**NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM**

# REPORT
# OF THE
# WORKSHOP ON AIR AND SPACE LAW

**[3 – 4 NOVEMBER 2018, Guwahati, Assam]**

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# PREFACE

Air and Space Laws are the emerging legal disciplines which have garnered the attention of many countries, both developed and developing. While some of the developed countries have been the proponents of aviation and space-related activities, developing countries are also taking a keen interest in developing effective policies which will allow them to explore these new frontiers. The aviation sector, in comparison to the space industry, has witnessed rapid growth in the past few decades, with the creation of state-of-the-art airports all across the world. The space industry is also touted to take off in a big way in the coming years. The private companies and enterprising individuals may play a very significant role in the development of the space industry.

National Law University and Judicial Academy, Assam has conceived the Project on Air and Space Law Education [PASLE] to impart education regarding pressing issues associated with the dual disciplines of Air and Space Law. The Project aims to organize activities such as workshops, seminars, conferences, and summer schools for promoting such education. The Workshop held on 3rd and 4th November 2018 was the first event organized by the University under the aegis of the Project.

The main objectives of the Workshop were to (a) appraise the participants of the various national and international frameworks in the fields of Air and Space Law; (b) to explore the emerging prospects of civil aviation in the North Eastern Region; (c) to facilitate a discourse with regard to terrorism-related offences and crimes committed on-board an aircraft in civil aviation and to acquaint with the various national and international frameworks in the sector; (d) to raise awareness about the environmental concerns with regard to Space Law; (e) to explore the national and international dispute resolution/settlement mechanisms to address the legal issues in Air and Space Law; and (f) to understand the emerging trends regarding activities in the spheres of Air and Space Law. Overall, the main aim of the Workshop was to stimulate discussion on pressing issues relating to the dual disciplines of Air and Space Law.

The Workshop was organized with a view to kick-start greater activities under the aegis of the PASLE, and hopefully, the participants have taken back knowledge on certain important developments in the fields of Air and Space Law.

