

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

Unedited transcript

670th Meeting

Thursday, 11 April 2002, 10 a.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

The meeting was called to order at 10.24 a.m.

The CHAIRMAN: Distinguished delegates, I declare open the 670th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

Distinguished delegates, before taking up the items scheduled for this morning's meeting, I would note that we still have some matters outstanding on item 5 of our agenda.

First, delegations will recall that the representative of Greece indicated yesterday that he wished to report to the Subcommittee on the results of informal discussions concerning the activities of the group of designated experts to consider the COMEST report.

Second, as delegations will recall from statements made by the Director of the United Nations Office for Outer Space Affairs and the representative of the United States of America last week, it was intended that the Subcommittee be provided with a special presentation today by a member of the delegation of the United States of America, Ms. Franceska Schroeder, on the results of the Workshop on International Legal Regimes Governing Space Activities organized by the American Astronautical Society, AAS, together with the European Centre for Space Law, ECSL, International Institute of Space Law, IISL, National Space Society, NSS and United Nations Office for Outer Space Affairs, in Scottsdale, Arizona, from 2 to 6 December 2001.

In the interests of expediency, I would propose that we deal with these two outstanding issues before continuing with other items on our agenda.

Therefore, unless there is any objection, I would propose that we, once again, re-open agenda item 5, Information on the activities of international organizations relating to space law, to enable the representative of Greece to make his report and thereafter to have the special presentation by Ms. Schroeder of the United States delegation.

Seeing no objection, *it is so decided.*

The distinguished representative of Greece has the floor.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Mr. Chairman and good morning to all. Just briefly, for the outcome of our informal meetings on the follow-up to this COMEST initiative.

As my colleagues from Belgium and Morocco were obliged to leave earlier, I have been left in charge of this communication.

First of all, through you, if we may, we would like to ask the Office for Outer Space Affairs to repeat its appeal to States who have not yet done so to designate experts as soon as possible so that in June, at the session of the Committee, we can possibly have a meeting on the side.

On the actual substance of our exchange of views, we asked our Belgian colleague to be so kind as act as Coordinator and that, with a view to drafting our report to the Legal Subcommittee and that is to work together with the Secretariat of COMEST for the drafting of a final text of recommendations from COMEST on the effects of outer space and that in

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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.

keeping with the international space law that is in force. Because we saw some points of imperfection and lacunae in the text and as the Chairman of COMEST is open-minded for adjustment of the text in its final draft which could help us in drafting the report.

Communication between the experts and the Coordinator, our Belgian colleague, can be handled through e-mail so as to save time and money and then, if necessary, after June, we can also have a meeting either here, in Paris or even in Athens, as was proposed by Greece at the beginning of this session.

And, at the same time, we are in agreement with the Work Plan being drawn up to be submitted to colleagues from any States who might be interested in this as well as to members of COPUOS and that in June, so that everybody can be aware of the developments in this area.

So that, Mr. Chairman, pretty much covers the conclusions of our efforts at this session. Thank you.

The CHAIRMAN: I thank the distinguished representative of Greece for his report.

I would now invite Ms. Franceska Schroeder of the delegation of the United States of America to give her presentation.

Ms. F. SCHROEDER (United States of America): Good morning and thank you very much. I wanted to speak to the group this morning about the results of a Workshop that was sponsored in December by various organizations, primarily the American Astronautical Society, on legal issues arising in connection with the Outer Space Treaty. Next slide please.

As Chairman Kopal mentioned before, the Workshop's sponsors are the organizations identified on this slide. Next slide please.

And I wanted to highlight that several of the Working Group Co-Chairs are members of this audience as well. Next slide please.

The purpose of the Workshop was to explore the fundamental principles of space law set forth in the space treaties; examine how countries have recognized and reflected those principles in their domestic laws; and identify gaps in barriers in the law and best practices regarding implementation of the legal principles.

