

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

Unedited transcript

650th Meeting

Tuesday, 10 April 2001, 10 a.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

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

The CHAIRMAN: Distinguished delegates, I declare open the 650th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

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 do not have any delegation inscribed on the list of speakers for this morning, so I invite all delegations and observers who still wish to speak on this important item to apply for the discussion.

Any delegation or observer wishing to speak? This is practically the last opportunity to speak on this item. I recognize the distinguished representative of UNIDROIT to whom I give the floor.

Mr. M. STANFORD (International Institute for the Unification of Private Law – UNIDROIT): Thank you Mr. Chairman, good morning ladies and gentlemen. I did not intend to take the floor but since you have indicated that it is the last opportunity to do

so, I thought perhaps I ought to take the opportunity. The main point is that I spoke last night to the representative of Belgium and we went through his draft, in other words, the draft for the organization of an ad hoc consultation meeting and I thought I would perhaps just to mention a couple of the ideas that I exchanged with him.

One of these was, I think you would agree that it makes sense for such a group to look, not at the text you have of the preliminary draft protocol, but rather the latest draft, in other words, say, if the informal group of experts were to meet, I do not know, later on this summer, if I understand correctly, after the next meeting of COPUOS, then I think it would be advisable, if I may suggest for them to work on the basis of the latest text of the preliminary draft protocol. And I would inform you that there is actually a newer version of the protocol than the version you have before you but, after discussion with the Office for Outer Space Affairs and the space working group, we agreed that, since you had already received the January version, it would, I think, only have complicated matters if we had sent you the newest version and the space working group will be meeting in a couple of weeks' time so there will probably be another version after that. So I would suggest that when the informal group of experts comes together that they perhaps concentrate their efforts on the latest version of the preliminary draft protocol.

And another thing, I was wondering whether it might be possible for this group, I am not in any way trying to set deadlines, but insofar as the Governing Council of UNIDROIT would be meeting in the middle of September, whether it might perhaps be possible to give some sort of preliminary ideas to the Governing

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Council from this group. In other words, if it might be possible for it to be held before then, say, I do not know, at the beginning of September or something like that but that is just an idea.

Anyway just to say that we are very grateful for this opportunity to have been able to present this protocol here and we look forward to working very closely with the Legal Subcommittee and COPUOS and hopefully this informal consultative group in the months ahead. Thank you very much Sir.

The CHAIRMAN: Thank you very much distinguished representative of UNIDROIT and I believe that your advice is certainly important for us and I, myself, also believe that the work of an informal consultative group, if it is really adopted and established, should be well coordinated with the schedule of meetings of the UNIDROIT bodies and also with other international events that have been already underway, the preparation for them already underway. So we should be very cautious not to overlap with these other important meetings.

Any other speaker on item 8? I see none. We will continue our consideration of item 8 this afternoon. This will be the last opportunity this afternoon so please, those delegations wishing still to say something to this item and because there may be some new ideas. Yesterday, we had a very good discussion including some substantive contributions and important aspects have been under discussion, so perhaps still today we could complete it but indeed this afternoon will be the last opportunity.

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

Distinguished delegates, we shall now continue our consideration in the Plenary of agenda item 9, review of the concept of the launching State. Do we have any delegation wishing to speak on this item in the Plenary?

I recognize the distinguished representative of Belgium.

Mr. J. F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr. Chairman. Following the discussion here in the Working Group on the concept of the launching State yesterday, there are two fundamental questions I would like to raise and these are of particular interest to us in Belgium.

And that in connection with the process of a space law bill. We are quite eager to have a reply from the Subcommittee or elements for a response on this and that is why I am raising the question here, looking at the concept of the launching State. If it turns out that later on, since this will not be dealt with at just one session, that there is a better forum for this discussion, of course, I would be pleased to raise the question again.

The two questions that emerged in yesterday's Working Group discussion and in informal talks, the questions that came up following that session were the Belgian draft bill applies to launching activities for flight and control of space objects and the criterion followed is jurisdiction. In other words, these are activities carried out under the jurisdiction of the Belgian State. That criterion does not correspond to the same criterion in Article VI of the Outer Space Treaty. The Outer Space Treaty in Article VI has the criterion of nationality. In other words, the State should maintain control, in other words, authorization but also surveillance, continuous surveillance over its nationals, non-governmental organizations, in particular.

This criterion gives rise to problems for us because it does not actually correspond to the legal and practical reality of space activities. In other words, the jurisdiction criterion is such that persons established in Belgium, with a view to carry out space activities, would be subject to the authorization system. The problem is that there might be Belgian nationals who could go abroad to other States and that to carry out space activities. That would mean that those Belgian nationals would be carrying out activities outside Belgian jurisdiction. However, by virtue of Article VI, the Belgian State, because these are Belgian nationals, would be bound to have control over or to have surveillance over their activity. How can the Belgian State guarantee the authorization system or the continuous surveillance over activities that are not carried out in Belgian jurisdiction or under Belgian jurisdiction? That is my question.

