

Project 2001: Status Report of the Working Group on Telecommunication

Isabel Polley, Attorney-at-Law, Institute of Air and Space Law, Cologne
Dr. Kai-Uwe Schrogl, German Aerospace Center DLR, Cologne

Abstract

The Working Group on Telecommunication of Project 2001: "Legal Framework for the Commercial Use of Outer Space"¹ is composed of around 20 leading experts in the field of space telecommunication. It is managed by the two Working Group Coordinators presenting this paper, which introduces the working scope of the Group, describes its structure and the meetings held so far. The paper also gives an outlook on the formal workshop of the Group which will be held alongside the International Aerospace Exhibition (ILA) in Berlin on 8/9 June 2000. Closing up, the topics will be characterized that figure out to be part of the final report of the Working Group addressed to the symposium of the framework project, taking place in Cologne in 2001.

I. Overall objective

In view of the fact that especially in the field of telecommunications private entities have been increasingly involved in space activities, the Working Group aims at determining in how far the existing legal framework reflects the current developments. Therefore, the Group's work consists of the examination of the present provisions and in discussion whether these regulations are sufficient for the already changed and still developing telecommunication environment. By identifying the

regulatory needs, the experts of the Working Group will propose what kind of legal framework should be developed on which level (national, regional like EU or global) and in which forum (in particular focussing on UNCOPUOS, ITU and WTO).

II. Working Group Meetings

In preparation of the first meeting of the Working Group at ESA Headquarters on November 5, 1998², the day before the ESCL's Practitioners' forum, the experts answered a questionnaire drafted by the Coordinator of Project 2001, thus identifying the subjects the emphasis should be laid on. At this early stage, it became clear that the Working Group would focus explicitly on thematic fields representing "licensing issues", "frequency issues", "trade issues" and "international service providers". By evaluating the questionnaire, the Working Group Coordinators sketched a Draft Outline as basis for the discussions during the informal meeting in Paris. At this meeting, it was felt that the thematic fields should be extended to a fifth topic "globalization issues", which covers the legal requirements for commercialization and globalization in the field of telecommunication in general. During the meeting and afterwards, the experts could choose a specific thematic field on which they would like to focus in order to intensify the Group's work, thus already preparing

¹ See Susanne Reif, *Project 2001: shaping a legal framework for the commercial use of outer space*, Space Policy (15,2) 1999, p. 109 et seq.

² See Susanne Reif, *Project 2001: A Legal Framework for the Commercial Use of Outer Space*, ECSL News (18-19) 1999, p. 10 et seq.

the next informal meeting, which took place alongside Unispace III in Vienna in July this year. At this second informal meeting, the program for the formal Workshop in Berlin in June 2000 was drafted.

III. Format of the Workshop on Telecommunication in 2000

The five thematic fields as outlined above will be discussed at Berlin in a two-day workshop on 8/9 June 2000. Each thematic field will be covered by the presentation of a discussion paper of about 20 minutes, a reply of a discussant, which will take 10 minutes, and finally by an open 30-minute-debate. The discussions and presentations will treat the impact of privatization in the thematic fields as well as the need for changes in the legal framework to adapt to new issues and demands.

- In regard to the thematic field “Licensing issues on the national level”, Maître LeGoueff will be the author of the discussion paper dealing with the licensing issues on the EU-level, followed by Mr. B.-L. Smith, who will mainly focus on IPR subjects. Dr. Kraatz will subsequently discuss the issues presented before.
- The thematic field “Frequency management” will be debated by Prof. Jakhu (Discussion paper) and Dr. Mosteshar (Discussant).
- The topic “Trade issues” will be covered by a discussion paper of Prof. Malanczuk, which will be then discussed by Mr. Noll.
- The second day will deal with the thematic field “International service providers”, presented by Dr. Ospina. Mr. Schemel has been invited to become the discussant.
- The fifth thematic field “Globalization

issues” is treated by Dr. Salin as author of the discussion paper and Dr. Martinez as discussant.

Besides the debates following each presentation of thematic fields, there will be time for an extensive general discussion that will lead to a summary of recommendations.

IV. The concept of the thematic fields

Working on the principle that telecommunication is defined as any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems³, the Working Group subdivided – as stated before – its study of telecommunication provisions into its relevant fields of application, i.e. “licensing issues”, “frequency management”, “trade issues”, “international service providers” and “globalization issues”.

1. Licensing issues

Since obtaining a license is the relevant action for becoming a player in the field of telecommunications, this thematic field is crucial from a practical point of view. As starting point, the licensing practices on the national level will be analyzed by the Working Group. On the EU-level, the “Licensing Directive” 97/13 stipulates certain standards for granting licenses⁴. It provides that licensing conditions must be objectively justified in relation to the service concerned, non-discriminatory, proportionate and transparent. However, licenses must still be obtained in each country where a service is intended. For this reason, licensing procedure and licensing conditions – including fees – may vary from country to country⁵. As another

³ Annex to the ITU Constitution.

⁴ See Stéphan Le Goueff; *Satellite Services Licensing in the European Union*, *Journal of Space Law* (25, 1) 1997, p. 40 et seq.

⁵ See Stéphan LeGoueff *ibid*.

important example for national licensing practice, the US-procedure has to be taken. When receiving a satellite application, the US Federal Communication Commissions asks whether the proposed private satellite system is in the "public interest" and whether the proposed venture is technically and financially feasible⁶. Therefore, by comparing the national licensing conditions, the Working Group will examine what will be needed for international harmonization of licensing. As result thereof, the experts will discuss the possible need for a legal framework for licensing harmonization, which may include on the European level the introduction of a European License that could be based on a one stop-shopping procedure as already proposed by the Licensing Directive for the future⁷, but which still has not been implemented.

