

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

Unedited transcript

663rd Meeting

Friday, 5 April 2002, 3 p.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

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

The CHAIRMAN: This meeting is called to order but I see the order already occurred and, therefore, we can start immediately. I declare open the 663rd meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

Status and Application of the Five United Nations Treaties on Outer Space (Agenda Item 4)

Distinguished delegates, we shall now continue our consideration of agenda item 4, Status and Application of the Five United Nations Treaties on Outer Space. It means here on the level of the Subcommittee. But as I see it here, I do not have any speaker that would apply for the discussion. Is there any delegation wishing to speak on item 4 of our agenda at this meeting?

I see none. We will continue our consideration of item 4, Status and Application of the Five United Nations Treaties on Outer Space, on Monday morning next week.

Review of the Concept of “Launching State” (Agenda Item 9)

Distinguished delegates, we shall now continue consideration of item 9 of our agenda, Review of the Concept of “Launching State”. For this item, I have two speakers on my list and I will give the floor to the first of them, the distinguished representative of the United States of America. You have the floor Sir.

Mr. S. MATHIAS (United States of America): Thank you Mr. Chairman. First, I would

like to thank the Secretariat for its efforts in compiling the excellent report reviewing the concept of launching State. This document contains a highly informative synthesis of State practice in applying the concept of the launching State, as well as identification of issues regarding that concept and elements that could be included in national space legislation and licensing regimes. It will undoubtedly prove to be a tremendous resource to both members and non-members of this Subcommittee.

Second, I would like to commend, in this plenary session, the Chairman of the Working Group on this agenda item, Dr. Schrogl, for his outstanding work in leading deliberations under this multi-year Work Plan. As I indicated this morning, the discussions on this item have yielded highly interesting results on a very important topic.

With respect to the issue of the definition of launching State, my Government would like to reiterate the point it made last year that problems have not arisen in practice with regard to the definition of the term launching State as used in the Registration and Liability Conventions. The Registration and Liability Conventions define the term a “launching State” as a State that launches or procures the launching of a space object or a State from whose territory or facility a space object is launched. Although both Conventions create certain obligations for launching States, they have separate purposes. The Liability Convention defines the circumstances in which a launching State bears liability to pay compensation for certain damage caused by its space object. The drafters of the 1972 Liability Convention emphasized the victim-oriented nature of the Convention, seeking to maximize the

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potential for recovery by injured parties with a broad definition of the term "launching State".

Under Article VI of the Outer Space Treaty, State Parties bear international responsibility for national activities in outer space and the activities of non-governmental entities in outer space require authorization and continuing supervision by the appropriate State Party to the Treaty. As the Secretariat's report notes, ensuring the safety of space activities is an important policy behind most national space laws, in particular laws governing the launch of objects into outer space. Individual launching States are uniquely suited to attain the goal of protecting nationals through domestic licensing regimes. This conclusion is supported by not only the report of the Secretariat and the work of the Chairman of the Working Group on the Launching State agenda item, but also by recent industry/academic work on the subject, including the Workshop on International Legal Regimes Governing Space Activities, held in early December of last year, in Scottsdale, Arizona, by the American Astronautical Society, which we discussed this morning.

The Registration Convention requires at least one launching State as registrant for a space object. The nature and criteria of registration, however, are not explicitly linked to a launching State's responsibility under the Liability Convention, including, vis-à-vis, other launching States, or of responsibility a State may bear as a State Party to the Outer Space Treaty. In practice, the frameworks established by the Registration and Liability Conventions have been effective in facilitating outer space activities, including launch activities. Both governmental and private launches occur on a regular basis and they have been able to proceed with the support of private insurance.

I appreciate the opportunity to express the views of the United States on this agenda item. Thank you Mr. Chairman.

The CHAIRMAN: I thank the distinguished representative of the United States of America for his statement on item 9 of our agenda, Review of the Concept of "Launching State".

I now give the floor to the next speaker on my list and it is the distinguished representative of Morocco.

