

Committee on the Peaceful Uses of Outer Space

Legal Subcommittee

*Unedited transcript***633**rd Meeting

Monday, 3 April 2000, 3 p.m.

Vienna

Chairman: Mr. KOPAL (Czech Republic)

The meeting was called to order at 3.15 p.m.

The CHAIRMAN: I now declare open the 633rd meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. We will now continue our consideration of agenda item 8.

Before continuing with our consideration of agenda items, I would like to draw the attention of delegates to the contents of a non-paper which was distributed to all delegations this afternoon. The non-paper was received from the International Academy of Astronautics (IAA), an organization which has been granted observer status by the Committee on the Peaceful Uses of Outer Space.

It reflects the evaluated results of a questionnaire on space debris which was circulated by the IAA among its members, as well as members of the IAA Committees. The IAA has requested that this information be distributed to the Legal Subcommittee of COPUOS at the present session, for the information of participants.

We will now continue our consideration of agenda item 8.

Review of the status of the five international legal instruments governing outer space (cont.)
(agenda item 8)

The CHAIRMAN: As mentioned this morning, it is my intention to conclude our consideration of this item at this session of the Subcommittee. Therefore I would urge any delegations wishing to make statements to inscribe their names on the list of speakers with the Secretariat as soon as possible.

I have one name on my list of speakers, the distinguished representative of Greece. As the Subcommittee may remember, the delegation of Greece asked for a reservation of the possibility to also speak on agenda items 4 and 6, although these two items have already been concluded. As this possibility was reserved and the Subcommittee kindly agreed, that delegation will have the opportunity to speak on agenda items 8, 4 and 6.

The delegation of Greece also requested to speak under agenda item 10; perhaps that statement could be postponed until the Subcommittee comes to its discussion of that particular item.

In its resolution 50/27 of 16 February 1996, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that, beginning with its thirty-ninth session, the Committee would be provided with unedited transcripts in lieu of verbatim records. This record contains the texts of speeches delivered in English and interpretations of speeches delivered in the other languages as transcribed from taped recordings. The transcripts have not been edited or revised.

Corrections should be submitted to original speeches only. They should be incorporated in a copy of the record and be sent under the signature of a member of the delegation concerned, within one week of the date of publication, to the Chief, Translation and Editorial Service, room D0708, United Nations Office at Vienna, P.O. Box 500, A-1400, Vienna, Austria. Corrections will be issued in a consolidated corrigendum.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): My delegation would like to congratulate you on your re-election, and also to congratulate Ms. M. Othman and Mr. S. Camacho on their recent appointments in the Office for Outer Space Affairs. We would like to express the appreciation of the Government of Greece for the report presented to us at the beginning of this session by Ms. Othman on the contribution of the Office to the work and general activities of the Legal Subcommittee.

The time has come for the role of the Office to expand; it should no longer be limited only to secretariat services for the Committee and its two Subcommittees. Furthermore, while we appreciate the need for rational and effective use not only of the geostationary orbit but also of our own time, my delegation will not make a general statement. Through the Chair, my delegation would ask colleagues to refer to the general statement, distributed to all delegations, made one month ago by my delegation at the Scientific and Technical Subcommittee.

In that statement the views of Greece are expressed on international cooperation in space affairs, space debris, the geostationary satellite orbit and the organization of the work of the Committee and its Subcommittees.

As concerns agenda item 4, the status of the five international space treaties, this is a routine subject where the review of this issue can only make a slight and indirect contribution to the development of international space law. It is fairly limited to an annual balance sheet of ratifications of and accessions to the five treaties, without however examining or even referring to legal or socio-political reasons for which international instruments on this subject have not as yet reached the level of universality required.

If we simply receive the annual report from the Office on these matters passively, without evaluating the relevant data and analysing the phenomenon, then what is the practical purpose of such statistics? My delegation's proposal would therefore be that, regarding a question the origins of which date to a proposal from Greece to the Committee in New York, in 1982/1983, the Office should draw up a table showing ratifications etc. That should then be merged with item 10 for examination at a later stage.

With regard to agenda item 6, the definition and delimitation of outer space and the character and utilization of the geostationary orbit, following

developments in both aerospace technology and international relations, and in particular because space activities are now being taken up by private and multinational companies not under the effective direct control of the State, we must acknowledge that the need for the definition and delimitation of outer space now is more pressing than ever before. Last Thursday, we all saw on television the first successful trial of a prototype of NASA, very similar to the European Hermes. It can reach an altitude of 11 to 15 km above sea level, aimed mainly at contributing "space traffic assistance" for space objects and astronauts in trouble.