2. Frequency management

The International Telecommunication Union (ITU) as the relevant body for frequency management is treated in this thematic field. The work of the ITU, although nowhere mentioned in the Outer Space Treaty, has served the development of telecommunications activities very well. But nevertheless, its role as the manager of the international spectrum and orbit resource has to be reconsidered by the new achievements of the telecommunication industry.⁸ The question is if the present regulations are in accordance with the changing demands in the field of telecommunications and how they can be adjusted to the current and future competitive situation. For a detailed analysis, the Working Group will focus on the allot-

⁶ See Pamela Meredith, *Licensing of Private Space Activities in the United States*, *Annals of Air and Space Law* (XXII,1) 1997, p. 413 et seq.

⁷ Article 13 of the Licensing Directive 97/13/EC of 10 April 1997.

⁸ See Kai-Uwe Schrogl, *The new structure of the ITU - responses to rapid technological and political change*, *Space Communications* (12) 1994, p.29 et seq.

ment planning and the financial system of the ITU, including the concepts of due diligence and fees for registration. Besides, the Working Group will study in how far the ITU is challenged by the new systems and services that will be operating in the Low Earth Orbit (LEO) and Medium Earth Orbit (MEO)⁹. The discussion of the ITU regulations will also center on the status and role of private entities in this organization, which already has enacted the most far-reaching provisions for participation compared with other international organizations. Another important issue is the range of competence the ITU should have in the future. It has been suggested that the ITU could be acting as World Communications Commission¹⁰. Depending on the findings of the Working Group, its experts will discuss the needs for a new legal framework coping with the issues quoted above.

3. Trade issues

The General Agreement of Trade in Services (GATS) and its provisions on telecommunications are treated in this thematic field. The GATS offers a multilateral set of enforceable rules to liberalize trade in services. It rests on three pillars: (1) a framework agreement, containing basic principles applicable to trade in services, such as Most Favored Nation and Transparency; (2) several annexes and (3) national schedules, where governments make specific commitments to liberalize their markets in identified service sectors¹¹. The Working Group will scruti-

⁹ See for these systems Sa'id Mosteshar, *Development of the regime for LEO and GEO*, in: Gabriel Lafferranderie/ Daphné Crowther (eds.), *Outlook on Space Law over the Next 30 Years*, The Hague/London/Boston 1997, p. 81 et seq.

¹⁰ See Francis Lyall, *The Role of the International Telecommunication Union*, in: Gabriel Lafferranderie/ Daphné Crowther (eds.), *Outlook on Space Law over the Next 30 Years*, p. 253 et seq.

¹¹ See Stéphane Lessard, *International Trade in Telecommunications Services: Towards Open Markets*, *Annals of Air and Space*

nize these legal provisions with respect to satellite communications, especially focussing on national commitments on market access for different kinds of foreign satellite services and terminal equipment. In addition, the Working Group will study the possibilities of further developments of free trade commitments within the WTO-regime. When developing proposals for new legal provisions, the Working Group will also take into consideration the relation between the respective roles of the WTO and ITU and their interaction.

4. International service providers

Since the operators of satellite systems have changed from once mostly governmental organizations to private providers, this thematic field will focus on the legal implications of this transformation. The Working Group will examine how the governmental multilateral operators have adapted to the present telecommunication environment. Moreover, the legal demands of the increasingly diversified systems are subjects of the Working Group's analysis. Especially the establishment of Global Mobile Communication Satellite Systems (GMPCS) raises a number of questions to which belong, among others, issues of international responsibility. The new satellite systems such as Iridium or Globalstar do not match the so far existing telecommunication standards and call for adaptation of national¹² or international regulation.

5. Globalization issues

In this thematic field, the legal requirements for globalization are dealt with in general. Thus, it will be outlined what are the legal conditions for commercialization regarding the telecommunication sector

¹² Law (XXII,1) 1997, p. 403 et seq.
See Patrick A. Salin, *US Legislation on International Satellite Communication Regulation*, German Journal of Air and Space Law (48,1) 1999, p. 50 et seq.

with special emphasis on non-trade issues. The new developments in the field of telecommunications require a review of the space treaties regarding subjects such as sovereignty, extraterritoriality and supranationality. Especially the emergence of Internet-based communication systems makes the compliance with Art. VI Outer Space Treaty, which stipulates state "authorization and continuing supervision", increasingly difficult¹³. The thematic field "Globalization issues" also covers new applications as e-commerce which raise several rather unique legal implications¹⁴.

V. Other contributions of the Working Group

The Working Group will also be able to react on the latest developments in the field. One such issue is the recommendation by UNISPACE III (19-30 July 1999), to start a discussion in UNCOPUOS on the question, whether a special legal regime for the status and utilization of Low Earth Orbits (LEOs) is needed. This recommendation was based on a proposal by the IISL Workshop at UNISPACE III, which was part of its Technical Forum. The basis for the recommendation is the incorporation of all orbits associated to the utilization of frequencies in Art. 44 of the ITU Constitution, which so far has only labeled the GSO as being a limited natural resource (with the consequence that LEOs now, by international law, have to be used "rationally, efficiently and economically" so that "countries and groups of countries may have equitable access to those orbits and frequencies"). In this context, the Working Group will analyse, how this subject could be dealt with in UNCOPUOS.

¹³ See Larry Martinez, *Satellite communications and the Internet: implications for the outer space treaty*, Space Policy (14,1) 1998, p. 83-88.

¹⁴ See Larry Martinez, *Legal Implications of Globalization Issues: From E-Commerce to the Internet*, Presented at this Colloquium.