

The 59th Colloquium on the Law of Outer Space at the 67th International Astronautical Congress

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The 59th International Institute of Space Law (IISL) Colloquium on the Law of Outer Space was held from 27–30 September 2016 in Guadalajara, Mexico, in conjunction with the 67th International Astronautical Congress (IAC). Comprised of seven technical sessions and one session for interactive presentations, the Colloquium focused on a range of thematic issues in space law, and featured papers from almost seventy presenters. Topics discussed included the legal aspects related to the remote sensing principles, regional cooperation and Latin American space activities, large satellite constellations, space resource utilization, planetary defence, and spectrum management. The 8th Nandasiri Jasentuliyana Keynote Lecture was delivered by incoming IISL president Kai-Uwe Schrogl, entitled ‘Space Law and Diplomacy’. The Manfred Lachs Space Law Moot Court semi-finals and world finals were also held in Guadalajara, as well the General Assembly of the IISL.

1 THE 59TH IISL COLLOQUIUM ON THE LAW OF OUTER SPACE

The 59th International Institute of Space Law (IISL) Colloquium on the Law of Outer Space was held from 27–30 September 2016 in Guadalajara, Mexico, in conjunction with the 67th International Astronautical Congress (IAC). The Colloquium began with the 8th Nandasiri Jasentuliyana Keynote Lecture, which was delivered by the incoming IISL President, Kai Uwe-Schrogl, entitled ‘Space Law and Diplomacy’. In his lecture, Dr Schrogl spoke about space law as the historical subject of diplomacy, and of space activities driving and assisting diplomacy. Today, in consideration of future space activities by more numerous and diverse actors doing more advanced activities, Dr Schrogl raised the question as to whether the current space law regime requires expansion and elaboration. Just as importantly, there is the issue of balancing equitability and fairness (as enshrined in Article I of the 1967 Outer Space Treaty) with the notions of effectiveness and efficiency so often mentioned by those promoting regulatory liberalism and the merits of private enterprise. This balancing has already taken place in the International Telecommunication Union (ITU) regime with respect to access

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and use of geostationary orbits and portions of the electromagnetic spectrum used for frequencies. Dr Schrogl concluded his keynote address with an overview of the IISL – whose current membership reflects almost sixty nationalities and an impressive array of academics and practitioners from various legal systems – as a kind of academic and quasi-diplomatic clearing house for the development of notions and ideas in space law.¹

The remainder of the session was devoted to young scholars, including recent graduates and new members of the IISL. Pierfrancesco Breccia of Sapienza University presented ‘Article III of Outer Space Treaty and its Relevance in the International Space Legal Framework’, a paper which was also awarded the IISL’s 2016 Prof. Dr I. H. Ph. Diederiks-Verschoor Award for the Best Paper by a Young Scholar. Mr Breccia’s paper discussed the complex and subtle interlinkages between space law as an apparently self-contained regime within the broader foundation of public international law. He contended that these linkages have yet to be mapped in their full detail, and that the seams and interstices between these regimes give pause to both scholar and practitioner in considering rights and obligations of states in their space activities.²

Further papers presented at the young scholar’s session continued in a similar vein, each discussing arising issues in the existing space law regime, its adequacy for addressing emerging and planned space activities, and domestic unilateral and international multilateral space law responses. In summary, while the papers discussed a very wide array of issues in space law, a common theme emerged: namely, that the existing international and national space law regime is already stretched to address existing and envisaged activities, and that workable regulatory solutions should be pursued. Again, as the number of actors in space increases, as their diversity grows, and as novel and advanced activities progress, the existing regime drafted in previous decades will continue to be stretched.

The next session of the IISL Colloquium was entitled ‘Legal Perspectives on Space Resources and Off-Earth Mining’. This session of the Colloquium received more abstracts than any other session of this year’s IAC, and eleven presentations were made on the topic of the legal aspects of celestial resources by presenters from over a dozen countries.

While academic discussions on the legality of the use of celestial resources have raged for decades, planned activities in celestial resource use, and the passage of domestic legislation authorizing such celestial resource use by private industry, have added a sense of urgency to the discussions. The session delved into the content and contours of international space law, beginning with Article II of the

¹ Available at: <http://www.iislweb.org/publications.html>. Accessed 3 January 2017.