Ishita Das
Coordinator

# PROCEEDINGS OF THE WORKSHOP

## DAY 1: NOVEMBER 3

## INAUGURAL SESSION

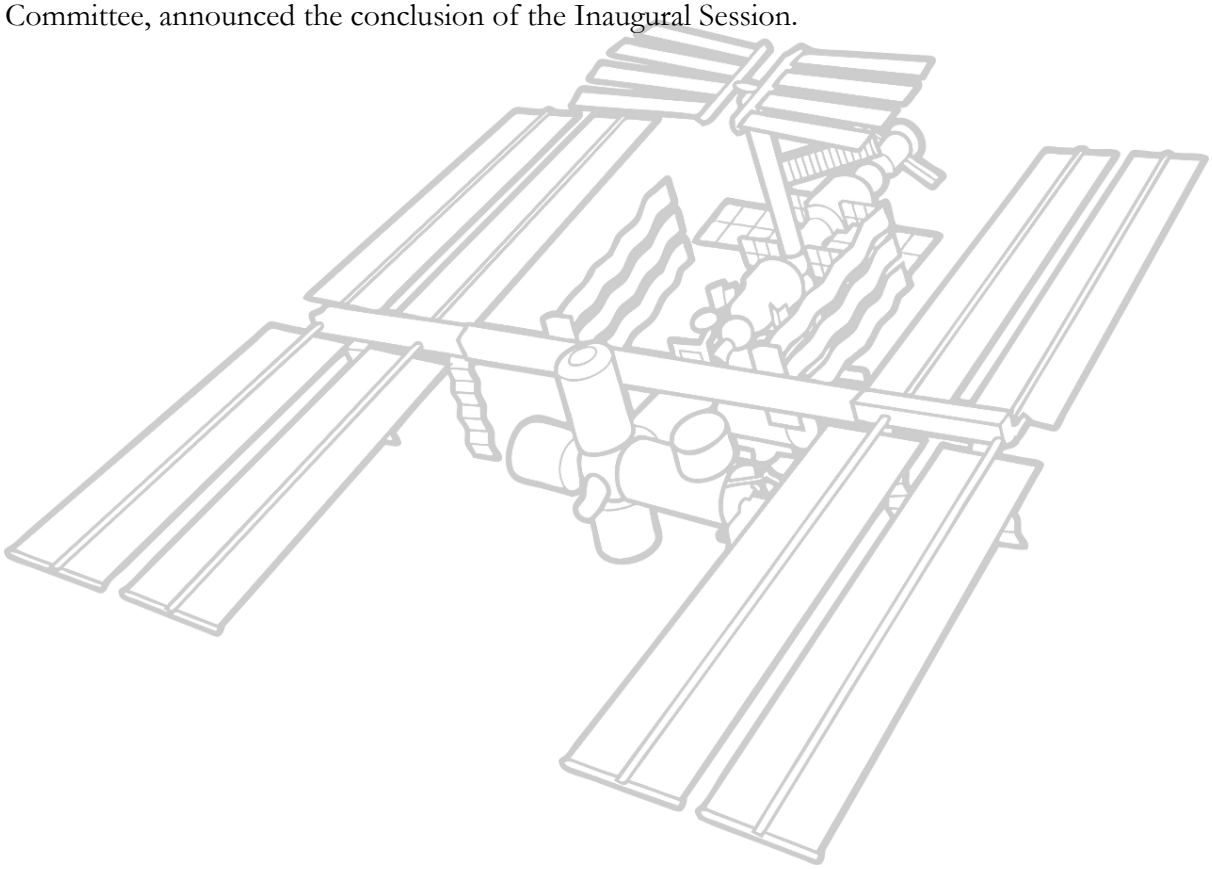
Mr. Robin Jaiswal, LL.M. student of National Law University and Judicial Academy, Assam, opened the inaugural session by making a reference to the feature film, *The Martian*, wherein Matt Damon's character, Mark Watney, says that "There's an international treaty saying no country can lay claim to anything that's not Earth." He indicates the reference to the various international agreements which specify the obligations of the countries with regard to the exploration of the outer space, such as the Outer Space Treaty. He emphasized how the developments in the aviation sector have also surpassed human imagination at the time when the Wright Brothers were developing the first airplane. He then proceeded to invite Prof. (Dr.) J.S. Patil, Hon'ble Vice-Chancellor of National Law University and Judicial Academy, Assam, and Patron of the Workshop to deliver the *Welcoming Address*.

Prof. (Dr.) J.S. Patil, welcomed the Chief Guest, Prof. (Dr.) R.C. Borpatragohain, Learned Advocate General, Assam; the Key Resource Persons, Prof. (Dr.) G.S. Sachdeva, Professor at NALSAR University of Law, Hyderabad, Mr. V. Gopalakrishnan, Associate Director (Policies) with the Indian Space Research Organization [ISRO], Mr. P.L.N. Raju, Director with the North Eastern Space Applications Centre [NESAC], Shillong; Ms. Veena Kamath, Associate at Kamath & Kamath, Bangalore; and the other members of the audience. He articulated the need for greater discussion on issues relating to the Air and Space Law and how the University was seeking to contribute to the same by the creation of the PASLE. He expressed hope that following the successful conduct of the Workshop, the University would be in a position to organize bigger events, perhaps, of an international nature, with the support of the eminent experts in the fields of Air and Space Law and the blessings of the Chief Guest and the Government of Assam.

The Chief Guest of the Workshop was then invited to provide his perspective on the Workshop. Prof. (Dr.) R.C. Borpatragohain noted that the disciplines of science and humanities were intricately interwoven in the studies of Air and Space Law. He emphasized how the remarkable feats of humankind towards the advancement of aviation and space activities had contributed to the translation of dreams to reality. He noted the efforts of the University towards the promotion of education in the fields of Air and Space Law and expressed hope that the PASLE would achieve success in spreading awareness about issues relating to the two areas of law. The Key Resource

Persons were then invited to provide their remarks on the Workshop's agenda and aims. While Prof. (Dr.) G.S. Sachdeva spoke about the importance of having proper laws with regard to the aviation sector, Mr. V. Gopalakrishnan emphasized the immense scope for growth in relation to space activities. Mr. P.L.N. Raju articulated the link between space technologies and the agricultural sector, and Ms. Veena Kamath spoke about the experiences which led to the development of an active interest in Space Law.

Following the remarks of the Key Resource Persons, Mr. Animesh Anand Bordoloi, 5th Year student at National Law University and Judicial Academy, Assam, and Member of the Organizing Committee, announced the conclusion of the Inaugural Session.