The American Astronautical Society engaged experts from industry, government, academia and international organizations on the status and future of the existing legal and policy regime governing space activities. The purpose of this activity was to inform the space community of the international and national legal and policy regimes governing space activities; identify gaps or barriers in those regimes that could be disincentives to future space activities and ventures; identify common State practices that could serve as models for international implementation; and ultimately to recommend international or national actions that should be taken to promote future space ventures.

I wanted to note that the Workshop began with informative keynote addresses delivered first by Ambassador Jankowitsch, who is very well known to this group, and by Scott Pace, who is the Assistant Director for Space and Aeronautics in the United States Office of Science and Technology Policy.

The AAS thought it would be a good idea to ask these gentlemen to make keynote presentations to the group before entering into the discussions of the individual Working Groups, in other words, they were invited to set the stage of what would proceed.

Their remarks were followed by extremely interesting and informative presentations on domestic space law regimes. Very useful presentations were offered by Australia, France, Germany, Japan, Sweden, the United Kingdom and the United States. We also enjoyed a very informative presentation by Michael Gerhard on the work of the Project 2001 Workshop which also addresses the issues of domestic implementation of international obligations under the space treaties.

We were very fortunate to have these presentations moderated by Nandi Jasentuliyana, another person very well known to this group.

The Workshop was comprised of four Working Groups, each with its specific mandate to address.

The first Working Group was tasked with looking most closely at the treaties themselves. The members of Working Group One were asked to identify best practices in domestic implementation and enforcement of treaty obligations as models both for States whose regulatory regimes are being formed and for States looking for ways to improve upon aspects of their existing regimes. In particular, this Working Group was asked to identify best practices in

implementation of the Outer Space Treaty, the Liability Convention and the Registration Convention.

The second Working Group was asked to consider how best to balance competing interests. More specifically this Working Group was asked to identify best practices in domestic policies that enables States to balance the need to implement obligations under international legal regimes with the need to support and encourage domestic military, civil and commercial space activities. Again, all within the context of the governing space treaties and the governing laws of each individual country.

The third Working Group was asked to focus on space law gaps or barriers. Specifically, this group was asked to identify gaps or barriers presented by the international space law regimes that affect the development and deployment of current or future activities in commercial space, in civil space and in military space activities. They were also asked to ponder the question whether certain gaps and barriers are appropriate. Perhaps, in fact, certain gaps and barriers were included in regimes on purpose to effect certain results.

The final Working Group had the task of looking at these issues from the perspective of the private sector and to examine more closely the role of the private sector. Specifically, this Working Group was asked to define the role of the private sector in developing international and implementing domestic legal principles and regimes governing space activities. How can and should the private sector participate in future developments in international and domestic legal regimes, if at all?

Before going into the specific findings of each of the Working Groups, I wanted to share with you, in the most general terms, what the Workshop participants concluded.

First of all, they concluded that the existing treaties are adequate and appropriate, at least for the time being, because their language affords significant flexibility relative to domestic implementation.

And as we learn more about the evolutionary and revolutionary innovations in space, it might be appropriate to elaborate common legal rules or standards. So in other words, the activity of reviewing the United Nations space treaties and their domestic implementation, must necessarily be an on-going process.

Now I would like to share with you some highlights of the findings of each of the Working Groups.

Working Group One, which you might recall was the group tasked with looking at the space treaties. I recognize that a wide-range of legal instruments and a number of developments, for example, geopolitical developments and the emergence of new space actors, have an influence on the implementation of space law.

As such, it would be difficult to form models and practices that would be appropriate for all States, as State sovereignty implies that States retain the flexibility to implement treaty obligations in accordance with their own domestic law.

Therefore, Working Group One developed a non-exhaustive list of observations, rather than recommendations, on both national and international levels, followed by examples of evolving issues.

For the sake of time, I have not listed a very specific list of recommendations in this presentation. However, I believe that you have all been given the opportunity to obtain a copy of the Workshop Report which contains very detailed discussion of the findings of all of the Working Groups and I understand that copies are available if you do not already have one and would like one. Next slide please.

