

**Committee on the Peaceful  
Uses of Outer Space  
Legal Subcommittee**

*Unedited transcript*

646<sup>th</sup> Meeting

Friday, 6 April 2001, 10 a.m.

Vienna

*Chairman:* Mr. Kopal (Czech Republic)

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

**The CHAIRMAN:** The session of the Legal Subcommittee is now open. I declare open the 646<sup>th</sup> meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

Before continuing with our substantive deliberations this morning, I should like to briefly outline our schedule of work for this morning. This morning we shall continue and hopefully conclude consideration of agenda item 5, information on the activities of international organizations relating to space law. We shall also continue our consideration in the Plenary of items 6 and 7. As I mentioned yesterday afternoon, it is also my intention to conclude consideration of agenda item 7 at this morning's meeting. Thereafter, we might also begin a preliminary consideration in the Plenary of agenda item 9, review of the concept of the launching State.

Following adjournment of the Subcommittee's Plenary meeting, the Working Group on Agenda Item 6 shall convene its third meeting under the guidance of Ms. Flores Liera of Mexico.

Thereafter, time permitting, the Working Group on agenda item 9, review of the concept of the launching State, might convene its first meeting.

**Agenda item 5, information on the activities of international organizations relating to space law**

Distinguished delegates, as I mentioned yesterday, we shall continue our consideration this morning of item 5 of our agenda, information on the activities of international organizations relating to

space law, simply in order to allow for the representative of the International Law Association, Professor Karl-Heinz Böckstiegel, to deliver a report on the work of that organization. Thereafter, unless any other delegation wishes to take the floor, it is my intention to conclude consideration of agenda item 5.

I therefore invite the representative of the International Law Association, Professor Karl-Heinz Böckstiegel, who is also Chairman of the ILA Space Law Committee, to now deliver his report on the activities of that organization. You have the floor Sir.

**Professor K.-H. BÖCKSTIEGEL** (International Law Association – ILA): Thank you very much Mr. Chairman and thank you specifically for the opportunity to shortly address this meeting and report at this session on the work of the ILA regarding the development of space law.

As you will be aware, a written report of the ILA has already been distributed to delegations as part of document A/AC.105/C.2/L.223 and on that basis, I can only make some additional short remarks.

Let me recall that the Space Law Committee of the International Law Association has been reporting to COPUOS every year on the progress of its work. Following our last presentation to the thirty-ninth session of the Legal Subcommittee of COPUOS, COPUOS, I am now pleased to give you an update in that regard.

As a more detailed source of information, may we remind you of the ILA Conference Reports published in book format shortly after each biannual conference. These Conference Reports reflect the

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In its resolution 50/27 of 6 December 1995, 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

work carried out by the Space Law Committee including reports, questionnaires to members and answers thereto as well as a summary of the debates taking place at the working sessions of the ILA Conference.

In addition, reports carry the resolutions adopted at each ILA Conference by the Plenary Session containing, *inter alia*, the terms of reference for the Committee's future work and this also refers to the Space Law Committee.

The Space Law Committee is, as you kindly mentioned, chaired by myself and has as its general rapporteur, Professor Maureen Williams from Argentina. Its members are specialists of note, many of whom are well-known to members of COPUOS and its Legal Subcommittee and indeed several are in this room today.

A long-standing tradition of our Committee is the inter-disciplinary approach to our work. Thus, we have so far been assisted by Professor Rex of Germany, who is also well-known to people around here from the Technical Subcommittee, by Professor Lubus Perek(?), who again is well-known here, and by Professor Richardi(?) of Argentina.

The following topics are presently being considered by the ILA Space Law Committee. One, review of the space law treaties in view of commercial space activities. Let me underline the qualification I added in view of commercial space activities so this is the special focus we introduce on this review of the space law treaties. Two, dispute settlement related to space activities. And three, space debris.

Within the context of this very short report, obviously I will draw some attention to the first subject which is, as you all know, is on the agenda of the Legal Subcommittee, as review of the status of the five international legal instruments governing outer space but I will also make a couple of short remarks regarding the main topics two and three, which I mentioned.

Now regarding the first main topic, review of the space law treaties in view of commercial space activities, as announced in our last report to COPUOS, the ILA Space Law Committee reported on the results of its studies on the subject of reference to the Sixty-Ninth Conference of the International Law Association which was held in London last July.

