

SUMMARY OF DISCUSSIONS

by Dr. Olivier Ribbelink

Before the start of the discussion session, the chairs of sessions 3, 4, and 1 gave a short summary presentation of their sessions, as well as the rapporteur of session 2. Their remarks were then summarized by the President of the IISL, who chaired the session. The discussion focused on the following topics:

Remote sensing:

The first intervention was by **Joanne Gabrynowicz** (USA) who commented on the issue of dual use of remote sensing satellites. Since the UN Principles do not include military satellites, nor commercial satellites, COPUOS has no authority to discuss issues that involve national security. The question was brought up whether the UN indeed has no jurisdiction on military issues. **Luc Dufresne** stated that commercial and private systems – commercial activities directly or indirectly undertaken by states fall outside the scope of the UN 1986 Remote Sensing Principles. He is in favor of law-making for private enterprise to act like states in this respect. **Prof. Andem** stressed that the above-mentioned problem emphasizes the important role of private international law and that we have to make a distinction between public and private international law. Also, there is a need for the harmonisation and unification of national laws. **Dr. Ribbelink** pointed out that this debate involves the distinction between acts *iure imperii* and acts *iure gestionis*, and thus of sovereign immunity and various jurisdictional issues. This could be, and maybe should be, a topic for further and more detailed discussion in the future.

Dr. Bourbonniere referred to the fact that market structures will determine the future.

We should consider in future discussions what is the supply side and what is the demand. **Dr. Rao** recalled the rapid technological changes and the much overlooked question that the user must be known. We need a good definition of "user", because the question "who is the user?" refers to a very important aspect of the matter, whether the producer also uses the data or whether that is someone else. **Prof. Christol** stated that the gathering of intelligence information involves not only space law but also international law in general and international humanitarian law. The issue is the legality of the unilateral gathering of reconnaissance information in order to maintain self-defence. He warned that we should beware of the tyranny of labels; we must think in broader terms.

Dr. Perek commented on the paper by **V. Pop**. According to him there is no problem with the present definition of celestial bodies. That definition worked well for several decades. **Dr. Perek** also commented on the paper by **J. Steptoe** on space debris. He agreed that there is a need for a treaty, and that we should begin discussions on that legal instrument now, because it takes so long to reach agreement (start now, if we want to adopt a document within forty years...)

Military uses of outer space:

Dr. Haeck asked **Dr. Achilleas** whether he thought that human rights law would apply in time of war. **Dr. Achilleas** pointed out that on the one hand there are references to times of war in the human rights texts and that on the other hand there is a certain possibility that the full exercise of human

rights in times of war will be restricted and/or limited.

Dr. Van Fenema commented on **Dr. Frankle's** paper. He agreed with Dr. Frankle, but added that nevertheless a certain link exists between the treaties as some states did not ratify the Rescue Agreement prior to the finalisation of the Liability Convention and the Registration Convention. He gave the example of The Netherlands as one of the countries which only ratified the Rescue Agreement after these two other Conventions had entered into force. However, one should keep in mind that the launching state under the Registration convention is not automatically also the launching state under the Liability Convention. **Dr. M.M. Esquivel de Cocca** reminded that the state of registry is one of the launching states under the Liability Convention. According to **Prof. Christol** the issue of proof should not be too difficult here. **Prof. Andem** recalled the law of nationality, and analogies with maritime law, because if there is any accident with an aircraft one looks at the nationality of the aircraft. In terms of liability the nationality aspect should be taken into account.