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TRAINING AND CAPACITY BUILDING: NETWORKING AND FEDERATIVE INITIATIVES

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Mr. Chairman,
Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Capacity building lies at the heart of the sustainable development and progressive evolution of space law today. If international space law has always been the celebration of the inevitability of Humanity's limitless potential, then capacity building within space law is the song of that celebration. At the outset let me express my congratulations to the United Nations, the International Institute of Space Law and the European Centre for Space Law on their work in this important field, in particular, the organization of this momentous symposium.

Space is an arena in which failure is not an option, where the theatre of operations is the province of all Humanity. It is continual, industrious work across borders, generations and disciplines, which will ensure the peaceful use of outer space for the benefit of all Humanity.

We have come a long way in the fifty years since Sputnik I. We have seen an explosion in the scope of space activities, forty successful years of international space legislation, and a growing awareness of the importance of space activities and space law amid both tragedies and triumphs. Along the way, we have witnessed the incontrovertible truth that cross-border, trans-generational, inter-disciplinary capacity building is the only feasible path forward.

I want to talk today about these training and capacity building measures, in particular networking and federative initiatives amongst professionals in the space field. To put the initiatives into context, I will briefly touch on the key phases and aspects of international space legislation. Before this however, I believe it is important to take a step back and consider the necessary focuses of capacity building to set us on the right path.

"Se faire connaître et être utile."

A very excellent question was posed by Dr. Gabriel Lafferranderie, Chairman of the ECSL, in the title of his recent article, "*Faut-il toujours enseigner le droit de l'espace?*", published in the German Journal of Air and Space Law.[1] Certainly, aside from the teaching of space law, the same question applies as well to training and capacity building thereof. Further, there are various challenges to surmount.

Firstly, access to continuing education and training in space law must be increased. This allows professionals in both legal and non-legal fields the access to material and opportunities to learn more about the field.

Secondly, an interdisciplinary and international exchange between peers must be ensured. This exchange of ideas allows for a synergy of perspectives and experiences, forming a crucible that guarantees the enduring relevance of space law in the face of rapidly evolving

science, technology, economics and international relations.

Thirdly, a coordinated and topical approach to capacity building should be created. This allows a coherent framework of capacity building and progressive development, which cannot be over-emphasized in the field of law, especially space law.

This leads us to the fourth challenge, which is the provision of a practical, annotated guide to space law for industry experts and other professionals, both in the legal and non-legal fields.

Finally, going full-circle back to Dr. Lafferranderie's excellent article, there is an urgent necessity to focus on two especial aspects of capacity building in space law, which he very eloquently describes, "*Se faire connaître et être utile*."[2]

The first focus of capacity building in space law is to make it known. Here a pro-active approach to outreach in various fields is likely the solution. Making space law known to technicians, scientists and engineers is only one fragment of the puzzle. The other pressing part is to make the specific branch of space law known to lawyers and legal practitioners as well.

The second focus is to make space law useful. This involves ensuring that space law is relevant to the various commercial, technical and scientific aspects of space activities. Aside from promoting space law as a specific branch of public international law, it will be imperative to create coherent bridges between international space law and national space legislation.

The question arises then, as to the viability of solutions in meeting with these challenges and focuses. In order to assess the significance and efforts of present-day networking and federative initiatives in capacity building, it will be useful to consider them against the key phases and aspects of international space legislation.

KEY PHASES AND ASPECTS OF INTERNATIONAL SPACE LEGISLATION

Historically, there are three discrete phases of international space legislation.[3]

The first phase took place from 1956 to 1979, where space law-making was a tremendous success. As early as 1959, the Committee on the Peaceful Uses of Outer Space was established as an *ad hoc* Committee to the UN General Assembly, making proposals on space legislation. In 1963, the UN General Assembly passed Resolution 1962,[4] which eventually coalesced to form the Magna Carta of outer space, the 1967 Outer Space Treaty.[5] This was followed by more specific legislation such as the 1968 Rescue Agreement,[6] the 1972 Liability Convention,[7] the 1975 Registration Convention[8] and the 1979 Moon Agreement.[9] Although there are varying levels of international ratification and signature for these Agreements, this period was marked by a clear impetus for hard legislation of space law.

The second phase took place between 1980 and 1992, where a novel method of international law-making for outer space activities was undertaken.[10] This saw the adoption of UN General Assembly resolutions such as the 1982 resolution on direct broadcasting satellites,[11] the 1986 principles on remote sensing,[12] and the 1992 principles on the use of nuclear power sources.[13] This second phase was characterized by the deliberate choice of non-binding resolutions to soften legal obligations on space-faring nations and non-space-faring nations alike.

