

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

Unedited transcript

666th Meeting

Tuesday, 9 April 2002, 10 a.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

The meeting was called to order at 10.18 a.m.

The CHAIRMAN: Distinguished delegates, I declare open the 666th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

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.

The first speaker on my list is the distinguished representative of France to whom I give the floor.

(Continued in French): I would like to call upon the distinguished representative of France to take the floor.

If you like, I could give the floor to the observer from EUMETSAT and then I will give it to you. Would that work? OK.

(Continued in English) In order to use the time that is available for us, I now give the floor to the distinguished observer of EUMETSAT, Mr. Hulsroj.

Mr. P. HULSROJ (European Organisation for the Exploitation of Meteorological Satellites, EUMETSAT): Thank you Mr. Chairman. I am happy to see that we again have the privilege of serving under with your wise chairmanship.

Let me explain what has happened in the past year in EUMETSAT. We have, I am sad to say, not spent a great deal of time on developing space law but rather perhaps using it. So we have been trying to ensure a timely start of the Meteosat Second Generation programme of operations and to ensure progress on the EUMETSAT Polar System development, where EUMETSAT cooperates with a large number of parties like ESA, CNES and NOAA of the United States. Also next year, or this year, will have this focus and it is a particularly critical year for EUMETSAT because the launch of the first satellite of the so-called MSG series, the Meteosat Second Generation series, is scheduled for the middle of this year. You should know that the MSG satellites which have been developed by ESA for EUMETSAT will bring very significant meteorological advantages not only to the Member States of EUMETSAT but also to the African continent. And in order to ensure an early, optimum use of MSG data, EUMETSAT has undertaken a number of training activities enabling new data sets to be used for operational meteorology from the start. In addition, there has been a European Union initiative to procure MSG user stations for use in Africa which was an initiative actively supported by EUMETSAT and we believe this is a good example of cooperation between intergovernmental organizations to the benefit of operational use of Earth observation data all over the world.

Now gearing up for the first launch of the MSG satellite, EUMETSAT has undertaken the necessary steps for the registration in line with the Registration Convention to which EUMETSAT has declared its acceptance of the rights and obligations.

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.

And we also expect to take the necessary steps to make a declaration on acceptance on rights and duties of the Liability Convention which, of course, is the natural corollary to the Registration Convention. But for this, of course, we need the approval of the EUMETSAT Council and I am sad to say, in this form particularly, that EUMETSAT will not have signed up for the Liability Convention before the MSG satellite will be launched. Now this is not due to any ill-will towards the Liability Convention obviously but these things take time and it is also clear that EUMETSAT does not need any prompting in relation to the Liability Convention since we are actively pursuing these activities. Yet it has struck us that, generally, intergovernmental organizations are not prompted on making declarations under the Registration and Liability Conventions. And I remember at a beautiful conference arranged by the ECSSL in Perugia in 1999 that the then Legal Counsel of the then intergovernmental organization, Intelsat, said that the only real reason she could identify for Intelsat for not having made these declarations was that there was no real attention given to the issue. So perhaps there are reasons to think about prompting.

We noted that there was a questionnaire sent to Member States and the reason for non-ratification of the Moon Treaty, at the instigation of the COPUOS, and apart from fact-finding, we believe that the purpose of the questionnaire probably was to draw attention to the issue. Perhaps one should consider similar steps in relation to the Registration and Liability Conventions. Of course, they are in a better state but it might still be useful to gain even further accession. It might be that these steps have been taken but, if they were, then at least intergovernmental organizations seem to have been passed by. Intergovernmental organizations might not merit a lot of focus in this attention in view of the rapidly decreasing number of intergovernmental organizations in space. But I think there is a general question towards States in general of whether some prompting would be appropriate, not pressure, but prompting on the signing up for the Registration and Liability Conventions and this could, for instance, be connected with launches of new satellites where one could perhaps if they are not covered by the Registration and Liability Conventions, whether this is an oversight or whether there are deeper political reasons which one would perhaps then have to tackle. Now I see that logically, of course, you could argue that there is no institutional way of knowing whether a satellite is launched if the Registration Convention has not applied but I think we all realize that the reality is that we almost, if not always, know.

In conclusion, the issue, I believe, is whether it would be a good idea to take gentle steps to seek further acceptance of the Registration Convention and the Liability Convention. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished observer for EUMETSAT for your contribution to our discussion on agenda item 5, Information on the activities of international organizations relating to space law.

(Continued in French) I now give the floor to the distinguished representative of France, Mr. Wibaux.

Mr. D. WIBAUX (France) *(interpretation from French)*: Thank you Mr. Chairman. I would like to make a short statement on the issue of space debris. First, I would like to thank the European Space Agency and I would also like to thank the European Centre for Space Law for their presentations yesterday, particular Mr. Lafferranderie's presentation which is of great interest to all. All studies have shown that indeed there will definitely be difficulties in the future and the studies further show that it is imperative that we make an effort to prevent the creation and production of an excessive high number of debris and we must do so if we wish to prevent accidents such as were mentioned by Mr. Lafferranderie.

This preventative effort has already been undertaken by national space agencies and the effort to prevent this type of problem has also been an objective of a number of in-depth studies and is a large part of the commercial activities authorized by States in application of the Treaty. France attaches high priority to this issue and, therefore, establish an organization which makes it possible to involve all players in these activities regardless of their level of responsibility such as technicians, industry, operators, insurers and so forth. France, of course, participates in interagency activities. These activities are led by the European Space Agency and France further participates in the work of the IADC Coordination Committee.

With a desire to identify those preventative measures which will make it possible to develop international rules for proper conduct and which can then be reflected in national legislations of States. With this in mind, France fully supports and endorses the work of the IADC and it also supports the Scientific and Technical Subcommittee's work within the Space Committee.

Mr. Chairman, France would like to see a Declaration of Principle on the Prevention of Space Debris. We would hope that it could be adopted as quickly as possible. The Declaration of Principle on the Use of Nuclear Energy in Space, as you know, was adopted by the General Assembly of the United Nations in 1992 and like this Declaration, a similar Declaration of Principle could proclaim and define principles of obligation in order to prevent excessive production of space debris. This Declaration of Principle could, for instance, take up some of the rules which were accepted in the past based on proposals within the IADC.

There has been a real increase in space activity commercially. It should be endorsed and supported and, having said that, however, the development of competition in space activity should not bring about less effort in the area of the production of debris and less attention paid to this area, even if limiting space debris brings about higher costs.

The development of international regulations which are universally accepted is the only way to guarantee that all players act with respect for the interests of all and particularly bearing in mind the interest of future generations. The French delegation, Mr. Chairman, remains convinced that our Committee can and should show its expertise and make a contribution. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you to the distinguished representative of France for your statement.

(*Continued in English*) Ladies and gentlemen, I do not have any other delegation. Yes, I recognize the distinguished representative of Belgium.

Mr. M.J.F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr. Chairman. I just wanted to comment briefly on our work on ethics and the joint approach involving COMEST and the Committee. There are some procedural difficulties outstanding and I think before the end of this Subcommittee, we should try to work these out so that we can have maximum participation from Member States from our Subcommittee, a basis for work and a Work Plan, otherwise we will not be able to fulfil the mandate assigned to us by the General Assembly.

Through you, Mr. Chairman, could I ask the Secretariat, and this especially looking at June, in other words, the end of the Committee's session, if it would be possible, once again, distribution of the invitation to

Member States to designate representatives for the expert group. Would that be possible? I think it would be useful. That communication did not go all the way through necessarily and I think it would make things easier to remedy the situation if it could be distributed once again. That is our first question. Then a second.