Mr. M. S. RIFFIT TEMSAMANI (Morocco) (*interpretation from French*): Thank you Mr. Chairman. Mr. Chairman, my delegation commends the work accomplished by the Working

Group on Item 9 of our agenda. We approve the document presented by the Working Group Chairman, for this document, once it is definitively adopted, will make an important contribution to the development of international outer space law and encourage States that are not signatories to the existing treaties to assume commitments under those treaties, particularly the Liability and Registration Conventions.

Mr. Chairman, we have studied this document and we believe that it is up to us, this Subcommittee, to conduct constructive and important work and the subject of defining the concept of launching State should be in the focus of our attention. We believe that, since this concept depends on the evolution of outer space activities, it needs to be revised at the present time.

The definition of the launching State given in Article I of the Liability Convention was adopted at a time when only a handful of States were concerned by space activities. Today, the operators and the procurers of space launches have changed. There are new technologies, launches from mobile bases or launch facilities deployed in international zones. This requires a new definition and restrictive interpretations by individual States muddles the situation and may lead eventually to the total absence of liability on behalf of any State.

Mr. Chairman, Article VI of the 1967 Treaty and the 1972 Liability Convention define a very essential function for the launching State, specifically its liability for damages caused by space activity and the Kingdom of Morocco emphasizes the need to be very clear and specific about liability. This liability is the best guarantee of the useful and fair use of outer space and as an important part of the international legal regime governing outer space activities.

The provisions of the existing treaties specifically for States which are involved directly in space activities should be reinforced by the adoption of domestic laws specifying the commitments by the States and the liability that should rest with those States. Morocco supports the suggestion of the French delegation that we consider shared liability by various States in the case of present day launches and, of course, this division of responsibility and liability should be addressed in the new text. It is not addressed in the existing language.

Mr. Chairman, this Committee must help the various States to adopt national legislation where it does not exist and adapt domestic law to make sure that the concept of the launching State is defined in

accordance with the international understanding and the existing conventions. We believe that States should make a commitment to fully apply the existing conventions as amended from time to time and our efforts here should aim at filling in the gaps that obstruct the meaningful implementation of existing treaties at the moment.

My delegation supports all initiatives that will allow us to accomplish this mission so that the exploration and use of outer space be conducted truly in the interests and for the benefit of all States. Thank you.

The CHAIRMAN (*interpretation from French*): Thank you distinguished representative of the Kingdom of Morocco for your statement on behalf of Morocco on agenda item 9, Review of the Concept of “Launching State”.

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

Mr. J. GUAN (China) (*interpretation from Chinese*): Thank you Mr. Chairman. Mr. Chairman, this morning the Working Group on this agenda item finished and adopted the draft conclusions on this agenda item. Like those delegations who spoke this morning and other delegations which took the floor this afternoon, my delegation appreciates those conclusions and thank the Chairman of the Working Group for his hard work. We would also like to appreciate the report prepared by the Secretariat for this agenda item.

Mr. Chairman, now in connection with the conclusions of the Working Group, I would like to express some views on the concept of the launching State.

First, we appreciate that the concept of the launching State should be defined in accordance with the two conventions, the 1967 Outer Space Treaty and the 1972 Liability Convention. In our view, judging from the practice by States in outer space, the concept of the launching States defined in those two recommendations, are one of the basis for the concept of the launching State.

Secondly, we also agree that these conclusions have shown concern for the domestic legislation by States engaged in space activities and the (*inaudible*) mechanisms should stipulate the liability of the launching States and they should clearly define the concept of the launching State. Therefore, we believe, as far as space activities are concerned, the development of domestic legislation in space is useful

complement to the development of international space law.

Thirdly, we are of the view that international cooperation in outer space, the launching States concerned should define their own responsibilities and liabilities in international cooperation. In this field, we have a differentiated approach at the previous session of the Legal Subcommittee, my colleague had made some presentations. We think this differentiated approach is, in effect, to define the specific launching State for a specific space activity.