The third phase started from 1992 and still carries on today.[14] This period features a re-definition of major notions of international space law in the form of UN General Assembly resolutions. A fusion of characteristics from the first two phases, issues that have been considered include the 1996 Declaration on Space Benefits,[15] the notion of the "launching State"[16] and

State practice relating to the registration of space objects.[17]

Overarching these three phases of international space legislation are three aspects that clearly stand out, which have an impact on capacity building in space law.

The first is the use of the consensus method as the basis of law-making by the UN COPUOS.[18] Consensus as a legislative mechanism is a unique method by which no formal vote is taken but the search for consensus governs the entire negotiating process. Certain issues that may arise due to the use of the consensus method include imprecision in key concepts and a possible dilution of the wording of space legislation. With particular regard to capacity building, the unique use of consensus as a law-making mechanism should be explained so as to avoid confusion and an irregular approach to the field of space law.

The second aspect is the importance of redefinitions. While this re-interpretation does highlight the importance of certain essential concepts, methodologically speaking, re-definition of essential concepts in the form of non-binding UN General Assembly resolutions may cause confusion especially in the inter-relation of international space law in its application to national space legislation.

The third aspect is the plethora of further unresolved issues to consider in space law, marking international space law as a still-evolving nexus of international law. These issues include the principle of registration, the applicability of the Rescue Convention to space tourists,[19] the drafting of a model law for national space legislation[20] and the reconsideration of the Moon Agreement. In terms of capacity building, the necessity of a coordinated framework for the progressive development of space law cannot be over-stated.

NETWORKING AND FEDERATIVE INITIATIVES

Having looked at the framework and context within which training and capacity building in space law must function, I will turn now to the networking and federative initiatives that are already in place. These are the ECSL Practitioners' Forum, the IISL regional conferences, and the International Law Association Space Law Committee.

ECSL PRACTITIONERS' FORUM

The European Centre for Space Law was established in 1989 at the initiative of the European Space Agency (ESA).[21] Members of the ECSL include professionals in industry, lawyers, academics and students. The ECSL encourages interdisciplinary exchange between members, and has organized a one-day Practitioners' Forum annually since 1992.[22] The aim of the Forum is to provide professionals in the space sector with a forum for the exchange of views, knowledge and information. The Forum focuses on the latest developments in space law within the European context, as well as issues involving Europe with external partners. The Coordinator of the ECSL Practitioners' Forum is Dr. Frans G. von der Dunk.

One month from now on the 27 April 2007, the 2007 Forum will focus on the "Consolidation of the European Space Industry: Legal Aspects".[23] It will consider major developments in the European Space industry, in particular the ongoing restructuring and consolidation at the corporate level. In the legal context, it will consider the nationality of consolidated companies and the consequent impact on State responsibility. Other issues of interest include the inter-relation of the UN, European Community and ESA legal regimes in situations such as the concession bid for the Galileo operator; and the transatlantic issues involving US-European cooperation.

Past Forum topics have included Legal and Policy Aspect of Space Tourism in 2006,[24] New Developments in the Field of Satellite Telecommunications in 2005,[25] Issues in Earth Observation and Data Policy in 2004,[26] and the Legal and Institutional Aspects of Galileo in 2003.[27]

The significance of the ECSL Practitioners' Forum likes in four prongs. Firstly, it allows for networking and professional idea exchange at the regional level in Europe. Secondly, it focuses on topical issues of interest and current developments in European space activities. Thirdly, it provides an informal setting that allows for unencumbered exchange of perspectives, ideas and opinions. Lastly, it provides a framework for capacity building at the intra- and extra- European levels.

IISL REGIONAL CONFERENCES

In 2001, the IISL started a series of regional conferences.[28] The aim of these regional conferences is to bring space law and policy specialists together in a specific region to discuss topics of particular interest to that region. The regional conferences allow interested parties from various backgrounds to meet and interact with experts from all over the world and thus promote mutual understanding and cooperation for the benefit of all parties.

The Asian region has been particularly involved in the IISL Regional Conferences. The first conference was held in 2001 in Singapore, focusing on Legal Challenges and Commercial Opportunities for Asia.[29] Three other conferences have taken place thus far: in 2004 in Beijing on Asia as a Regional Force in Space;[30] in 2005 in Bangalore, on the topic of Bringing Space Benefits to the Asian Region;[31] and in 2006 in Bangkok, with the focus on Asian Cooperation in Space Activities: A Common Approach to Legal Matters.[32]

The significance of the IISL Regional Conference is that it allows for networking at the Asian regional level. This provides for the opportunity for capacity building for developing and non-space-faring countries in Asia in association with Asian space powers. Such capacity building facilitates technology transfer and idea exchange at the Asian regional level, especially when these Conferences organize parallel international and interdisciplinary discussions at the professional and industrial level.

