

Committee on the Peaceful Uses of Outer Space

Legal Subcommittee

Unedited transcript

634th Meeting

Tuesday, 4 April 2000, 10 a.m.

Vienna

Chairman: Mr. KOPAL (Czech Republic)

The meeting was called to order at 10.20 a.m.

The CHAIRMAN: I now declare open the 634th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. I apologize for the slight delay in the opening of this session. I am not usually late but this morning there was a traffic jam and then it was necessary to hold brief consultations on the Subcommittee's proceedings.

This morning we will now continue our consideration of agenda items 9 and 10. Thereafter we will resume our consideration of and probably conclude agenda item 5, "Information on the activities of international organizations relating to space law". A presentation will be made by the distinguished representative of UNIDROIT during this particular discussion.

We will now continue our consideration of agenda item 9.

Review of the concept of the "launching State"
(*cont.*) (agenda item 9)

The CHAIRMAN: I have no names inscribed on my list of speakers. Does any delegation wish to take the floor at the present time? I see none. We will continue our consideration of this agenda item this 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: I give the floor to the distinguished representative of the United States.

Mr. J. CROOK (United States of America): This last item on our agenda invites us to consider possible recommendations to COPUOS for new items to be discussed at the fortieth session of the Subcommittee in 2001. This is important and requires care. We should never recommend projects to COPUOS that are not clearly thought out or that are proposed simply to give this body something to do. Our goal should be to identify topics for discussion that are serious, and the discussion of which offers potential benefits to governments and to the regime of space law.

My first point concerns a matter mentioned last week by the Chair: agenda item 7, on the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. This item was included on our agenda for this year as a single-year item. It will therefore

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be dropped from the agenda unless COPUOS takes some action to renew or extend it.

My delegation proposes that the Legal Subcommittee should recommend that COPUOS continues the discussion of this item for one more year. In this way, the Subcommittee can at its meeting in 2001 be informed of the ongoing work on nuclear power sources in the Scientific and Technical Subcommittee and its working group on NPS.

My second point concerns agenda item 8, the review of the status of the five international legal instruments governing outer space. We began this agenda item three years ago, pursuant to the three-year workplan approved by COPUOS. We are about to complete the work we were asked to perform. This work has been useful, but it should not be drawn out. We agree with those delegations that have stressed that the workplan has been completed and that the item should be brought to a close. It is important for us to show to our political masters in COPUOS and in our capitals that the Legal Subcommittee can complete a task that it has been given.

Nevertheless, we have heard the concerns of the distinguished representative of Greece and others who fear that if this item comes to an end, there will be no place on our agenda to raise matters of general concern regarding the outer space treaties and their implementation. With all due respect, my delegation believes that there is already ample room for such discussion elsewhere on our permanent agenda. These matters can readily be raised under agenda item 3, "General exchange of views".

Perhaps more to the point, these matters can also be addressed under agenda item 4, regarding the status of the international treaties governing the uses of outer space. The appropriateness of doing so has been clearly established, both in terms of the agenda and by the way it has been implemented during this meeting.

However, if there are lingering concerns on this score, we do not object to a proposal that COPUOS could confirm the broad scope of standing agenda item 4. We will be clear here: we do not propose to continue consideration of item 8, or a merger of items 4 and 8. Instead, we suggest that if delegations feel it is necessary, COPUOS could confirm that the permanent item on our agenda on these treaties extends to matters such as measures to increase adherence to the treaties, as

well as to measures involving their application in practice, both internationally and domestically.

We have heard a number of other proposals for possible additional topics. Some of them have been considered in previous years, but did not find consensus. Our positions on these is well known and I will not repeat them here. We have also consulted privately with the proponents of some new suggestions, and have explained our reservations. Overall, my delegation believes that the suggestions made to the Subcommittee have not been sufficiently focused to provide a basis for considered and useful legal discussion here.

There is one matter that may be of interest and utility. Unfortunately, we will not be able to reach a decision on it at this meeting of the Legal Subcommittee, although the matter might perhaps be taken up by COPUOS at its June 2000 meeting. We are referring to the work by UNIDROIT on a new international regime governing security interests in high-value mobile equipment, in particular property in space. We understand that we will receive a briefing on this project from the UNIDROIT Secretariat, which may include a proposal that UNIDROIT's draft space protocol be included as a one-year discussion topic on our agenda.