## SESSION 1.1. BRIEF INTRODUCTION TO AIR AND SPACE LAW, INCLUDING STATE SOVEREIGNTY ISSUES

***Key Resource Person: Prof. (Dr.) G.S. Sachdeva, Professor, NALSAR University of Law***

Prof. Sachdeva started the first technical session with an example where a farmer had shot a rabbit across the land of another farmer. The latter claimed breach of his right and approached the court. The Roman maxim *cuius est solum eius est usque ad coelum et ad inferos* was developed, that is, whoever owns the land owns the air-space up to the heavens. The first air law of the world can be traced to a police decree of 1783 in Paris which required people to take permissions from the police before flying their hot air balloons. With the development of aircraft in the early twentieth century, cases began to come up. The US courts developed the principle that the space that one could not use is not theirs and that the state can use it. They developed the principle of eminent domain of state and the doctrine of public policy or public interest. Further, with international flights being in operation, the issue of sovereignty also arose.

He discussed the futility of the Paris Convention due to the opposing views of free air, supported by the French, versus the view regarding the protection of sovereignty. The Chicago Convention also did not grant free air but it gave certain concessions called freedoms of the air. The accident-prone nature of aircraft was also discussed. The first case of an accident under air law was traced back to a balloon falling on the standing crop of a farmer. The court had imposed absolute liability on the farmer in this regard. The Rome Convention deals with third-party damage when an accident takes place. The aircraft is to carry its insurance whenever it flies and the weight of the aircraft determines the third party liability if an accident happens in a foreign country. In the case of national flag carriers, a back-to-back guarantee from the government is required in order to cover third-party damages. He said that insurance for aircraft was usually done in Lloyds, an aviation insurance specialist market.

The first commercial airline was the *DELAG* from Germany. It used Zeppelin dirigibles filled with helium, a highly inflammable gas. In 1910 an accident took place at Lake Constance where all the passengers aboard died. The liability that arose was unlimited and the owner of the airline went bankrupt after making the payment. In a lot of cases nowadays, airlines do not buy their own aircraft but they take them on the lease. These leases may be of two types – wet and dry. In a wet lease, the complete operations along with the crew are provided. However, in a dry lease, only the

aircraft is given on lease while the crew has to be separately hired. The Cape Town Conference came up in order to determine the interest of the leaseholder on the aircraft. It provided that the leaseholder has the right to seize an aircraft in case of non-payment of the lease. An Indian example was given in this regard for a practical understanding of the concept.

Prof. Sachdeva concluded the part on Air Law by saying that social consciousness is required. Instead of focusing on increasing the number of airports, the focus should be on conserving the ecology of these airports. Airports should not come up at the cost of basic ecology. And finally, aircraft should become more environment-friendly and cause less pollution as they are already exempted under the statutes relating to air pollution.

He introduced the basic concepts in space law with some of the lasting jurisprudence in the subject. There must be free access to all – irrespective of whether the states are members or not they have access to all parts of outer space. The established principle of *pacta sunt servanda* is not applicable in this case. Further, there is the basic humanitarian principle that benefit from space activities must be shared with all states. However, this principle is criticized by some who argue that such benefits should not be earned by states who do not contribute in any way. The last jurisprudential concept discussed was that the outer space is not to be the sovereign property of any country. Astronauts are considered to be the envoys of mankind in outer space. The reason behind this was that previously there were only two countries – the USA and the USSR – that had access to outer space. So they needed each other's help in case any problem arises. This idea became controversial when other countries also started taking part in space activities. This concept of the envoys of mankind is now forgotten.

Newer concepts like that of the common heritage of mankind developed with the development of the law of the sea. Subsequently, this was also applied in the case of space. The Outer Space Treaty could not foresee concepts like the commercialization of outer space or privatization of outer space. To a certain extent private corporates can undertake space activities under the supervision of the state but this is very narrow. Another pertinent issue not imagined at that time was that of space debris. There are thousands of satellites and every satellite leaves a pugmark of debris. They either explode or implode and create debris that continue to remain for thousands of millions of years. Prof. Sachdeva highlighted the need for mitigation and remediation. For mitigation, guidelines were framed in 2007. However, many countries have not fulfilled it completely. In the case of remediation, only Japan and Switzerland are taking measures. He highlighted the need to

create a mechanism and system to tackle these problems and urged the young minds to look into opportunities in this aspect.