ILA SPACE LAW COMMITTEE

The International Law Association (ILA) was founded in 1873.[33] Its affirmed objectives are "the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law". Currently, the ILA has 23 committees, including committees on International Commercial Arbitration, International Human Rights Law and Practice, the Use of Force and Space Law.

The Space Law Committee has the status of permanent observer to the UN COPUOS and reports annually thereto on the results and progress of its work. Its chairperson is Professor Maureen Williams, and I serve on the Committee as its rapporteur.[34]

The work of the ILA Space Law Committee is very significant to capacity building for several reasons. Firstly, it keeps a present focus on the overview of state practice underlying remote sensing and national space legislation, and the inter-relation of both these topics with registration issues. Secondly, it ensures professional idea exchange and capacity building through the circulation of questionnaires and feedback papers to members for preparation of the Committee's Report for its annual Conference. Thirdly, the Space Law Committee analyses and reviews important issues in space law, for example the issues of Space Debris and Dispute Settlement. Most importantly, the ILA Space Law Committee is a meeting of peers, professionals and interested parties

in a Working Group format, which allows the review and discussion of topics of significance in the field.

The work of the ILA Space Law Committee also complements further initiatives undertaken in the context of capacity building. Amongst these initiatives is the recently completed Project 2001 Plus,[35] which studied global and European challenges for air and space law at the edge of the 21st century. Another project of interest is the Cologne Commentary on Space Law (CoCoSL),[36] which is newly launched in 2007. CoCoSL aims to provide a comprehensive, annotated practitioners' guide to the written norms of space law. Both Project 2001 Plus and CoCoSL are coordinated by the Institute of Air and Space Law at the University of Cologne in Germany.

PERSPECTIVES

Returning to the point where I started, today capacity building is one of the main priority areas for the implementation of the UN Programme on Space Applications[37] in developing countries in the short and medium term. Moreover, capacity building in space law ensures the viability and sustainable development both of space law and space activities for the benefit of Humanity. For these reasons, it is urgently necessary to pro-actively consider challenges to training and capacity building in space law, and to create workable solutions to these challenges.

The space law community has put several initiatives in place to kindle capacity building in space law. I believe that while this is the correct way to go, more fuel should be put on the flame. The task we face today is the progressive evolution of capacity building in space law, and thereby the long-term relevance of the rule of law in outer space.

It is what the founding principles of space law, as well as the future of space activities, demand of our generation. It is our generation's duty to deliver.

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[1] Lafferranderie, G., "Faut-il toujours enseigner le droit de l'espace?", (2006), 55(4) Zeitschrift für Luft- und Weltraumrecht 517 – 540
[2] *ibidem* at 532
[3] Hobe, S., "International Space Law in its First Half Century", (2006) 49th Colloquium on the Law of Outer Space (forthcoming)
[4] Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (1962) United Nations General Assembly Resolution 1962 (XVIII) (13 December 1963)
[5] Treaty on the Principles Governing the Activities of States in the Exploration and the Use of Outer Space Including the Moon and Other Celestial Bodies, (1976) adopted 19 December 1966, opened for signature 27 January 1967, entered into force 10 October 1967; 6 ILM 386, 610 UNTS 205
[6] Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, (1968), adopted 19 December 1967, opened for signature 22 April 1968, entered into force 3 December 1968; 19 UST 7570, 672 UNTS 119
[7] Convention on International Liability for Damage Caused by Space Objects, (1972) adopted 29 November 1971, opened for signature 29 March 1972, entered into force 1 September 1972; 10 ILM 965, 961 UNTS 187
[8] Convention on Registration of Objects Launched into Outer Space, (1975), adopted 12 November 1974, opened for signature 14 January 1975, entered into force 15 September 1976; 14 ILM 43, 1023 UNTS 15
[9] Agreement on the Activities of States on the Moon and other Celestial Bodies, (1979) adopted 5 December 1979, opened for signature 18 December 1979, entered into force 11 July 1984; 18 ILM 1434, 1363 UNTS 3
[10] See *supra* note 3.
[11] Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, (1982) UN General Assembly Resolution A/RES/37/92 (10 December 1982), 22 ILM 451 (1983)
[12] Principles Relating to Remote Sensing of the Earth from Outer Space, (1986) UN General Assembly Resolution 41 / 65 (3 December 1986)
[13] Principles Relevant to the Use of Nuclear Power Sources in Outer Space, (1992) UN General Assembly Resolution 47 / 68 (14 December 1992)
[14] See *supra* note 3
[15] Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries, (1996) UN General Assembly Resolution 34 / 121 (13 December 1996) A / RES / 51 / 122