Let me just make a couple of remarks regarding the major treaties. Regarding the 1967

Space Treaty, on general lines, this Treaty was considered by us flexible enough in the present international scenario to serve as a basis for governing the activities of private entities in outer space. The special rapporteur on this topic, Professor Stefan Huber(?) of Germany, indicated that any possible improvements should focus on the clarification of a number of concepts such as the concept of outer space. The problem of delimitation maybe as well, space objects and a definition, in more precise terms, of the scope and implications of the common benefit clause. Should we embark on any changes, it was also suggested that the provisions embodied in Article 6 dealing with international responsibility should be cleared, having in mind that this article is closely related to a possible commitment of the States to enact national laws concerning authorization and supervision of the activities of private entities in outer space.

Most Committee Members agreed, however, that this Treaty on General Principles should, for that very reason, remain untouched. Concern was expressed that should amendments be introduced, its deeply rooted principles would become affected.

A majority believed that the most sensible course of action regarding changes and improvements might be a separate international instrument which centred on the above-mentioned obligation of States to enact national legislation, applicable to commercial space activities.

With regard to the 1972 Liability Convention, the position of the ILA Space Law Committee regarding this Convention was one of entire support to the proposal made by Austria in COPUOS to the Legal Subcommittee in 1998 whereby States would be encouraged to avail themselves of paragraph 3 of General Assembly resolution 2777 and thereby accept, on a basis of reciprocity, the binding nature of the Claims Commissions awards.

Regarding the 1975 Registration Convention, a number of steps have been suggested by the ILA Space Law Committee to make this Convention consistent with present times. In the first place, that national registries kept by launching States, should be unified and harmonized as much as possible and that further requirements should be added in Article 4 of this Convention, such as references to the owners and operators of the space object.

Contrary to the general feelings within the ILA Space Law Committee that the just mentioned space treaties should be kept in their present reading and, if necessary, adjustments or changes be introduced

by means of separate instruments, the Moon Agreement was seen in a different light. The low number of ratifications obtained so far clearly indicated that the international community was not prepared to go along with its provisions, particularly Article 11 stating that the Moon and its resources are the common heritage of mankind and envisaging the setting up of an international system for the management of those resources.

The reaction of our Committee to this Agreement may be summarized as "We either improve it or replace it". The special rapporteur of our Committee on the Moon Agreement, Dr. Frans von der Dunk from the Netherlands, observed that neither developed nor developing countries had shown an interest in the Moon Agreement. As to improvements, consensus began to grow within the ILA Space Law Committee of drawing analogies from the Law of the Sea, particularly in connection with the controversial nature of Part 11 of the 1982 Montego Bay Convention dealing with areas beyond national jurisdiction.

As you know, the polemic drafting of Part 11 of the Convention, led to further negotiations resulting in the adoption of an agreement on its implementation.

This is as far as I would want to go on the review of space law treaties. Dispute settlement is the second main topic of the ILA, as I mentioned. In connection with dispute settlement, let us recall from earlier reports of the ILA to COPUOS, that the ILA revised text on a Draft Convention on the Settlement of Disputes Related to Space Activities was adopted by the ILA Conference of 1998. Only minor adjustments were introduced to a former text adopted by the ILA Conference of 1984 in Paris. Among the striking features of this draft, mentioned should be made of Article 10 which leaves the door open for private entities to be parties to the dispute settlement mechanisms established by the Convention for Sovereign States. The Committee has been mandated to continue its consideration of this matter in the future.

Regarding the third main topic, space debris, with which the ILA has dealt with in recent years, may I recall from earlier reports of the ILA to COPUOS in the aftermath of the adoption of the ILA international instrument on the protection of the environment from damage caused by space debris which was adopted at the 1994 Conference of the ILA in Buenos Aires, that the subject continues under permanent study by the ILA and is quite frequently referred to, as we now see. We, as in the past, encourage that also the legal aspects of space debris be taken up in COPUOS and also in the Legal Subcommittee as soon as possible.

This, Mr. Chairman, is all I would like to say in this very short report. Let me end in encouraging any of you if you want further information or further discussion, just approach either myself or Professor Williams of Argentina. We will be happy to respond. Thank you very much again.

**The CHAIRMAN:** Thank you Professor Böckstiegel for your report on the activities of the International Law Association and an important and one of the oldest non-governmental institutions dealing with the codification of international law and, of course, of its Space Law Committee of which you have been Chairman. I use this opportunity also to inform the Subcommittee that Professor Böckstiegel has been Director of the Institute of Air and Space Law of the University of Cologne which celebrated last year its seventy-fifth anniversary of existence and work. This Institute was originally founded as an Institute of Air Law in 1925 and after World War II widened its interest also to the area of space law so that it is now Institute of Air and Space Law of the University of Cologne. And in the framework of this Institute, a major project has been conceived and developed. Its name is Legal Framework for the Commercial Use of Outer Space and under this project, several workshops have been held until this year and will now culminate by holding a colloquium by the end of May in Cologne that would finalize the whole project which has been resulted without very ambitious and also substantive in its work. So far as I had the opportunity to follow it and participate in this project.