UNIDROIT's work in this area has been supported by the United States Government and by many other governments represented here, and also enjoys wide support in the private sector. Thus, the suggestion to hold a discussion on the protocol in the Legal Subcommittee is interesting. However, it is unfortunately not one that we can accept this week. UNIDROIT has just completed a meeting in Rome on the proposed protocol. Before we can reach a decision, we must consult both within our Government and with the private sector regarding the outcome of that meeting.

We cannot carry out those consultations in the few days before the end of this meeting. However, depending on the results of those consultations, we and others might decide to invite COPUOS, at its June meeting, to consider adding this topic as a possible one-year item for discussion by the Legal Subcommittee. However, I must stress that this depends on consultations with the public and private sector interests affected by the proposed new instrument. We cannot at this stage make any commitment in this regard.

That concludes our remarks and I thank the Subcommittee and the Chair for their courtesy and attention throughout the course of this meeting.

The CHAIRMAN: Thank you for your statement on this agenda item. Does any other delegation wish to take the floor? I recognize the distinguished representative of the Islamic Republic of Iran, to whom I give the floor.

Mr. M. ARAGHI (Islamic Republic of Iran): Thank you for giving my delegation the floor to speak on this agenda item. In short, my delegation wishes to support three proposals made by certain distinguished Member States on the inclusion of new agenda items, as follows.

First, we wish to support the proposal made by the delegation of the Czech Republic on the inclusion of the legal aspects of space debris as a new agenda item. Second, we also support the inclusion of the legal aspects of commercialization of outer space as a new item, as proposed by several delegations, including those of Argentina and Brazil. Third, we support the Australian proposal to include the review of the Moon Agreement as a new item for the fortieth session of the Subcommittee.

The CHAIRMAN: Thank you for your statement. I now give the floor to the distinguished representative of Egypt.

Mr. E. ZNATY (Egypt) (*interpretation from Arabic*): My delegation would refer to the proposal put to us by the distinguished representative of the Russian Federation in the working paper that has been distributed, with regard to a single-issue for consideration by the Subcommittee at its 2001 session on the advisability of developing a single comprehensive United Nations convention on the law of outer space.

At present, we believe that outer space law is, unfortunately, subjected to the fragmentation of rules in all its five international space treaties. These instruments in and of themselves are somewhat general in nature. Some delegations have noticed that these five instruments have not been sufficiently adhered to or ratified by many States, and there is very little agreement on one of these treaties, namely the Moon Agreement, which only nine States have ratified.

However, in spite of these considerations which might bring us to accept the proposal for one single convention on the law of outer space, we believe this proposal should not make us lose sight of certain facts which could give rise to some difficulties. The establishment of a single convention on the law of outer space requires a basis: there are certain basic foundations for this

and international law has facilitated this with regard, for example, to the development of the Convention on the Law of the Sea. As concerns outer space, the situation is different: we do not sufficient customary rules allowing us to base ourselves on this foundation for the elaboration of such a convention.

International law in this field does not carry much weight. Furthermore, national legislation on outer space activities only exists in a limited number of States that are active in this field. My delegation therefore feels that this proposal is one that requires arduous work and necessitates true will on the part of one and all. At the same time we do appreciate the fact that the Russian Federation has made this proposal, which certainly deserves our attention.

The CHAIRMAN: Thank you for your statement. Does any other delegation wish to take the floor? I see none. It therefore seems to me that we have reached the limit of possible progress that can be made on this item within the plenary of the Subcommittee at this time. I would therefore suggest that interested delegations meet informally later this morning, following the adjournment of the plenary meeting, with a view to reaching agreement on proposals for new agenda items for the Subcommittee's fortieth session.

I would also suggest that these informal consultations among delegations might be facilitated by the appointment of a single delegation or representative to coordinate the efforts in this respect. Following consultations with various delegations, I have identified the distinguished representative of Sweden as someone who may be able to carry out this task. I have also mentioned this to him. Therefore, unless there are any objections, I will request the distinguished representative of Sweden, on behalf of the Subcommittee, to coordinate informal consultations on new agenda items.

I give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): My delegation has a couple of minor points. First, we were not consulted on this. Second, my delegation was the one that suggested we engage in informal discussions and now we have just learned that consultations have been held to nominate a colleague to guide us in this very difficult work.

We are merely making this comment and quite frankly, I do have some reservations on the decision taken, as we were not consulted about this.

The CHAIRMAN: Thank you for your comments. I recognize the distinguished representative of Sweden, to whom I give the floor.

