

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

Unedited transcript

649th Meeting

Monday, 9 April 2001, 3 p.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

The meeting was called to order at 3.12 p.m.

The CHAIRMAN: Distinguished delegates, the meeting is now in session. I declare open the 649th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

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

As I indicated this morning, it is my intention to conclude substantive deliberations on this item at this afternoon's meeting.

I do not see any delegation inscribed on the list of speakers for the discussion on item 6 for this afternoon's meeting. Is there any delegation wishing to speak on this item? I see none. Therefore, with the exception of formally receiving and endorsing the report of the Working Group on this item, which we shall do towards the end of the week, we have

concluded substantive consideration of item 6 for this session. *It is so decided.*

Agenda item 8, consideration of the draft convention of the International Institute for the Unification of Private Law (UNIDROIT) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property

Distinguished delegates, we shall now continue our consideration of agenda item 8, consideration of the draft convention of the International Institute for the Unification of Private Law (UNIDROIT) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property.

I have several speakers on my list and I give the floor to the distinguished representative of Belgium.

Mr. J. F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr. Chairman. You have received by now, I believe, the non-paper which contains the proposal from Belgium. This proposal, the purpose of this is the creation of an ad hoc consultation mechanism between States represented within COPUOS and specialized international organizations, the observers here, for example, I am thinking of ITU and the ESA but, of course, that is not an exhaustive list. Then representatives, of course, of the Office for Outer Space Affairs and, of course, the representatives of UNIDROIT. This means that this ad hoc consultation mechanism, as it would be set up, is a mechanism that falls outside the institutional framework of COPUOS.

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

It is a purely informal mechanism, the only purpose of which is to facilitate exchanges to facilitate the work so that at the next meeting of COPUOS and, of course, assuming that a new item on the UNIDROIT draft protocol will have been included on the agenda of the forty-first meeting, on that assumption, that at that time, when we come back, we will have a piece of work that will be almost complete, almost finished. And at that forty-first session of the Subcommittee, we would be able to include it in a report that would go to the Subcommittee.

So if I could sum up what I am saying now, the work will be done informally but the result will be endorsed by the Subcommittee.

This is important for the Belgian delegation for a number of reasons and I will explain them. First of all, it would allow us to work and I hesitate over the word swiftly but let us say efficiently and, of course, when I say efficiently, it means that we are working within a very well limited time frame.

Now what is important for Belgium about the work that has to be done is in respect of the compatibility or consistency between, on the one hand, what is done in international space law, and, on the other hand, the commitments entered into in terms of the ratification of the UNIDROIT convention and the protocol thereto. It is studying this compatibility and consistency within COPUOS and within this ad hoc consultation mechanism. Those are the reasons behind this proposal.

Now, the way in which we work is up to the Member States. I have not said so but the principle would be that it would be on a purely voluntary basis, everyone is welcome. It is obvious that the more contributions we have, the more value-added we will get out of this work. The working basis might be, for example, L.225 and L.229, those documents, but there are other documents, of course, that could be added to this. So that is just a suggestion.

One minor point I would like to make now on the documents, in particular the language of the documents. I have understood the concern that was expressed by the Russian Federation delegation. It is obvious that it is very difficult to work on such technical aspects of a language that is not one's mother tongue. So I think that, at this stage, if we are going to add to the problem of examining the text, problems of interpretation not only of the common language but legal concepts, then I think that we will probably complicate things a little too much. So I would propose that this consultation mechanism should be

based on the English text. That is just a proposal, it can be discussed, of course.

Personally, I have to say that there is a version in French. It has been translated into French of the protocol but I would not use it. I would personally prefer to work with the English version.

Now the way in which this work would be organized. In order to be able to work in an inter-sessional situation, in other words, between this one and the forty-first session of the Subcommittee, I think that it would be worthwhile to be as pragmatic as possible. This would involve working a lot in terms of correspondence. If we have to have one, two or three meetings of participants between this session and the session of the forty-first in 2002, these meetings I am talking about of the participants who are involved in this consultation mechanism, would only really be useful and interesting if we have effective preparation of the work. In other words, upstream preparation, doing our work before we sit down at the meetings. So we should have to develop correspondence mechanisms so that we can centralize, coordinate the contributions coming from each participant in this.

That just about sums up what I wanted to say. You have the full facts in this non-paper related to item 8. I will not go through it because it is there. There are some procedural details that still have to be touched up and decided upon but that could be done among delegation interested in participating in this mechanism. Thank you very much Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Belgium for introducing your proposal contained in this non-paper. We will, of course, be discussing it and I would like to invite delegations to ponder this proposal and to make comments at the appropriate time during our discussions.

(*Continued in English*) The next speaker on my list is the distinguished representative of the Russian Federation.

Mr. I. B. POROHIN (Russian Federation) (*interpretation from Russian*): Thank you very much Mr. Chairman, ladies and gentlemen. The presentation of this question on the UNIDROIT draft convention as well as the draft protocol is very timely, I think, in order to ensure the future of this document as we should in accordance with recognized international space law and exclude any clash, to prevent any clash between the new legal regimes, in particular key

problems such as the registration of space objects and responsibility of the launching States.