Fourthly, we have also noted that these conclusions concern the problems associated with space activities for non-governmental entities. While we discuss the draft protocol specific to space properties, we will discuss this matter. Here, I would like to say that since, given the specific nature of space activities, particularly the legal regime for outer space activities under the current five outer space treaties, activities in this field have a specific meaning and role. Therefore, we are of the view that on the international level, no space activity should preclude the international responsibility to be undertaken by States.

Before concluding, I would like to emphasize that the registration and launch of space objects, the differences between a launch and the registration of space objects, we think that the registering States for space objects should bear the responsibility as the launching States for the space objects but the registering State is a final result of launch activities. Therefore, we believe that exploring the possibility of elaborating of a comprehensive single convention on space activities has some significance. It will help define the concept of the launching State and its international responsibility. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished representative of China for your statement on the item which is still under our discussion, it means item 9, Review of the Concept of “Launching State”.

I now give the floor to the distinguished representative of Brazil, speaking on the same item.

Mr. S. LEITE DA SILVA (Brazil): Thank you Mr. Chairman. The importance of national legislation has been emphasized by many countries. The Working Group has already recommended to all Member States special attention to the national legislation on space law, as well as to the need to strengthen the international framework for space activities. In this context, I would like to inform that

the Brazilian Space Agency has recently issued two edicts on licensing and authorization of space launching activities in Brazilian territory. These rules are very important in the context of our efforts that the Brazilian Government is making to qualify the Alcantara Launching Centre.

At the same time, and with the same purpose, the Brazilian Government has decided to retake its studies in order to propose to our National Congress a draft of a legal framework regarding outer space activities developed in Brazil. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of Brazil for your statement on point 9 of our agenda.

Ladies and gentlemen, is there any other speaker wishing to speak on this item at this moment?

I see none. We will continue our consideration of item 9, Review of the Concept of "Launching State" on Monday morning of next week.

Information on the Activities of International Organizations Relating to Space Law (Agenda Item 5)

Distinguished delegates, we shall now continue our consideration of agenda item 5, Information on the Activities of International Organizations Relating to Space Law.

I have a speaker on this item and it will be the distinguished representative of the United States of America, to whom I give the floor.

Mr. S. MATHIAS (United States of America): Thank you Mr. Chairman. Mr. Chairman, under this standing item on the Legal Subcommittee agenda, each of us has the opportunity to comment on the activities of international organizations relating to space law. I would like to once again reiterate my Government's call for members of international organizations to consider steps they could take to encourage wider adherence to the four core outer space treaties so as to make it possible for the organizations to conduct their outer space activities within the framework of the treaties.

Over the years we have witnessed an increasing number of countries working together on a regional or global level to provide space-based services. Such international cooperation has clear benefits in terms of pooling resources and has led to

many important developments in space activities and technology.

The outer space treaties explicitly contemplated the conduct of space activities by international organizations and included provisions to address such activities. International organizations that carry on space activities have the opportunity to accept the principles of the Agreement on the Rescue and Return of Astronauts and the Liability and Registration Conventions. An international intergovernmental organization that conducts space activities can be a launching authority under the Rescue and Return Agreement and the core articles of the Liability and Registration Conventions can be deemed to apply to such an international intergovernmental organization.

In each instance, however, two requirements must be met. The organization must declare its acceptance of rights and obligations under the applicable treaty and the majority of the members of the organization must have adhered to both the Outer Space Treaty and to the applicable treaty, either the Rescue and Return Agreement, the Liability Convention or the Registration Convention, as the case may be.

As a result of the latter condition, several important intergovernmental organizations conducting space activities remain unable to elect to bring those activities into the frameworks of the Rescue and Return Agreement and the Liability and Registration Conventions because not enough of their members have become Party to both the Outer Space Treaty and respectively either the Rescue and Return Agreement, the Liability Convention or the Registration Convention. The result is a potentially significant gap in the coverage of key treaties.