Once again, thank you very much distinguished representative of the International Law Association for your report that was also included the document that was prepared by our Secretariat.

Are there any other speakers on item 5 at this time? I see none. We have concluded our substantive consideration of item 5.

**Agenda item 6, matters relating to (a) the definition and delimitation of outer space and (b) 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**

Distinguished delegates, we shall now continue our consideration in the Plenary of item 6 on our agenda, matters relating to (a) the definition and delimitation of outer space and (b) 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.

Mr. Secretary, do we have speakers on this particular item? There is no speaker inscribed on the list of speakers on this item. Are there any speakers, either from among the delegations or from among the observers? Yes, I recognize the distinguished representative of the Ukraine. I give her the floor.

**Ms. N. MALYSHEVA** (Ukraine) (*interpretation from Russian*): Thank you Mr. Chairman. My delegation has very carefully examined the document given by the Secretariat which sums up the replies to the questionnaire and that in relation to the question of delimitation of outer space and utilization of the geostationary orbit.

As Ukraine is in the group of States that did not give an official reply to the questionnaire, we have examined the matter only from a general point of view and would like to draw your attention to one point. First of all, replies given to the questionnaire. Do they allow us to reply directly to the question as to whether or not it is useful to have a delimitation of air space and outer space? We have doubts there.

For the debate, aerospace object and its legal framework were selected on the basis of where it is, whether in air space or in outer space. We do not question the foundations of this difference to determine choice of law, whether its ecology, air, outer space law and so on. There is also the question of liability for damage and there is the principle of sovereignty of States over natural resources and other related matters but we do not see a direct link between the nine questions and the matter of the delimitation of outer space.

My delegation feels that efforts of the Committee in this area should focus more on improvement of space activities and that, taking into account, their particular character and nature.

Our Subcommittee, even in the light of results obtained in the past, our Subcommittee would have a problem determining technical characteristics for the delimitation of air space and outer space even if all delegations do reply to the questionnaire, we still will not be able to make much progress here as I see it.

However, we would not want to stand against this type of approach categorically because it is important in this area to have the views of the

Scientific and Technical Subcommittee as well. Thank you.

**The CHAIRMAN** (*interpretation from Russian*): I thank the distinguished representative of Ukraine for that remark. (*Continued in English*) I now recognize the distinguished representative of Egypt to whom I give the floor.

**Mr. K. EL-HUSSAINY** (Egypt) (*interpretation from Arabic*): Thank you Mr. Chairman. Mr. Chairman, on this particular item, definition and delimitation of outer space, Egypt would like to address the fact that we should work on this to have a definition and delimitation of outer space and that to be able to know where space law would apply because after 43 years, counting from the first trip into outer space, it is somewhat strange not to have a reasonable definition of outer space. We cannot say that we do not have enough experience for this. So I believe the definition of a space object is a first step but that is not sufficient for a definition of outer space or a delimitation of outer space.

The Egyptian Government would insist on the fact that the definition of a space object should have influence on law applicable and it should be taken into account. There is a need to consider the sovereignty of States as that is an essential principle of international law and, at the same time, the freedom to utilize outer space should also be taken into account. Legal rules must be established so as to guarantee that that freedom will but not be used against the sovereignty of States and I believe that would be the only element that would lead to acceptance of any rules determined for this. Thank you.

**The CHAIRMAN**: Thank you distinguished representative of Egypt for your statement on point 6 of our agenda. I do not have any other speaker inscribed on the list of speakers but are there any other speakers wishing to speak on agenda item 6 at this time? I see none and we will continue our consideration of item 6 this afternoon.

**Agenda item 7, review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space**

Distinguished delegates, we shall now continue consideration of item 7 on our agenda, review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. Yes, the representative of the United States of America.

**Mr. K. HODGKINS** (United States of America): Thank you Mr. Chairman. Mr. Chairman, with your permission, we would like to come back to this matter this afternoon in our Plenary session. We will have a brief statement to make on this item but we are not in a position at this point in the session to do that. So with your permission, Mr. Chairman, we would like this item to remain open until this afternoon's session. Thank you.

**The CHAIRMAN:** Thank you distinguished representative of the United States of America. Certainly we will do so but I would like to urge all delegations still wishing to speak on this item to inscribe their names on the speakers' list with the Secretariat as soon as possible in order to enable us to close the discussion on this item this afternoon.