Working on this draft, paragraph by paragraph, is not something that fits within COPUOS' mandate. However, as early as today, we could touch upon a number of general comments we have to make about the draft convention definition of space property which is essential for the protocol, in our opinion, is a little too general and too vague which could lead to problems when it comes to the practical implementation of the provisions of this protocol.

First of all, given the fact that the definition of a clear list of objects as we have it in the protocol for aviation, for example, does not explain very clearly what we mean by registration and what could actually appear in such an international register.

Secondly, is it very useful really to include in the definition of space property things like licenses, authorizations and the approval of intergovernmental organizations who, in accordance with the legislative practice of the overwhelming majority of countries dealing with space activities, cannot actually be transferred as a result of a civil law transaction.

Along the same lines, we have the question about whether the idea of including in space property, non-material goods such as control, management and the transfer of the space property. First of all, we have the right for intellectual property given that there are very specific regimes, both internationally and nationally, to govern intellectual property. It is not a very good idea, I think, or it is not extremely useful to establish exceptions or provide for exceptions in respect of the intellectual property as is suggested in this regime. It is also problematic to, we think, to include in the concept of space property, contracts, contractual rights. As you are aware, international commercial contracts in the area of space activities, you have very long complex documents backing all this up which include many different types of contractual law which are all interlinked and interdependent in nature.

And this is where there is another technical problem but just as important. How can you register contractual rights which very often it is almost impossible to extract from the case of a specific situation or specific contract? For all these reasons, in our opinion, it would be more pragmatic and more opportune, I think, to use an approach to define space property, an approach which is also used in the protocol on aviation. In other words, a concrete specific list of material objects involved in space

property. You could include in the list, for example, spacecraft, orbital stations, as well as their components that might be used for independent and specific purposes, for example, transponders, space communication or equipment or modules of space stations, equipment which is on space equipment or installations and orbital stations, multiple-use spacecraft and transport systems as well as their separate components, launchers, boosters, material results of activities in space or space products.

This list, of course, is only preliminary in nature and it should be looked into in more detail certainly. Moreover, a specific list of objects that are part of space property and are subject to the protocol would facilitate the identification for registration purposes and would give, I think, better accuracy and precision to the protocol and would increase its chance of being implemented in a practical way.

Then we have legal defence systems. Article 9 of the draft protocol includes a concept according to which, for legal defence purposes, we establish transfer to the creditor of the access codes and access and command codes as well as command, control and operation of space property. It says specifically there that if this transfer of control has deleterious effects to the operational system, for example, this will not be considered as being as going against public order.

In our opinion, to give creditors this means of legal defence, creates or causes a number of concrete questions to arise which are all very difficult to differentiate. First of all, if we talk about telecommunications satellites which are the first ones that are actually in line for this particular text, we are talking about a complex object from a legal point of view for which there are equitable property interests which are equitable from several creditors. Everyone knows that there is a customary practice that is the sale or leasing of transponders for one satellite, on one satellite, which goes for several buyers, for example, and with that, there are services for telemetry, monitoring and so on which are covered by one single satellite.

It is not correct, I think, or fair to assume that to give to one single creditor who is the owner or lessor of several transponders or one transponder on the satellite, the right to have the control over the entire satellite which might contain dozens of transponders which are all owned by different individuals or different companies, for example, different users.

Secondly, the telecommunications satellites, generally speaking, cover communications over very

vast territories and serve many users and they supply many different types of emergency assistance-type services.

And along those lines, and on that subject, we do not think it is very well justified what we have in Article 9 of this draft protocol which is that if the transfer of the control of the space property has deleterious effects for one or several communications operational systems, then that legal defence means will not be considered as being as contravening public order.

Thirdly, in a number of countries, the capacity of one or several satellites is being used, not only commercial users but also by governmental bodies, for example. The possibility of an unforeseen transfer of control over satellites on which you have a communications system of a State connected, for example, might be considered by governments as being a threat, as representing a threat to their national interests. And this is why, giving the creditor this type of right, might be a very serious obstacle when it comes to the ratification of this convention or this protocol.

Thirdly(?), links with other international conventions. We have to look more in detail about the links existing between the protocols and the other existing legal texts. First of all, the links with other international agreements(?) such as the principles and activities of States in space. Then we have the Agreement on Rescue of Astronauts, then we have the Agreement on Compensation and Responsibility and then we have the Convention on Registration. There are questions of the links between those and agreement protocol and the protocols and the convention among these agreements, included among several different countries. We have, for example, the intergovernmental agreement between Canada, the Members of the European Space Agency and Japan, the Russian Federation and the United States about the cooperation for the International Space Station, an agreement that provides the legal regime which is a conceptual produce which is different from what we have now in this draft protocol.

It is essential to have in Article 5 a possibility for participating States to formulate reservations about the inapplicable character of the provisions of this convention to relations which are regulated by international agreements which have been adopted already by the countries concerned. Thank you very much.