Delegations will also be aware of the multinational project that has been set up for a telecommunication system on the basis of radio channels with zeppelin-type balloons in international and national skies, at an altitude of between 20 and 50 km above sea level. These work on frequency bands of between 20 and 540 Ghz, and ITU has already been contacted concerning assignment of these bands.

As is the case with space objects, these two cases need something more than a legal void: it must be filled. At the same time, there has been no follow-up to the examination of space objects. We have not even received any information on the follow-up to the questionnaire. In order to avoid any problems and difficulties due to a lack of firm regulations, we must review our previous discussions on the definition and delimitation of outer space.

As concerns the problems of the geostationary orbit, a topic we have been discussing for over some 25 years, my delegation is pleased to see the satisfactory compromise that has been reached, thanks especially to the work carried out by the delegations of France, Colombia and some contributions from Greece. However, all States, be they economically weak or industrialized, should do their utmost – especially in such forums as the World Radiocommunication Conferences of the ITU – to make the best possible use of the combined spectrum of radiofrequencies and satellite orbits. In this way the whole of humanity will be able to benefit from it.

My delegation would like to remind the Subcommittee that all along, and especially recently, at the thirty-fifth session of the Legal Subcommittee, the 16th Plenipotentiary Conference of the ITU (Minneapolis, 1998), and at UNISPACE III, Greece has always firmly supported the theory whereby electromagnetic space, as a natural and unique resource, as part of the overall cosmos, is

the province of all mankind. It is not susceptible to any national appropriation or claims of sovereignty through the bias of use, occupation or any other means, as is the case with circumterrestrial or extraterrestrial orbits or any other point, region, celestial body or natural force in near and far space.

States have only the right of access to radiofrequencies and to satellite orbits for space telecommunications. And where this too is concerned, the use of it must be equitable, rational, economic and effective.

Turning to agenda item 8, "Review of the status of the five international legal instruments governing outer space", last year it was an honour for me in this Subcommittee to chair the working group on this question. The outcome of the work of this group was appreciated by the Legal Subcommittee, as can be found in its report on the thirty-eighth session (document A/AC.105/721), as well as the report of COPUOS on its 42nd Session.

However, although the three-year plan of Mexico ends with this session, there is a further need to examine this; it cannot be concluded by a superficial examination at the present session. This is why my delegation wishes to make a formal proposal today to continue, with no limit of time, the examination of this question, which we believe is of great importance and relevance to our work. As there is already some space on the agenda thanks to the successful work concluded on the GSO, there should be a new agenda not only for the fortieth session but for subsequent sessions of the Legal Subcommittee, more details of which we will refer to at a later point.

As concerns agenda item 10, on new items for the agenda of the Legal Subcommittee, first we should stress that this proposal from Greece does not call for a mere repetition of work already carried out on this subject during the last three years. The initiative of the delegation of Mexico had the single aim of examining why several States had not ratified the five outer space treaties, along with a proposal for mechanisms to assure accession to these instruments (see document A/AC.105/C.2/L.206/Rev.1 of 1997, in particular the paragraph on results sought).

This was a question of mechanical, descriptive work totally associated with agenda item 4, which did not greatly affect the actual substance, whereas the proposal by my delegation is that the Legal Subcommittee is the appropriate institutional forum to deal with legal problems related to human activities in space. It should regain its initial role

and noble international mission and resume its serious work, beginning with the examination of the major problems resulting from applications by States at the international level related to the five treaties, in particular due to the technical and geopolitical changes that have taken place since the treaties were originally drawn up.

If the Legal Subcommittee is not the appropriate global forum for discussion of the thorny question of space debris, space objects, the utilization of nuclear power sources in space, non-implementation of the Moon Agreement, launch activities, private undertakings, correlation of international public and private law in space, the examination of industrial and intellectual property, the unification and development of space laws, etc., then my delegation wonders where it is that these questions should be discussed? In the corridors, at the coffee counter, or in Vienna restaurants?

To avoid there being any hidden agendas on the part of certain States to see the role of the Subcommittee deteriorate so that they could take action at the international level without legal commitments, in a totally deregulated environment, then we must all work together so that the Legal Subcommittee may be revitalized and find again its institutional and constitutional role which was decided upon some 40 years ago. Over the past years, the *corpus juris spatialis* has been possible; tax payers the world over should not be forced to pay taxes so that representatives of some countries spend that money on spring holidays in Vienna.

