

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

Unedited transcript

726th Meeting

Wednesday, 13 April 2005, 3 p.m.

Vienna

Chairman: Mr. S. Marchisio (Italy)

The meeting was called to order at 3.25 p.m.

The CHAIRMAN: Good afternoon distinguished delegates, I now declare open the 726th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

I will shortly suspend the plenary meeting so that the Working Group on Agenda Item 6(a), Matters Relating to the Definition and Delimitation of Outer Space can hold its seventh meeting to adopt its report. I will then reconvene the 726th meeting of the Legal Subcommittee to continue agenda item 6(a) so that the Chairman of the Working Group on that item can introduce the report of the Working Group for our adoption.

Thereafter, we will consider and hopefully suspend our consideration of agenda item 8, Examination of the Preliminary Draft Protocol on Matters Specific to Space Assets, pending discussions in the Working Group on this agenda item.

We will then continue and suspend our consideration of agenda item 9, Practice of States and International Organizations in Registering Space Objects, pending discussions in the Working Group on that item.

We will also continue our consideration of agenda 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-Fifth Session.

I then intend to adjourn the 726th meeting of the Subcommittee so that the Working Group on the Practice of States and International Organizations in Registering Space Objects can hold its fourth meeting, and the Working Group on the Preliminary Draft Protocol on Matters Specific to Space Assets can hold its sixth meeting.

I now invite José Monserrat Filho of Brazil to chair the seventh meeting of the Working Group on Agenda Item 6(a), Matters Relating to the Definition and Delimitation of Outer Space.

The 726th meeting is suspended.

The meeting was suspended at 3.27 p.m.

The meeting resumed at 4.29 p.m.

Distinguished delegates, we now reconvene the 726th meeting of the Legal Subcommittee.

I would now like to invite the Chair of the Working Group on Agenda Item 6(a), Matters Relating to the Definition and Delimitation of Outer Space, to present his report to the Subcommittee. Thank you Mr. Monserrat for your report. You have the floor.

Mr. J. MONSERRAT FILHO (Brazil) (*interpretation from Spanish*): Thank you Mr. Chairman. Distinguished Chairman of the Legal Affairs Subcommittee, it is my pleasure to now report as Chairman of the Working Group on Item 6(a) of the

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agenda entitled "Matters Relating to the Definition and Delimitation of Outer Space".

With regard to adoption of the final report of the Working Group, I should like to inform you that the Working Group adopted the report in its entirety on a paragraph-by-paragraph basis during its seventh meeting this afternoon, 13 April 2005.

There were two modifications made to item 8 of the report. It led to some discussions which were very fruitful in my judgement.

Mr. Chairman, the Working Group was able to achieve important results that will serve as a positive basis for future endeavours. These results included a programme of action for the next year, as reflected in the Working Group's report, specifically in paragraphs 6 (a), (b), (c), (d), (e), subparagraphs (a) through (e).

With regard to the questionnaire on aerospace objects, the conclusions that we drew were that the Working Group should not suspend its consideration of the questionnaire. Rather it should continue to invite member States to respond to the questionnaire on aerospace objects..

Another important element which was the result of the discussions in the Working Group was the agreement to continue urging States, or inviting States, to indicate their preferences with regard to the responses reflected in the Analytical Summary. These preferences will then be compiled by the Secretariat so that they may be examined by the Working Group next year, 2006.

Mr. Chairman, I would also like to mention the fact that the Working Group agreed that it should invite member States that submit their proposals with regard to methodology for revising the responses received to the questionnaire with a view to developing an acceptable common understanding with regard to the definition and delimitation of outer space.

I would like to highlight the fact that, as an integral part of future actions regarding the Working Group's efforts, the Group agreed to recommend to the Commission, through the Legal Affairs Subcommittee, that it invite the Scientific and Technical Subcommittee to consider the possibility of preparing a report. This report would present the technical characteristics of aerospace objects according to the current technological advances and possible developments in the future.

Another of the results of the Working Group was to come to an agreement to invite member States to submit information on existing national practices or practices which are currently being developed with regard to national legislation that is directly or indirectly related to the definition and delimitation of outer space.

Mr. Chairman, before concluding my report to the Legal Affairs Subcommittee, I would like to thank all delegations for their very significant cooperation and contributions which greatly facilitated the tasks of the Working Group in seeking to reach its objectives during the forty-fourth session of the Legal Subcommittee.

Once again, I would like to thank the Secretariat for the skilful and untiring efforts of the Office.

Thank you.

The CHAIRMAN: I thank Mr. Filho for your report and for the remarkable work you have done. Thank you once again.

Distinguished delegates, I would now like to adopt the report of the Working Group on Agenda Item 6(a), Matters Relating to the Definition and Delimitation of Outer Space, as contained in document A/AC.105/C.2/Def/2005/L.1.

Do I take it that the Subcommittee adopts the report of the Working Group on Agenda Item 6(a), Matters Relating to the Definition and Delimitation of Outer Space, as amended?

I see no objections.

The report of the Working Group on Agenda Item 6(a), as amended, is adopted.