² *Ibid.*

1967 Outer Space Treaty, whose brief thirty words on the subject form the core of any discussion on the legality of space mineral resource use. The oft-quoted article reads 'Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. Presentations in this session varied from how this negative treaty obligation placed upon states must be read in context with the broad rights enshrined in Article I, to how national legislation clarifies this obligation and related treaty obligations, such as the oversight provisions of Article VI, to the need for multilateral coordination on resource use in space. Note was taken of the previous statements by the Board of Directors of the IISL and their position paper on the recent relevant US legislation, which the IISL has found not to be in violation of Article II of the Outer Space Treaty.³

The third session of the Colloquium, 'Contemporary Considerations about the 1986 Principles Relating to Remote Sensing of the Earth from Space', featured seven presenters on a wide array of related topics linked with remote sensing, including on the need for an international convention on remote sensing, issues of sovereignty and customary international law, and migration flows within the European Union (EU). Again, an underlying theme was the uneasy position that current and planned activities have under the existing space law regime, including the 1986 Remote Sensing Principles which constitute 'soft law' despite its widespread observance. As Earth observation technologies become more widespread and accessible, the principles historically applicable to them will apply to increasingly unique circumstances.

The next session of the Colloquium explored yet another emerging space activity which may place pressure on existing regulatory and administrative capacities. 'Legal Challenges Represented by Large Satellite Infrastructures and Constellations' featured eight presentations on large satellite infrastructures and constellations with numerous spacecraft, and discussed the administrative challenges with megaconstellations, unresolved issues of the bringing into use of satellites (including small satellites), issues of liability and damage, and the possibility of new national and international regimes and regulatory structures to face and mitigate the challenges of this emerging field of activity.

The next session, 'Current Developments in Space Law with Particular Consideration for Latin America', considered issues and perspectives on

³ International Institute of Space Law, *Position Paper on Space Resource Mining*, 3: 'Therefore, in view of the absence of a clear prohibition of the taking of resources in the Outer Space Treaty one can conclude that the use of space resources is permitted. Viewed from this perspective, the new United States Act is a possible interpretation of the Outer Space Treaty. Whether and to what extent this interpretation is shared by other States remains to be seen.' Available at: <http://www.iislweb.org/docs/SpaceResourceMining.pdf>. Accessed 3 January 2017.

international cooperation and national legislation specific to space for a number of Latin American countries including Argentina, Colombia, and Brazil, as well as examples from further abroad including the People's Republic of China and Nigeria. In 2014, Colombia acceded to the Registration Convention, and an investigation into which domestic agency should establish and maintain its national registry of space objects needed to be undertaken.

The seventh IISL Colloquium session was the joint International Astronomical Federation (IAF) and IISL Session on the Legal Framework for Collaborative Space Activities. This joint session focused on topics related to the legal framework governing collaborative space programs, in particular governmental exploration programs and their preparations. It featured invited presentations on national approaches to international space collaboration in the People's Republic of China, France, the Russian Federation, and the United States of America. Given divergent national capacities and funding, along with different priorities and interest in space, cooperation between different space agencies and states requires a careful consideration of the benefits to be accrued from cooperation. Nevertheless, and due to the difficulty and costliness of most space activities, international cooperation in space exploration has been conducted since the beginning of the space age, and continues to grow. Looking to the future, emerging national issues include the future of the International Space Station (ISS), the successor to the ISS, other possible space stations including commercial space stations, and more ambitious future ideas such as deep space facilities, international lunar villages, and advanced planetary exploration.

The IISL Colloquium at the IAC also features an interactive presentation section, where authors of abstracts are invited to prepare slides to be shown on plasma screens in the main hallways of the conference for IAC attendees to peruse. This year's IISL interactive presentations numbered almost twenty separate presentations and allowed many students and young professionals in space law the opportunity to present their ideas and work to a wider audience of the space community.