We again encourage any international organizations that may be in this position, and their members, to consider taking steps to remedy this problem. We believe that doing so could produce a useful improvement in the coverage and effectiveness of the core outer space treaties. We would welcome clarification as to what steps these organizations are taking to address this problem and, Mr. Chairman, my delegation looks forward to hearing the contributions that we know international organizations will be making under this agenda item. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of the United States for your statement by which you drew our attention to an important

question of our efforts for increasing the participation of international organizations in the space treaties.

I do not have any other speaker on my list of speakers. However, if there is some delegation wishing to speak now on this item, it means item 5, Information on the Activities on International Organizations Relating to Space Law. The distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you Mr. Chairman. Mr. Chairman, I simply wanted to ask if you think it is appropriate to decide now or Monday morning on the proposal I put forth this morning with regard to the special meeting to be held by COMEST. We talked about that this morning and had asked, through you, to see if the delegations present here today would like to give their consent to attend that meeting during the morning, using this room, so that we could have as broad a participation as possible on the part of all delegations and to further to be able to benefit from the logistical support, such as interpretation. And I am wondering if you think this is the appropriate time to make a decision in that regard so that we can be ready for Monday or perhaps you had chosen to wait until Monday morning to make this decision. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of Greece for your raising this question. Yes, you are right saying that you already mentioned this question this morning and I would also like to recall that I replied that there would be an informal meeting of States interested in discussions on the report of the World Commission on the Ethics and Scientific Knowledge and Technology, the so-called COMEST report. But as I mentioned this morning, the location and timing of the informal meeting might be determined on Monday because it depends upon the progress of formal work of the Subcommittee and also upon the work of the new Working Group that we have established and we will still have to elect its Chairman. It means the Working Group on Definition and Delimitation of Outer Space. So please be patient in this respect and we will decide this question at an appropriate time on Monday morning.

I still have the application from the observer for the European Space Agency to whom I give the floor.

Mr. G. LAFFERRANDERIE (European Space Agency) (*interpretation from French*): Thank you very much Mr. Chairman for giving me the floor. I would like to take a few minutes of your precious

time to give you a presentation on a document, the document is the Activities Report of the European Space Agency and the European Centre on Space Law. This document is AC/105/L.231. If you would like, Mr. Chairman, then, I would like to take advantage of another moment later to be able to present the document to you. This document which I wish to present later refers to the survey conducted on legal issues with regard to space debris. This is document CRP.5. So that one I would like to go over on Monday, time willing.

At the moment I would like to limit myself to document L.231 so that I could highlight some of the information in this document both with regard to the European Centre for Space Law and the Agency itself. In this document, on page 2 of the English text, you will see reference to a workshop. I referred to this workshop already. It was held in Morocco, in Rabat, on 14 and 15 February of this year. It was renamed a meeting rather than a workshop and the basis for it was in the Subcommittee on the promotion of space law. And based on that, the Moroccan authorities organized, in conjunction with IISL, the meeting that I just mentioned. The usefulness and quite useful reorientation which came out as a result of this for the promotion of space was quite interesting. And I think I might be repeating myself, if my memory serves me, I would just like to reiterate then that next September in Tunis, we will also be holding another workshop and this workshop will be more specifically focused on remote sensing. A number of countries have approached me from the African continent who are interested in organizing such meetings and these meetings are not really academic context but rather take a very practical or concrete approach to very specific questions and issues that these countries have related to their implementation of space law.

Moreover, I would like to bring your attention to paragraph 4 of the same document, L.231. Here you will see reference to the work with the International Institute of Space Law, working in conjunction with the European Space Centre for Space Law, and, indeed, a Space Traffic Management Symposium was held and at the time, an idea was raised, and I think you yourself, Mr. Chairman, had brought this up in another context, the idea was to envision the possibility of holding the Symposium next year and this would be in conjunction with the Legal Subcommittee and would focus on the issue of UNIDROIT protocol. The idea is that the protocol and the government experts will be far enough along with their work so as to have observations and remarks and then it might be a timely moment to promote the contents of the protocol and, of course, later we can look at the possibility at a

diplomatic conference on the subject. I cannot speak for UNIDROIT. I am sure that Mr. Martin Stanford will be repeating what I have said largely. UNIDROIT's work has, indeed, included an informational campaign on protocol on space property and they plan to do this once the time is right and their work is far enough along and, indeed, UNIDROIT will be participating in this promotion effort.