And now on the basis for work. I think it is important to stress that at yesterday's informal meeting, it was quite clear, and I am saying this for those who were not there, that the document submitted by COMEST, the recommendations from COMEST, are not the final document. This was admitted by the Chairman of COMEST. It is a living document. It is being worked on further. And the Chairman of COMEST confirmed that, on the basis of contributions and that from COPUOS Member States, it could be possible to amend the text, reflecting our contributions. So I think we should grasp that opportunity and we should find a way with COMEST to make a contribution for the document so that we can have a basis for work for our Committee.

And in spite of procedural hesitation that has come up throughout this meeting of the Subcommittee, I would like to ask if we could have those three bases, participation, the basic text and the Work Plan, so that then we can work efficiently and effectively with a view to our next meeting. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Belgium for that contribution regarding COMEST.

To give my immediate response, I believe it should be possible for the Secretariat to send out that request to Member States again to members of our Subcommittee asking them to announce their experts so as to expand the number of people in the committee of experts. That, of course, provided that it is approved by Member States here.

On the document prepared by COMEST, if there is to be a new version of the document, I am sure the Secretariat can distribute it as an additional document to serve as background information or a basis for the Subcommittee, as a basis for work in the group of experts.

And then your third. The Work Plan, your third point. That is a matter for the committee of experts. It has to be established and they will have to take the necessary measures for their own work. Of course, I think a Work Plan will be necessary.

So if you agree, distinguished delegates, can we accept that solution?

I see no objection. *It is so decided.* Thank you.

(Continued in English) I have now two other speakers on my list of speakers. The first one will be the distinguished representative of the Russian Federation.

Mr. Y. M. KOLOSOV (Russian Federation) *(interpretation from Russian)*: Thank you Mr. Chairman. We asked for the floor following the interesting statement by the representative of France addressing the need to draw up a Declaration on Principle as soon as possible on the prevention of space debris. And our view is as follows.

First of all, scientific and technical aspects of this problem call for further experience and an in-depth study of scientific and technical aspects of the space debris problem.

And, secondly, right now we are trying to see what kind of points could be included in the Declaration on Principle and it would seem to us that this would involve some of the provisions in the Convention on Registration of Space Objects whereby information has to be given to the Secretary-General and the international community on space objects that are no longer in orbit.

Such a Declaration on Principle would also concern matters in the Convention on Liability for Damage Caused in Outer Space. It is the damage caused in outer space as defined by in terms of fault similar to damage on Earth, on land. It might be a good idea to define how fault can be determined, what circumstances might release a party of liability based on fault. This could have effects on the principle of the use of nuclear power sources as well. That principle, in some cases, means a withdrawal, a removal of the object to a higher orbit and also other final nuclear questions. This could also relate to the Moon Agreement, the Agreement on the Moon and Other Celestial Bodies, and I would assume that such a Declaration would also have to take account of questions the Outer Space Treaty itself, where there is reference to prevention of pollution of the Earth through debris and also prevention of space debris in outer space.

The elaboration of such a Declaration on Principle, indeed, would cover the whole range of existing documents on outer space and my delegation

would be willing to consider the elaboration of Principles on the prevention of space debris in outer space and that within the context of a universal, global convention on outer space law being elaborated. That is the sole approach that we would believe would be constructive. Thank you.

The CHAIRMAN *(interpretation from Russian)*: I thank the representative of the Russian Federation on the proposal just put by the representative of France.

(Continued in French) I have one delegation on my list of speakers now and that is the representative of Greece. You have the floor.

Mr. V. CASSAPOGLOU (Greece) *(interpretation from French)*: Thank you Mr. Chairman and good morning to all.

I would like to make a couple of brief comments by way of reaction to the proposal made by the distinguished representative of France on the question of a legal examination of the space debris question.

We have already approved, even at this session of the Legal Subcommittee, that the question that space debris is governed by the group of treaties and texts on outer space. However, at a certain point, we will have to consider specific rules because on the basis of the Rex Report, which, in my view, is the summary of all technical studies on the question of space debris. It covers other aspects as well. And I must say this candidly as economic questions especially regarding operators of satellite systems who would like to use the operational life of satellites right up to the very last second. So for fully economic reasons, even speculative reasons, the orbits are over-used, the geostationary and others. If you wish, the usable outer space has been turned into waste territory.

We approve the French proposal because it is, after all, the practice that we have followed for 20 years now. First of all, the Principle on direct broadcasting, then remote sensing and nuclear power forces finally. In other words, it is pre-law, if I can put it that way, with quasi-legal concepts and principles, and that to preserve the space environment. In its general statement at UNISPACE III, Greece was virtually aggressive regarding the conservation of the space environment and that preserving it from any utilization that does not take into account future generations.

So, in practical terms, I think it was two years ago that France proposed, I do not remember exactly how it was, but it was a very significant effort, and that was to have a study on economic implications of space debris. I do not think we should wait. We have the technical data. I am not an engineer but I believe we have enough already to begin the discussion and the Czech Republic and Greece jointly proposed to initiate a dialogue on the question of arrangements that should be approved.

So, through you, if I may, Mr. Chairman, I would like to ask our colleague from France to move further into a practical proposal. In other words, how now we can propose for the plenary, in other words June, a method to begin work immediately, not putting this off to the Greek calends for ever and ever. We have to start now. That is my reaction to the French proposal.

On the proposal from our colleague from Belgium, I am quite pleased because we have approved everything he has proposed and I can already announce, through you, to colleagues who are members of the expert group that there should be a meeting today soon to continue our debate. Maybe not a debate but an exchange of views on the basis of what we heard yesterday from the Chairman of COMEST. I am quite pleased because my own remarks on form and substance of the recommendation text of COMEST were to the effect that it is not a finished text. In other words, there is room for improvement. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for that statement.

(*Continued in English*) Ladies and gentlemen, I do not have any other speaker on my list of speakers. Is there any other delegation or any other observer wishing to speak on item 5 at this time?

I see none. We will continue our consideration of item 5, Information on the activities of international organizations relating to space, this afternoon. I should like to inform delegations that it is my intention to conclude consideration of agenda item 5 at this afternoon's meeting. I would, therefore, urge any delegations still wishing to speak on this item to inscribe their names on the speakers list with the Secretariat as soon as possible.

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, we shall now continue our consideration of item 6, Matters relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit.

I do not have any speaker on my list for this morning's discussion so I have to ask again, is there any delegation or any observer wishing to speak on this item, item 6, it means definition and delimitation and the geostationary orbit, at this stage in the plenary of our Subcommittee?

Again, I see none. We will continue our consideration of item 6 this afternoon.

Consideration of the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001) and the Preliminary Draft Protocol on Matters Specific to Space Assets (agenda item 8)

Distinguished delegates, I would now propose that we begin consideration of agenda item 8, it is Consideration of the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001) and the Preliminary Draft Protocol on Matter Specific to Space Assets.

I have a number of speakers on my list and I will give them the floor promptly but if it may make a suggestion to you. I would recommend to listen to a introductory statement of the representative of UNIDROIT, of the Institute for Unification of Private Law, in order to give him the opportunity to inform us about the state of negotiations within the UNIDROIT, within his Institute, because this might be useful for all of us, for those who have participated in the consultative mechanism and also for other delegations which did not participate in these consultations. So unless I hear any objections, I would first give the floor to the distinguished observer for UNIDROIT.