We do not feel any further arguments are necessary to demonstrate the need to introduce this question as a new item on the agenda of the Subcommittee at its future sessions, beginning with 2001. This would be a good opportunity to celebrate the fortieth anniversary of its constitution and its valuable contribution to the peaceful uses of outer space, in the common interests and for the well-being of all mankind. Greece is eager and willing to cooperate with those delegations interested in this and the Office in order to have an open-ended workplan on this question.

The CHAIRMAN (*interpretation from French*): Thank you for your statement. I would also like to thank you for your kind words to the officers of this meeting.

(*continues in English*) Does any other delegation wish to speak on agenda item 8 at this point? I see none. We have therefore concluded our substantive consideration of agenda item 8, "Review of the status of the five international legal

instruments governing outer space". We will now continue our consideration of agenda item 9, "Review of the concept of the 'launching State'".

I have no names inscribed on the list of speakers: does any delegation wish to take the floor at this time? I see none. We will continue our consideration of this item tomorrow morning. You have been informed by the distinguished chairman of the working group that the working group on this particular item will continue its work tomorrow afternoon.

We will now continue our consideration of agenda item 10.

Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session (cont.) (agenda item 10)

The CHAIRMAN: Perhaps it might be useful to briefly review existing proposals, as reflected in our draft agenda for that session. I will go through this list point by point.

According to our agreement on the agenda of the Legal Subcommittee, as adopted in 1999, we will first have the regular items. The session will commence with the opening session and election of the Chairman; a statement by the Chairman; the general exchange of views. Thereafter, there is the item on the status of the international treaties governing the uses of outer space, including possibly expansion of this point, which is a standing point, to incorporate current agenda item 8 if delegates agree with the idea proposed earlier, and supported today by the distinguished representative of Greece. There may also be an examination of the status of the Moon Agreement, as mentioned by the distinguished representative of Australia and supported by other delegations.

Next will be information on the activities of international organizations relating to space law. Then there will be the item "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union", which might be divided into two parts, as requested by the delegation of the Russian Federation. The first would be "(a) Matters relating to the definition and delimitation of outer space" and "(b) Character and utilization of the geostationary orbit". There would be no working group established on this particular item.

There is then the group of single issue items for discussion, as follows:

- "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space". This is the current item; however, its discussion depends on the outcome of the work of the Scientific and Technical Subcommittee, and therefore a decision will be taken later.
- "Examination of the status of the Moon Agreement", a proposal made by the delegation of Australia, unless this issue is included in the discussion on the review of the existing space treaties.
- "Review of existing norms of international law applicable to space debris", an item proposed by the delegation of the Czech Republic. At the beginning of our session that delegation recommended retaining this item on the Subcommittee's agenda.
- "Advisability of developing a single, comprehensive United Nations convention on the law of outer space", as proposed by the delegation of the Russian Federation. As you may remember, this morning the distinguished representative of the Russian Federation explained how we should proceed with this particular item.
- "Issues relating to the protection of intellectual property rights and outer space", which has been under consideration and has been proposed by several delegations, and a proposal was actually submitted by the delegation of South Africa.

Next are a group of agenda items to be considered under workplans:

- "Review of the status of the five international legal instruments governing outer space", which again is a current item which depends on a decision on this particular item. This afternoon the distinguished representative of Greece suggested renewing this point and including it on our agenda as a new point, without any limit of time.

I give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) [speaks in English]: What distinguishes existing agenda item 8

from my proposal is that only the title remains the same: the content and substance are completely different. The Mexican initiative was a kind of "balance sheet", nothing more. My delegation's proposal insists on the substantive matters of every problem concerning the application of the treaties.

The CHAIRMAN: Thank you for your explanation. I think I understand your proposal, but I must add that in addition to your own position on this particular point, other delegations have also wanted to extend the consideration of the present point. We must therefore take all these elements into account when deciding upon this item.

- "Review of the concept of the 'launching State'", which is current agenda item 9, including its consideration in the working group in accordance with the workplan.
- "Commercial aspects of space activities (for example, property rights, insurance and liability)", as proposed by the delegation of Argentina.

These are the proposals before the Subcommittee to date, and they should of course be taken into consideration with a view to establishing the agenda of the next session of the Subcommittee. We must also discuss at the Subcommittee's next session the proposals to be considered by the Legal Subcommittee at its forty-first session.

This has hopefully refreshed everyone's memories. I have two delegations on my list of speakers and I give the floor to the first of them, the distinguished representative of Australia.