I would just like to quickly look at two major activities of the European Centre for Space Law and draw your attention to the point of this kind of activity in terms of promoting space law in terms of concrete objectives. First are the summer courses, some of you are aware of them, and then the Practitioner's Forum, which was held in November of last year as usual. This Forum, as the title would indicate, for lawyers and anyone in the legal profession involved in concrete specific issues related to finance and the legal sphere. It is a very broad scope of action and last year the Forum had already focused on the state of the draft protocol on space property or assets and this Forum allows for the expression of anyone interested in this subject and, of course, it is in a confidential nature, it is a very useful exchange of information in order to become more familiar with what is going on in the area of space law and progress therein.

Of course, I must also highlight the very important activity for us which is the Manfred Lachs Space Law Moot Court Competition. Indeed, this has become a tradition and, once again, I would like to ask all of the delegations present here today to take a look at this and the importance of the Moot Court Competition. Truly, it is extraordinary, both for students and professors, anyone in the academic field. It is the only example in public international law of this type of competition and as practised in private law. We know have three teams which participate in the Competition. Of course, the United States has a team, Europe has a team and Australasia has a team. So I would like to encourage all Member States to reflect upon how they might help and facilitate matters for universities from other countries to broaden participation in the Moot Court which, once again, is truly a unique example and is truly marvellous training for students for their chosen profession.

You will also see that in this document there is reference to ethics and the contact we had with COMEST, more particularly, and I think that COMEST spoke here to the Subcommittee last year and I think there was reference to their conference in Berlin of last December.

I would further like to mention the example, and I hesitate to say example because the word is not the best choice, but an example of development and promotion of space law in some regions involves putting into place what we call contacts. The ECSL Newsletter helped with the national points of contact and is based on a number of bodies, either legal bodies or non-legal entities, enabling them to exchange information and to help each other in this area. And I think this network, and there is a lot of networks today, but truly this is a network which should be taken into consideration by a number of regions in order to increase education in this field and to help them educate their citizens with regard to space law.

I am particularly pleased to say that this year we set up national points of contact with ECSL in Austria here and I would like to take this moment to thank the Austrian authorities who made this national point of contact possible and especially here in Austria with the presence of COPUOS and the Legal Subcommittee being here in Austria. I think that having an Austrian national point of contact is very important and will prepare the way for extraordinary activities in the future in this area.

I would also like to mention what we did internally, within the Agency, in order to improve the implementation of the Convention, the Convention which is of concern to us which involves coordination. You know that the Convention was accepted by the European Space Agency and we have, therefore, developed procedures in order to implement it. And based on reflections expressed here a year or two ago, we resolved to improve our procedures to increase the volume of information on these activities to the benefit of everyone, especially to promote transparency in this area.

Mr. Chairman, I think I should stop there but, once again, I would just like to leave you with my request for time in the next meeting to go a little bit more in depth with regard to the results of the survey on space law. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you to the distinguished observer for the ESA and for the European Space Law Centre and I would like to thank you for your brief report and, of course, you will be welcome to present your report on space debris next week in our next session.

(*Continued in English*): I do not have any other delegation. Yes, I recognize with pleasure the distinguished representative of Austria and she has the floor now.

Ms. U. HIEBLER (Austria): Thank you Mr. Chairman. Mr. Chairman, let me briefly comment to Mr. Lafferranderie's statement which he made right before. I think he mentioned the establishment of the national point of contact of ECSL in Austria. I intended to make this known in the framework of our Working Group on Item 4, Promotion of Space Law, but I would like to use this opportunity, since it was already mentioned, to express our thanks to the European Centre for Space Law for all their help in the establishment of this national point of contact. And I would also like to use this opportunity to give the following information on this point of contact. It has been established at the University of Graz in Styria and the responsibility contact person there is Professor Christian Br nner, who is Professor at the Institute for Public Law. So we look forward to fruitful and rewarding work of this national point of contact. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished representative of Austria for your contribution and also for your announcement on the establishment of the point of contact in Graz.