In the interactive session, Mr. P.L.N. Raju inquired about the number of countries that have their own space law to which Prof. Sachdeva answered that more than 40 countries have done so. Mr. V. Gopalakrishnan clarified that many countries have implemented their treaty obligations through domestic legislation. Prof. Patil highlighted the new and emerging issues including the issue of privatization of space and stated that while countries are involving in international law, they have to move towards global law. To this, Prof. Sachdeva responded that more novel issues may come up where children may be born in space, the issues of nationality in such cases and so on and that this would require a new law altogether. Some of the delegates also participated in this round. One of the questions which came up was with regard to the imposition of liability on a state under national law in case of damage by a spacecraft. When there is damage the state which supported the treaty will have the liability. The state causing damage will have to immediately respond to the victim country. The state cannot take responsibility just like that for a private party. If a private party is competent enough, they have to compensate and countries have different ceilings for such compensation. The interactive session saw the active participation of all the Key Resource Persons as well as that of the Delegates.

## SESSION 1.2. SCREENING OF DOCUMENTARY TITLED, "MANGALYAAN: INDIA'S MISSION TO MARS"

***Key Resource Person: Ms. Veena Kamath, Associate, Kamath & Kamath***

The second technical session witnessed a screening of the documentary on 'India's First Interplanetary Journey to Mars', under the supervision of Ms. Veena Kamath. It traced the different activities pre-launch as well as post-launch that have to be taken care of while launching a mission. It explained the need for a powerful rocket to launch the *Mangalyaan* since the PSLV could not do so and the GSLV was still under development. It also showed the significance and the urgency of sending the mission within the selected time without any delay as it was a determining factor for the shuttle to reach Mars. It also highlighted the various problems that may have arisen at each stage of the launch, including after the launch where the ISRO officials had

mapped out at least 250 different reasons for possible failure. The success of the mission was a huge step for India in its outer space activities.

## SESSIONS 2.1 & 2.2. THE NORTH-EAST AND DEVELOPMENT OF AVIATION AND SPACE ACTIVITIES

***Key Resource Person: Mr. P.L.N. Raju, Director, North Eastern Space Applications Centre***

Mr. Raju started the second technical session by talking about the documentary shown in the preceding session and emphasizing that the cost of the entire *Mangalyaan* mission was less than that of the movie *Gravity*. In his session, Mr. Raju primarily dealt with space technology application in the North-East. He identified the fields in which space technology is used. They include satellite communication, for developing GPS, in meteorology, remote sensing application, among others. Space technology application is done in diversified areas such as in irrigation, agriculture, for drinking water, fisheries, sericulture, horticulture, shifting cultivation, accessing the forest cover, snow and glacial studies, decentralised planning up to the *Panchayat* level, drone technology, taxation, preservation of wetlands, urban planning, disaster management, cyclone tracking, landfall management, drought monitoring, forest fire alerts, landslides, thunderstorm nowcasting, *inter alia*. Even in the case of the development of smart cities around the country, high-resolution data is collected through the application of space technologies for their planning. He explained how microwaves are used to collect data during floods in order to penetrate through clouds and the use of thermal remote sensing for forest fire alerts. For satellite navigation, primarily NAVIC and GAGAN are used. NAVIC works similar to GPS and helps navigation while GAGAN increases accuracy by a large extent. The North Eastern states use the assistance of the North Eastern Space Applications Centre for their work on the various projects which are given them.

He also discussed the importance of policies in the application of space technologies. The exploration of outer space must be done in a peaceful manner in order to benefit mankind and to strengthen the capabilities of countries in space application. This requires international cooperation. Space technologies are being used to solve regional as well as global problems, for sustainable development, to secure against external threats and to prevent man-made and natural disasters. Policies play a pivotal role in this regard. The UN also plays an important role in Earth Observation Data Policy. It has developed certain principles with regard to remote sensing. He also discussed the components of the Earth Observation Data Policy. The legal issues include

licensing which is included within the 1967 UN Outer Space Treaty under Articles 1 to 17 and that of liability which is covered within the Liability Convention.