Are there any other delegations wishing to take the floor under this agenda item at this stage?

I do recognize the observer of the International Astronautical Federation. You have the floor.

Mr. VAN FENEMA (International Astronautical Federation): Thank you Mr. Chairman. I apologize for making remarks under this agenda item at such a late stage. That is why I submit the following purely for the information of the Subcommittee.

Mr. Chairman, a few months ago, the President of the Council of ICAO, the International Civil Aviation Organization, Dr. Kotaite, referring to the successful sub-orbital space flights of Spaceship-1, suggested in remarks reported in the press that ICAO would be the most appropriate organization to regulate the safety of such sub-orbital flights. I quote from the article that appeared on 16 January in the French language Canadian press “The Organization of the Civil Aviation Organization, ICAO, believes that the time has arrived to adopt regulations in order to ensure the protection of space tourists and travellers. This is an industry which may take off literally in the next five years. I see none other than ICAO to put this regulation into place”.

... Mr. Chairman, these remarks may have been made without any official meaning or intent. The fact is that on the initiative of the Indian member of the ICAO Council, that Council on 11 March 2005 decided to include a new topic in the Work Programme for the forthcoming session of the Council, namely “Concept of Sub-Orbital Flights”.

Mr. Chairman, the fact that this topic appears on the agenda does not mean more at this stage, than that a discussion will take place on the basis of a working or discussion paper yet to be distributed. And it may very well be that whatever the documents produced on this topic will contain, the Council will quickly decide to shelve the item because ICAO has many more pressing issues to deal with.

Nevertheless, this action reminds us of a simple truth and that is that agenda item 6 is not a completely theoretical exercise for at least two reasons. One, all space objects pass through air space on their way to their final destination. And two, air space, for the sake of safe and secure air transport operations, is a highly regulated environment.

Since 1944, ICAO is the United Nations specialized agency exclusively authorized and eminently qualified to guarantee the safety and security of international air transport and of its millions of users. Detailed rules, the so-called standards and recommended practices pertaining to aircraft operations and air traffic management, assure that all 188 member States and the airlines concerned adhere to minimum operational criteria. These rules also apply to aircraft operations over the high seas, a *res communis omnium* comparable, in that sense, to outer space. And they apply without any vertical limitation, that is to say, air space is supervised and controlled to as high an altitude as is practically necessary to

guarantee the safety of aviation. As a result, the international aviation industry today is a very safe one.

The launching of space objects has, so far, not affected aviation safety. Through ad hoc measures, such as the creation of ‘no fly zones’ in the areas of planned space launches, launchers and aircraft operations have been kept separate and the controlled or uncontrolled re-entry of spacecraft and space debris has not resulted in the endangerment of aviation either, so far at least.

From the point of view of aviation safety, neither the annual number of worldwide launches, some 72 on average, nor the launch failure rate, between five and six per cent over the past seven years, has created any real concern and most of the national space activities started from national territory and use national air space both ways. No reason then for ICAO to deal with the matter, one could argue at this stage.

Do the five sub-orbital flights of Spaceship-1, approved and licensed by the Associate Administrator for Commercial Space Transportation of the United States Federal Aviation Administration in 2004, change this situation? Not really. Apart from three interesting aspects. One, these flights are private enterprise operations that will turn commercial when Richard Branson, the entrepreneur and founder of the highly successful airline, Virgin Atlantic, actually starts selling seats to passengers on the five-passenger Spaceship-2 vehicles for sub-orbital flights over 100 kilometres, maybe as early as 2007.

That is interesting to ICAO because it is called to regulate international commercial operations in air space and this, particularly in view of the following, the second aspect. The operational characteristics of Spaceship-1 and Spaceship-2 are such that ICAO would have a reasonable argument in principle for applying its technical and operational standards and recommendations practices to this vehicle where appropriate. The relevant part of the definition of aircraft, as used by ICAO, reads as follows: “any machine that can derive support in the atmosphere from the reactions of the air”.

Point three, assuming that these five sub-orbital flights and their successive versions are, indeed, space flights, as the licensor, the United States Office of Commercial Space Transportation, indicates, the criterion for the ex-prize was, *inter alia*, to fly above 100 kilometres. For ICAO, this may mean that this “aircraft” not only uses air space but as it left sovereign national air space, it engaged in an international flight in principle subject to ICAO rules.

Mr. Chairman, I realize that these observations may be termed academic, or worse, theoretical. And, of course, let us wait for the outcome of these ICAO discussions before drawing any premature conclusions.

But I wanted to use this ICAO development, whatever result it may produce, to point the discussion under this agenda item into a direction worth exploring at some time in the future, namely for the sake of the orderly and safe management of flight operations in and above air space at which operational stage should the air traffic manager transfer the management of the flight of a space object, whether sub-orbital or not, to the space traffic manager.

Mr. Chairman, that is a functional issue not a geographical one but more important it is a technical and operational issue and not a legal one which has often advantages particularly when safety is at stake.

Thank you Mr. Chairman.

The CHAIRMAN: I thank the distinguished observer of the International Astronautical Federation for his informative statement.

