

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

*Unedited transcript*

671<sup>st</sup> Meeting

Thursday, 11 April 2002, 3 p.m.

Vienna

*Chairman:* Mr. Kopal (Czech Republic)

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

**The CHAIRMAN:** Distinguished delegates, I declare open the 671<sup>st</sup> meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

**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.

I would like to make this afternoon meeting, with your kind cooperation, shorter in order to allow the Secretariat to work on the draft report of the session so that it would be prepared on time for our next meeting tomorrow morning. So I rely on your cooperation in this respect.

As delegations are aware, a second session of informal consultations were held on this item this morning. I will now give the floor to the Coordinator of those consultations, Mr. Niklas Hedman, to report the results to the Subcommittee. You have the floor Sir.

**Mr. N. HEDMAN** (Sweden): Thank you Mr. Chairman. At this morning's session of the plenary under this agenda item, I made some observations of the first session of informal consultations. Now we have held a second round of informal consultations and I would like to make some additional remarks.

Mr. Chairman, during the informal consultations this morning, there was a consensus in these consultations to have an agenda item 8 as a single issue for next year on the examination of the Preliminary Draft Protocol on Matters Specific to Space Assets to the Convention on International Interests in Mobile Equipment. This item should be divided into two sub-items. The first one, Considerations relating to the possibility of the United Nations serving as a supervisory authority under the Preliminary Draft Protocol. And the second sub-item, Considerations relating to the relationship between the terms of the Preliminary Draft Protocol and the rights and obligations of States under the outer space law regime.

Mr. Chairman, it was also proposed, and there was a consensus to establish a working group under agenda item 8, a working group that would have a mandate to discuss both sub-items but separately.

Mr. Chairman, furthermore, it was also a consensus that the Secretariat should prepare a report, in consultation with the Legal Council, on this matter for consideration by the working group.

Now Mr. Chairman, there were some other proposals and issues that were discussed in the informal consultations. The first one was agenda item 9, the issues relating to the launching State, and also additional proposals made during this Legal Subcommittee.

I found that there was no consensus and no common understanding on either of these proposals. We had a very fruitful and interesting debate but so far

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there has not been any consensus on these additional proposals. Thank you Mr. Chairman.

**The CHAIRMAN:** I thank Mr. Hedman, the distinguished representative of Sweden and Coordinator for the draft provisional agenda for the next session of the Legal Subcommittee, for his report.

I would now like to give an opportunity to any delegation wishing to make any statement in the formal setting of the Subcommittee plenary on this item and the proposals that have been presented thereunder. I would remind delegations that this would be the final opportunity to make such statements for this session of the Subcommittee.

Yes, I recognize the distinguished representative of the United States of America.

**Mr. S. MATHIAS** (United States of America): Thank you Mr. Chairman. Mr. Chairman, during the informal consultations this morning with respect to item 10 that were so ably conducted by the representative of Sweden, there was discussion, as he mentioned, of current agenda item 9, the review of the concept of the launching State and whether there might be some opportunity for States to continue to make observations with respect to the concept of the launching State and to reflect on the conclusions of the Working Group under item 9. And my delegation expressed its view this morning that a separate agenda item with respect to launching State was not, in our view, advisable at this time. But we took very seriously the considerations expressed by other States with respect to their desire to have some forum in which to continue to reflect upon the conclusions of the Working Group and other considerations with respect to launching State.

So Mr. Chairman, what I would like to suggest is that perhaps the report of the Subcommittee with respect to item 10, could reflect that the concept that the Working Group under agenda item 4, Matters relating to the status and application of the five United Nations treaties on outer space, that that Working Group could review the application and implementation of the concept of the launching State, as reflected in the conclusions of the Legal Subcommittee's consideration under agenda item 9, including the report of the Secretariat that was part of our consideration this year of agenda item 9.

We think that providing a forum in the Working Group under item number 4 for continued consideration of the conclusions of the Working Group and of the application and implementation of the launching State generally, would be a productive way

to proceed with respect to this matter. Thank you Mr. Chairman.