The CHAIRMAN (*interpretation from Russian*): I thank the distinguished representative of the Russian Federation for that statement that you have just made on item 8. I would like to know whether you are in possession of a written text in English or in any other language of your statement. Has it been translated into any other language because it would be extremely important for all participants to be able to become thoroughly familiar? We read, once again, for example, for your statement, given the fact that it is extremely important and I think that this would be very useful for our debate.

Mr. I. B. POROHIN (Russian Federation) (*interpretation from Russian*): We will be handing in to the Secretariat the text of our statement for it to be circulated to everyone.

The CHAIRMAN (*interpretation from Russian*): Thank you very much for your cooperation in this regard.

(*Continued in English*) The next speaker on my list of speakers is the distinguished representative of China to whom I give the floor.

Mr. H. HUIKANG (China) (*interpretation from Chinese*): Technical problem. They said the English is not available now.

The CHAIRMAN: Can we start again? Please try again.

INTERPRETER: Excuse me, there appears to be a technical problem. The interpreters are interpreting into English but it is not coming over the system for some reason. We are working on the problem. It might take a couple of minutes to solve.

The CHAIRMAN: Thank you. We have to wait a little bit, a couple of minutes.

INTERPRETER: OK, it is working now.

Mr. H. HUIKANG (China) (*interpretation from Chinese*): Mr. Chairman. Can you hear me? Yes? Shall I start? Thank you.

Mr. Chairman. The Chinese delegation has studied the report submitted by the Secretariat and the UNIDROIT under item 8, namely document L.225 and has listened to the presentation by Dr. Stanford from UNIDROIT and also to the statements by a number of delegates, particularly the representative from ESA which is very high on a professional standard. These will help to better understand the purpose of the

preliminary draft protocol on space property and the possible difficulties and problems in drafting such a protocol.

The Chinese delegation would like to appreciate their contributions and this delegation would also like to take this opportunity to make some of our preliminary comments.

My statement might be very long, probably I will need 20 minutes or so but I hope I am really specific and brief to the point.

Mr. Chairman, we appreciate the efforts of UNIDROIT to extend the proposed international regime governing international interests in mobile equipment to apply to space property. Along with the development of commercial use of outer space and the growth of participation by private enterprises in space commercial activities, legal issues concerning the financing, collateral and security of space property will also be increasing. It is necessary to find appropriate solutions and formulate necessary legislative provisions. In view of the professional character of international space law and the central role of COPUOS in the formulation of legal regimes on outer space, the Chinese delegation supports the active involvement of the Legal Subcommittee in the consideration of the draft international convention on international interests in mobile equipment and the draft protocol on space property.

Mr. Chairman, what needs to be pointed out is that it should be clear from the very beginning the development of an international regime on security and financing of space property is an arduous task. It involves legal issues that are intertwined and complicated. Thus, formulating the draft protocol on space property will probably be more difficult than the protocol on aircraft and the protocol on railway rolling stock. Therefore, it seems necessary to engage in in-depth study on some basic issues before examining the provisions of the draft protocol on space property.

First of all, how to define the concepts of space equipment or space property in legal terms for the purpose of financing and providing collateral and security for space activities. In a broader sense, space equipment belong to the mobile equipment category and, therefore, may become a subject for the readjustment of the legal regime on international interests in mobile equipment. However, space equipment as property in the sense of civil law is different in many respects from ordinary mobile equipment like railroad rolling stock or aircraft. Apart from the unique character of their location in outer

space, the commercial value of space equipment often depends on their functions and usage and their orbital positions.

Communication and broadcasting satellites and Earth resource satellites may have greater commercial value than enable them to bear their own costs for launching and operation and thus they probably do not need any financial support from the State. But those for scientific study, for example, the space explorers, manned spacecrafts and satellites for scientific experiments and those for public services, such as meteorological satellites, ocean satellites and satellites for environmental and disaster monitoring, these not only need the financial support from the State for their development and launch. Their operation cannot continue without the financial support of the State either. Though, no doubt, they belong to the space equipment and space property category, it is very difficult to say how much their commercial value is apart from that to the specific State concerned.

And the legal issue thus arises is whether this kind of space equipment can be treated as space property and thus qualified as collateral for international financing. There is also another situation where space equipment constitute an integral part of a big space system and its effective operation needs the synergy of other space equipment or even the support of facilities on the ground.

Without the support of this equipment and facilities, this space equipment may not have any value at all. Examples are the Global Navigation System which needs a group of satellites and the Global Communication System which consists of 66 iridium satellites. For these, unless you obtain the whole system, or at least obtain the right to participate in the system, otherwise it is difficult to say how much the asset values if you only obtain one satellite in the system or only a certain part of the system.

In such case, will this space equipment be regarded as space property good for collateral? Moreover, the compatibility of the concept of space property with the concept of space object which already exists in the present international space law also needs to be sorted out.