During the interactive session, the security problems that may arise due to the tracking of UAVs by satellites was raised. Ms. Kamath asked if there was any area where space technologies could not be used. To this, Mr. Raju answered that flood forecasting could not yet be done with 100% accuracy. Prof. Patil also raised the issue of the security of nations from being tracked by foreign satellites. With the end of this session, the first day of the workshop was concluded.

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## DAY 2: NOVEMBER 4

## SESSION 3.1 – AIR LAWS AND CIVIL LIABILITY

***Key Resource Person: Prof. (Dr.) G.S. Sachdeva, Professor, NALSAR University of Law***

Prof. (Dr.) Sachdeva began the third technical session by talking about the emergence of the first recorded regulation on the ambit of air law. It was in Paris that the local administration brought about the regulation with regard to hot air balloons. These balloons were hazardous, and the local administration sought to regulate them by not allowing them to be used in the vicinity of Paris. In the earlier years, the concept of 'compensation' was non-extant, for instance in Germany, there was no contributory negligence; in France, there was the concept of '*dolus'* which implied gross negligence, and to be eligible for compensation, negligence had to be gross in nature.

He went on to talk about the problems in identifying jurisdiction since passengers, aircraft, persons claiming for compensation had different jurisdictions. He thereby deliberated on the role of IATA, which was instrumental to draft the Paris Convention and the Warsaw Convention. He gave an example of the *DELAG* incident, which resulted in the bankruptcy of the airline company because of the concept of unlimited liability. Because of this instance, airline companies could not respond to such claims. This was solved by the Warsaw Convention which standardised contracts, quantified liability, and required simple evidence for compensation. He also talked about the concept of *res ipsa loquitor*, which resulted in the shifting of the burden of evidence upon the carrier.

He went on to talk about the concept of 'International Carriage', i.e. the countries accepting this treaty were high contracting parties. Certain exemptions were the personnel on duty, experimental flights, extra-ordinary operations, transport by other means, military and customs aircraft, postal mail, and charter flights. With respect to contracts for carriage, the ticket must contain essential information such as the name of the passenger, the point of departure, destination, and most importantly about the limited liability under the Warsaw Convention, which if not specified, the provisions of the convention would not apply. Furthermore, the loss of a ticket does not mean that the contract does not exist, since the person is entitled to a new boarding pass, which means the contract is not yet abrogated. Also, a consignment without the Airway Bill Number is subject to unlimited liability.

The liability of passenger is 'strict'. It is 'presumptive' because of the concept of *res ipsa loquitor*. It also means that heirs cannot claim liability. Furthermore, unlimited liability exists in case of fraud and defect in the design of the aircraft, called product liability. Therefore, the importance of 'airworthiness check' is pivotal. He then went on to discuss accidents on board. He believed that it was open to several interpretations. He took the example of a KLM flight case, where the American Court adopted the three test criteria:

1. What activity was the passenger doing?
2. Under whose control was the passenger?
3. Under whose authority was the passenger?

He then talked about the concept of defense in strict liability's defense, which mainly includes *force majeure* or 'Act of God', and acts of the enemy. He also said that if an aircraft was carrying dangerous or hazardous cargo, even then compensation could be claimed. He then gave the importance of the changing nature of liability, which in the pre-Warsaw era was fault based. He gave the example of product liability, wherein on the death of a HAL MiG test pilot, the Indian court ordered the government to pay damages to the victim's heir. He then talked about the role of the Montreal Convention of 1999 which raised the limit for liability to reduce the dependence of protocols and the concept of 'Inducement Settlement Clause' which means not to litigate unnecessarily to gain compensation.

On the Indian arena, he said that air liability law could essentially be traced to the Contract, Act, Fatal Accidents Act, Carriage by Air Act 1934, Carriage by Air Act 1972( which was the result of the Hague Protocol), and the Consumer Protection Act. He said that this was in contrast to the often liberal interpretation granted by US Courts, and their comprehensive laws on air liability. Following his remarks, there was a brief discussion on the issues touched upon by Prof. Sachdeva. The session came to an end following the same.

## SESSION 3.2. LIABILITY UNDER SPACE LAW

***Key Resource Person: Ms. Veena Kamath, Associate, Kamath & Kamath***

Ms. Kamath started the session by encouraging the participation of the delegates and initiated by asking a few questions on space law, the primary aspects that one relates to space law and so on. A lot of treaties have developed through the UN Committee on the Peaceful Uses of Outer Space.