Yes? Greece has the floor.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): (*interpreter: The first part was missed. There was no microphone*) ... I do not have any objection to the representative of UNIDROIT starting this discussion but I would like to make a statement on principle and that is this process is

informational and no more. This is not for official contributions from COPUOS for the elaboration of the preliminary draft text. In other words, we believe that COPUOS is not empowered to contribute to the elaboration of this Protocol. So, with that condition, we can accept but not as participants in the law-making process for the Protocol. That would be for the Ad Hoc Diplomatic Conference to do that. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece. I would also like to repeat what I said earlier and that is the representative of UNIDROIT would be given the floor strictly for information purposes. So I do not really understand why you had to lodge your reservation. I thought I stated it quite clearly.

On your second remark, we do have the question of the elaboration of the Convention and the Protocol on the agenda and we consider this in harmony with our agenda. Was that clear?

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): I did not have a chance to follow you with what you said because Channel Four here is a problem. The French channel, Channel Four, seems to be a problem here, the equipment. I am on Channel Four to be able to follow you but I do agree with everything you have just said, nonetheless.

The CHAIRMAN (*interpretation from French*): Other French-speaking delegations, do you have a similar problem? It would seem so.

Well then, all I can do is ask the relevant services, technical engineer, technician, to please help us out.

We will suspend the meeting for a couple of moments.

The meeting was suspended at 11.00 a.m.

The meeting resumed at 11.08 a.m.

The CHAIRMAN: ... (*Beginning of tape, part of sentence cut off*) ... Protocol thereto on matters specific to space assets. I will give the floor to the distinguished Secretary of the Subcommittee who will inform you about these problems concerning the French translation.

Mr. P. LÁLA (Secretary, Office for Outer Space Affairs): Thank you Mr. Chairman. We were

advised by the technicians that they cannot fix the problem immediately. They would like to change French from Channel Four to Channel Seven but I am not quite sure whether they will be able to do it now. So for the moment, we can ask the regions of delegations, the French-speaking Francophone delegations to bear with us. This is something intermediate, this is not continuous. So if you could continue the morning session on Channel Four in French and they will switch to Channel Seven at lunchtime so this afternoon you should have a better connection on Channel Seven but they cannot do it right now. If you agree, we can continue this way. Thank you very much Mr. Chairman.

The CHAIRMAN: Thank you Mr. Secretary. So may we proceed? Thank you. *It is so decided.*

I now give the floor to the distinguished observer for UNIDROIT, Mr. Martin Stanford. You have the floor Sir.

Mr. M. STANFORD (International Institute for the Unification of Private Law): Thank you very much Mr. Chairman. Good morning ladies and gentlemen. It is a very great pleasure to be here today and I must say that I was not expecting to make a statement so do please understand if this is not as clear as it might have been.

The Diplomatic Conference, first of all, the Diplomatic Conference to adopt the Convention on International Interests in Mobile Equipment and a Protocol on Aircraft Equipment took place in Cape Town last October and November. The Convention is designed to create a new international regime for the taking of security in high-value mobile equipment, be it aircraft, space assets or railway rolling stock or, indeed, other types of high-value mobile equipment. The Convention and the Aircraft Protocol were open to signature at the concluding session of the Conference on 16 November. Professor Kopal represented the United Nations at the Diplomatic Conference and I would suggest that among the decisions taken at the Diplomatic Conference were two of direct relevance to this Subcommittee. One, and this is, I think, recognition of the contribution of the ad hoc consultative mechanism and also the work conducted within this Subcommittee, was to replace the words "space property" in the provision determining the sphere of application of the Convention, by the term "space assets". You remember the discussion as to whether the words "space property" was appropriate, given the connotations of ownership.

And the second point, which I think will be of interest to those present here today is that the Diplomatic Conference decided to introduce a new article dealing with the relationship between the Convention and each protocol, in effect, affirming the primacy of each protocol in relation to the Convention.

Twenty-two States have to date signed the Convention and the Aircraft Protocol. The latest State, Senegal, came to sign a couple of days ago. The International Civil Aviation Organization, ICAO, has been invited by the Diplomatic Conference to exercise the functions of supervisory authority in relation to aircraft equipment and the Preparatory Commission, set up by the Diplomatic Conference to act as a provisional supervisory authority under the control of the ICAO Council, pending the entry into force of the Convention and the Aircraft Protocol, I understand, will be meeting next month in Montreal(?).

I would submit that the chances of the early entry into force of the Convention and the Aircraft Protocol are extremely good. I already have received signs that a number of States are already at an advance stage with the procedure for the ratification of the Convention and we would hope that the Convention might even come into force later this year.

The Convention, as many of you will be aware, is designed as a framework convention. In other words, to establish the basic general rules to apply to all the categories of equipment covered by its terms and the Protocol is dealing with the equipment-specific aspects of each category of equipment.

In the same way as the Aircraft Protocol originated in the work of an industry and aviation working group, other preliminary draft protocols have been prepared on railway rolling stock and space assets. Both of these working groups were made up of representatives of manufacturers, financiers, operators and insurers of the relevant assets, as well as representatives of the relevant international organizations.

Once the preliminary draft protocols were completed by the working groups, they were submitted to the President of UNIDROIT for consideration by the Governing Council of UNIDROIT as to their rightness for transmission to governments.

The preliminary draft rail protocol, dealing with railway rolling stock, has already gone through this process and is already before governmental experts. A second session of governmental experts is due to look at this in June in Rome.

The preliminary draft space protocol was submitted by the Space Working Group to the President of UNIDROIT at the end of last June, after a third session of that working group held in Seal Beach, California last April.

At its meeting last September, the Governing Council of UNIDROIT decided to authorize the Secretariat to transmit this text to governments once an opportunity had arisen to bring the preliminary draft protocol up-to-date with the changes that were going to be made to the Convention and the Aircraft Protocol at the Diplomatic Conference that was being held in Cape Town two months later. The Governing Council further authorized the body charged with this task a Steering and Revisions Committee, also to take account of those views expressed by the ad hoc consultative mechanism set up by COPUOS last June. Thirdly, the Governing Council decided that the intergovernmental consultation process, in respect of the preliminary draft protocol, should be enlarged to embrace not only UNIDROIT Member States but also all COPUOS Member States and the United Nations Office for Outer Space Affairs.

In order to prepare properly the work of the Steering and Revisions Committee, the Space Working Group met in Rome in January to bring the preliminary draft space protocol into line with the Convention and the Aircraft Protocol as they had been opened to signature in Cape Town and to consider, in a preliminary fashion, the conclusions reached by the consultative mechanism at its two working meetings. I should point out that this meeting of the Space Working Group held in Rome in January was attended both by the Chairman of the Legal Subcommittee, Professor Kopal and by a representative of the United Nations Office for Outer Space Affairs.

The text of the preliminary draft protocol that was subsequently finalized by the Steering and Revisions Committee in Rome in February at a meeting that was also attended by a representative of the United Nations Office for Outer Space Affairs, will now be transmitted to governments and a first session of governmental experts, convened by UNIDROIT in Rome, hopefully towards the end of this year.

The UNIDROIT Secretariat has studied with care the conclusions reached by the ad hoc consultative mechanism and there can be no doubt that these views will be given full consideration by the Committee of Governmental Experts.

The UNIDROIT Secretariat has noted with particular interest that the consultative mechanism has admitted the possibility of the United Nations exercising the functions of supervisory authority, subject to clarification as to the funding requirements of it exercising these functions.