Secondly, how to harmonize a securities regime which is of a private law character with international space law which is public law in nature and avoid inconsistency with the latter's basic legal principles. Here, a basic conceptual issue is involved, namely, is the proposed new regime based on private international law and civil and commercial law or

international space law. Specifically, is it based on the proposed aircraft protocol or existing treaties governing outer space? And different lines of thinking will lead to different conclusions.

We have noted that the authors of the draft protocol on space property deliberately modelled it on the draft aviation protocol, stating explicitly that provisions of this protocol shall not revise those of the draft convention on international interests in mobile equipment. Obviously, this line of thinking is grounded in private international law and civil and commercial law but whether it can take into full account the differences between space objects and aircraft and thereby ensure consistency of the new proposed regime with the existing body of international space law remains to be assessed further. From the comments by delegations of the Member and cooperating States of ESA contained in L.229, it appears that problems still abound. We share this feeling.

As we are all aware, the basic framework of existing international space law is based on States and provisions of space law concerning the registration, nationality, ownership of and jurisdiction over space objects as well as liability for damage caused by space objects, were all established with States undertaking rights and obligations. Article 6 of the Outer Space Treaty states that "States Parties shall bear international responsibility for national activities in outer space and whether such activities are carried out by governmental agencies or by non-governmental entities and for assuring national activities are carried out in conformity with the provisions of the present treaty."

The same Article also provides that the activities of non-governmental entities in outer space shall require authorization and continuing supervision by the appropriate State Party. In introducing a security regime into international space law, an important legal issue which requires solution is how to deal with international responsibility, including liability for damage, to be borne by governments for national commercial activities of non-governmental entities in space as well as the relationship among governments of countries of the various parties to international financing, securities and guarantees for space objects in terms of rights and obligations.

On top of the above, there are issues of the legal basis and resources needed for the performance by the Office for Outer Space Affairs of its functions as a registry of the protocol on space property. The complexity of these issues requires the formulation of a

whole set of practicable legal regulations but seems not to have commanded adequate attention in the present draft protocol.

Last, but not least, how to ensure universal acceptance of and particularly support from the major space-faring nations for the proposed regime is another important issue which requires attention from the very beginning. Given the wide array of international space law issues involved in this protocol and the space policies of various governments and to ensure the proposed regime of securities and guarantees for space property will be able to play its role fully. It is important to take effective measures to have more governments represented in the elaboration of the protocol on space property. In this regard, the Legal Subcommittee is in a position to provide necessary assistance.

Mr. Chairman, in general, the current draft protocol on space property is very preliminary and, in our view, is not ready for submission to be considered. Therefore, we suggest that the COPUOS Secretariat, in cooperation with UNIDROIT, submit to the next Legal Subcommittee session, a revised draft protocol on space property. And, after consideration by the next Legal Subcommittee session, we decide whether we submit this draft protocol back to the UNIDROIT Secretariat.

To sum up, with respect to the draft protocol on space property, this Legal Subcommittee should pay much attention to it and respond positively but when making decisions, we should not proceed in haste. Thank you Mr. Chairman.

One last word, our statement will be provided to the Secretariat for circulation among delegations. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished representative of China for your substantive statement. Only to clarify, you said that the Chinese statement would be submitted to the Secretariat. It means in Chinese? Chinese and English. Thank you very much for your cooperation. Thank you.

Distinguished representatives, I still have on my list of speakers the name of the representative of Colombia who applied this morning. However, I have been advised that this will not be done during this afternoon. So my list of delegations is now exhausted. However, is there any other delegation wishing to speak at this moment? I see two delegations. The first one is the distinguished delegation of Brazil.

Mr. S. LEITE DA SILVA (Brazil): Thank you Mr. Chairman. The Brazilian delegation would like only to inform that we were very pleased to hear the comments made by the Chinese delegate and we will be interested in the English version of this statement. Thank you.

The CHAIRMAN: Thank you distinguished representative of Brazil. We have been assured by the distinguished delegation of China that the English version as well as the original Chinese version will be available for all delegations.

I now recognize the distinguished representative of Mexico.

Mr. J. S. CORDERO (Mexico) (*interpretation from Spanish*): Thank you very much Mr. Chairman for giving me the floor once again. I, too, would like to say that I was very much interested in the statement made by the distinguished representative of the Russian Federation and the distinguished representative of China on the preliminary draft protocol before the Subcommittee submitted by UNIDROIT.

I would also like to draw the group's attention to L.227 submitted by UNIDROIT as well for COPUOS Members to call upon their governments to send specialized representatives to the diplomatic conference in South Africa. I believe that the text the registry and the parent convention with UNIDROIT and ICAO in Africa, this could be most beneficial for later discussions as well. Thank you.

The CHAIRMAN: Thank you distinguished representative of Mexico for your contribution. Next on my list of speakers is the distinguished representative of Germany.