**The CHAIRMAN:** Thank you distinguished representative of the United States for your statement and also for your suggestion how to solve the question concerning the further consideration of the issues arising from the report of the Working Group on Item 9 of the present agenda next year.

I have on my list of speakers the distinguished representative of Australia.

**Mr. A. BELL** (Australia): Thank you Mr. Chairman, I would just like to make a couple of comments also on agenda item 9 of the draft provisional agenda before us. As we indicated in our statement this morning, our preference would have been to have a separate single issue agenda item looking at follow-up on review of the concept of the launching State. We also took notice of the fact that there did not appear to be consensus on this issue and we recognize the views of other delegations who expressed contrary reviews. On this basis, we would like to lend our support to the constructive suggestion of the United States delegation that we include in the report a recommendation that the Working Group under agenda item 4 look at the concept of the launching State as an alternative. Thank you Mr. Chairman.

**The CHAIRMAN:** Thank you very much distinguished representative of Australia for your statement and I now give the floor to the distinguished representative of India.

**Mr. P. K. CHAUDHARY** (India): Thank you Mr. Chairman. Mr. Chairman, as my delegation expressed the view that we do not want the continuation of this agenda item, but in view of the wishes of the Committee, we would support and welcome the proposal of the United States. Thank you Mr. Chairman.

**The CHAIRMAN:** Thank you very much distinguished representative of India. Is there any other delegation? Greece.

**Mr. V. CASSAPOGLOU** (Greece): Thank you Mr. Chairman. Just to support the United States delegation proposal which I think is very useful. Thank you very much.

**The CHAIRMAN:** Thank you very much distinguished representative of Greece for your statement. Any other view on this particular issue?

The distinguished representative of Italy and then Brazil. Italy first.

**Mr. C. ZANGHÌ** (Italy) (*interpretation from French*): Thank you Mr. Chairman. With regard to follow-up to the definition of the launching State concept, I did this morning speak in favour of keeping it on the agenda if only in the form of a follow-up within a working group. The compromise solution that has been proposed here to entrust this task to a working group that already exists on agenda item 4, presided over by Professor Cassapoglou, the distinguished representative of Greece, we feel this is a good proposal and the mandate of this group should thus be expanded to incorporate the follow-up on the launching State.

I also wanted to make a comment regarding another subject. I do not know if this is a good time to do that.

**The CHAIRMAN** (*interpretation from French*): Thank you distinguished representative of Italy. As regards your second comment, if you would please hold on to it and make that comment later.

(*Continued in English*) The next speaker is the distinguished representative of Brazil.

**Mr. S. LEITE DA SILVA** (Brazil): Thank you Mr. Chairman. The Brazilian delegation also would like to endorse the positive opinion concerning the initiative of the delegation of the United States. Thank you Mr. Chairman.

**The CHAIRMAN**: Thank you distinguished representative of Brazil for your contribution. Is there any other delegation wishing to speak on this particular point? I recognize the distinguished representative of the Russian Federation.

**Mr. Y. M. KOLOSOV** (Russian Federation): ... to the, as it looks like, common wish to amend the item 4 to enable the Subcommittee to further review the concept of the launching State but we want it to be reflected in the report that we can accept it without prejudice to the possibility of discussing any other issue related to the implementation of the five core treaties. Thank you.

**The CHAIRMAN**: Thank you very much. (*Interpretation from Russian*) Thank you.

(*Continued in English*) The United States of America once again.

**Mr. S. MATHIAS** (United States of America): Thank you Mr. Chairman. I am just following up a point that the Russian representative just made. In our view, making specific reference in the report to the fact that agenda item number 4 is broad enough to include consideration of the issue of launching State is not to either expand the mandate of agenda item 4 or the Working Group thereunder, or to limit it in any way that would preclude other items from being brought up under it. Our intention is only to specifically note that the consideration of the launching State issue would be an issue that is within the scope of agenda item 4 and the work of the Working Group under agenda item 4 and obviously it fits very squarely in the general concept of status and application of the five United Nations treaties on outer space to consider the implementation of one particular aspect of those five treaties. So it is not an expansion of the scope of agenda item 4, in our view, or a limitation in any way of subjects that could be raised under agenda item 4, it is only a specific reference to one item that can be raised and we would look forward to having discussed under agenda item 4. Thank you.