I think it would, in concluding, be appropriate for me to state that we would be very happy if the Legal Subcommittee might, therefore, consider it appropriate to recommend, or rather to endorse this conclusion by the ad hoc consultative mechanism, with a view to advancing work on this topic. Thank you very much Mr. Chairman.

The CHAIRMAN: Thank you distinguished observer for UNIDROIT for your introductory information on the state of affairs within your Institute and about further prospects in negotiations in the Institute on this particular item.

Distinguished delegates, I have now a number of speakers who applied for the discussion on this topic and I give the floor to the first speaker, the distinguished representative of the Czech Republic. You have the floor Sir.

Mr. J. ŠTEPÁNEK (Czech Republic): Thank you Mr. Chairman. Mr. Chairman, in the beginning of my intervention on agenda item 8, let me express our full support to your efforts to bring, as in previous years, this session of the Legal Subcommittee, which marks the fortieth anniversary of this United Nations body, to a successful outcome.

Mr. Chairman, the item which stands now before us is, without doubt, fairly important and also quite innovative, for it reflects the recent trends in the development of space law of our times and has brought us to a close cooperation with another international intergovernmental organization, namely the International Institute for Unification of Private Law, UNIDROIT. This renowned institution addressed the United Nations and its Committee on the Peaceful Uses of Outer Space with an offer and request to closely cooperate with UNIDROIT in the elaboration of its draft Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on matters specific to space assets.

Acting on the basis of the mandate given to the Legal Subcommittee by the United Nations General Assembly, the Legal Subcommittee has dedicated a considerable attention to this issue during the last 12 months. In particular, it was done by means of a special consultative mechanism which discussed in

greater detail many questions relating to both drafts and to the eventual role of the United Nations in the adoption and operation of the respective new instruments.

In this context, it should be recalled that the attendance at both sessions of the consultative mechanism, held in Paris in September 2001 and in Rome in January 2002, was quite representative because it comprised more than two thirds of the active membership of the Subcommittee and the most interested international organizations. The delegations, coming from countries of all geographical groups and representing different degrees of the economic, scientific and technological development, participated in the discussions and contributed to their conclusions. Furthermore, it should be recalled here that a message of gratitude and deep appreciation was agreed among all participants of these sessions and conveyed to the Governments of France and Italy for hosting these meetings. The United Nations Office for Outer Space Affairs fully supported this endeavour by preparing and facilitating these consultations and also by producing useful documents on their outcome. Therefore, the United Nations Office also deserves our full appreciation for its dedicated work.

Mr. Chairman, let me now present a number of comments on some aspects of the issue which emerged so far from our discussions.

First of all, let me say that the delegation of the Czech Republic shares the view according to which the Convention and the Space Protocol, as a whole, may have significant potential to facilitate the development of commercial activities in outer space and thus bringing benefit to countries of different levels of economic and technological development. This also concerns the activities of developing countries and countries which are at the beginning of their space activities.

Our second comment relates to one of the most discussed problems so far, namely to the relationship of the proposed new international regime to the existing body of international space law as included primarily in the United Nations space treaties. As the Czech Republic already expressed in its preliminary response to the list of questions prepared by the Secretariat, the Convention and the Space Protocol, if carefully drafted and applied, will neither undermine nor compromise existing principles of international space law. This aim, however, must be ensured by insertion of an appropriate safeguard clause in the Space Protocol, by a good-faith application of the Convention and the Protocol by their Parties and,

last but not least, by a reliable and impartial exercise of the functions of the supervisory authority and the registrar. In particular, the full respect for the established principles of space law as contained in international space treaties concluded under the auspices of the United Nations, should be explicitly stated in the Space Protocol, be it spelled out in the operative part or in a preambular paragraph of this instrument. After all, the problems that might arise in relation to the existing international space law are not specific only to the Convention and the Space Protocol. They concern similar situations occurring in other areas of international law and they also emerge in interrelations between the existing space treaties and national laws governing space activities adopted by individual States.

In our opinion, the consistency of the United Nations space treaties and the new instruments will not be impaired by the use of different concepts in the new instruments. Of course, these concepts have different meanings but they are, or will be, defined in each of these instruments for their specific purposes. The use of the term "space assets", as introduced into the present version of the draft Space Protocol, is more convenient than the former term "space property". Its definition, which emerged from the last deliberations of the UNIDROIT Working Group of Experts held in Rome at the end of January 2002, is quite satisfactory for our delegation. The problem of "associated right", however, should still be subject to further consideration.

Mr. Chairman, during the deliberations of the consultative mechanism, one of the most discussed issues was the nature and framework of the international registration system, its supervisory authority and registrar and, in particular, the identification of bodies or persons appropriate to exercise these functions. It should be appreciated that at the outcome of its second session of the consultative mechanism agreed that "a system for registering international interests in space assets should enjoy the confidence of potential users. To that end, the supervisory authority could be an intergovernmental organization". It is the opinion of the delegation of the Czech Republic that this authority should be entrusted to an international intergovernmental organization of a high repute and that it could be assumed by the United Nations. Due to its role in international cooperation, the United Nations Secretary-General should be designated to carry out the functions of supervisory authority and its performance should be entrusted to the Office for Outer Space Affairs, based upon the competence of this body in servicing international cooperation in space activities. If the United Nations is

entrusted with the role of supervisory authority, the world organization must enjoy the full extent of privileges and immunities as provided by the 1946 Convention on the Privileges and Immunities of the United Nations.

The work of the Secretariat arising from this function would be facilitated by establishment of a commission of experts, appointed by the Parties to the Convention and the Space Protocol. And COPUOS, as the focal body for international cooperation in space activities, should receive regular reports on the performance of the supervisory function pursued by the Secretariat. Of course, the acceptance of this function by the United Nations would be conditioned by a full recovery of the costs provided by the Parties to the Convention and the Space Protocol.

As to the role of the registrar, as it is currently envisaged in the Space Protocol, our delegation would prefer this function to be carried out by a private entity.

Mr. Chairman, the above-mentioned questions have been but a few examples on which the delegation of the Czech Republic expressed its opinion in its preliminary response to the questionnaire and during the discussions of the consultative mechanism. At the same time, conclusions of consultations performed thus far, as reflected in the last part of document A/AC.105/C.2/L.233, indicate a number of aspects on which it is recommended to further consider the questions involved. Moreover, though the Convention on International Interests in Mobile Equipment, which created a common basis for all specific protocols to this instrument, was already approved at the Diplomatic Conference held in Cape Town last November, the draft Protocol on Matters Specific to Space Assets has been but a preliminary document. It has now to be subject to consideration of intergovernmental meetings which UNIDROIT is about to convene in order to finalize its draft Protocol. My delegation appreciates the cooperation between UNIDROIT and COPUOS and its Legal Subcommittee developed thus far and welcomes the intention of UNIDROIT to open its intergovernmental meeting on the Space Protocol to all Member States and interested observers of COPUOS as well as to representatives of the Office for Outer Space Affairs.

My delegation is convinced that COPUOS, from its part, should demonstrate its interest in the UNIDROIT project by retaining this item on the agenda of the Legal Subcommittee until a full elaboration and finalization of the draft Protocol on Matters Specific to Space Assets. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of the Czech Republic for your statement. I now give the floor to the distinguished representative of the United States of America, Mr. Mathias.