Working Group Two specifically recommended some best practices and, in fact, this Working Group was quite prolific in their development of best practices. They arrived at 17 in total and I am offering for your consideration today what I am considering their Top Ten. Again, all of the recommendations and best practices of this Working Group are in the Report.

First, this Working Group determined that States should establish clear rules for non-government space activities, such as licensing procedures; that States should consider national space legislation as a means of providing clear and reliable rules for the conduct of such activities. Next slide.

They also recommend that to reduce regulatory burdens for non-governmental launch activities, while giving effect to the legal obligations and interests of affected launching States, States should conclude, as appropriate, agreements concerning recognition and acceptance of the authorization granted for space activities by other launching States. States should prescribe a clear and transparent procedure for

the licensing process, including time limits and an appeal process.

The Group also found that licensing fees should be limited to a reasonable level. States should establish debris mitigation policies to help maintain the space environment for all space activities. And in authorizing launch activities, States should give appropriate consideration to public health and safety and the financial capabilities of the operator.

Continuing with the best practices, involved States should conclude technology safeguard agreements to protect technology that is subject to export control regulation. States should consider broad cross-waivers of liability to the extent allowable under national law. And the responsibility of launch firms for third party liability should be limited to a reasonable level.

All of these best practices of Working Group Two have the idea in mind of encouraging and continuing to foster innovative space technology and the development and use of outer space, while keeping in mind all of the important, vital, fundamental principles articulated in the United Nations space treaties. Next slide please.

Working Group Three articulated a few recommendations that I would like to share with you. First, Working Group Three noticed that there are definitions in a number of areas within the space treaties that are vague, ambiguous or outdated and that there should be further analysis to determine whether or not this constitutes a gap or barrier to space activities. In other words, this recommendation recognizes that some definitions might, in fact, no longer be appropriate or might never have been fully developed but that might not be a problem. The point is to consider and to continue looking at the definitions to determine whether or not they need revision or further refinement.

This Working Group also made the recommendation that specific space activities never envisioned by the framers of the current space treaties have now become technically possible. But no space activities should detract from the quality of life for all peoples, with due respect to political and cultural integrity of States. Individual States have the ability to limit space activities of their nationals and to lodge complaints through diplomatic channels against activities for which another State is responsible. This Working Group encourages nations to consider the use of national measures to resolve these situations.

The final recommendation is that States that have not ratified the treaties, specifically the Outer Space Treaty, the Liability Convention and the Rescue and Return Agreement and the Registration Convention, should ratify them at the earliest opportunity.

Working Group Four articulated, if I recall correctly, I think, five recommendations. Again this was the Working Group tasked with looking at the role of the private sector. Working Group Four's recommendations are as follows.

Given that the private sector is largely driving the development of technology and expansion of the market, States should recognize that there is a clear role for the private sector in contributing to the development of the domestic and international legal regime.

Governments, the United Nations Committee on the Peaceful Uses of Outer Space and other international government bodies addressing space-related matters are encouraged to invite members of the private sector to make informal presentations to their meetings. Next slide please. (*one slide missed – see AAS presentation papers*) That in developing, implementing and reviewing their domestic legal regimes, governments, keeping in mind the desire of the private sector for reasonable predictability and certainty, should first ensure that legal regimes are open and transparent; they should provide the private sector clear and timely access to the decision-making process; they should actively seek private sector input to the decision-making process; they should ensure that the decision-making process is balanced, reasoned and fair; and they should provide for a process to review adverse decisions.

Lastly, this Working Group recommends that governments should facilitate enhanced consultation with the private sector on matters relating to the development, implementation and review of domestic legal regimes.

Keeping in mind that all of these recommendations, of course, are based on the desire to make sure that the interests of the private sector are considered when those important fundamental, critical legal principles articulated in the United Nations space treaties are implemented through domestic law.