**The CHAIRMAN**: Thank you distinguished representative of the United States. Is this explanation of the distinguished representative of the United States satisfactory for all delegations? Yes, I believe it is clear now.

Distinguished delegates, I believe that we reached a consensus on this particular item. It means on the inclusion of the discussion on the results reached during our consideration of the present agenda item 9 in the work of the Working Group on agenda item 4 at the next session of the Legal Subcommittee.

If I see no objections, *it is so decided*.

May we now proceed to other points, to the remaining points that were reported by the distinguished representative of Sweden? Now, of course, you have the floor, distinguished representative of Italy because you informed us about your intention to speak still on another issue. Please.

**Mr. C. ZANGHÌ** (Italy) (*interpretation from French*): Thank you Mr. Chairman. Indeed, I wanted to comment on the proposal made three years ago, for the first time, by the Russian Federation and re-submit it today.

The Russian Federation, China and Greece and other delegations have joined them, have distributed a text which is basically a proposal to recommend that we study the issue of the appropriateness of a fifth convention on outer space

law, the comprehensive convention, and this morning we did not arrive at a consensus. I ask myself, maybe we should go back to this matter before we push it aside. Our colleague, Professor Kolosov, this morning, pointed out that, on the one hand, this Legal Subcommittee has spent a lot of time of looking at the existing outer space conventions and treaties and some of them have been found lacking or outdated or in need of revisions. On the other hand, nobody has really touched these existing five treaties which currently constitute the sum total of the legal system governing outer space activities in a way to make them more coherent and consistent. While we take note of the firm position taken by numerous delegations with regard to this item, I am still asking myself maybe the Russian proposal can be reduced to a minimum and still retained in this new form. As I said, it was first put forward three years ago. It is about the possibility of considering a comprehensive and universal convention and, within this framework, we could also address the definition of the launching State, something that has been on our minds so much, for we have not found a clear-cut and universally applicable definition in the existing treaties, not a definition that would correspond to the current state in the evolution of outer space activities. And this would probably be a way to address the launching State concept as well as make a step forward towards updating the existing legal regime governing outer space activities and beginning to fill in the existing gaps. So maybe this is where the launching State concept and related issues need to be addressed.

I remember that at that time, the proposal was made for the first time. We invoked the various international intergovernmental organizations that were becoming increasingly actors in international space activities. That was three years ago, where as in 1967, when our Outer Space Treaty was first adopted, these intergovernmental organizations, while they already existed, did not play nearly the role in outer space activities that they play today.

This is one item, one area in which the situation has evolved and we are talking about the privatization of outer space activities such as the privatization of Intelsat and other similar organizations, are undergoing the same process. So there are definitely new situations that were not covered by the convention and that need to be addressed. It is not a matter of reviewing or rewriting the existing outer space treaties but it is a matter of bringing the situation up-to-date, into conformity with the current context.

So again, my question is, could we perhaps apply the same philosophy, the same approach that we used in the study of the launching State concept to

other issues that also lack clear-cut definitions in the existing conventions and also require a more up-to-date approach? So maybe before we push aside the Russian proposal, we should ask ourselves, could we approach it in the same spirit as the United States approached the matter of the launching State concept and suggest a compromise solution and ask the Committee that is considering the existing outer space treaties and their implementation, entrust that group with considering the items raised in the Russian proposal? Ask this group, give it the possibility to develop the fundamental ideas that form the foundation of the Russian proposal, first submitted three years ago, and re-submitted this morning. And identify also other issues, if they exist, such as, for example, the launching State concept, that have evolved over the years, that international intergovernmental organizations and the privatization process have changed or lent a new character to, or other issues that need to be addressed that constitute lacunae that have to be filled. So that would be a question of expanding, maybe not even expanding because it is already broad enough, but clarify and making more precise the mandate of the group in charge of considering the outer space treaties and their implementation and see if, when questions arise, questions of the kind that formed the foundation of the Russian proposal, if they can perhaps consider them, applying the same approach as the approach they applied to the matter of the launching State concept. Thank you Mr. Chairman.