The five main international treaties with respect to space law include the Outer Space Treaty, the Agreement of Rescue of Astronauts, the Liability Convention, the Registration Convention, and the Moon Agreement. The Outer Space Treaty lays down the fundamental principles of space law such as the principle of non-appropriation, use of the outer space for control of states, liability, responsibility, and cooperation. She gave a hypothetical scenario in order to understand the scope of space law and its relation to domestic law and private international law issues such as jurisdiction and compensation. The delegates were asked to identify the various issues which might come up in that scenario.

She discussed the provisions of the Outer Space Treaty and the Liability Convention to understand the issue of liability under space law. It was discussed whether domestic law may sometime provide for more specific rules regarding liability, more particularly in the light of certain loopholes in the existing laws which are currently being exposed due to the rapid technological advancements in the field of outer space. She showed a short video on the Soyuz launch and asked the delegates to participate in identifying the various stages of the launch in which the issue of liability may arise. The Liability Convention imposes absolute liability where damage has been caused by a launch on the surface of the earth. However, a distinction is created when damage occurs at any place other than the surface of the earth, that is, a fault-based approach is used. Since only a limited number of states engage in outer space activities, there are not many incidents that have occurred where the states have applied the principles laid down in the Liability Convention. This is because in most cases the states amicably settle the disputes between themselves. Since the Liability Convention is victim-oriented, therefore there is no limit on liability. Dispute resolution takes place through Diplomatic Channels and the Claims Commission. National remedies need not be exhausted to make a claim under the Convention. Compensation is awarded in accordance with international law and the principles of justice and equity. Apart from this, she discussed issues such as who is liable, how is the quantum of compensation determined, how are the obligations on liability enforced and what are the loopholes in the existing laws on liability vis-à-vis the current space activities.

She concluded by identifying the issues which need to be addressed with respect to liability in the light of technological advancements such as the Asteroid Redirect Mission. She discussed these issues by taking examples from movies such as 'The Martian' and other space-based movies. During the interactive session, she highlighted the need for a revisit or relook into the definition of vital terms such as 'space object' and 'damage' under the Liability Convention. She also

encouraged the participants to take part in the different moots related to international aviation law and international space law and to do internships in these areas. Following her remarks, this session came to an end.

## SESSIONS 4.1. MILITARIZATION AND COMMERCIALIZATION OF SPACE

***Key Resource Person: Mr. V. Gopalakrishnan, Associate Director (Policies), ISRO***

Mr. Gopalakrishnan started the fourth technical session with the concept of the global commons which include the high seas, the Antarctic region, and the outer space. He discussed some of the provisions of the Outer Space Treaty which provide for the use of peaceful methods, non-appropriation, the application of the principles of international law, peaceful purpose, liability, jurisdiction, and control environmental protection and so on. He also discussed some of the provision of the Moon Agreement which provides for the sharing of benefits among all states on an equitable basis. The Outer Space Treaty is the most popular with 107 ratifications while the Moon Agreement has only 18 ratifications.

He talked about the initial trends in the concept of peaceful uses. The Outer Space Treaty has provisions relating to militarization and strictly prohibits nuclear weapons and weapons of mass destruction from being installed on celestial bodies. It also prohibits the installation of military bases in space. However, the use of military personnel for scientific research or for any other peaceful purpose is not prohibited. But there are changing trends in the peaceful use concept. Article 51 of the UN Charter provides for the right to self-defense. Moreover, non-aggressive force support is also allowed in certain cases. The change in space policy approach in the use of space systems for military and national security can be seen in Russian space laws, US space policies, Japan and in some other countries as well. The US Government has recently declared an initiative for the establishment of a space force. Emerging space security issues include cyber warfare and hacking.

Another important concept is that of the principle of "no first placement" that is followed by all nations. Commercialization of space can be traced to different sectors such as satellite manufacturing, space launch services, and ground systems among others. Article 6 of the Outer Space Treaty provides for the possibility of non-governmental entities and confers responsibility

on the state for their activities. Mr. Gopalakrishnan identified the emerging trends in this field to include space tourism, celestial resources mining, space habitat or colonization, space manufacturing and so on. However, technological and trade barriers will have to be addressed in this area. Another issue that may come up is that of intellectual property rights. Other legal issues would include data protection, and national security among others. He concluded by saying all stakeholders must ensure unhindered space-based services for the benefit of humankind and for this purpose the outer space environment has to be protected.