Now I do no longer have any speaker on my list for this afternoon on item 5, Information on the Activities of International Organizations Relating to Space Law. Is there any other delegation or any other observer wishing to speak on this particular subject?

I see none. We will continue our consideration of item 5, Information on the Activities of International Organizations Relating to Space Law, on Monday morning of next week.

Matters Relating To: (a) the Definition and Delimitation of Outer Space; (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 (Agenda Item 6)

Distinguished delegates, as we still have some time remaining, and in view of the fact that both the Working Group on Agenda Item 4 and the Working Group on Agenda Item 9 completed their substantive deliberations for this session this morning and so will not need to convene additional meetings this afternoon, I would now propose that we consider advancing our schedule of work for the session by beginning consideration of item 6 of our agenda, Matters Relating To: (a) the Definition and Delimitation of Outer

Space; (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.

However, before opening the floor to any delegation wishing to speak to this item this afternoon, I would like to briefly consider the issue of the chairmanship of the working group on this item.

As I mentioned in my statement at the beginning of the Subcommittee's session on Tuesday, I have been informed that Ms. Socorro Flores Liera of Mexico, who chaired this Working Group at the Legal Subcommittee's fortieth session in 2001, will unfortunately not be in a position to do so at this year's session.

However, my understanding is that informal consultations on the matter have taken place amongst interested delegations and that a possible candidate who might enjoy the consensus of the Subcommittee has been identified.

If I see no objections, may I take it that the Subcommittee would wish to appoint Mr. Manuel Alvarez of Peru as Chairman of the Working Group on Agenda Item 4 at our present session?

I see no objections. Therefore, Mr. Manuel Alvarez of Peru is appointed Chairman of the Working Group on Agenda Item 6. *It is so decided.*

I was rescued in the last moment by our careful Secretary and by our careful Mr. McDougall because he brought to my attention there has been a typing error in the written introductory work of the Chairman and that it read on agenda item 4 but, of course, this concerns agenda item 6. It is always good to have a good team of the Secretariat here and I have to thank for it to our distinguished Director. *It is so decided.*

I extend to Mr. Alvarez my warmest congratulations. I understand that the Working Group will convene its first meeting on Monday morning of next week, following the conclusion of deliberations in the plenary, and I take this opportunity to wish Mr. Alvarez every success in guiding the Working Group in its endeavours.

We shall now consideration in the plenary of item 6. Do we have any speakers? Yes, I see that we have one and it is the distinguished Ambassador of Ecuador to whom I give the floor.

Mr. P. PALACIOS (Ecuador) (*interpretation from Spanish*): Thank you very much Mr. Chairman. There is something I would like to say that my delegation is not prepared yet to discuss this topic which is very important since the original schedule had us discussing item 6 on Monday and not today so we are not ready yet. Thank you.

The CHAIRMAN: Very well. You will be expected Excellency on Monday.

Is there any other delegation wishing to speak on item 6 at this moment?

I see none so I will shortly adjourn this meeting of the Subcommittee but before doing so, however, I would like to inform delegates of our schedule of work for Monday morning of next week.

On Monday morning, we shall continue our consideration of item 4, this time it is indeed item 4, Status and Application of the Five United Nations Treaties on Outer Space, and item 9, Review of the Concept of "Launching State", item 5, Information on the Activities of International Organizations Relating to Space Law, and item 6, Matters Relating to the Definition and Delimitation of Outer Space and the Character and Utilization of the Geostationary Orbit. Thereafter, time permitting, the Working Group on Item 6 might convene its first meeting under the chairmanship of Mr. Manuel Alvarez of Peru. And as far as the question of the informal consultation of the experts or participants in the discussions on the COMEST report, we will discuss it and decide on it on Monday.

Are there any questions or comments on this proposed schedule?

I see none. This meeting is adjourned.

The meeting closed at 4.05 p.m.