Mr. C. HENRICHS (Germany): Thank you Mr. Chairman. I find it very interesting what direction our discussion took this afternoon. We started with a discussion on the procedure, how we best go on and we had the proposal, the non-paper from the Belgian delegation and then we had two very in-depth substantial submissions and contributions by the Russian Federation and by China which were both very interesting and they both revealed, in my view, that there is a lot of open points that deserve to be considered and to be discussed. It seems to me, however, that we may could try to find the way forward by combining these two aspects, the procedural aspect and the substantive aspect, just from

the amount of points that have been raised in these mere two statements.

This delegation would doubt that it would be sufficient to have the discussion today and to have the next discussion in this Legal Subcommittee in one year's time and just proceed in steps like that. This would, somehow, I feel, not be consistent with the development that takes part or that is probable to take part under the UNIDROIT side of things. So maybe these two statements that have been made by the Russian Federation and by China can be an incentive for us to try and proceed along those lines, proposed by the Belgian delegation, to find some mechanism to elaborate on these points and whatever other points may arise in the not too distant future but rather on a faster proceeding basis. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Germany for your contribution and your suggestion, how to combine these two approaches, the substantive one and the procedural one, to further considerations of this issue. I also believe that such substantive contributions that have been made, some of them in the morning and also in the afternoon, may also serve for an eventual mechanism that we will establish for further in-depth consideration of the issues involved.

I still have on my list of speakers the distinguished representative of the United States of America to whom I give the floor.

Mr. H. BURMAN (United States of America): Thank you Mr. Chairman. Mr. Chairman, in order to provide some additional information that may be of help as we proceed forward, I would like to comment on the process that we have employed for the development of the aircraft protocol. And while the issues involved may, of course, be rather different with regard to space equipment and space services, nevertheless, it may be informative and it may provide some guidance for our on-going discussions.

At the outset of that effort, a similar question was raised, as has been raised today, and the issue is whether to build the new treaty system at UNIDROIT and the aircraft protocol on the basis of existing conventions in the case of air transportation, primarily the Chicago and Geneva conventions. But, in fact, we went a different route and we did so because the purpose of the effort was to increase the availability of funding for States in all regions and all weathers(?) of economic development for air transportation and in order to do that, as a practical matter, we examined which methods would attract capital markets funding

and that has been the guiding direction that has informed the preparation of the UNIDROIT treaty system, if I may call it that, and the aircraft protocol. And there are a number of practical implications if one does that. For example, we did not engage in a conceptual approach to how to define aircraft or aircraft engines but instead determined which elements of air transportation are effectively identifiable for purposes of an international computer-based registry system and we have focused on those and that is the method by which our definitions have been arrived at. It is the functional approach to definitions. It meant ultimately that the term "aircraft", for example, for the UNIDROIT convention system is different than what the term "aircraft" would mean under the Chicago Convention.

What we found to be practical in that case was, in fact, at the outset, not to be bound by the terms of pre-existing convention systems. Ultimately, that proved a more successful path.

And so I suggest that in approaching these issues for purposes of examining the potential for enhancing the availability of commercial credit to assist space development, that we take the same, or consider taking the same pragmatic approach to those problems. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of the United States of America and particularly for your advice how similar problems have been explored or resolved in the field of air transportation.

Distinguished colleagues, I recognized the distinguished representative of France.

Mr. M. LAFFAITEUR (France) (*interpretation from French*): Thank you Mr. Chairman. I might be anticipating on the future now but at this stage, I hope we will be able to take up the proposal made by our colleague from Belgium for a consultation mechanism to be developed during the course of the next months and that so as to have a report or a revised text next year.

This consultation mechanism as envisaged could be understood as work to be done through e-mail, in a very simple way, but it might also be necessary to have a couple of meetings and I would like to say that France would be very pleased to be able to host the first meeting if there is to be one during the course of 2001. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of France especially for the offer to organize the first meeting should it be decided to have one.

(*Continued in English*) I now recognize the representative of the Russian Federation.

Mr. Y. KOLOSOV (Russian Federation) (*interpretation from Russian*): Thank you Mr. Chairman. We were going to try to find out which State would cover the costs of the event. It is clear to us now. In paragraph 6 of the document from the Belgian delegation, it says that the mechanism would include representatives of the Office for Outer Space Affairs and I would like to ask the Secretariat if the Secretariat would have resources for this or would the French Government generously cover those costs as well?

The CHAIRMAN (*interpretation from Russian*): I thank the representative of the Russian Federation and I give the floor to the representative of the Secretariat who will have an answer.

Mr. P. LÁLA (Secretary): Thank you Mr. Chairman. I think the Office will be very glad if it can get any additional support from any Member State. Of course, we are planning our meetings at least one or two years in advance so at the moment, I do not think we have any resources for ourselves. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from Russian*): The Russian Federation.

Mr. Y. KOLOSOV (Russian Federation) (*interpretation from Russian*): Mr. Chairman, I would like to thank the representative of the Secretariat for the candid reply. We have another question now. According to the Belgian proposal, it would be an open-ended group. So we could look at the following situation. Say you have 50 experts with some countries even having up to two experts on their delegation which would mean 100 or more experts taking part at the meeting. Would the French Government be willing to receive them, find the venue and interpretation and everything else that is necessary? It is a complex and delicate question.