And that concludes my presentation. Thank you very much for your attention.

The CHAIRMAN: Distinguished delegates, I would like to thank Ms. Schroeder for her interesting presentation. I think that the full text of the report from this particular symposium or meeting that was held in Scottsdale, Arizona, was available already and so that you can now complete the information that has been provided here by the full text of the report. Once again, I thank Ms. Schroeder for her presentation.

We have now finally concluded consideration of agenda item 5, Information on the activities of international organizations relating to space law.

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, we shall now continue our consideration of agenda 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. I would recall for the benefit of delegations that it is my intention to conclude consideration of item 8 at this morning'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.

Before opening up the floor to delegations wishing to speak on this item, I would like to briefly re-visit an issue from yesterday. After consultations with some delegations and the Secretariat on how best to accommodate the concerns expressed by the delegation of Greece about the report produced by the Secretariat on the results of the ad hoc consultative mechanism, document A/AC.105/C.2/L.233, I would propose that the conclusions of mechanism appearing in section IV of the document, which were discussed and adopted by the participants of the working meeting in Rome, be attached as an annex to the report of the Legal Subcommittee for the current session. This would, in my opinion, appropriately distinguish these conclusions from the rest of the contents of document L.233 and would provide a valuable basis of reference for future deliberations on this item.

Unless there is any objection, may I take it that proceeding in this manner would be agreeable to the Subcommittee?

I see no objection, *it is so decided.*

I shall now open the floor to delegations wishing to make statements on the substance of item 8. The first speaker on my list, and so far the only speaker, is the distinguished representative of China, to whom I give the floor.

Mr. J. GUAN (China) (*interpretation from Chinese*): Thank you Mr. Chairman. The Chinese delegation has listened carefully to all the statements made during these past two days under this agenda items. Like many delegations, we are also concerned with the relationship between the UNIDROIT Draft Protocol on Space Assets and the existing international outer space legal regime. At the same time, we have noticed that we still do not have a specific formula as to how to coordinate this Protocol on space property and the existing international outer space legal regime. We do not have any intention to hinder the efforts made by the Legal Subcommittee on coordinating the relationship between the two. However, we would like to point out that there is some difficulty in making further effort on this road and there are also problems with the methods to be adopted to solve this issue. We have to point out that the method we are adopting now, in the view of the Chinese delegation, is only a preliminary consideration.

First of all, we would like to mention about the difficulties. The Protocol drafted by UNIDROIT is international private law rather while the international space law system is international public law. The targets of these two different legal systems are quite different and within these two different legal systems, there are also inherent and legal principles which are quite different and relatively independent.

To incorporate elements of international public law into the international private law or the other way around are all quite difficult and doing so, might result in the incompleteness of either system. This is the difficulty we face while discussing the UNIDROIT Draft Protocol in our Legal Subcommittee as to how to incorporate the international public law elements into it.

And now I would like to mention about the method of solving this problem. First of all, we need to emphasize that any law concerning outer space should be based on the existing international outer space legal regime. That is, the drafting of the Protocol on Space Property should be based on the existing international outer space law, not the other way around. We cannot look into every specific positions of the UNIDROIT Draft Protocol on Space Property, as to where to insert the necessary space law element into it. Maybe we cannot find any specific place to put it and

as a result, only mentioning the international space law in a general term in the preamble, but this is definitely not enough.

Moreover, it also involves the issue as to what kind of public law basis we want to provide to private law in the field of international outer space activities. And, at present, we have five international outer space treaties and quite some international customary rules in the field of outer space. These are quite abundant public law bases but they might not be enough. Is it possible to formulate a new legal instrument targeting specifically international commercial activities, outer space commercial activities? Its content can include the international liability of States and the management and supervisory role of the States in regulating commercial activities in outer space and the relevant domestic law principles to be formulated.

In this respect, we have a specific issue to solve, that is, how to make the signatories of an international private law also signatories of international public law.