Mr. S. MATHIAS (United States of America): Thank you Mr. Chairman. Since our meeting last April, there have been significant developments regarding the work of UNIDROIT and the development of a Space Assets Protocol. Last fall, the Diplomatic Conference to adopt a Mobile Equipment Convention and an Aircraft Protocol met in Cape Town, South Africa and adopted both the Convention, now called the Cape Town Convention, and the Aircraft Protocol. We would like to take this opportunity to thank you, Mr. Chairman, for your valuable report on this Diplomatic Conference. Your report highlighted the significant progress made at that Conference, as well as the work that lies ahead on the draft Space Assets Protocol.

We would also like to commend the Secretariat for its work, together with UNIDROIT, with the Governments of France and Italy, and with the European Space Agency, on the organization of two working meetings of the ad hoc consultative mechanism on the UNIDROIT Convention and the draft Space Assets Protocol thereto. The work of the ad hoc consultative mechanism has been beneficial, particularly in identifying issues for consideration by the Member States of UNIDROIT in negotiating the Space Assets Protocol. The United States participated in both working meetings and we are pleased with the report submitted by the consultative mechanism to the Legal Subcommittee.

The United States is firmly committed to the goals of the Space Assets Protocol. As we here are all aware, commercial activities in outer space have increased significantly, especially within the last five to 10 years. The growth and development of the commercial space sector will benefit States in all regions and at all levels of economic development. Commercial space systems are extremely capital-intensive to plan, design, construct, insure, launch and operate, and they take years to complete. In the communications market, for example, satellite systems are often more expensive than other types of communications technology. In addition, privatization and pro-competitive policies have begun to reduce many governments' financing of outer space activities. Furthermore, throughout history, including times such as now, economic factors may limit funding sources. The availability of financing mechanisms for

commercial activities, which is crucial to the sector's on-going growth and development, has become more challenging.

We continue to believe that the draft Space Assets Protocol to the Cape Town Convention on International Financing of Mobile Equipment, through its emphasis on asset-based and receivables financing, has considerable potential to enhance the availability of commercial financing for outer space activities. By facilitating greater commercial financing of satellites and other mobile equipment, the Space Assets Protocol ultimately could further the provision of services from space to countries in all regions and at all levels of development.

We would like to at this point to express our views on certain issues that we believe should be addressed in order to establish an effective system under the Protocol for the commercial financing of outer space activities. These can broadly be characterized as issues arising in the context of existing treaties, the Outer Space Treaties and the International Telecommunication Treaties, and other issues relating to domestic regulatory practice.

With respect to the treaty-related issues, we believe that we will need to give further consideration to the implications of transfers under the draft Space Assets Protocol and UNIDROIT Convention on State obligations and rights under the Outer Space Treaties and the International Telecommunication Union Constitution, Convention and Radio Regulations.

Under the UNIDROIT Convention and proposed Space Assets Protocol thereto, in the event of default or insolvency, possession of or control over a space asset could be transferred from a national of one State to a national of another, or from the territory of one State to the territory of another. Such transfers can and do happen today but a Space Assets Protocol would likely increase their frequency.

How will such transfers affect the responsibility of a launching State? And how will they affect either State's responsibility to supervise certain activities in outer space? Further, we need to examine whether State obligations and rights relating to return of objects launched into outer space would be affected. Moreover, the ITU procedures establish priority rights concerning spectrum at geostationary orbital locations for Member States of the ITU. We will want to examine whether transfers under the UNIDROIT agreements could affect Member States' rights and obligations under the ITU treaties and if so, how?

One important issue to consider is whether it will be possible to address these questions in advance of particular transactions, through arrangements between States that become party to the UNIDROIT Space Assets Protocol or through language in the Protocol text itself that would then be effective as between those States Parties, or whether it will be necessary to address them on a case-by-case basis.

With regard to domestic regulatory practice, we see two concerns specific to space assets. The licensing of any transfers of satellite operations and the export control implications of possible transfers under the Protocol. While we support the goal of certainty for creditors and debtors, which is key to bringing new financing to space ventures through capital markets, there are some domestic regulatory reviews that will have to continue. In the event of transfers resulting from default or insolvency, for example, there may be domestic regulatory procedures that would need to be addressed prior to any final transfer under the Protocol. At the same time, ways to enhance predictability need to be considered, as predictability would enhance credit potential for many countries. It may be possible to address these issues through appropriate language within the Space Assets Protocol.

The United States would be pleased to provide additional information to this Committee about its own domestic regulatory procedures if that is of interest to other delegates.

One question that we now face is what role this Subcommittee should or can play to facilitate the further development of the Space Assets Protocol. We certainly believe that the Legal Subcommittee and its members have expertise that may be valuable in the development of the Protocol. While the Legal Subcommittee has much to offer in this context, however, the UNIDROIT Space Assets Protocol will ultimately continue to be negotiated by its Member States through the UNIDROIT process. As we have heard, a UNIDROIT negotiation session is likely to be held this fall. We hope that the work of the ad hoc consultative mechanism and our discussions within this Legal Subcommittee will be helpful in informing the positions of various Member States at the UNIDROIT negotiating session. We support the Legal Subcommittee's continued study of the developments within the UNIDROIT context and would look favourably upon the continue inclusion of this topic as a one-year agenda item. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of the United States for your statement on this item of our agenda.

The next speaker on my list is the distinguished Ambassador of Colombia, to whom I give the floor.

Mr. H. C. SAMPER (Colombia) (*interpretation from Spanish*): Thank you Mr. Chairman. Following up on what was said at the General Assembly and the Legal Subcommittee itself, we all know that an ad hoc consultative mechanism was established in order to facilitate discussion on this matter and to facilitate possible approval to the extent that it is considered appropriate, based on the results achieved and based on the work on this topic which continues. I have personally had an opportunity to attend the meetings last year in Paris and later in Rome under the wise chairmanship and skilled chairmanship and sponsored by UNIDROIT. And, therefore, I can say that, first of all, there is inherent importance to this topic and it is clearly related to our work and to our jurisdiction of work and it is clearly linked to the accelerated pace of new trends in private law and new trends in space research and space projects and which we have seen reflected in UNISPACE III in this very city of Vienna. Moreover, I can humbly attest to the very seriousness of the efforts of UNIDROIT.

Mr. Chairman, I have the impression that, to date, there is no means to help this Committee adopt a position on the key aspects of the Protocol related to the relationship between international public law, on the one hand, and international private law on the other hand, particularly space law.

One thing is the process of "rapprochement" and developing harmonization among States' laws and much progress has been achieved in that area. That is one matter. It is an entirely different matter to look at the relationship between international space public law and private law.

The first case we see a great deal of change and progress being achieved and perhaps this is due to the pace of change and progress in the private sphere. Whereas with regard to the latter, I think it would be appropriate for this Committee to be fully aware of the scope and how far-reaching this innovative project is. Ultimately, for us, the UNIDROIT Convention and the Protocol, by being international treaties, these will create obligations for States in the area of public international law and, further, they are geared to establish private principles and obligations as well. It is entirely inexcusable to ensure compatibility between

obligations assumed with those that already exist and have already been assumed by States when they are to accept the treaties on outer space and have done so since 1967. This can be done either through ratification or whether it be done through law, according to the reiterated jurisprudence of the International Court of Justice.

In the case of space law, which, as we all know, is very young but which is, to some extent, similar to maritime law, *mutatis mutandis*. Although there are similarities, there are also differences for a number of reasons. For one reason, between space law and maritime law, we see as the greatest flagships, if you will, in the last century and this century in terms of the principles which are in force such as the common heritage of mankind, as in the case of the sea, and it is also true for space, even if it is expressed using different terminology, since 1967.