Mr. N. HEDMAN (Sweden): I am of course honoured by your proposal to hold informal consultations. Having heard the comments made by the distinguished representative of Greece, it would of course be a pleasure for me to assist Greece in these informal consultations following the conclusion of this morning's session. Greece could chair these informal consultations and I will assist.

The CHAIRMAN: Thank you for your constructive approach to the comments made by the distinguished representative of Greece. In reply to the latter's question, I must say that these consultations were undertaken by myself: I spoke to some delegations, bearing in mind that there are delegations that have made certain proposals for new items. I therefore approached in particular those delegations who were impartial in this respect, or who at least had shown no bias for any one particular proposal. This was the basis for my consultations, which were not general informal ones but informal talks.

Perhaps the proposal made by the distinguished representative of Sweden might satisfy the request of the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): You have just stated that your idea of requesting the delegation of Sweden to assist was on the basis of criteria of impartiality. But Sweden has already taken part as regards the non-inclusion of agenda item 8 as a new item. Therefore Sweden has already expressed its views on this and is not totally disinterested.

Since you have mentioned this issue of impartiality, I would like to thank the distinguished representative of Sweden for proposing that I should chair these discussions. But in order to respect the principle of impartiality, we should opt for a colleague who has no vested interests in this matter.

The CHAIRMAN (*interpretation from French*): Thank you for your comments. I see no other possibility to consult further on this. This idea has been presented.

(*continues in English*) I made this suggestion because I wanted to engage in these consultations either in a smaller room (Room C7013) than this room (Conference Room III). In this latter case, we may be able to use the services of the interpreters. I wanted to start these consultations immediately following the adjournment of this morning's meeting of the Subcommittee. Of course we will continue our consideration of agenda item 10 in the plenary of the Subcommittee this afternoon.

This was my idea, but it seems that we cannot now decide upon this at the present time; perhaps we could consult among ourselves on this issue. But my proposal still stands, as does the position stated by the distinguished representative of Sweden that he would be happy to share this responsibility with the delegation of Greece or with any other delegation wishing to offer its services. We will decide on this question at a later stage.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): My delegation would propose that the delegation of Australia be considered as a suitable candidate, if there are no objections from any delegations.

The CHAIRMAN: Thank you. There are now three delegations wishing to take the floor, and first I will give the floor to the distinguished representative of South Africa.

Mr. L. MKUMATELA (South Africa): We are in a learning curve at the moment. However, my delegation believes that this is a matter for understanding and joint cooperation. If the Chair feels it would facilitate the Subcommittee's work to hold these informal consultations, we would support that proposal, in the hope that if certain issues could be eliminated or if there are strong feelings on certain other points, those issues could be referred back to the plenary.

We understand that these proposals may not be taken up by the Subcommittee, as it may see fit. It is a chain of events; we are not sure that what we have proposed today is guaranteed to appear on the Subcommittee's agenda. A process of consultation is involved.

Furthermore, we wish to express our understanding that if, for example "State X" has made no proposal regarding agenda item 10, it is not a foregone conclusion that that particular State does not have an interest or a position on this question, be it a space-faring State or not. Therefore to say that "State X" is disinterested is not a valid argument. We support the Chair's views that even

with a process of informal consultations, much remains to be done, and we would support your proposal that the delegation of Sweden should coordinate these consultations in an informal manner.

The CHAIRMAN: Thank you for your statement. I now give the floor to the distinguished representative of Australia.

Mr. J. CANNAN (Australia): I think it is fairly clear to the Subcommittee that Australia holds a reasonably strong position on one or even two possible agenda items. The distinguished representative of Greece kindly proposed Australia but we will not be able to accept. However, there are many eligible delegates who would be in a position to chair the informal consultations and we would be happy to support the candidate chosen by the Subcommittee.

The CHAIRMAN: Thank you. I see that Sweden does not wish to speak now. Does any other delegation wish to take the floor? I see none.

By asking the distinguished representative of Sweden to chair these informal consultations, I was only considering the possibility of selecting a delegation that did not propose a new point for the agenda. I am not saying that such delegation does not have an interest or opinion on this issue, but I rely on your advice and decision. On the other hand, I appreciate the willingness of the distinguished representative of Sweden to assume this difficult task. The result of these informal consultations would be subject to discussion by and the final decision of the Subcommittee in a formal meeting. The consultations would be informal held either completely informally (i.e. in a smaller room), or in this room, with interpretation, but at the informal level.

If delegations so wish, I will postpone a decision on this point for now, but I would appreciate receiving your views as soon as possible, as time is running out.

