

Report of the IISL Plenary 2008: “Real Space, Real Law, Real Progress”

By Scott Hatton

Moderator: Robert Richards (CEO, Odyssey Moon)

Panelists:

- Walter Peeters (Dean of ISU)
- Clayton Mowry (President, Arianespace USA)
- Christian Sallaberger (MDA, Canada)
- Axelle Cartier (General Counsel, Excalibur Almaz Europe)
- Tom Shelly (Space Adventures USA)
- Martin Stanford (Secretary General UNIDROIT)

New economic activities have entered the space arena and their legal and regulatory needs could be seen to be in conflict with those of the existing space agencies and satellite markets.

These new entrants pose both challenges and opportunities to the space law community and in turn the space industry in general. Their issues need to be understood to encourage this new growth, but also to negate any harmful impacts they may or may not have.

This was a discussion panel, focusing on International Space Law and its role in the modern world of commercial space exploitation. As one panel member put it "Where explorers go, lawyers follow." Bob Richards started the session off by asking each of the panelists to comment on what their occupation is and how space law impacts on it, how stable it is and how they see it will develop.

Walter Peeters works in education, and he finds it difficult to teach the next generation of space leaders about the Outer Space Treaty, knowing that it may not survive in its current form into the future. He wonders what will a new treaty put in place? For example, the treaty attaches liability to the concept of a 'launching state', but with the rapid commercialisation of space, will this make any sense in the future?

Clayton Mowry's role is head of a company that carries out a large number of launches of satellites and spacecraft of all varieties, and often has to deal with a large amount of regulation. However, it was often regulation closer to home that was more difficult to deal with (for example ITAR, the International Traffic in Arms Regulations). This was a recurring comment made during the session, as many of the panelists found that local or national laws, rather than the international treaty, were most limiting in the commercialisation of space.

These sentiments were echoed by Christian Sallaberger, who spoke of the problems of having an international company work on projects restricted by such legislation. It made transfer of technology or personnel within the company, but crossing national boundaries, legally problematic.

Axelle Cartier worked for a private space company registered in the Isle of Man, which has special legal status, and this has alleviated many of these problems.

Governments can do this to help such commercial interests to flourish.

Tom Shelly runs Space Adventures, a company responsible for sending six private individuals to the ISS. Originally the ISS regulations had no provision for private citizens to visit. The help of the Russian government helped get past this, and now the USA are also behind them.

Martin Stanford works for the International Institute for the Unification of Private Law (UNIDROIT). His organisation was involved in not trying to improve the legal situation of space law, but helping people through the rules.

It seems then, from what was being said, that the major barrier to commercial exploitation of space was not the Outer Space Treaty. Many companies had managed to make money despite the treaty and found the laws closer to home to be more of a problem.

However, as the expansion of Earth's economic sphere expands to include the Moon, this may change. There is already an agreement on the peaceful use of outer space, but will governments respect the rights of private companies, and vice versa? Should the sites of the Moon landings be considered hallowed ground, and action be taken to stop commercial companies disturbing them? (Selling pieces of Apollo 11 on eBay was one example.)

The panel stated that the commercialisation of space is demonstrating that the Outer Space Treaty established several good fundamental principles that remain valid today, but could not recognise or anticipate the extent of the involvement of private

commercial players in space. They spoke of the probability that common law and case law will come into play as private players increase their activity in space and on the Moon. The panel concluded that the Outer Space Treaty has important and valid principles to build upon. (for example ITAR, the International Traffic in Arms Regulations). This was a recurring comment made during the session, as many of the panelists found that local or national laws, rather than the international treaty, were most limiting in the commercialisation of space.

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