

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

Dr. Jasentuliyana Keynote lecture by a leading space law expert and IISL Young Scholars session (1)

Author: Ms. Upasana Dasgupta

Institute of Air and Space Law, McGill University, Canada, upasana.dasgupta@mail.mcgill.ca

GUIDE TO SPACE LAW: THROUGH THE LENS OF ITS DRAFTING HISTORY

Abstract

The international law regarding outer space is governed by five international treaties which were adopted in 1960s and 1970s and no hard law has been adopted since then. Given the situation, it is important to understand the drafting history of the space, the intention behind the States negotiating the treaty provisions and whether the purpose of the treaties are still valid today.

The Vienna Convention on the Law of Treaties provides: Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 [ordinary meaning to the terms of the treaty in their context and in the light of its object and purpose] or to determine the meaning when the interpretation according to article 31:(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. As space-faring nations are gradually legislating national space laws embodying the principles contained in the space treaties, it has become even more important to understand the true intention behind each provision of the space treaties.

Hence, I have initiated a project at SGAC Space Law and Policy project group to decipher the space treaties, particularly the outer space treaty through the lens of the history.

Expected audience: Any international lawyer, academicians and students will find this work enlightening. As United Nations Institute for Training and Research (UNITAR), a principal training arm of the United Nations, note on “the preparatory work of UN multilateral treaties” stated “No lawyer would feel satisfied about his identification of the meaning of a treaty unless he had examined the preparatory work.”

Scope: This project would require skimming through the complex records of the preparatory work of the space treaties and produce a guide that explains every word of the space treaties through the lens of the travaux préparatoires. Each chapter of this project will consist of elaboration of each article of the space treaties. Each chapter will consist of a brief overview of the drafting history of each provision, the proposals and the debates around each article and the compromises behind final wordings of the article. Whereas space law books and articles refer to the drafting history of the space treaties, there is no word by word by word guide to the travaux préparatoires of the space treaties.