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

(*Continued in English*) Should we proceed on the basis of this suggestion just made by the distinguished representative of Italy with regard to the mandate of the Subcommittee and its Working Group on Item 4 of the agenda for the next session of the Subcommittee? I recognize the distinguished representative of the United States of America.

**Mr. S. MATHIAS** (United States of America): Thank you Mr. Chairman, and we listened with interest to the thoughtful comments of the representative from Italy. I must say, however, that we view the two issues as being significantly different in character and that the question of the treatment of the concept of the launching State is not comparable to the suggestion that Working Group 4 take up the issue of a universal comprehensive treaty. And our thinking on this is essentially as follows, Mr. Chairman.

As I suggested this morning in our informal consultations, our concern about an effort by this Subcommittee to address the universal convention

concept is that it conveys to the entire constituency of all of us that follow space law issues that the subject is now on the table of doing away with the existing treaties and replacing them with some new regime. That is the only thing a single universal treaty can mean. It must mean that the existing treaties are replaced by something new and there is no way that any delegation can assure anyone in this room or outside this room that once negotiations on a universal convention are underway, that there would not be changes in existing treaty principles. Once a universal convention is being negotiated, every point, with respect to the treaty regime, will be negotiated. That is the nature of a negotiation on a universal comprehensive treaty. And so it is one thing to say that we will look at the manner in which the concept of launching State is being applied. That is entirely within the existing treaty regime but it is fundamentally different and, as I suggested this morning, destabilizing to suggest that we are going to look at the possibility of a universal comprehensive convention that, in our view, would inevitably lead to a loss of confidence by the international community in the existing treaty regime and widespread confusion over the indefinite future with respect to the nature of the treaty regime that is going to govern outer space. Thank you Mr. Chairman.

**The CHAIRMAN:** Thank you distinguished representative of the United States. I will now give the floor to the distinguished representative of Italy because it seems to me he probably would like to explain once again the substance of his suggestions. You have the floor Sir.

**Mr. C. ZANGHÌ** (Italy) (*interpretation from French*): Thank you Mr. Chairman. Indeed, perhaps I was not very clear or perhaps there was a misunderstanding. I specifically and purposely avoided talking about universal convention and talked about modification because I know that this idea did not get the consensus, indeed, there was firm opposition to it, and that is why I do not speak of going back to the old terminology, i.e., to achieve some kind of single convention. That is absolutely not the intent of my intervention. Rather, it is to go back to the idea not the objective. And I repeat, it is to look at the possibility of seeing, like we did for the launching State concept, if there are concepts which should be studied more in-depth and interpreted as was the case for the concept of launching State, without touching on the core of what already exists, so without going so far as to talk about a single convention or a revision of what is in place. And, as the United States just said, it is not about comprehensive re-visiting which would, of course, have serious consequences for space law as a whole but if we look at what we did for launching State

and we take another concept or a second or a third concept and study them more in-depth, that does not in any way affect the content of the five existing conventions but rather helps us to simply clarify certain notions or helps us to identify a cause or multiple causes which explain why some countries have not ratified one or other of the five conventions, in order to help with the implementation of the existing conventions, i.e., to promote acceptance of ratifying the conventions since there are some concepts, in addition to the concept of launching State, which are deserving of being studied more in-depth. It is not a matter of going back to the idea of a single convention or a general comprehensive review of what already exists.

**The CHAIRMAN** (*interpretation from French*): Thank you. Thank you for your clarifications.

(*Continued in English*) Is there any other delegation wishing to speak on this particular item? I recognize the distinguished representative of Greece.

**Mr. V. CASSAPOGLOU** (Greece) (*interpretation from French*): Thank you Mr. Chairman. I must also observe here that the purpose of the Working Group for Item 4 on the agenda is so broad in scope that, as our eminent colleague from Italy said, it is possible to develop ideas in that area and then, by way of conclusion, re-visit the idea and let the Subcommittee put forth proposals on the matter. So one approach does not mean that is not possible to develop other ideas, especially with a view to study the situation which, I am not sure how to describe it, is not entirely satisfactory, given the very low level of participation in the treaties because if we wish, in the context of the Working Group study, these issues and promote maximum participation in the conventions, then I think we could proceed as we are doing now. Thank you.

