

The Seventh Eilene M. Galloway Symposium on Critical Issues in Space Law: Global and Regional Space Organizations and the Law

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The Seventh Eilene M. Galloway Symposium on Critical Issues in Space Law was held December 6, 2012 at the Cosmos Club in Washington, D.C. The symposium was co-hosted by the International Institute of Space Law and the National Center for Remote Sensing, Air, and Space Law at the University of Mississippi School of Law. The Theme for the 7th Installation of the symposium was Global and Regional Space Organizations and the Law.

The Symposium opened with welcoming statements from Prof. Joanne Irene Gabrynowicz, Director, National Center for Remote Sensing, Air, and Space Law at the University of Mississippi School of Law; and Prof. Corinne Jorgenson, President, Advancing Space and Executive Secretary of the International Institute of Space Law; and Dr. Jonathan F. Galloway, Professor of Politics, Emeritus, Lake Forest College.

The welcoming statements were immediately followed by a keynote speech by William H. Gerstenmaier, Associate Administrator for Human Exploration and Operations, NASA. Gerstenmaier's comments covered the lessons that he, as an engineer, had learned about the legal aspects of space exploration. He first discussed the *International Space Station (ISS)*, noting that the ISS would not be possible without a great deal of international cooperation which is facilitated by the ISS Intergovernmental Agreement. He characterized this document as a "tremendous agreement." He noted that this agreement had many benefits which allowed the partners to work together, and that the framework allowed for the development of MOUs among the member states, allowing for lower levels of interaction to be negotiated. He said that the agreement avoids the challenge of over specificity, which has allowed it to become an enduring framework by giving partner states the ability to adapt. Gerstenmaier concluded by discussing the Name the Node contest that NASA held to name a node on the ISS. He noted that the contest included a legal disclaimer that gave NASA the ability to name the node regardless of the outcome. However, he stated the contest became very popular as a result of the Colbert Report encouraging people to vote to name the node Colbert. In this case he noted that

public opinion overtook the law, which was a valuable lesson. He also noted that Stephen Colbert and the Colbert Report were very supportive of the program which allowed for the resolution of the matter by naming the treadmill the Combined Operational Load-Bearing External Resistance Treadmill (COLBERT), and naming the node *Tranquility*.

The first panel of the day was moderated by Prof. Joanne Irene Gabrynowicz and was titled Founding Agreements of Regional and Global Space Organizations. The first presenter was Marco Ferrazzani, ESA Legal Counsel, Head of Legal Department, European Space Agency Headquarters. He presented on the European Space Agency (ESA). He started with a brief history of ESA and stated that its genesis was when European states realized that independent space programs would be counterproductive. As a result the ESA Convention was developed in the 1970s and entered into force in 1975. He stated that the convention was innovative in that it allowed the member states to decide how they would participate through a variety of mechanisms. Noting that one of the key purposes of the convention was cooperation and integration, he said the Convention set out a framework for two types of activities. He first covered mandatory activities. These activities are those in which all member states must participate, and decisions about these are made on a one state, one vote process. On the other hand he said that voluntary activities are those in which member states may choose to participate in. Decisions on these activities are made based on weighted votes taking into account a state's contribution to a given activity. These decisions are made at the ministerial Council which is the governing body of ESA and then carried out via the auspices of the ESA Secretary General. Ferrazzani concluded by saying that cooperation is "fundamental for space activities in Europe and worldwide" and that to this end ESA has developed a number of tools to accomplish international cooperation.

Tare Brisibe, Chair, Legal Subcommittee UNCOPUOS was the second presenter and presented on the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS). He started with a brief history of UNCOPUOS, stating that it began as an ad hoc UN committee in 1958 and was made permanent in 1961. He said that there are currently 71 members. He also noted that there was a historical precedent within the committee for taking its decisions using consensus. Brisibe then stated that space law must be placed in its proper context which is as a branch of international law. He then enumerated several merging principles of space law including the duty of states to ensure sustainable development of natural resources, public participation and access to information and justice, good governance, and integration and legal participation. He stated that these principles were rooted in the traditional sources of international law. Brisibe then gave brief remarks on the agenda items of the Legal Subcommittee including the status of the space treaties; the Cape Town Convention protocol on space assets; capacity building in space law; the use of nuclear power sources in outer space; definition and delimitation of space; the use of the geostationary orbit; international mechanisms for cooperation; national space law legislation; debris mitigation; and the activities of intergovernmental organizations and nongovernmental organizations.

The second panel of the day, Legal Aspects of Organizations with a Space Component, was also moderated by Prof. Joanne Irene Gabrynowicz. Barb Ryan, Director General, GEO, presented first on the Group on Earth Observations (GEO). She started by stating that GEO was created to develop a Global Earth Observation System of Systems (GEOSS). She said that one of the goals of GEO is to fill gaps in data sets that occur for a variety of reasons. This is accomplished through a numerous mechanisms such as the Data Sharing Principles which encourage open access to data at minimal cost. The mechanisms, according to Ryan, are usually linked to soft law mechanisms such as instruments with non-binding principles, informal institutions, and collaborative and coordinated work to maximize benefits. To this end she pointed to the *Landsat* data available online as an example of how data can be opened up for public use. She said that online distribution has not only allowed increased access by researchers, but that it has also pressured other countries to allow for open access to data.