We will now continue our consideration of agenda item 5.

Information on the activities of international organizations relating to space law (*cont.*) (agenda item 5)

The CHAIRMAN: I wish to inform the Subcommittee that the International Institute for the Unification of Private Law (UNIDROIT), an intergovernmental organization, has requested

permission to attend our meetings in order to report to the Subcommittee on its activities relating to space law under this agenda item.

Inasmuch as the granting of observer status is a prerogative of our parent committee, I feel that we should not take any formal decision on the matter. However, if there is no objection, I would suggest that the representatives of UNIDROIT might attend the formal meetings of the Subcommittee and might be invited to report to the Subcommittee on their activities relating to space law. This would be in accordance with the practice we have observed in past years when non-Members of the Subcommittee have communicated their request to participate in its meetings.

If I hear no objections, *it is so decided.*

I therefore now invite the distinguished representative of UNIDROIT to deliver his report.

Mr. M. STANFORD (International Institute for the Unification of Private Law (UNIDROIT)): UNIDROIT is an intergovernmental organization, based in Rome. UNIDROIT is the acronym for the International Institute for the Unification of Private Law. Its 58 Member States come from the four corners of the globe. Its fundamental objective, in the words of the UNIDROIT Statute, is to "examine ways of harmonizing and coordinating the private law of States and to prepare gradually for the adoption by various States of uniform rules of private law".

UNIDROIT has prepared many international conventions over the course of its long existence, including the 1988 Ottawa Convention on International Financial Leasing. Among the principal features of that Convention was the enshrinement of the principle of the enforceability of the lessor's real rights against the trustee in bankruptcy and unsecured creditors of the lessee. The success of this approach persuaded UNIDROIT of the desirability of seeking to extend that principle to the enforceability of security rights in those special categories of high-value mobile equipment which, by virtue of the fact that they are of a kind likely to be moving across or beyond national frontiers on a regular basis in the ordinary course of business, do not particularly lend themselves to the application of the *lex rei sitae* for the resolution of disputes concerning the validity, enforceability and priority ranking of such rights.

This legal rationale was moreover reinforced by economic reasons. The opportunities for asset-based financing of such categories of equipment

have to date been extremely limited because of the evident difficulties lenders face in securing and collecting on such loans. The special advantage of asset-based financing for high-value capital equipment resides in the reduction in costs that follows from the reduction in risk for the financier permitted by his ability to have prompt recourse to the value of the underlying asset in the event of default by the debtor.

To take the specific example of space property, those private lenders contemplating lending on the security of a satellite are clearly going to want to find out whether other lenders may already also have claims outstanding against that same asset. Currently, there are no reliable mechanisms available to potential lenders for the screening of such outstanding claims. Failing the development of a centralized recording system for the registration of interests in space property, such a mechanism will not be available to potential lenders. Another practical problem which has hitherto tended to restrict opportunities for the use of asset-based financing in respect of space property arises out of the very nature of space property - namely, the fact that, being physically in orbit, it is not going to be easy to repossess in the event of the debtor defaulting.

This was therefore the starting point for UNIDROIT's preparation of the preliminary draft Convention on International Interests in Mobile Equipment, and is currently the subject of intergovernmental negotiations. This work has advanced a great deal since the first meeting of the UNIDROIT Study Group responsible for the preparation of this preliminary draft in 1993. The Study Group was chaired by Professor Sir Ray Goode of Oxford University, a member of the UNIDROIT Governing Council and a world-renowned expert on secured transactions law.

During the work of the Study Group it had become clear that the interest of the aviation sector to see the new international regimen in force as soon as possible was not compatible with the need to allow the other equipment sectors involved the time necessary to indicate the special equipment-specific rules that they required. Thus a decision was taken to split up the general rules, applicable to all the different categories of mobile equipment encompassed by the preliminary draft Convention, and the special rules necessary to adapt the general rules to the specific characteristics of each category. The general rules are thus contained in the future Convention, which has become a sort of framework Convention: the equipment-specific

rules are carried in separate equipment-specific Protocols.