The CHAIRMAN (*interpretation from Russian*): I thank the representative of the Russian Federation.

(Continued in English) The next speaker on my list is the distinguished representative of Austria, the distinguished Ambassador of Austria.

Mr. H. WINKLER (Austria): Thank you very much Mr. Chairman. Mr. Chairman, as a matter of fact, I would like to begin by thanking our Belgian colleague for this proposal because the question is what would the alternative be? I think the substantive discussion that we have had today in the morning by contributions by the United States and others and this afternoon, in particular by the Russian and Chinese contributions, show that there is, indeed, substance to discuss. And as was rightly pointed out by our Belgian colleague and by yourself, that this Subcommittee could not decide on any meetings. It could not take an initiative in setting up a mechanism, it would have to go through the usual channels. So what we have in front of us is an informal mechanism which States could use or could not use, according to the choosing. I would, of course, hope that those States which have such essential contributions to make would indeed willing to make use of this mechanism because this is exactly what this mechanism would need, substantial contributions, because the aim would be, next year, to come up with already a basis for discussion which would then be fed into a result-oriented working group, for example. All of the Legal Subcommittee, as such, which would then adopt a report which, through the usual channels, would go to UNIDROIT. This is the way I see it.

We could, of course, wait until next year and start from fresh, so to speak, but I think, given the complexity of the matter, which was really very impressively shown to us this afternoon by the two substantive contributions that we have heard, we need some preparatory work and I think we should be very grateful to the French delegation that they are willing to find a way. We do not have to decide right now or even take him up exactly on how much and how many, etc. I think this remains to be seen and I do not think we are asking from the Secretariat or from the Office for Outer Space Affairs that they set up a meeting. All we are asking them is to maybe send an expert or two to such a meeting and I think this should be within the ordinary budget without any additional resources because I am sure that the Office does indeed participate in meetings through one or two or three, I do not how many, offices. So I think we should keep an open mind. We should set up a mechanism that would allow us to make this contribution that is expected from us.

Having said this, just one personal remark. I have my doubts that the comparison that we have heard

from the distinguished representative of the United States. Really is it applicable to our case? I think the relation of ICAO and the Warsaw Convention on the one hand and questions of international or private law is different than in our case where we are speaking of a legal regime that is different from the private law regimes that UNIDROIT is usually dealing in. And, there is no escape to this, the Legal Subcommittee and the United Nations, through its competent bodies, to interpret or to enlarge on the existing rules of international law on outer space.

Of course, we should draw on whatever examples are available to us but this is a rather unique situation and we would have to find rather unique solutions in order to live up to the challenge. Thank you.

The CHAIRMAN: Thank you distinguished Ambassador of Austria for your statement. If I am permitted to draw your attention to something? What we did in the past, for example, when we were preparing the item on the concept of the launching State, we also held inter-sessional consultations. At the time it was organized very successfully by the distinguished delegation of Germany. These consultations were held in Bonn. I think it was in December two years ago and at least about the date I have been certain and I think that a similar type of consultations might be repeated in relation to the present issue and at the time about 40 people attended these consultation and including the most interested delegations including also the representative of the Secretariat of the Office and also I think some observers for international organizations. So that something on the lines of this experience such consultations could be held also some time between this session of the Legal Subcommittee and the next session of the Legal Subcommittee. I think it should not be before the session of the main Committee this year. It should be after the session of the COPUOS in June.

Any other delegation? I recognize the observer for the International Astronautical Federation.

Mr. H. P. VAN FENEMA (International Astronautical Federation – IAF): Mr. Chairman, may I suggest that also the International Institute of Space Law of the International Astronautical Federation be invited to contribute to the discussion within a framework of the ad hoc consultations. Thank you.

The CHAIRMAN: Thank you very much. It will be taken into account. The next speaker on my list is the distinguished representative of Argentina.

Mr. M. VERGARA (Argentina) (*interpretation from Spanish*): Thank you very much Mr. Chairman. First of all, my delegation would like to express its thanks to UNIDROIT for its work in this mobile equipment paper and its work on the protocol on space property.

Secondly, and it is only about the first statement that was made by the Russian Federation and the response that this elicited from Mr. Stanford of UNIDROIT about the need to obtain a copy in Russian of the protocol relating to space property, we would like to express that a copy of this protocol in the Spanish language would be most welcome by Spanish-speaking countries such as our own. We have a copy in Spanish, a translation in Spanish, of the convention produced by ICAO but we do not have a copy in Spanish of the protocol. This would be extremely useful for us in terms of the number of questions that we put with our internal agencies that are not always responded too very quickly so a copy in Spanish would be most welcome.

We do understand the need expressed by the Belgian delegate about meetings of the future, ad hoc consultation mechanism or working group and that it should have its discussions held in English. We think that is a very reasonable approach. This request I am making, of course, has not effect at all on the point that the discussions would be in English of the mechanism. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Argentina for your contribution to our discussions. The next speaker on my list is the distinguished representative of Belgium.