## SESSION 4.2 – CRIMES RELATED TO AVIATION AND TERRORISM

***Key Resource Person: Prof. (Dr.) G.S. Sachdeva, Professor, NALSAR University of Law***

Prof. Sachdeva started the last technical session with the history of aviation, that is, the use of hot air balloons. Slowly with the development of aircraft and the trend towards luxury and comfort, other services also began to arise. The first air hostess can be traced to 1930 and following this, crew service began to emerge. Commercial Aviation Industry started serving in-house hospitality services such as food and alcohol. With the rise in consumers, other problems started to arise, such as misbehaviour with passengers as well as the crew. The Chicago Convention of 1944 gave the Commander certain powers and imposed responsibility on him for discipline and good behaviour in the aircraft. The Tokyo Convention of 1963 provided guidelines to handle misbehaviour in aircraft. Unruly behaviour could be restrained by the Captain himself, the crew and even co-passengers may be requested for help. The Commander's authority can be exercised onboard the aircraft only while it is in flight and only to maintain discipline and order to ensure flight safety. He is to hand over the offender to the Police at the next landing. Terrorism against aviation started from the Latin American Countries. The first recorded hijacking occurred in 1930 in Peru. In the late 50s and early 60s, such activities also took place in Cuba. However, the worst of such incidents was the 9/11 attacks in the US where the aircraft were hijacked to use them as missiles.

Prof. Sachdeva also discussed the nature of aviation terrorism in the present times. The Tokyo Convention dealt with onboard terrorism. Offenses under this Convention need not necessarily be penal in nature. The Convention imposed obligations on all States to take custody of offenders. The offender may be later allowed to be repatriated, extradited and even to proceed to their destination. The Hague Convention of 1970 addresses hijacking and the unlawful seizure of

aircraft. It applies only to international commercial flights and to offenders onboard. The Montreal Convention of 1971 deals with innovative forms of terrorism where the terrorists may seize control of ground facilities as well. It applies to all civil aircraft. The Montreal Convention of 1992 deals with dangerous goods. He concluded by discussing some of the remedies to be taken up. With the rise in new forms of terrorism, new challenges have arisen. Moreover, there is a glaring need to have a consolidated instrument dealing with all terrorist activates. Although the Beijing Convention of 2014 makes an attempt at consolidation, it is a weak one. Further, there is also a need for the building up of international customary law on aviation. Cooperation of all states and compliance is of the utmost importance in this regard. He also suggested that Special International Tribunals may be set up to try terrorists and offenders of aviation law. With his remarks, the session came to an end.

## VALEDICTORY SESSION

Mr. Robin Jaiswal invited Prof. (Dr.) J.S. Patil to deliver the *Welcoming Address* and award the certificates of participation to the Delegates of the Workshop. Following the distribution of the certificates, Dr. Ishrat Husain, Associate Professor at National Law University and Judicial Academy, Assam, and Chief Coordinator delivered the *Vote of Thanks*. Following his remarks, the last session of the second day was concluded.

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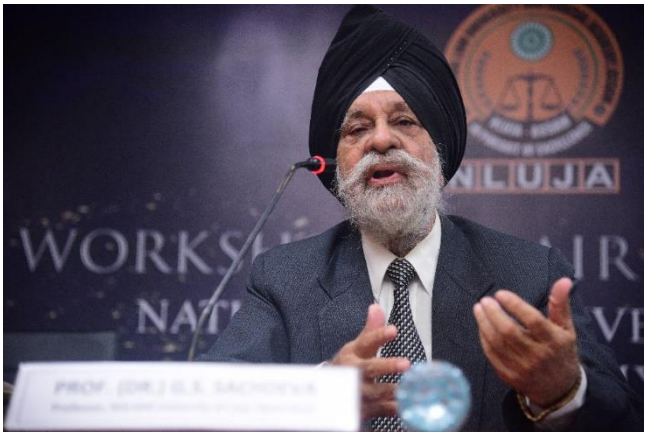
# PICTURES FROM THE WORKSHOP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