When the preliminary draft Convention was submitted to the Governing Council in February 1998, the only preliminary draft Protocol ready for consideration was that relating to aircraft equipment. This Protocol had been prepared by a working group organized at the invitation of the President of UNIDROIT. When the UNIDROIT Governing Council authorized the transmission of these two texts to governmental experts, it was only the preliminary draft Convention and the preliminary draft Aircraft Protocol which were so transmitted, with UNIDROIT and ICAO as co-sponsors of the intergovernmental consultation process, UNIDROIT - because of its responsibility for the overall project - and ICAO, by reason of its competence for the development of international civil aviation law. We hope that the preliminary draft Convention and the preliminary draft Aircraft Protocol may be adopted at a diplomatic conference as international instruments in the first half of 2001.

In the meantime, however, work has continued apace on the development of other preliminary draft Protocols to the future Convention. A preliminary Protocol on Matters specific to Railway Rolling Stock is already waiting for approval by the UNIDROIT Governing Council with a view to its transmission to governmental experts. The intergovernmental consultation process on this preliminary draft Protocol will be co-sponsored by UNIDROIT - responsible again for the overall project - and the Intergovernmental Organisation for International Carriage by Rail (OTIF), by reason of its competence for the development of international rail transport law. We anticipate the first joint session of governmental experts on this preliminary draft Protocol being held later this year.

Considerable progress has also been made on the development of a preliminary draft Protocol to the future Convention on Matters Specific to Space Property. This future Protocol is being prepared by a Working Group, again set up at the invitation of the President of UNIDROIT. The coordinator of the Space Working Group is Mr. Peter Nsgos, a well-known expert to all of us in the field of space finance law. The Working Group brings together expertise from different parts of the space industry, in particular manufacturers, financiers and operators of space property.

Although, for the time being, priority continues to be given to completion of the preliminary draft Convention and the preliminary

draft Aircraft Protocol, we are, as I have mentioned, expecting these texts to be adopted as early as the first half of next year. We are therefore anxious, as evidenced by our plans to transmit the preliminary draft Rail Protocol to intergovernmental negotiations already later this year, also to be in a position to move the preliminary draft Space Protocol forward to intergovernmental negotiations as soon as possible.

Before looking at some of the special issues associated with the preliminary draft Space Protocol, let me first give you an overall idea of the principal features of the proposed new international regime as reflected in the preliminary draft Convention.

The method chosen to get round the legal and economic difficulties that I have already identified is the creation of a new international interest in mobile equipment. This interest has been defined in such a way as to embrace not only the classic security interest but also what are increasingly recognized as its functional equivalents, the seller's interest under a title reservation agreement and the lessor's interest under a leasing agreement. The categories of mobile equipment in which such international interests may be held have been consciously limited to a relatively small number of high-value assets, the common feature of which is that they all move regularly either across or beyond national frontiers in the ordinary course of business. This restriction was consciously designed to limit the scope for what might otherwise be considered unwarranted interferences with the application of domestic law rules.

At the heart of the future Convention are the provisions for the creation of what is intended as an autonomous international interest: that is, an interest constituted by the future Convention and not derived from or dependent on national law. This interest, if created in accordance with the very simple formalities required by the future Convention, will be enforceable against the debtor whether or not it has been registered.

The future Convention provides holders of international interests with a basic set of default remedies designed to be exercisable expeditiously, a matter adjudged to be of major practical significance for those contemplating lending against such high-value assets. The international interest will be registrable in an International Registry to be set up under the future Convention. Separate registries are envisaged for each of the categories of equipment covered. Plans are already well advanced for the setting up of an Aircraft

Registry and are underway for the setting up of a Rail Registry as well.

Registration will be the key to third parties knowing of the existence of international interests and to international interests enjoying priority over any other interest subsequently registered as over any unregistered interest, international or otherwise. Registration will also be the key to the international interest's validity against the administrator and creditors in the debtor's insolvency.

The fact that the International Registry is intended to be fully computerized means that it will be possible for a potential lender to make a search from any point in the world and to find out, more or less instantaneously, the precise status of the asset against which he is considering advancing funds. This fact alone explains why the future Convention may be expected to make such a major difference to the future pattern of the asset-based financing of high-value mobile equipment.

Moving on now to look at the special issues raised by the application of the future Convention to space property, each Protocol is intended to carry the equipment-specific rules necessary to adapt the general rules contained in the Convention to the special characteristics and needs of a particular category of equipment. The future Space Property Protocol will therefore need to cover a number of issues particular to space property. One such issue concerns the types of space property to be caught by the new regime. I would point out that the term "space property" is simply being used as a term of art to indicate all the different types of property that it is felt desirable to cover.

Another issue that will have to be addressed concerns the need to be absolutely certain as to the coherence and compatibility of the future Space Protocol with current international space law. While the Space Working Group is fully confident on this score, the specificity of space law requires that this issue also be fully considered in due course.