Mr. J. CANNAN (Australia): In several interventions last week, my delegation referred to Australia's great interest in introducing a new single-issue agenda item for 2001 on the Moon Agreement. We have also distributed what is at this stage a non-paper on this subject. Australia has therefore been very interested to note the growing level of interest in the Moon Agreement. The distinguished representatives of Greece, Italy, Republic of Korea, Russian Federation and Chile have all singled the Moon Agreement out as one area where they felt the Legal Subcommittee could still make a useful contribution.

Clearly there are some problems with the Moon Agreement, and some obstacles preventing its broader ratification. Australia continues to believe that this Subcommittee should play a role in addressing these issues and perhaps suggesting some ways forward. Instead, the Subcommittee seems to be

stepping back from its ownership of the Moon Agreement and the other four space law treaties.

Notwithstanding the well-expressed comments made by the distinguished representative of Greece a few minutes ago, and given several interventions made on Friday, there may be no formal opportunity set aside for Australia and other States concerned about the Moon Agreement to discuss the issue in any depth next year. In fact, if the Subcommittee is unable to reach a consensus on renewing agenda item 8, or merging it in some way with current agenda item 4, there will be no formal opportunity for the Legal Subcommittee to discuss the substantive issues of any of the five treaties that form the basis of the international space law regime.

This seems a strange state of affairs for the Legal Subcommittee of COPUOS to find itself in. As the distinguished representative of Greece asked last week, and mentioned again today, if this Subcommittee does not continue to discuss the five major treaties, then who will? Australia notes from several statements made last week that agenda item 4 does provide an opportunity for information-sharing on new signatures, new ratifications and steps and measures being taken at the national level towards those ends.

The Chairman reminded us that agenda item 4, which by its nature does not last very long, was for the purposes of sharing information rather than substantive consideration, debate or analysis. From Australia's perspective, the Moon Agreement (with only nine ratifications) is crying out for further attention. As we mentioned last week, it is the only one of the five international space law agreements not to have been ratified by the majority of the space-faring nations.

There may well be some perfectly good reasons for this. We were interested to hear several such reasons mentioned to us during informal discussions last week. But my delegation feels that this Subcommittee could build on the useful work carried out over the past three years and identify some of these obstacles that have caused the Moon Agreement to be so overwhelmingly "under-ratified". This is why Australia would propose, for one year only, dedicating some time to examining these obstacles. If the Subcommittee then sees fit, it could consider steps that might help address this situation.

Australia is not proposing anything radical here: simply a discussion, for one year only, to allow the Legal Subcommittee to focus on the issues that have prevented the broader ratification of the Moon Agreement.

The CHAIRMAN: Thank you for your statement on agenda item 10. The next speaker on my list is the distinguished representative of Brazil, to whom I give the floor.

Mr. E. LUCERO (Brazil): As my delegation had the opportunity to state during the general exchange of views, Brazil welcomes the new approach in composing the agenda of the Legal Subcommittee. We hope that these improvements in our methods of work will be translated into the effective enhancement of the Subcommittee's activities in further developing and strengthening international space law.

We share the perception that, in view of the rapid changes and new developments in space technologies, an adequate and up-to-date legal framework to regulate human activities in outer space is required if we wish to avoid what in French we call *fait accomplis* – when the occurrence of unpredicted situations might generate legal problems derived from the non-existence of a corresponding norm to address them appropriately.

In this context, the Legal Subcommittee of COPUOS is the forum *par excellence* with the mandate to consider and review, as appropriate, the existing space-related legal framework. Such work must be strengthened in accordance with commonly identified priorities. Account must be taken of the new requirements posed by the rapid development of space-related ventures and technology, taking into account the relevant existing legal texts and principles. Brazil is therefore ready to support in principle the initiatives presented by delegations concerning new agenda items that address such commonly identified needs and priorities.

In particular, the Government of Brazil would like to see included in the Subcommittee's agenda one item to address the commercial aspects of space activities, including the participation of non-State actors such as private initiatives. This is an area requiring a full debate aimed at fostering our understanding on a wide range of issues such as, for example, insurance liability and intellectual property rights in outer space.

As far as international cooperation is concerned, the guiding principles of any progress to be achieved in these issues, especially those related to intellectual property rights, are threefold: to provide developing countries with reasonable access to data resulting from such cooperation and activities; to foster spin-off benefits; and to promote the transfer of technology.

