter and functions, to modify many of its working procedures, and to seek to make the union a more responsive and equitable organization for regulation of the electromagnetic spectrum and the uses of the geostationary orbit. In my estimation, nations have done an extraordinary job of dealing with a massive set of difficult, interrelated issues to bring order out of prospective chaos in global space radio regulation. A working global regulatory body sits today accomplishing astounding fetes of problem solving and coordination. The level of international cooperation and coordination achieved today could not have been imagined only 50 years ago.

Despite all that has been accomplished in the ITU since 1980, there are still commercial institutions, one in my own country, that do not understand the function or the rationale of the Union's role sufficiently to protect the commercial organization's interests properly. Because of what I believe was a major failure to properly plan and coordinate a global program in which billions of dollars were invested over the past decade, a major commercial communication venture faces bankruptcy and ruin, and tens of satellites placed in space by that organization are likely to be abandoned there. Where did the plan go wrong? Why did it fail?

Pundits will analyze and discuss that question for years. I believe the failure occurred at the outset. I believe the organizers never knew or bothered to inform themselves properly what the world's conditions and procedures for a global communication system would require. I think there was complacent arrogance and excessive self-reliance without

adequate thought given to the interests and needs of other countries and other parties. I don't think the program was ever properly coordinated through the existing machinery for such coordination. Why not? Ignorance? Arrogance? Complacency in financial power?

I don't know details enough to answer these questions, but I do know enough to say that the proposed system was never properly notified, discussed and coordinated as it should have been before the first satellite was launched. The failure was not a consequence of the regulatory coordinating machinery, it was failure on the part of the organizers to properly use the regulatory coordinating machinery. Now, I ask again, what does this all mean?

Men, institutions, and nations work together to achieve cooperation for jointly shared goals. But if the institutions, the regulations, the guidelines and the opportunities for coordination and cooperation are unknown, or if they are ignored, they may as well not be there. Thus, I come to a simple conclusion. It is not enough to work together, as we have, to create the mechanisms and policies for cooperation, it is also essential to communicate the results of that work to the full community of affected parties, so that all may know what has been accomplished. It is not enough for representatives gathered in the working sessions of the UN, or the ITU, or ICAO or ISO to establish mechanisms of cooperation and collaboration, it is also imperative that they, the authors of the regulations, reach out to the general community affected and inform them what has been done, what machinery has been put in place, what rules govern activity, and what is practical, real, and capable of achievement within the agreed framework of laws and organization.

That means that each of us has a work of communication to do, not only among our colleagues in the foreign offices and the space agencies of the world, but also in the industry that is expanding its reach into the commercialization of outer space. It is simply not enough for us to write rules, regulations, policies, and guidelines, we have to communicate them, explain them, and defend them when they are belittled, or attacked, or ignored. If we, who have devoted years to the foundations and formulation of space law, do not undertake to declare, explain and defend space law, who will?

So, I conclude with this simple statement of encouragement. You, in this room, are doing a great service of importance to the future of humanity in its uses of outer space. When you leave this room, talk about your work, tell others what is being done, and reach out to the entrepreneurs who will venture fortunes on the future of space activity to help them avoid pitfalls of ignorance.

Assessing the nature, the scope, and the vitality of law relating to the commercialization of space, I conclude that the body of law is suitably emerging, robust and responsive. You will hear more in particular detail about aspects of commercialization of space from the following speakers. You have done an excellent work and you shall do more. Please, don't keep it a secret!

Thank you for the privilege of participation here today, and thank you for your attention.