The IISL publishes all papers presented each year in one of its flagship deliverables, the *Proceedings of the International Institute of Space Law*, as a hardcover book within the next calendar year.⁴

⁴ Published by Eleven International Publishing, see <http://www.iislweb.org/proceedings.html>. Accessed 3 January 2017.

2 THE MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

Each year, the IISL hosts the World Semi-finals and World Finals of the Manfred Lachs Space Law Moot Court competition at the IAC.⁵ The finalists plead their case of the mock competition before judges of the International Court of Justice. This year, the winning teams from the African, Asian-Pacific, European, and North American regional rounds proceeded to Guadalajara, Mexico for the semi-finals and world finals. The 2016 problem was the hypothetical dispute between the states of Banché and Rastalia, and concerned space debris, the return of astronauts and spacecraft, commercial spaceflight services, and liability issues for damage. The case was authored by Prof. Zhao Yun from Hong Kong University.

The Semi-Finals rounds were between McGill University, of Montreal, Canada representing North America, and Obafemi Awolowo University, of Nigeria, representing Africa, and between the National and Kapodistrian University of Athens, Greece, representing Europe and Curtin University, Australia representing the Asia-Pacific region.

The Obafemi Awolowo University and the National and Kapodistrian University of Athens progressed to the World Finals, which were judged by Judge Peter Tomka, Her Excellency Judge Xue Hanqin, and His Excellency Judge Kirill Gevorgian of the International Court of Justice. The National and Kapodistrian University of Athens was declared the winner of the 2016 Manfred Lachs Space Law Moot Court. The 2016 Lee Love Award for Best Team also went to National and Kapodistrian. The judges also awarded the Sterns and Tennen Award for Best Oralist to Ms Filareti Filaretou-Kouimtzi.

3 CURRENT DEVELOPMENTS IN THE INTERNATIONAL INSTITUTE OF SPACE LAW

Each year at the IAC the IISL holds both its twice-annual Board of Directors meeting, and a General Assembly of IISL Members. This year the General Assembly heard reports from the various IISL committees on ongoing and planned work, including the organization and hosting of conferences, publications, details from the Manfred Lachs Space Law Moot Court competition, and the election of new members. Outgoing IISL President Tanja Masson-Zwaan was unanimously elected as President Emerita, the highest distinction the institute can award. Lastly, the General Assembly held a moment of silence in remembrance of our dear

⁵ See <http://www.iislweb.org/lachsmoot/>. Accessed 3 January 2017. This was the 25th edition of the competition. A book commemorating this anniversary was published by Eleven Publishing, see <https://www.elevenpub.com/law/catalogus/manfred-lachs-space-law-moot-court-competition-1>.

friend, Mr Jim Rendleman, a longtime, active, and treasured IISL member who passed away this year.

In 2017, the IISL will again organize a one-day symposium on the first day of the yearly Legal Subcommittee on the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) in Vienna, Austria, jointly organized with the European Centre for Space Law (ECSL).⁶

The 60th IISL Colloquium on the Law of Outer Space will be held in Adelaide, Australia during the 68th IAC from 25–29 September 2017.⁷ The colloquium will place a special focus on the 50th Anniversary of the Outer Space Treaty. Session topics include the 9th Nandasiri Jasentuliyana Keynote Lecture on Space Law and Young Scholars Session, “NewSpace”, New Laws – how governments can foster new space activities’, ‘Refugees and the role of space communications/status and practice of charter for man-made disasters’, ‘Space law developments in Asia-Pacific: diverging national space legislation with regard to the applicability of space law to suborbital flights’, and ‘current developments in space law’. Joint sessions between the IISL and other organizations include a round table on technological and legal challenges for on-orbit servicing, with the International Academy of Astronautics (IAA), and the yearly joint session on the legal framework for collaborative space activities, with the International Astronautical Federation (IAF).

⁶ European Centre for Space Law, see http://www.esa.int/About_Us/ECSL_European_Centre_for_Space_Law. Accessed 3 January 2017.

⁷ Abstracts for the IISL sessions (E7.1-7) can be submitted until 28 Feb. 2017 at <http://www.iac2017.org>. Accessed 3 January 2017.