We have no problem with our jurisdiction criterion to be supplemented by nationality as a criterion. In other words, in the Belgian law, we could say that any activity launching flight or control of space objects carried out by Belgian nationals is subject to authorization and continuous surveillance. The problem that we have is with implementation and with the effectiveness of continuous surveillance if activities are carried out outside Belgian jurisdiction.

So I just wanted to raise the question of relevance of the national criterion. Should it be supplemented, complemented, revised? And that with a view to have harmony between the real possibilities of a State with regard to its jurisdiction and the terms of Article VI in the Outer Space Treaty. I would like to hear from States that already have space administration, how they solve this question.

There is the case of the United Kingdom. We heard a presentation yesterday on that country. How does the United Kingdom make effective continuous surveillance over activities carried out by British nationals outside British jurisdiction?

And my second question is related to liability. Liability for damage under Article VII of the Outer Space Treaty and the 1972 Convention. The Belgian draft bill states that if the Belgian State is held liable under Article 7 and/or the 1972 Convention for damage caused by a space object, it can refer to the private entity in control of the space object. That means that the Belgian State has to be declared liable internationally for damage under international law which means that we need to know if, that is an international judge that would decide, on the liability for damage and that the Belgian State would be held liable.

As I have said, we need solid legal basis and that to consider that States are liable for space activity carried out by their nationals. I have already explained that our political will is to respond positively to this matter, there is no doubt there. However, the fundamental differences that there are between Article VI in the Outer Space Treaty and Article VII, those differences do not allow us, at the present state of affairs in international law, to find a legal response to the question. We proposed yesterday a possible solution, for what it is worth, of course, it can be criticized but that would be to consider that a State granting legal personality to say a commercial entity wishing to carry out space activities makes it come under the definition of the launching State because it would be either its territory or its facilities that would be procured.

The duality here is due to the fact that some States have a system of nationality of companies, depending on the Head Office, in other words, if the Head Office is actually in Belgium, in the case of Belgium, then it is a Belgian company, in which case it would be territory that would apply. Others have the question of incorporation, in other words, the nationality is attributed of the country where the company is registered, in which case, the facilities term

would be probably more appropriate. It is one approach just like any other. It can be criticized but it is here which is not the case of a pseudo-link between Article VI which is on international liability of States based on the obligation to control or surveillance for activities in Article VII which is liability for damage caused by a space object and not even space activity. There are space activities that may cause damage but do not, however, come under Article VII because it is not the space object itself that causes the damage.

So these two questions for us are fundamental and, I must say, an explanation that says that is how we have always done it would not be enough for me. That is not how it can work. We need clarity. There is the political will, I have said this, to have a broad concept of liability but we need the legal foundations, the legal basis to set this on. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Belgium for that statement. The two questions that you have raised and explained are definitely important questions and we will have to examine these and find a reply insofar as possible. They are detailed questions and they should probably addressed to the Working Group that will be following this session of the Subcommittee shortly.

(*Continued in English*) Is there any other speaker wishing to speak on item 9 of our agenda at this stage? Yes, I recognize the distinguished observer for the International Astronautical Federation.

Mr. H. P. VAN FENEMA (International Astronautical Federation – IAF): Thank you Mr. Chairman. I just need some clarification after this statement made by the distinguished delegate of Belgium. I understand from his secondary remark or his second question that the Belgian State would feel liable in cases where a private company is registered or incorporated in Belgium and causes damage. I understood from his intervention yesterday that he meant to make the Belgian State liable in case the Belgian State has licensed a company to perform space activities in Belgium. There is a distinction between the two but I just want to have clarification, which one of the two he has chosen. Thank you.

The CHAIRMAN: Thank you Dr. van Fenema for your intervention on this important point. Is there any other speaker who would like to speak? Belgium once again. You have the floor Sir.

Mr. J. F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr.

Chairman. I will not go into detail since I have realized that I probably was not clear enough yesterday. The Belgian legal system provides for implementation of the obligation to supervise and so far it has been the jurisdiction criterion that has been applied. Under another article it has laid down that. When the Belgian State is held liable under the terms of Article VII of this and the 1972 Convention for Damage Caused by a Space Object, it can turn to the party in control of the object or activities that caused the damage. In other words, we are not saying we are not liable for nationals, what we are saying is that if we are designated as responsible or liable for activities by our nationals under international law, then we, in Belgium, can have a case against the nationals which means that we need an international response. I believe it would be the international judge that would be determining whether or not the Belgian State would be liable but it is not Belgium. Belgium will simply take note of the response under international law on the question of liability, in which case it can have a case against its own national in Belgium. Thank you.

The CHAIRMAN: Is there any other speaker wishing to speak on agenda item 9 this morning? I see none. We will continue our consideration of item 9 in the Plenary this afternoon and now I intend to suspend the session of the Subcommittee in order to enable our Working Group on Item 9 acting under the guidance of Dr. Kai-Uwe Schrogl of Germany to continue its consideration of this item and hopefully to finalize this consideration.

So the meeting of the Subcommittee now is suspended and immediately the Working Group will start its own work.

The meeting was suspended at 10.40 a.m.