[16] Application of the Legal Concept of the "Launching State", (2004) UN General Assembly Resolution 59 / 115 (10 December 2004)
[17] This is a current agenda item, as mentioned in the Report of the Chairman of the Working Group on the State Practice of the Registration Convention, UN Doc. A / AC.105 / 871 at 36
[18] Galloway, Eileen, "Consensus Decision-Making in the UN COPUOS", (1979) JSL 3
[19] Concrete proposals will be made in Hobe, S., "Challenge to the Astronaut Concept in the Era of Space Tourism", in Lafferranderie, G., (ed.), *Agreement on the Rescue of Astronauts, the Return of Astronaus and the Return of Objects Launched into Outer Space 1968 - 2008. Lessons Learned? Which Directions Now?*, (forthcoming, 2008)
[20] Hobe, S., Schmidt/Tedd, B. and Schrogl, K.-U., (eds.), *Towards a Harmonised Approach for National Space Legislation in Europe: Project 2001 Plus*, Proceedings of the Workshop, 29 – 30 Januarz 2004, Berlin (2004)
[21] For more information relating to the ECSL, see the Bi-Annual Report, European Centre for Space Law, available online at <ftp://ftp.estec.esa.int/ftp/pub/ecsl/MATERIAL/Biennal-Report/Origin.pdf>, Last accessed 21 March 2007
[22] Information relating to the ECSL Practitioners' Forum is available online at <http://www.esa.int/SPECIALS/ECSL/SEM0MNGHZTD_0.html>, Last accessed 21 March 2007.
[23] The programme of the 2007 ECSL Practitioners' Forum is available online at <http://www.esa.int/SPECIALS/ECSL/SEM1FMQJNVE_0.html>, Last accessed 21 March 2007.
[24] The programme of the 2006 ECSL Practitioners' Forum is available online at <http://www.esa.int/SPECIALS/ECSL/SEMT7YVLWFE_0.html>, Last accessed 21 March 2007.
[25] The programme of the 2005 ECSL Practitioners' Forum is available online at <http://www.esa.int/SPECIALS/ECSL/SEMNH1V74TE_0.html>, Last accessed 21 March 2007.
[26] The programme and proceedings of the 2004 ECSL Practitioners' Forum is available online at <http://www.esa.int/SPECIALS/ECSL/SEMIFMWJD1E_0.html>, Last accessed 21 March 2007.
[27] The programme of the 2003 ECSL Practitioners' Forum is available online at <http://www.sidi-isil.it/attivit%C3%A0/galileo.htm>, Last accessed 21 March 2007.
[28] The Constitution of and more information on the International Institute of Space Law can be found online at its website <http://www.iafastro-iisl.com>, Last accessed 21 March 2007.
[29] The proceedings of the 2001 IISL Regional Conference in Singapore was published as a special feature of the SIngapore Journal of Inetrnational and Comparative Law (2001) 5 SJICL.
[30] More information on the 2004 IISL Regional Conference in Beijing, PR China, can be found in the IISL newsletter, available online at <http://www.iafastro-iisl.com/downloads/newsletters/Newsletter_65_december_2003.doc>, Last accessed 21 March 2007.
[31] A report on the 2005 IISL Regional Conference in Bangalore, India, is available online at <http://www.isro.org/newsletters/spaceindia/lulsep2005/Chapter1.htm>, and at <http://www.asindia.org/Anouncement.aspx?id=10>, Last accessed 21 March 2007.
[32] The programme of the 2006 IISL Regional Conference in Bangkok, Thailand, is available online at <http://www.iafastro-iisl.com/downloads/SLC%202006_Programme.doc>, Last accessed 21 March 2007.
[33] Information relating to the International Law Association is available online at <http://www.ila-hq.org>, Last accessed 21 March 2007.
[34] Information relating to the ILA Space Law Committee is available online at <http://www.ila-hq.org/html/layout_committee.htm>, Last accessed 21 March 2007. The Committee also publishes annual reports, including the Report on the Sixty-Ninth Conference in London, (2000), and the Report on the Sixty-Eighth Conference in Taipei, (1998).
[35] See *supra* note 20
[36] More information on the Cologne Commentary on Space Law (CoCoSL) is available online at <http://www.ilwr.de/index.php?name=cocosl>, Last accessed 21 March 2007.
[37] United Nations Office of Outer Space Affairs, *United Nations Programme on Space Applications*, (January 2006), V.05-89626, available online at <http://www.unoosa.org/pdf/publications/psa-brochure.pdf>, Last accessed 21 March 2007.