As we are all aware as well, the number of ratifications is very low for the space law treaties. Therefore, in the area of space law, emphasis is very special with regard to the role of customary law and the role it plays to protect some basic principles inspired by space law.

Our opinion is that what we need is not just a provision in the preamble to the Protocol but we also need provisions in the articles themselves. These principles should clearly enunciate the idea that provisions of space private law are in keeping with basic principles of space law found in space law treaties and particularly with regard to the 1967 Treaty and the Convention on International Responsibility for Damages and the treaty which, as I have said before, is included in customary law. *A priori*, we cannot state that there are none or that in the future there could be no contradictions between the draft Protocol, on the one hand, and on the other hand, international public space law. I think it would be inappropriate to say so at this time. Associations are in the realm of private law. It is also true that we must not close the door to innovation. Innovation, indeed, is key in law, in international law specifically. We should leave the door open to the possibility of innovation, particularly when remarkable efforts are being made in this area which we do not want to undermine and which we feel are crucial for mankind as a whole and for all States.

This is true. However, for the provisions of international private law to come into force, it must be done through public international law. There is no other means, at least to our understanding there is no other means, to produce the same level of stability and guarantee which is being sought for large multi-

national investors and not just for States in the space race.

Another parallel which we could draw, and which is not secondary with the area of maritime law, is this one. Of course, there are huge differences between maritime law and space law but there are also remarkable similarities and it is particularly in the pragmatic area of guarantee of stability for investors and investments and for transnational business ventures. And this is where we see a difference with State activities and it is basically obvious, and I think the members of this Committee understand this, States are far from being able to participate in a race of investments and the consequent guarantees necessary for them, many States are, and yet they must take an interest in the whole issue of responsibility and the risks incurred by investors.

I believe to say in a preamble that contracting States, in awareness of the principles established in space law, including those contained in the treaties in public international law under the sponsorship of the United Nations, is insufficient, that as it is being proposed. It is not just a question of saying that we are aware. Of course, we are aware but you have to take a step further and proclaim our endorsement of the fundamental principles guiding space law once again.

If there were any new proposal, some kind of alternative for fundamental principles for outer space, these should be discussed. We are not being dogmatic and closing the door on that discussion but rather it is a question of observance of principles that we believe prevail. We have not closed our mind to the possibility of discussing new principles and see if they gain the necessary consensus for recognition by the international community.

Furthermore, we believe that in the operative section of the text it should be included and that because of a discussion held by many jurists at international level on that regarding the character or status of preambles of treaties or protocols. In a period where there is no longer the relative importance of protocols or treaties, there are some protocols today that might be more important than treaties and in the books that are considered classics, you will see that a treaty is the highest expression of the sovereign powers of a State. You might have that through a protocol today. The fact that it is named a protocol does not in any way diminish its legal standing or innovative impact. As there are schools of thought whereby preambles do not prevail in a strict sense because all they do is express the general philosophy of a treaty. Because of those schools of thought, we would like to

feel certain that it should be any provision in the operative part of the treaty where there is expression of prevalence of the fundamental principles of public space law, should these not be excluded, thanks to new principles that may come in, as we are open-minded to them.

There is a pragmatic aspect and that is in relation to the question of the Protocol and instruments of one of the agencies of the United Nations that specializes in telecommunications, the ITU, and in particular, regarding its Regulations. That is another aspect that I believe has not been sufficiently clarified. With respect to the protocols, we do not feel fully satisfied with the explanation given hitherto by the ITU.

We agree that the term "space assets" is acceptable and better than the more appropriate definition of "space property". It does have some aspects that require further clarification such as those derived from an interpretation of the right of utilization of satellites.

And something more important that goes yet further, and that is resources obtain as a result of such space activity. Space objects move, put in basic terms, they move in outer space and outer space is governed by public law principles. So such objects, with the name attributed to them, are subject to public international law although they might be launched by private entities. The first treaty had a provision in it to this effect, as we all know.

On the characteristics and scope of a proposal regarding a supervisory authority or a registry, we believe that, while a register might be private and it might be a pragmatic idea to have it, so the supervisory should, however, be in the hands of the United Nations and its specialized bodies. It is logical, Mr. Chairman, that commercial activities be reflected in the creation of a new law more than the heritage itself. We are not against legal innovation. We believe that is a sound possibility but there are questions of jurisdiction, rights and duties of the States regarding relations between States and transnational undertakings that have links with several States, and not only a State of origin. Which would lead us to commend the excellent initiative of UNIDROIT with the representatives demonstrating their legal wisdom more and more but this has led us to modestly make these preliminary remarks in the conviction that this body has a role to fulfil in its entirety before taking any decision. Thank you.

The CHAIRMAN: Thank you distinguished Ambassador of Colombia for your statement on agenda item 8 and I now give the floor to the next speaker on my list and it is the distinguished representative of the United Kingdom.

Mr. D. LUSHER (United Kingdom of Great Britain and Northern Ireland): Thank you Mr. Chairman. The United Kingdom would also like to express its appreciation to the Governments of France and Italy for organizing the intersessional consultations on the UNIDROIT Space Assets Protocol. We also wish to commend the Office for Outer Space Affairs, the Secretariat of UNIDROIT and the UNIDROIT Space Working Group for their work on the documents and we very much appreciate your valuable involvement also, Mr. Chairman.

The United Kingdom understands that the intersessional consultations on the compatibility of the draft Space Assets Protocol with public international law concluded that it was premature to address the primacy issue until a conformity examination had been performed on the final text. However, our preliminary view is that there is no incompatibility or conflict with international space law. Some further work may be required on the interaction with the ITU Convention and Regulations.

The United Kingdom believes that the provisions of the Convention and the draft Space Protocol on default remedies and insolvency present potential practical difficulties for States. The Convention and draft Protocol provide for an automatic transfer of space assets in certain circumstances. This is a new interaction and, though reference in the report of the intersessional consultations, it is important possibly merited inclusion in the conclusions with a possible recommendation of an amendment to the Protocol to protect State Parties with respect to any potential liability they may have under the Outer Space Treaty and/or Liability Convention and circumstances where title is transferred to a creditor in a jurisdiction which is different from that of the debtor.

Specifically, the United Kingdom believes that consideration should be given to an amendment which makes the Protocol clear, that the creditor cannot take possession of the space asset or assets without the consent of the relevant authority.

In conclusion, I would like to say that the United Kingdom looks forward to further developing the text of the draft Space Protocol in the UNIDROIT Committee of Government Experts. We believe that is the appropriate forum to develop private and

international law. Nonetheless, the UNIDROIT Secretariat should be asked to keep this Subcommittee informed. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of the United Kingdom for your statement on item 8. The next speaker on my list is the distinguished representative of Greece, to whom I give the floor.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Mr. Chairman. As a first reaction, I would just like to make a couple of comments on the draft Protocol on Space Assets.

First of all, on behalf of Greece, I would like to thank the Governments of France and Italy for supporting the consultation mechanism and to examine the draft and also the European Space Agency and the European Centre for Space Law for their support and contribution. And I would also like to thank the Office for their efforts.

I must say the document, L.233, that has been given to us is a reflection of what the Secretariat has understood. The report and conclusions have not been discussed and, therefore, have not been approved by countries that were at the Paris and Rome meetings. For example, you do not have in it the fundamental objection from Greece as regards privatization of the United Nations, conferring on it private functions.