Another area in which the preliminary draft Convention will require modification in order to apply to space property is the chapter concerning default remedies. As I have already indicated, most types of space property will be simply ineligible for physical repossession, unlike the more earthbound categories of equipment covered by the future Convention. The solution proposed by the preliminary draft Space Protocol is to replace physical repossession as a remedy by the constructive repossession of an orbiting satellite by

means of the relevant tracking telemetry and command facilities.

It is anticipated that a considerable body of the registration rules to be applicable to space property would also be carried by the future Space Protocol. One of the principal matters to be resolved in this context will concern the setting up of the future international registry for space objects and the designation of the body to exercise supervisory powers over the international registry. Amongst other functions, this supervisory body will have responsibility for designating a registrar for each category of equipment.

The conferring of these functions on an inter-governmental body has to date been seen as an important guarantee of the reputation of the international registration system with prospective users. Both ICAO and OTIF have already served notice of their eagerness to exercise such functions in relation to aircraft equipment and railway rolling stock, respectively.

One of the factors remaining to be resolved in the context of the preliminary draft Space Protocol is the identification of the intergovernmental body that might suitably be entrusted with the exercising of such responsibilities in respect of the future international registry for space property, and the related question of the specialist intergovernmental organizations/organizations which might most usefully assist UNIDROIT in the process of moving the preliminary draft Space Protocol forward to intergovernmental negotiations. Both UNIDROIT and its Space Working Group tend in principle to believe that the intergovernmental body best suited to assist UNIDROIT in this endeavour would be the United Nations, in particular in view of the fact that the Outer Space Treaty and the Registration Convention were concluded under United Nations auspices. The registry provided for under Articles 3 and 4 of the Registration Convention is also maintained by the United Nations Office for Outer Space Affairs.

It is appropriate now to consider some of the special features of current commercial space activity that we would suggest make UNIDROIT's project so timely. The raising of the necessary finance for space activities has always caused special problems in view of the astronomical sums of money involved. Until 10 years ago, most of the customers for such finance were either governmental or intergovernmental agencies, or large multinationals or blue chip companies with a long credit history and well able to offer security over the entirety of their assets. However, the ever-

growing trend towards commercialization of space that is witnessed nowadays has brought with it a change in the profile of the typical customer for space finance. Such customers will now increasingly be start-up companies with no real credit history and no assets to offer as collateral other than their satellite.

Such satellites will typically be commercial communications satellites each of which will have an estimated value of US\$75 million, and launching costs that may well be in excess of that sum. It is anticipated that over 1,000 commercial communications satellites, valued at over US\$5 billion and projected to generate well over US\$500 billion in revenues, will be launched over the next decade. This clearly represents a unique opportunity for asset-based financing.

Although certain international instruments, for instance the aforementioned UNIDROIT Convention on International Financial Leasing, contain provisions that may affect creditors' interests in space property, none of these instruments effectively deal with the international registration, recognition and enforcement of security rights in such property. Neither do the 1967 Outer Space Treaty nor the 1975 Convention on Registration of Objects Launched into Outer Space.

Representatives of the space sector – whether satellite manufacturers, launch services providers, satellite operators or financial institutions – who are involved in the Space Working Group are all agreed as to the great benefits to be derived from a uniform, predictable and commercially-oriented regime governing the taking of security in space property of the kind contemplated by the future Convention and Space Protocol. First, it will increase the willingness of financiers to lend funds for space commercial transactions. Secondly, the cost of such transactions, whether measured in terms of financial, legal or insurance costs, will as a result be much reduced in proportion to the consequential reduction in the financial risk at present incidental to such transactions.

The increased availability of asset-based financing for space-related ventures and the reduced cost of such financing that are likely to result from the proposed UNIDROIT regime may be expected to bring particular benefits for the new type of customers for satellite services, particularly in those developing countries and countries with economies in transition which currently have such limited access to such financing possibilities.

As you will have noted, UNIDROIT has its hands full at the moment with keeping the preliminary draft Convention and Aircraft Protocol on track for adoption at a diplomatic conference that may be held as early as next year. However, we are at the same time anxious to maintain the momentum that has been built up to date in the development of the preliminary draft Space Protocol and to ensure that we are in a position to transmit this text for intergovernmental consideration at the earliest possible opportunity.