And last, but not least, we would also like to mention that in the field about this Working Group on this item, maybe we need to give this Working Group a broad mandate at the beginning instead of restricting its function too rigidly because it has to find its own direction of work. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of China for your statement on item 8 of our agenda.

Distinguished delegates, are there any other delegations wishing to speak on this particular item? Is any observer wishing to speak on this item?

I see none.

Distinguished delegates, we have, therefore, concluded consideration of agenda item 8, Consideration of the Convention on International Interests in Mobile Equipment and the Preliminary Draft Protocol on Matters Specific to Space Assets, for this session of the Subcommittee.

Proposals 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 (agenda item 10)

Distinguished delegates, we shall now continue our consideration of item 10 on our agenda, Proposals 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.

Once again, we shall shortly convene informal consultations in this room under the coordination of Mr. Niklas Hedman of Sweden, with a view to advancing our discussions on this item. However, before doing so, I would like to provide an opportunity for any delegation wishing to make a statement on this item within the formal context of the plenary of the Subcommittee this morning.

Are there any delegations wishing to take the floor on this item at the present time at this level?

Yes, I recognize the distinguished representative of Sweden.

Mr. N. HEDMAN (Sweden): Thank you Mr. Chairman. In my capacity as Coordinator for the informal consultations, I have, together with the Secretariat, or the other way around, the Secretariat with some assistance by myself, has produced a list of the provisional agenda for the next Legal Subcommittee which we would like to distribute now to the plenary and I would just like to present this so that the plenary knows what took place yesterday and then it is in your hands. Would that be alright with you Mr. Chairman.

The CHAIRMAN: Yes.

Mr. N. HEDMAN (Sweden): So we will wait a minute until it is distributed and then I will make the presentation.

The CHAIRMAN: The distinguished representative of Sweden has the floor again.

Mr. N. HEDMAN (Sweden): Thank you Mr. Chairman. Delegates should now have before them this paper provided by the Secretariat, a draft provisional agenda for the forty-second session of the Legal Subcommittee and this is based on the first round of informal consultations yesterday, on 10 April.

We have here tried to put out the agenda as it stands so far.

With regard to single issues item for discussion, there was a general understanding in the room that item 7, relating to the NPS principles, should be retained on the agenda as a single issue for next year.

It was also a general understanding in the informal consultations that agenda item 8 related to the Space Protocol would also be retained in the agenda. A proposal was submitted and this you can see under item 8 on this paper. It was discussed and this is the understanding of the Coordinator that this is the result that we have before us.

With regard to agenda item 9, Review of the concept of the launching State, it is my impression that there was no consensus or understanding in the room how to deal with this issue. Therefore, we have put it in square brackets.

You would then go to the next page. There is a list of additional proposals as they stand today. First, there is the proposal by China, Greece and the Russian Federation, which was presented yesterday in the plenary.

Thereafter, there is the proposal made by Brazil, also presented yesterday in the plenary.

Proposals numbers 3 and 4 are proposals that have been presented in previous years and it was indicated by the sponsoring States that these two proposals could be held over for following years and this has also been indicated in both.

Mr. Chairman, it is a common understanding that items 7 and 8 should be retained on the agenda. There is a need to further deliberate on item 9, the launching State, and the four additional proposals on the second page.

This paper, Mr. Chairman, is now in your hands and I have now presented this to the plenary. Thank you.

The CHAIRMAN: Thank you distinguished representative of Sweden for your introduction to the draft provisional agenda for the forty-second session of the Legal Subcommittee in 2003 which was based on the first round of informal consultations, on 10 April 2002, that you kindly guided.

Distinguished delegates and representatives, of course, are there any other speakers wishing to speak on this item at this level, at the level of the Subcommittee? Yes, I recognize the distinguished representative of Greece.