In conclusion, with reference to the comments of the Chair in introducing the discussion of this agenda item, the issue of space debris was mentioned. My delegation agrees that this issue should be gradually introduced into the agenda of the Subcommittee and therefore supports the initiative of the delegation of the Czech Republic in this regard.

The CHAIRMAN: Thank you for your statement. My list of speakers is now exhausted: does any other delegation wish to take the floor? I give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): First, my delegation would like to formally introduce its position concerning the proposal of the Czech Republic. We would like to co-sponsor this initiative. If the Chair feels it is necessary, we would like to be included in the proposal from the Czech Republic.

I would like to make a minor proposal of a procedural nature. As many of these suggestions for new items for the Subcommittee's agenda are now to be considered, my delegation would ask through the Chair that those delegations that have already put forward proposals could meet informally, in order to hold an exchange of views to avoid any overlap or duplication. We could also look at the complementarity of issues so that we could then draft a text of specific items for the new agenda.

The CHAIRMAN: Thank you for your statement. Does anyone else wish to speak under this agenda item? I give the floor to the distinguished representative of South Africa.

Mr. L. MKUMATELA (South Africa): This morning my delegation proposed that the question of intellectual property should be considered for inclusion in the work of the Legal Subcommittee next year. We stated that we would consider presenting a paper giving our reasons for this; however we regret that we felt that to prepare a short paper on this subject might lead to some distortion and misunderstanding. This was simply an attempt to implement what is contained in the report of the UNISPACE III Conference.

Therefore my delegation believes we would be "preaching to the converted" if we attempted to justify the need to or desirability of including this item on the agenda. This item was proposed for inclusion by the Workshop on Space Law, and details are given of this in the report. Also, the workshop on intellectual property rights in space also stated that the motivation there was an attempt or desire to

implement what was recommended by States or governments at UNISPACE III (cf. page 132 of the report).

Despite the fact that there is a belief that this matter is addressed inadequately elsewhere, the workshop on intellectual property rights in space (page 132) contains an interesting sentence:

“However, the protection and enforcement of intellectual property rights should be considered together with the international legal principles developed by the United Nations in the form of treaties and declarations, such as those relating to the principle of non-appropriation of outer space”.

My delegation believes that it is suggested here that any regime should take into account the principle of non-appropriation of outer space. The consequences of this we are not familiar with; therefore we believe it is very wise to address this matter in a more detailed manner, or the Subcommittee could refer this matter to the other relevant organizations in the United Nations system. There is a clear mandate on page 133 of the report where COPUOS is referred to: “... the United Nations, through the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee ...” If the Subcommittee then refers this to a different structure, then so be it, but there is a mandate or a request by that workshop.

My delegation believes that the wisdom of those States that assembled there is a great enough motivation for this item to be included on the Subcommittee’s agenda.

The CHAIRMAN: Thank you for your statement. We understand that you have associated yourself with the suggestions made last year during the workshop on the development of space law in the twenty-first century, as well as the workshop on intellectual property rights. Both of them were part of the technical forum of UNISPACE III and the viewpoints and considerations which have been set out in the conclusions of these two workshops are more or less identical to those which you have

proposed as a basis for the inclusion of this item on the Subcommittee’s agenda.

I have no other speakers wishing to take the floor. We will therefore continue our consideration of this agenda item tomorrow morning. I will shortly adjourn this meeting of the Subcommittee. However, as there is still some time available to us this afternoon, I would urge delegations to use this time to engage in informal consultations with a view to reaching agreement on the proposals which have been tabled for new items for the agenda of the Legal Subcommittee at its session in 2001.

I would strongly urge those delegations that have put forward ideas concerning the Subcommittee’s agenda, as well as all other delegations, to consult amongst each other. We must reach a conclusion on this issue fairly soon, so please make the best possible use of this time. Consideration could also be given to the suggestion of the distinguished representative of Greece, in particular those delegations that have made similar suggestions. This is an opportunity to harmonize your proposals in order to reach a common proposal for consideration by the Subcommittee.

Before adjourning this meeting I would like to inform delegates of our schedule of work for tomorrow morning. We will take up our consideration of agenda item 5, “Information on the activities of international organizations relating to space law”, to allow a presentation to be made on the activities of UNIDROIT, which I mentioned last week. Once we have concluded consideration of that agenda item, we will continue our consideration of agenda item 9, “Review of the concept of the ‘launching State’” and agenda item 10, “Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session”.

Are there any questions or comments on this proposed schedule? I see none. The meeting is adjourned.

The sitting adjourned at 4.05 p.m.