To this end we are planning to organize an informal meeting of experts from the relevant intergovernmental organizations later in the year to examine the special issues raised by the international registry for space objects, and perhaps also the question of the categories of space property to be included in the future Space Protocol. In the light of the recommendation of UNISPACE III for the organization of effective and focused joint forums on the subject of security of ownership, and given the special role of the United Nations Office for Outer Space Affairs (OOSA) in the development of international space law, let me say that we should be extremely happy if it were possible for OOSA to be associated in the organization of such a meeting.

UNISPACE III recommended that attention should be paid to the various aspects of the issues of liability and security of ownership in order to arrive at a coherent global framework. It further recommended that the issue of security of ownership regarding spacecraft should be addressed by COPUOS. In the light of this latter recommendation, we believe that as we move ever closer to the stage where the preliminary draft Space Protocol is ready for submission to our Governing Council for consideration as to the most appropriate means of moving it forward to intergovernmental negotiations, the time has most definitely come for the preliminary draft protocol to be considered by COPUOS.

Whilst I realize that members of the Legal Subcommittee will not be able to pronounce themselves on the substance of the issues involved this year, let me suggest that COPUOS might find time for these issues to be fully aired as a single issue discussion item at the next session of the Legal Subcommittee. For the time being, I am naturally at your disposal for any additional clarification that may be necessary.

In concluding, let me mention that those of you wishing more information regarding the preliminary draft Space Protocol and our work on

this subject will find at the back of the room (on the right-hand side) the latest text of the preliminary draft Convention and the preliminary draft Space Protocol, as well as a brief memorandum illustrating the legal and economic background to this project, and the principal features of the future Convention. There is also some other information about UNIDROIT and a copy of this presentation.

The CHAIRMAN: Thank you for the valuable information on the work that is being carried out by your organization.

Are there any delegations wishing to comment or to ask any questions on this particular presentation? I give the floor to the distinguished representative of Italy.

Mr. S. MARCHISO (Italy): My delegation would like to congratulate the distinguished representative of UNIDROIT on his very interesting and important presentation on the on-going scientific and diplomatic work concerning an international convention on the tracking of high-value mobile equipment, the basic features of a proposed new international regime and a preliminary draft Space Protocol.

This presentation confirms the valuable engagement of UNIDROIT, of which Italy has the honour to be the host country. Its efforts to harmonize and coordinate private law of States and to prepare gradually some uniform rules of private law for adoption by States has met with success on many occasions. We heard with satisfaction of the considerable progress that has been made in the development of the preliminary draft Protocol to the future Convention on matters specific to space property. My delegation believes that these private law aspects deserve attention, and we await the final outcome of the on-going negotiations.

At the same time, we are conscious that the special features of space property which are present in the draft Protocol must be taken fully and correctly into account. We would like to mention the role of public financing in the field of space activities, the notion of space objects, the registry for space property, the choice of legal issues which, in the present text of the draft, excludes to some extent the rules of international space law. This leaves the issue to the will of the parties involved and private national laws. This could raise many problems: for example, the insolvency administrator of the debtor's obligation to give possession of the space property to the creditor, in accordance with applicable law.

My delegation believes that the consistency of the principles of the future Space Protocol within international space law must be discussed, as stated by the distinguished representative of UNIDROIT in his presentation. In this context, my delegation agrees that the UNIDROIT draft could be included as a possible single issue discussion item at next year's session of the Subcommittee.

We would welcome this idea, depending on the outcome of our negotiations on the agenda of the Subcommittee for 2001 and on the outcome of the on-going negotiations. We welcome the recommendations contained in the UNIDROIT presentation concerning informal meetings and joint forums to help clarify this issue.

The CHAIRMAN: Thank you for your comments on the presentation made by the representative of UNIDROIT, and for your statement on agenda item 5.

Are there any other speakers under agenda item 5 at this time? I see none. We have thus concluded our consideration of item 5, "Information on the activities of international organizations relating to space law". It is therefore my intention to shortly suspend this meeting of the Subcommittee in order, first and foremost, to allow informal consultations on the appointment of a moderator for our informal consultations on the agenda of the Subcommittee for its next session.

Before doing so, I would like to inform you that this meeting has been visited by one of the former chairmen of the Legal Subcommittee, Dr. Eugeniusz Nysner. He was here for a certain time but I think he may now have left. I believe it is important for delegations to know that he was here and wished to be remembered to us all. He was the second Chairman of the Legal Subcommittee; he succeeded the first Chairman, Judge Manfred Lachs. Under his able guidance, two of the outer space treaties were finalized, namely the 1972 Liability Convention and the Moon Agreement. Some sets of Principles were also discussed and negotiated under his guidance, particularly the first three sets of Principles (on DBS, remote sensing and NPS).