Mr. V. CASSAPOGLOU: Thank you very much Mr. Chairman. Mr. Chairman, I would like also to express my thanks and gratitude to our colleague from Sweden for his work and I would like just a very

slight modification of this draft text we have concerning the remote sensing. As you may remember, we associated with the Brazilian proposal and we asked that Greece appears with Brazil, that is the splitting we made in the initial 1996 Greek proposal concerning principles for direct broadcasting and remote sensing. So please be kind enough to proceed in this slight modification. Thank you very much.

The CHAIRMAN: Thank you distinguished representative of Greece. I suppose that Brazil will have no objections against it? No. Thank you very much for your cooperation and, therefore, it will be the countries mentioned in the brackets, round brackets, of paragraph two on the second page of this document, would be Brazil and Greece. Thank you very much.

Is there any other speaker on item 10 in the plenary at this time?

I see none.

I would, therefore, propose that we now suspend this meeting of the plenary in order to allow for a further session of informal consultations coordinated by Mr. Niklas Hedman of Sweden. However, I would like to inform delegations that, following these informal consultations, and I hope that these informal consultations will help us to reach an agreement on this issue, it is my intention to resume the formal meeting of the Subcommittee in order to consider the results of the informal consultations.

Therefore, this meeting is temporarily suspended and I kindly invite the distinguished coordinator, Mr. Hedman, to come to the Chair and to start these informal consultations.

The meeting was suspended at 11.08 a.m.

The meeting resumed at 12.57 p.m.

The CHAIRMAN: ... of Coordinator for informal consultations and I will kindly request him to report to the Subcommittee during the afternoon session of the Subcommittee. It was my aim to finish all these discussions during the morning session and to restart the afternoon for the Secretariat to prepare all the reports, including the reports of the Working Groups but it is obvious that this aim could not be now achieved. Therefore, we will meet again this afternoon for a formal meeting on item 10 and then we will see whether it could be done in a fast way or another discussion would be developed. But for the time

being, I adjourn this meeting in the morning but before doing so, I will give the floor to the Secretary of the Subcommittee for an announcement.

Mr. P. LÁLA (Secretary, Office for Outer Space Affairs): Thank you Mr. Chairman. I just would like to inform delegations about documentation. I would like to remind delegations and delegates if they wish to submit to the Secretariat any additions or corrections to the preliminary list of participants, to do it now because in lunchtime, because we are just preparing for the final list of participants for print. So if there are any corrections, please inform the Secretariat right after this session.

In addition, I would like to inform about the status of documentation for adoption of the report. You may recall that yesterday we distributed the first part of the report, which is document A/AC.105/C.2/L.235. This first part includes introduction, reflects the general exchange of views and review and possible revision of principles relevant to the use of nuclear power sources in space.

Also this morning, we distributed into your pigeon holes, reports of two Working Groups. One is the report of the Chairman of the Working Group on Agenda Item 4, Status and application of the five United Nations treaties on outer space, and the report of the Chairman of the Working Group on agenda item 9, Review of the concept of the launching State. We intend to distribute further documentation by tomorrow morning so you can the adoption of the full report Friday morning. Thank you Mr. Chairman.

The CHAIRMAN: Thank you Mr. Secretary for your announcement. I still recognize the distinguished representative of Greece but please be short because we have about five minutes.

Mr. V. CASSAPOGLOU (Greece): It is a point of clarification with the Secretariat please, Mr. Chairman. At least my pigeon hole was not in the morning, the document concerning the Working Group 4. Thank you.

Mr. P. LÁLA (Secretary, Office for Outer Space Affairs): Yes, Mr. Chairman, if you will permit me. Of course, the Secretariat is working even if we are sitting here so in the meantime, the documentation is distributed and my point was when you we are leaving the room, please stop by your pigeon holes and pick up the documentation and you can study it at lunchtime. Thank you.

The CHAIRMAN: Thank you very much. The 670th meeting of the Subcommittee is now adjourned.

The meeting closed at 1.10 p.m.