The next presentation was by Paul F. Ulihir, Director, Board on Research Data and Information, U.S. National Academies, was titled "From Outer Space to Cyberspace: the Evolution of the GEO Datasharing Principles and their Application." His presentation focused on the dual nature of databases as both public goods and private goods. He stated that pure public goods are not depletable and are nonexcludable and that private goods are both depletable and excludable. In this respect he noted that databases are nondepletable but are also excludable. Therefore he stated that databases could be called quasi-public goods. He noted that are specific legal problems involve copyright issues. Specifically he said that facts in a database are not copyrightable, but that structures and organizations are copyrightable. He said this area of law is not understood well which often leaves researchers unclear with what to do with databases. He noted that there were several approaches, but endorsed using common use licenses developed by Creative Commons organization. These licenses, he said, allowed researchers to make data available, but also to reserve some rights in those databases.

The Third panel of the Seventh Galloway Symposium was titled Restructured Organizations: From the Cold War to the Era of Globalization and was chaired by Prof. Corinne Jorgenson. Elina Morozova, Head of International and Legal Service of Intersputnik gave the first presentation. She started with a brief history of Intersputnik pointing to its socialist roots and stating that today there are 29 members. Additionally, she said that Intersputnik's membership is open to any state and that it is a "universal" international organization. She stated that a variety of documents govern Intersputnik, and that it has a three level management structure. This structure consists of the Board, which makes decisions on long term goals and policies; the Operations Committee, which makes operational decisions; and the Directorate, which is the administrative arm of the organization. She noted that Intersputnik was the only international satellite organization that has not privatized, but that it was working to increase cooperation with business through initiatives such as its wholly owned subsidiary Intersputnik Holding, Ltd.

Chris Murphy, Senior Director, Government Affairs of Inmarsat gave the next presentation. He also started with a brief history explaining Inmarsat's origin's as a treaty organization in 1979. He said that it privatized in 1999 with its initial public offering in 2005. He stated, though, that the International Maritime Satellite Organization was created in order to oversee the corporation's public service obligations. These include continuation and support of Global Maritime Distress Safety System (GMDSS) and nondiscriminatory access on the basis of nationality. He also noted that Inmarsat shall seek to serve all areas where there is a need for mobile satellite communications and fair competition. He stated that Inmarsat was working on a number of emerging markets including emergency response, telemedicine, and defense.

Richard DalBello, Vice President of Legal and Government Affairs of Intelsat General gave the third presentation. He started by noting that there was a common story among the various organizations on the panel that was about the move from the political context to the commercial context. According to DalBello Intelsat General's roots were in INTELSAT, which was an IGO founded to fulfill the mandate for non-discriminatory access to satellite communications found in UN General Assembly Resolution 1721. He stated that after privatization the International Telecommunication Satellite Organization (ITSO) was formed to oversee Intelsat General's universal service commitments including lifeline services and nondiscriminatory access.

The final presentation of the panel was made by Patrick Masambu, Deputy Director General, ITSO, who presented on ITSO, IMSO, and Eutelsat. He noted that these three IGOs had shared histories in that they were all created to monitor previous satellite organizations that had privatized. He said that the challenges involved for these shifts included amending agreements for changed competencies, developing additional legal instruments, and maintaining protection of core services. He also noted there were common issues involved with flexibility in implementing changes and implementation of treaty provisions.

The final panel of the Seventh Galloway Symposium was moderated by Prof. Joanne Irene Gabrynowicz and was titled Practitioners' Roundtable: Working With and Serving the Day-to-Day Legal Needs of Regional and Global Space Organizations. Participants included Marco Ferrazzani, ESA Legal Counsel, Head of Legal Department, European Space Agency Headquarters; Dr. Tare Brisibe, Chair LSC UNCOPUOS; E. Jason Steptoe, Associate General Counsel, International Law Practice Group, NASA Headquarters, Washington, DC; Stephen E. Smith, Sherman & Howard, Space Law Practice Group Co-Chair; and Dennis Burnett, Vice President Trade Policy and Export Control, EADS North America. This round table discussion covered a wide range of topics in a lively conversation. The starting point for the conversation was advice for young lawyers on what it takes to become a practitioner in the area. All the panelists agreed that the paths into the field were varied but that core lawyering skills were a must. The panel then addressed a variety of issues from ITAR to how to advise clients that were engaging in new space activities such as asteroid mining. The discussion served as a capstone to the day's event by highlighting the variety of ways that lawyers interact with space clients and how these interactions can facilitate successful space activities.