Mr. J. F. MAYENCE (Belgium) (*interpretation from French*): Once again, thank you Mr. Chairman for giving me the floor. I would like to express my specific thanks for their support both in terms of the procedure and in terms of the substance, those delegations who have spoken. I would like to thank the French delegation particular for its offer which I hope will make it possible to make ours real.

I would like to clarify one thing I have already clarified I think but I will repeat it nonetheless. It is clear, I think, that this mechanism consultation does not fall within the Legal Subcommittee in the institutional sense, in other words, costs from the Office for Outer Space Affairs do not arise because it is not Vienna that is responsible for consultation mechanism at all.

Now, as the coordination tasks are distributed, it is clear that we could have the Office for Outer Space Affairs playing a role here. They will also be a speaking partner but it is not, strictly speaking, a mechanism which falls under COPUOS, not even under the Legal Subcommittee. However, the results, as I said, will be endorsed in the Legal Subcommittee, only the results. Thank you.

The CHAIRMAN (*interpretation from French*): Thank you very much for that contribution representative of Belgium and I now call on the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Mr. Chairman. I would like to thank our colleague from Belgium for that clarification because when I asked for the floor actually earlier, I was about to put the question that he has just put. He took the words right out of my mouth, in other words, if this mechanism would fall or not within the framework of the institutional activities of the Legal Subcommittee. Now, according to the answer that we just got, in fact, it is no, they will not fall within the Subcommittee's work. In fact, it is an initiative from a Member State, as was the case two years ago when you, yourself, Mr. Chairman, said that there was an invitation from Germany two years ago for the concept. The speaker did not explain what concept.

What is important is to know who, when and how there will be participation in this informal consultation mechanism and which will lie outside the institutional framework of our meeting. And then afterwards, of course, when and where we will actually endorse the work, first of all, discuss and then endorse, because, as you will recall, we participated in the initiative of the Federal Republic of Germany in Bonn a couple of years ago and the result was academic actually, it could be described as being an academic result and it did not actually involve a political commitment by the States that participated. It was used as a sort of a basis so that afterwards, a working group could be set up and our friend is chairing over this, and then afterwards, there would be an institutional discussion with vim, the Legal Subcommittee of COPUOS.

We have to be absolutely clear and, quite apart from the very friendly invitation, we would all love to be in the beautiful city of Paris, be it in the Spring or in the Winter or any time of the year, but this really has to be established very clearly so we all know what we are talking about. Thank you very much Mr. Chairman.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for clarifying the matters that need to be discussed.

(*Continued in English*) There is not other speaker on my list of speakers. Is there any other delegation wishing to speak on item 8 of our agenda at this meeting? Perhaps I may say that we might still discuss this item for a certain time tomorrow morning, preferably morning and, therefore, it is up to each delegation to decide whether you wish to add something important to the discussion that has been held up to now. However, I would also welcome if the delegations consult amongst themselves in order to clarify this such a question of procedure and also terms of reference of such a group because I believe that the terms of reference should be more or less defined here in the Legal Subcommittee and not left completely to the decision of the participants of such. Of course, we will be fairly flexible in this respect but nevertheless the basic agreement should be reached here.

This is, for the time being, all on this item. Perhaps would the distinguished representative of UNIDROIT still say something today or will he then still make his final comments tomorrow?

Mr. Martin STANFORD (International Institute for the Unification of Private Law – UNIDROIT): Since you have given me the floor Mr. Chairman, I do not want to appear to be churlish. Thank you very much. I really did not hear the final words, I must confess, I was talking to somebody else but I think the idea as I indicated this morning that the Belgian representative is a very felicitous idea and I think we would be extremely happy to take part in any initiative that were to follow from that.

Apart from that, there is nothing I would like to add on this occasion. Perhaps you might invite me to comment perhaps when the matter is reverted to tomorrow. Thank you very much Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of UNIDROIT particularly for your willingness to further cooperate in the elaboration of our conclusions tomorrow.

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

Distinguished delegates, we shall continue our consideration in the Plenary of agenda item 9, review of the concept of the launching State.

Are there any delegations wishing to speak in the Plenary? I recognize the distinguished representative of Australia to whom I give the floor.

Ms. S. PAYMAN (Australia): Mr. Chairman, as my delegation's contribution to the Legal Subcommittee's consideration of the review of the concept of the launching State, I am pleased to present an overview of Australian Government policy and also the national space infrastructure being put in place to enable Australia to facilitate its commercial space programmes consistent with its obligations as a signatory to all of the five treaties governing the legal regime of outer space.

The Australian Government is supporting the development of a competitive environment for the establishment of a commercial space industry in Australia. It has long been recognized that Australia, being ideally located in the Asia-Pacific region, with close proximity to the equator for geostationary launches, would be a desirable location for launching of commercial satellites. This fact, in conjunction with Australia's extensive, low population land areas, its benign climate and well developed and sophisticated infrastructure, make Australia an attractive launching State. There are currently six proposals before the Australian Government for space launching from the Australian territory.