**The CHAIRMAN** (*interpretation from French*): Thank you to the representative of Greece.

(*Continued in English*) Is there any other delegation who wishes to speak at this moment, particularly on this issue?

I see none. I believe that the conclusion from this discussion would be that any issues that might be raised during the discussion on item 4 of the agenda of the Legal Subcommittee at its next session, under the scope of the considerations in the Subcommittee and its Working Group on this particular item, can be developed, that new problems, such as was the case with the launching State, could be raised and could be

studied under this item and then this is the agreement on the interpretation of the existing mandate of the Subcommittee and its Working Group on Item 4. We will not change the existing mandate, as it was established last year, but we have only reached an understanding that the interpretation of this mandate might accommodate the suggestion made by the distinguished representative of Italy. Is it acceptable?

*It is so decided.*

Shall we still have some other speaker for the consideration of the draft provisional agenda for the next session of the Subcommittee, as it was proposed by the distinguished Coordinator, for this item and as it was discussed here during the formal session of the Legal Subcommittee and, of course, on the basis of the agreement that we have reached on the specific proposals?

*It is so decided.*

The agenda is approved.

Distinguished delegations, unless there is any objection, may I take it ...

**Mr. V. CASSAPOGLOU** (Greece) (*interpretation from French*): Thank you very much Mr. Chairman. Mr. Chairman, if I understand, clearly we are finishing or we are about to finish examining item 10 on the agenda, or have we not finished yet because I do have a proposal for a new item. Having said that, I am not sure if we could start it now but in any case, I would like to mention it and then I will leave it up to you and to our colleagues to decide.

After this morning's presentation by our distinguished colleague, Ms. Schroeder from the United States, and based on the experience I had not long ago, just two weeks ago in the ITU, where we set up a working group on issues related to application in the private sector of space activities. And so, based on that experience, it seems to me that it might be appropriate to add, perhaps not this year, but perhaps the following year, but in any case I would like to broach the idea that we might have a new item on the agenda and that would be review of issues related to application in the private sector of space activities. I suggest this because if we work in a more or less institutionalized manner, in a more in-depth way to study all the issues which, for that matter, arise from sub-paragraph 2 of item 6 on space activities, I think that it might be interesting.

So that is the new idea that I wanted to submit to the delegates for their consideration.

**The CHAIRMAN** (*interpretation from French*): Thank you Greece. If I understood correctly then you are broaching this as a point of information because all items for next year's agenda, that subject is closed, and we cannot continue with considerations along those lines at this point but thank you for the information and perhaps next year, you could develop that a bit further and present it to us for our consideration at the time that we are considering the agenda for the forty-third session of the Subcommittee.

(*Continued in English*) Ladies and gentlemen, unless there is any objection, may I take it, therefore, that we can conclude or we have already concluded our consideration of item 10, Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-second session and the draft provisional agenda, as it was submitted and amended by us this afternoon, will thus become really provisional agenda. It means it was already adopted.

Unless I see any objection. I see none.

*It is so decided.*

Distinguished delegates, I will shortly adjourn this meeting of the Subcommittee in order, as I already told you, to give the Secretariat adequate time to prepare all of the documentation necessary for us to adopt the reports of this session. Before doing so, however, I would like to inform delegates of our schedule of tomorrow morning.

Tomorrow morning, we shall begin with the adoption of the reports of the Working Groups on Items 4, 6 and 9. Thereafter, we shall proceed with the adoption of the report of the Subcommittee. Of course, should it be necessary, we might extend our deliberations into the afternoon session as well but I would like to attempt and make every effort to finish our business tomorrow morning. So again I will rely on your cooperation.

Are there any questions or comments on this proposed schedule?

I see none. This meeting is adjourned.

*The meeting closed at 3.55 p.m.*