**Agenda item 9, review of the concept of the launching State**

I see no other speaker on this item and we will now proceed with the next item on our agenda, review of the concept of the launching State. I would recall that this item is to be considered by the Subcommittee in accordance with the Work Plan adopted by the full Committee at its forty-second session in 1999. This is the second year of the Work Plan and the Subcommittee should accordingly, through its Working Group, conduct a review of the concept of the launching State as contained in the Convention on International Liability for Damage Caused by Space Objects and the Convention on the Registration of Objects Launched into Outer Space as applied by States and international organizations and, of course, also with regard to all other United Nations instruments concerning space law.

This morning, I should like to open the floor to any delegations wishing to make preliminary statements on this item in the Plenary. I have a speaker on the list of speakers for this preliminary discussion and it is the distinguished representative of China, to whom I give the floor.

**Ms. R. XIAOXIA** (China) (*interpretation from Chinese*): Mr. Chairman, many space law provisions take the State that launches a space object as the point of linkage for the application of the law. In a case of a single launching State, the rights and obligations of the launching State are relatively easier to establish but when it is launching States the situation may be somewhat more complex. How to handle the situation the relationship between other launching States in terms of their rights and obligations, is an issue that needs to be further studied.

Here I wish to make a brief presentation with a reference to China's practice. Later my colleague will provide some information specifically on China's launch vehicle system and its commercial launch systems at the meetings of the Working Group under this item.

Under the Liability Convention, whenever two or more States jointly launch a space object, they should be jointly and severally liable for any damage caused. The Liability Convention, however, has no specific provisions on how to share the liabilities on joint launching States. Therefore, the States concerned would have to find a solution through consultations.

One optional solution is that during the launching stage, that is from the point of ignition of the launch vehicle to the point of separation of the satellite from the launch vehicle, the liability is on the State that provides the launch service. During the entire operational stage, after the separation of the satellite from the launch vehicle, the liability should be taken by the State to which the owner and the operator of the satellite belong.

On 12 December 1998, the Governments of China and the United States of America signed an agreement on launch liabilities in accordance with which when China launches a satellite manufactured by the United States, China should take full responsibility or liability of compensation to the United States insofar as it is liable in accordance with the Liability Convention, the Outer Space Treaty as well as international law.

On the other hand, when providing international commercial launch services, China is only the launching State that provides launch service not the operating or manufacturing State of the satellite. China, therefore, should only be liable for any possible damage caused during the launching phase and it takes no liability of compensation for damages which occur at any time during the flight and operation of the satellite after it is successfully launched.

When China was to launch ASIAN-I(?) satellite for Hong Kong, in order to clearly establish the Chinese liability and delimitation thereof, the Government of China signed an agreement on 16 March 1990 with the Government of the United Kingdom which stipulates that during the launching stage of ASIA-I satellite, that is from the point of ignition of the rocket to the separation, China is liable to any damages caused to the third State or their people

in accordance with the Liability Convention, the Outer Space Treaty and other principles of international law.

So on this basis, as a launching State, China's liability is limited only to the damage caused during the launching stage. However, as the owner and operator of this ASIAN-I satellite, Britain is the registration State, therefore, it is a co- or joint launching State. Therefore, the United Kingdom is to be liable for the entire operation and flight of the satellite after a successful launching.

So this agreement between China and the United Kingdom is of great importance which has been invoked in many launch services China conducted thereafter for international customers. Thank you Mr. Chairman.

**The CHAIRMAN:** Thank you distinguished representative of China for your statement on agenda item 9, review of the concept of the launching State in this preliminary debate. Any other speaker want to speak on item 9 of our agenda at this stage? I see none. We will continue our consideration of item 9 this afternoon.

Distinguished delegates, I will shortly adjourn this meeting of the Subcommittee in order to allow the Working Group on Item 6 to convene its third meeting under the guidance of Ms. Flores Liera of Mexico. Time permitting, this might be followed by the first meeting of the Working Group on Item 9.

Before adjourning the meeting of the Subcommittee, however, I would like to inform delegates of our schedule of work for this afternoon.

This afternoon we shall continue our consideration in the Plenary of items 6 and 9. Thereafter, the Working Group on Agenda Item 6 might convene its fourth meeting under the guidance of Ms. Flores Liera of Mexico, following which the Working Group on Item 9 might also convene its meeting.

I just wanted to pass the Chair to the Chairperson of the Working Group on delimitation and definition of outer space. However, I do not recognize her here in this room so perhaps in order to use in the best way the time that is available for us, I will change over the order of the working group sessions and I will first give the Chair to the Chairman of the Working Group for the discussion on the concept of launching State, Dr. Kai-Uwe Schrogl, whom I kindly invite to come and to take over the Chair. Thank you.

The meeting of the Subcommittee is now adjourned followed immediately by the meeting of the Working Group on the launching State.

*The meeting closed at 10.56 a.m.*