To ensure an orderly development of its space programmes consistent with its international obligations, Australia is committed to the creation of an effective national framework to facilitate the regulation of space activities carried out from its territory.

The promulgation of the Space Activities Act 1998 and the development of accompanying regulations have been the key measures towards the creation of a legal and regulatory framework for commercial space activities in Australia. In addition, the Australian Government has established an independent Space Licensing and Safety Office of competent persons to licence all space activities to be carried out from Australian territory or by Australian nationals overseas.

The Space Activities Act 1998 provides an open and transparent framework for licensing space activities conducted from Australian territory and launches of Australian payloads from overseas sites. The two primary objectives of the Act are to ensure public safety and for Australia to meet its international obligations, including under the Liability Convention

by requiring all launch activities to be insured to cover for any damage.

A launch facility in Australia can only be operated on the basis of a Space Licence issued by Australia's Space Licensing and Safety Office. An applicant for a Space Licence must satisfy the Government that they are competent to operate a launch facility and launch vehicles of the kind specified. In addition to a Space Licence, a Launch Permit is required in order to launch a space object from a specified Australian facility. The holder of the Space Licence and the Space Permit must have comprehensive third party liability insurance.

Should an Australian national wish to launch a space object from a facility outside Australia, they must apply for an Overseas Launch Certificate. Once again, stringent conditions apply, including the requirement that the applicant satisfy the insurance/financial requirements.

Mr. Chairman, the Australian Government's space launch programme has a distinctive characteristic. Launches from Australian territory of necessity will involve several international players. For example, the launch vehicles and associated rocket technology will be almost exclusively imported from major space States. Similarly, the payloads launched into orbit will be procured by foreign entities using imported technology.

Australia places high importance in collaboration with its partner States for projected launch activities from its territory given the interest of State of manufacture of the launch vehicles and related equipment and the nationality of the procuring entity. Due regard is made of Article V of the Convention on International Liability for Damage Caused by Space Objects on the question of participation of two or more States in a launching activity.

Given Australia's reliance on foreign technology and hardware, expertise and also that non-governmental entities will mainly conduct the launch using Australian territory, it is uncertain how the obligations of different parties are to be determined.

Australia is conscious of the need to secure cooperation with key spacefaring nations and matters of technology security and market access.

The Australian delegation hopes that the review of the concept of the launching State by the Legal Subcommittee will prove valuable in further enunciating State obligations under the treaties against

the background of increasing non-governmental involvement in space activities and joint participation by nationals of several States in launching activities, such as those proposed for Australia.

Australia will be happy to further contribute towards the work of the Legal Subcommittee under this agenda item. Thank you Sir.

The CHAIRMAN: Thank you very much distinguished representative of Australia for your statement on item 9 of our agenda.

I do not have any other delegation wishing to speak in the Subcommittee on this particular item. Is there any other delegation or is there any observer wishing to speak on this item in the Subcommittee at this stage? I see none. So I believe that we can now state that the consideration of item 9 in the Plenary will continue tomorrow morning.

Distinguished delegates, I will shortly adjourn this meeting of the Subcommittee in order to allow the Working Group on Item 9 sufficient time to convene its second meeting under the chairmanship of Mr. Kai-Uwe Schrogl of Germany and I believe that the time that is available for the Working Group is sufficient enough because it is now 4.30 p.m. It means one hour and a half is available for the Working Group.

Before adjourning the meeting of the Subcommittee, however, I would like to inform delegates of our schedule of work for tomorrow morning. Tomorrow morning, we shall continue our consideration of items 8, as I have already said, 9 and also consideration of 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 forty-first session. Time permitting, the Working Group on Item 9 might also convene its third meeting.

Are there any questions or comments on this proposed schedule? I recognize the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much. On the agenda for today, we were supposed to also take up item 10 of the agenda, I believe.

The CHAIRMAN (*interpretation from French*): I stated that we could take up that matter tomorrow.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): At what time?

The CHAIRMAN (*interpretation from French*): Well, there is tomorrow and the day after tomorrow as well, all day.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): I did not understand. Tomorrow or the day after tomorrow.

The CHAIRMAN (*interpretation from French*): Tomorrow, in any case, if there is time and we have planned to do it the day after tomorrow anyway in our provisional agenda.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Yes, I am putting the question because the day after tomorrow we have our colleague from the ESA who will not be present. He will have to leave. So if we have to continue informal consultations on this agenda item, we will not have the benefit of our Chairman.

The CHAIRMAN (*interpretation from French*): It appears that he is not even in the room right now. I do not know quite how to settle this issue but if we have some time available tomorrow, then I hope that the representative of Sweden will be present. If not, then we will have to go without him but he has already prepared the text of the agenda for the forty-first session of our Legal Subcommittee and we have, in fact, circulated the proposal to all delegations, that is the proposed agenda for the forty-first meeting. Thank you very much Greece for bringing that up.

(*Continued in English*) Unless any other comment or question or request is made, this meeting is adjourned and immediate will be followed by the session of the Working Group. Thank you.

The meeting closed at 4.32 p.m.