This report of the Secretariat is a report from the Secretariat as to what it understood from the Rome and Paris meetings. It is not the conclusions drawn by representatives. Otherwise, at this session of the Legal Subcommittee, we should discuss the whole of L.233, just for the sake of correctness.

And, a further comment, and that is, participation in the two meetings of the consultation mechanism was not as extensive as one might have hoped at the beginning. So the ideas expressed by the colleagues from the 26 States represented at the first meeting in Paris and 27 States present at the second meeting in Rome, are not a demonstration of the view of the Legal Subcommittee.

Having made that scholastic or administrative point, now I would like to make a comment on the views expressed just before I took the floor. I am quite pleased to note that States, several States that spoke before me, they have understood the great danger that could ensue for national legal systems or order through this preliminary draft Protocol on Space Assets, that is

the problems that could arise at national level in the legal system.

First of all, there could be an example. There might be a State signing or acceding to and ratifying the Protocol without being a signatory or ratifying the Treaty, I am speaking of the five treaties, or as we know there are some States that do not participate at all in the treaties, but could be parties to the Protocol. And that is why, in the operative provisions of the Protocol, there should be direct references, and not only to the five treaties, because you might have approval of the relevant provisions on the Outer Space Treaty, you might have ratification of the Protocol without that State being committed at international level under the five or four space treaties. So there you have a practical problem, paradox, if you wish, that might occur. After all, it is up to the States to regulate private activities. It is mentioned and it is an international obligation, that is a general one for States Parties to the Treaty. It is paragraph 2 of Article 6 of the 1967 Treaty. So that would be a first problem for co-existence of the treaties and the Protocol.

And then, I have serious misgivings as to the terminology regarding space assets and associated rights. There should be explicit exclusion of any possibility of playing within different legal systems, cherry picking the legal system, because it is the responsibility of the launching State or the operator. It is not possible to manipulate space law and use flags of convenience, bypassing national law, especially, in the State that might have granted a licence for launching or operations and that through making choices of applicable law.

We must stress this famous transfer question. First of all, even with consent from a State, a private entity is not entitled to transfer property of a State. There is no right of an operator of a satellite system regarding frequency or orbital position simply because it is utilizing it. We cannot even consider the possibility of existing security interests on a basis of permission to use a frequency band with a related orbital position. Thus, there is a strong need for cooperation for discussion with an in-depth study with ITU experts. In our view, there is no question for radio frequencies used in telecommunications and related orbital positions for geostationary satellites and other orbits. That is not up to the States. It is not even the States managing these natural resources that decide. It is a question of users and that by virtue of the ITU Constitution.

We look on a daily basis at economic speculation, heavy speculation on the part of

governments when trying to deal with this resource in exchange for licences. National revenue has tremendous gains through auctioning off goods, property, that is not their own.

Three weeks ago, in Monterey, President Chirac referred to international public property and he did well in doing so because there are many States that are speculating on this international public property, that is public property that belongs to mankind in its entirety.

So we oppose the possibility of transfers of licences and rights for export, rights for utilization. We have to be extremely attentive there.

And to conclude, Mr. Chairman, I feel I should give an initial introduction on the question on supervisory authority and the register. We are absolutely against the register being held by COPUOS or the Office. We have said this before on several occasions. You cannot compare United Nations specialized agencies such as ICAO which accepted to be the supervisory authority and not the register. You cannot compare that with COPUOS. COPUOS is a subsidiary body of the General Assembly of the United Nations and, therefore, a political body with nothing to do with practical activity. The international supervisory function could be assigned to the ITU, which has great expertise of practically a century and a half, since 1906, Berlin, the first Radio Telegraph Conference of Berlin in 1906, holding a register, as supervisory authority, that is.

For the register, there are quite a few private institutions with international recognition. Lloyds Registry of Shipping is a possible example, or the ICC in Paris, the International Chamber of Commerce. They could have that function, not mixing COPUOS and the General Assembly in with questions of financing and cost and taxes and all the rest. That is why we are firmly against the COPUOS Office, the General Assembly, taking on that international public function.

That, Mr. Chairman, covers my initial reactions to this Protocol. We are open-minded, as we have been in the past, willing to cooperate and, there is something else that is important, I would like to ask you to please take into account the fact that space activities might have similarities but you cannot apply to these the same practices as are applied to air transport, sea transport or rail transport. Thank you Mr. Chairman and I thank colleagues for their attention.

The CHAIRMAN: Thank you very much distinguished representative of Greece for your statement that you called the first reactions to the document submitted. I only wish to bring to your attention that the document L.233 is not a document that has been approved in total. This is a report of the Secretariat and it is spelled out here on the first page of this document. However, I have also to bring to your attention that the first part of this document, dealing with the working meeting hosted by the Government of France, was submitted to the participants of the consultative mechanism in Rome and was approved as a whole. Of course, we did not consider this report paragraph by paragraph because there was no time for it but in principle it was approved. And moreover, the last part under IV, Conclusions of the consultations undertaken through the ad hoc consultative mechanism, were discussed at the end of the session in Rome and were considered paragraph by paragraph, so that there was an opportunity for any participant of this consultation to submit their comments to these conclusions, to request amendment of the draft that was prepared for this consideration and to complete it if the views of the participants were somehow omitted. This I have to say because this has been the fact.

I now give the floor to the distinguished representative of Italy.

Mr. S. MARCHISIO (Italy) (*interpretation from French*): Thank you Mr. Chairman. The Italian delegation would like to make the following statement on item 8 of the agenda. The Italian delegation would like to bring its endorsement to the process underway with regard to UNIDROIT with regard to adopting a Space Protocol on international guarantees for space property and material, according to the Aeronautical Protocol. Indeed, this is an international convention and the purpose of it is specific aspects regarding commercialization of space such as private financing of space activities.

The Italian delegation believes that these international guarantees will make it possible to increase financing possibilities for industry which is involved with this, particularly by securing loans, granted by financiers and loans.

Mr. Chairman, the Convention on Mobile Equipment and with the Aeronautical Protocol was adopted by the Cape Town Diplomatic Convention, as the representative of UNIDROIT indicated. The objective of this Convention is to establish an international legal regime for the insurance of sponsorship laws, particularly with high value equipment. It is a framework convention that needs to

be completed and adapted to specific equipment, thanks to the Application Protocol.

The Convention and Protocol, according to the Italian delegation, have the remarkable goal of creating new uniform material in terms of guarantees rather than uniformizing the laws.

And with regard to the registry, for safety this is not unification of all connected areas and, thus, we must do so in order to adapt the law for different issues which might bring conflicts with regard to safety and other areas. The Convention was prepared by a working group which includes satellite operators, financiers and other players in the space area, including well-known legal experts, all belong to this working group and are known to the Subcommittee. They contributed greatly to the endeavour in the area of space activities. They looked at rights as defined in the Protocol. The Protocol will be negotiated at an intergovernmental level after the end of the year, as we have heard from the representative of UNIDROIT.

One of the aspects which was most striking during the consultative mechanism meeting was that of compatibility between regimes established by the Convention and the UNIDROIT Protocols, on the one hand, and international space law in the broader sense of the term. In our opinion, it is certain that the functioning of UNIDROIT must be seen in the context of conformity with well-established space laws, particularly those that have been codified in treaties under the auspices of the United Nations.