As you may know, he later became Under-Secretary-General of the United Nations and was then appointed Permanent Representative of Poland to the United Nations. He is now the Vice-Chairman of the International Civil Service Commission. I greeted him on behalf of the Subcommittee but he has no doubt been called

away to carry out his duties as he is attending a meeting in an adjacent meeting room.

Secondly, I would like to make an announcement concerning this afternoon's schedule of work. 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". Thereafter, the working group on agenda item 9 will convene under the chairmanship of Mr. K. Schrogl of Germany.

I would also like to inform you of the probable schedule for the conclusion of this session of the Legal Subcommittee. On the basis of our current progress, it would appear to me that we might be able to conclude substantive discussions within the Subcommittee as early as tomorrow. I also believe that the working group on the definition of outer space and the utilization of the geostationary orbit could adopt its report tomorrow morning, following the adjournment of the Subcommittee's meeting. Allowing time for the Secretariat to produce the necessary documentation, we might begin and possibly conclude the adoption of the report of the Subcommittee and the working group on item 9 on Thursday morning.

If we are able to keep to this tentative schedule, we could conclude at lunchtime on Thursday. Of course, this is if everything goes according to this schedule. I would stress that this schedule is only indicative and based on current expectations. It will obviously depend on the extent of progress achieved in discussions over the next day or so.

Are there any questions or comments on this proposed schedule? I give the floor to the distinguished representative of Sweden.

Mr. N. HEDMAN (Sweden): Once again I would like to thank you for proposing me as moderator for the informal consultations under agenda item 10. Of course I will accept this task with pleasure. I personally would prefer to hold these consultations in a smaller room; I therefore would propose Room C0713, if this is agreeable to the Secretariat. This is in order to create a more familiar atmosphere for these informal consultations. If any delegation would prefer a different format, I am of course open to all suggestions.

The CHAIRMAN: Thank you for your comments and I appreciate your willingness to

assume this difficult task. I recognize the distinguished representative of the Russian Federation, to whom I give the floor.

Mr. Y. KOLOSSOV (Russian Federation) (*interpretation from Russian*): Could I ask through the Chair at what time these informal consultations will take place.

The CHAIRMAN (*interpretation from Russian*): I would imagine that it will be as soon as the meeting is finished. There will be a short consultation on the appointment of the moderator of the consultations; once that is done (in 15 minutes' time or thereabouts), then the consultations will begin.

(*continues in English*): Are there any other speakers? I see none. The meeting of the Subcommittee is now suspended.

The meeting was suspended at 11.35 a.m. and resumed at 11.50 a.m.

The CHAIRMAN: I would now like to resume the formal session of the Subcommittee. I will now inform you of the results of my brief consultations with most delegations that were available in this room during the break concerning the appointment of a moderator for our informal consultations on agenda item 10, items for inclusion on the agenda of the fortieth session of the Subcommittee.

I am happy to advise you that as far as I am aware, no delegation opposes the proposal I made to appoint the distinguished representative of Sweden as moderator. He has kindly agreed to take on this task and to guide the consultations on this issue.

There is one point remaining to be resolved, and that is where exactly to hold these consultations. Some delegations suggested holding this consultation in a smaller room in order to have a less formal atmosphere for discussing the issues involved. Other delegations prefer to hold the discussion in this room (albeit informally) as this would allow those delegations not having a fluent knowledge of English, which would be the working language if we use a smaller room, to take advantage of the interpreters.

I leave this up to delegations, but my own inclination would be to hold the meeting in this room, so that the interpretation services are available to us. Are there any comments? I see none. Thank you for your understanding and cooperation. The formal meeting of the Subcommittee is now adjourned and will be followed by informal consultations in this room. This afternoon we will hold a formal plenary, followed by the meeting of the working group on the review of the concept of the "launching State".

I give the floor to the distinguished representative of the United States.

Mr. J. CROOK (United States of America): We understand there is a group of people in the smaller room, waiting to begin the informal consultations. Perhaps they should be informed of the decision taken to meet in this room.

Mr. P. LÁLA (Secretary): Yes, we have sent someone to tell them and they will shortly join us.

The CHAIRMAN: Thank you. The meeting is adjourned.

The sitting adjourned at 11.55 a.m.