An issue which is of particular interest to the Italian delegation is that of accessory law in the Protocol and recognized therein. According to the regimes which come from the accessory law, there are issues with regard to the outcome of space property, some of which activities is financed by public funding and this provides us an opportunity to allow a private financier to use international guarantees if he holds the titles to this property. We must underscore in the case of space property being at the public service of a State. It is difficult to allow possession or control by a creditor if the creditor cannot use this property in the same conditions and for the same purposes. Again, we have the change of owner of space property is the result of either measures related to implementation of obligations or insolvability and, therefore, it should respect international regulations with regard to the coordination established by the ITU as underscored by other delegations already.

Mr. Chairman, the Convention stipulates an international system for guarantee registry and a

supervisory authority. No doubt the idea of registry introduces an idea of security and guarantees in commercial activities. The supervisory body, with an international legal authority, which I underscore, is in the mother Convention, should establish and control registries that it is administering. If the Protocol authorizes a supervisory body and works with the IOC, there is still the problem to resolve of identifying the body, which is intergovernmental in nature, to whom we can confide this responsibility, that is the responsibility of space registries.

The Italian delegation believes that the appropriate partner might be the United Nations. And to this end, we share 102 and 103 with regard to the consultative mechanism in that the United Nations might assume the supervisory role.

The Italian delegation would like to thank the Chair of this Subcommittee, Professor Kopal, for his work in this area as well as the Office of the United Nations for all documents prepared, especially L.233. This document fully reflects all the results of the consultative mechanism.

We would also like to underscore that the conclusions in paragraphs 94 to 104 were largely discussed in Rome and have been the object of final consensus for approval for the consultative committee. Now this does not mean that the Legal Subcommittee also supports these conclusions but the mechanism did approve these conclusions by consensus. And so I must also underscore that the references to individual opinions expressed during the meeting of the consultative mechanism are reflected in these paragraphs, i.e. paragraphs 73 to 95 and I think all delegations with the contrary opinion would find these opinions reflected in these paragraphs, duly reflected.

Mr. Chairman, I would like to thank you and I would like to say that the Italian delegation accepts the invitation of UNIDROIT to recommend to its Member States and interested members, an intergovernmental meeting. This meeting should take place at the end of this year.

The Italian delegation would also like to see the Subcommittee continue to examine this item on the agenda until the end of the negotiations in the context of UNIDROIT. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you to the distinguished representative of Italy for your statement.

The next speaker on my list is the distinguished representative of Belgium.

Mr. M.J.F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr. Chairman. The issue raised with the Legal Subcommittee with regard to the UNIDROIT Protocol, as you know, is very important for my delegation, both as a member of COPUOS and as a Member State of UNIDROIT. I would like to join other delegations in thanking you, Mr. Chairman, specifically, and I would also like to thank other governments, the French Government and the Italian Government, and the European Space Agency, as well as the Office for Outer Space Affairs.

We are extremely pleased by the conclusions, especially the general conclusions, to which you alluded, Mr. Chairman, and which are to be found in document L.233.

The main issue then for us is that of transferring control of the operation of space objects. This is the issue which was the one most likely to raise questions in terms of the supervisory role of international space law and guardian of this law. There are already transfers taking place in space activities so it is a very topical issue even though the Space Protocol has not even come into force yet. So for the Belgian delegation, it is very important to have a comprehensive overview of this problem. It is an issue related to privatization, we call privatization of space law.

The Belgian delegation, at the end of the consultative mechanism's work, believes that the draft Protocol should not be an issue of incompatibility with space law. However, international space law and, more specifically, its implementation through national legislation, might lead to serious problems due to the fluidity of space property sought in the Space Protocol.

The solution for Belgium then would lie in international agreements for States Parties to the Space Treaty, that is to foresee the consequences of transfer of property and I insist that we need to look at the parties State to the Space Treaty and not those which belong to the UNIDROIT Convention and the Protocol. It is to them we must look then. So we would recommend as a solution, as we have said in other discussions, particularly those with regard to launching State, that is our position, so Belgium would like to see future discussions in the Subcommittee to allow us to examine the issue of transfer, the transferability of space property which, again, is a broad sweeping phenomena and goes beyond the UNIDROIT draft.

And finally, we would like to inform you of our position with regard to the United Nations role in implementing the Protocol. Our preference, as indicated earlier in the Rome meeting, would be to non-involvement of the United Nations in such implementation. Indeed, we fear that this role for the United Nations might lead to confusion with regard to the jurisdiction of various organizations and the function of implementing. Of course, it is complementary to some extent but the implementation of registering space objects and the registry of space property with regard to that. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you to the distinguished representative of Belgium. I now give the floor to the last speaker on my list to date and that is the delegate from Canada.

Ms. M. ALLOUCH (Canada) (*interpretation from French*): Thank you Mr. Chairman. Our delegation would like to begin by thanking you, Mr. Chairman, as have other delegations preceding us and we would also like to thank the Secretariat of COPUOS and UNIDROIT for their significant efforts in the area of item 8 of our agenda. We would also like to thank the Governments of France and Italy for having been the source of the ad hoc consultative mechanism.

Our delegation believes that the COPUOS Subcommittee and the ITU should continue to be involved in developing the Aeronautical Protocol. We believe this because there are a number of elements that remain to be explored in order to ensure that the Protocol be perfectly compatible and in keeping with basic principles of international space law and substantive regulations within the law and government interest in the area of space. Thus, we believe that it is important for this project remain on the agenda for this Subcommittee in future meetings.

With regard to the authority for supervising and the registry issue, we support some of the previous delegation's statements, i.e., it is better for the supervisory role to be confided to an international organization which is already well established and which enjoys the unity and authority reflected in international texts, for reasons of savings and to rationalize this matter. However, public trust in the registry should be possible through court procedures, should there be a problem. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you to the distinguished representative

of Canada for your statement on behalf of your country.

(Continued in English) Ladies and gentlemen, my list of speakers on this particular item has been now exhausted. Is any other delegation wishing to speak or perhaps any other observer wishing to speak on this particular item?

I see none for the time being and, therefore, we will continue our consideration of item 8 this afternoon.

Distinguished delegates, I will shortly adjourn this meeting of the Subcommittee to allow the Working Group on Item 6 to convene its third meeting under the chairmanship of Manuel Alvarez of Peru. There is not much time left but still he can use the remaining time of about 20 minutes. Before doing so, however, I would like to inform delegates of our schedule of work for this afternoon.

This afternoon, we shall continue and hopefully conclude our consideration of item 5, Information on the activities of international organizations relating to space law. We shall also continue consideration of item 6, Matters relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit and item 8, Consideration of the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001) and the Preliminary Draft Protocol on Matters Specific to Space Assets. Time permitting, we might also begin consideration of item 10, Proposal to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-second session. Thereafter, the Working Group on Item 6 might convene its fourth meeting under the chairmanship of Mr. Manuel Alvarez of Peru.

Are there any questions or comments on this proposed schedule?

I see none. So before adjourning, I will give the floor to the distinguished Secretary of our Subcommittee for an announcement.

Mr. P. LÁLA (Secretary, Office for Outer Space Affairs): Thank you Mr. Chairman. It is just information regarding these technical problems which we are encountering. It seems that the problems appears only when the French is the original language and the engineers, during the lunchtime, will be testing the signal with special equipment to try and establish what the problem is. So we would like to thank you

for your patience and indulgence. Thank you Mr. Chairman.

The CHAIRMAN: Thank you Mr. Secretary. Now the meeting is adjourned.

The meeting closed at 12.45 p.m.