And I ask if there are any other delegations wishing to take the floor.

I see none.

We have now concluded our consideration of agenda item 6.

Examination of the preliminary draft Protocol on Matters Specific to Space Assets to the Convention on International Interests in Mobile Equipment (agenda item 8)

Distinguished delegates, I would now like to continue our consideration of agenda item 8, Examination of the Preliminary Draft Protocol on Matters Specific to Space Assets to the Convention on International Interests in Mobile Equipment.

I will now give the floor to the distinguished representative of Brazil. Brazil, you have the floor.

Mr. C. DA CUNHA OLIVEIRA (Brazil) (*interpretation from Spanish*): Thank you very much Mr. Chairman. Mr. Chairman, without prejudice to the discussions held in the Working Group created to study the report on the possibility of the United Nations serving as a Supervisory Authority for the preliminary

draft Protocol on Matters Specific to Space Assets, my delegation would also like to make in this plenary session some comments on the matter.

Initially, my delegation would like to express its appreciation to the Working Group, chaired by the distinguished delegate of The Netherlands. Its report with the enhancements based on discussions held in the last two weeks contain a number of important elements for discussion on this matter.

My delegation, Mr. Chairman, has also listened to a number of statements on this matter, all of which reflect, in a timely manner, issues that warrant our consideration in this discussion. The distinguished Ambassador of Bolivia, on behalf of the Group of Latin America and the Caribbean, as well as other delegations of GRULAC, have all indicated their understanding that the treaties and principles of the United Nations in the area of space should prevail over the norms of private law, as contained in the preliminary draft UNIDROIT Convention Protocol.

My delegation would like to express that it fully shares this understanding.

My delegation further understands, Mr. Chairman, that the Legal Subcommittee does have jurisdiction to evaluate the matter put before it, without prejudice to the views that might be expressed in other bodies of the United Nations pursuant to the recommendations adopted in this Subcommittee, if that should occur.

With regard to determining whether or not the United Nations may lay claim to a legal mandate to assume responsibility set forth in the preliminary draft Protocol, we should like to point out here, in the strict use of the word, legal, my country understands that the United Nations would, in fact, lay claim to such a mandate. The recommendation of the Legal Subcommittee to be adopted in this area should not, however, exclude or be to the exclusion of other options, which may arise and to which may prove appropriate to undertake the function of Supervisor.

If it is decided that it is incumbent upon the United Nations to fulfil the role of Supervisory Authority, my delegation believes that the Office for Outer Space Affairs would not be the best suited to this purpose, either due to limitations in terms of operation and budget but also because some delegations have already indicated that it is a strictly public entity and the activities undertaken by the Office are strictly public, as the Executive Secretariat of the Committee on the Peaceful Uses of Outer Space.

Having said that, my delegation shares the position put forth by the distinguished delegate of Canada in the sense that the International Telecommunication Union, as a specialized agency of the United Nations, does play the role of Supervisory Authority, as stipulated by the ITU representative in the UNIDROIT meeting held in Rome in October of 2004.

Mr. Chairman, in the event that the Secretary-General of the United Nations does not assume the function of Supervisory Authority, my delegation believes that it is absolutely vital that the United Nations have unlimited access, without any conditions, to all information belonging to the Registry established in the context of the UNIDROIT Protocol.

Thank you Sir.

The CHAIRMAN: I thank the distinguished representative of Brazil for his statement.

I now give the floor to the representative of Italy.

Ms. PIAZZA(Italy): Thank you Mr. Chairman. Mr. Chairman, the issue on the agenda item 8(b) is the relationship between the terms of preliminary draft UNIDROIT Space Assets Protocol and the rights and obligations of States under the legal regime applicable to outer space. The Italian delegation has already the opportunity to state that it believes that there is no risk of inconsistency between the draft Protocol and the United Nations space treaties.

In this respect, my delegation would like to stress that the third preambular paragraph of the Space Assets Protocol makes a general reference to the established principles of space law including those containing international space treaties concluded under the auspices of the United Nations.

Furthermore, we would like to recall that during the first session of the UNIDROIT Committee of Governmental Experts, it has been agreed to add an Article 21 *bis* providing a proposal of specific language but the precise formulation of this article, including the question as to whether the United Nations outer space treaties should be specifically mentioned is a matter that is still under consideration by the States negotiating the draft Protocol.

Thank you Mr. Chairman.

The CHAIRMAN: I thank the distinguished representative of Italy for her statement.

Are there any other delegations wishing to take the floor on item 8 of our agenda?

I do recognize the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you Mr. Chairman. To start with, I would like to make a general remark on work done hitherto with regards to items 8(a) and (b) and I would like to refer to 8(b) to start with. And I would like to say in this regard that as we wait for the final UNIDROIT Protocol, and I hope that this will be not later than the beginning of next year, the end of this year. While we are waiting, we have got to make sure that we have compatibility between two different legal orders here because we would have one legal order which would be set up by the Cape Town Convention and the Protocol, so there needs to be compatibility and space law must prevail over private law set up by the Protocol which, as we know, although these are special regulations, they would have priority, primacy, over the Cape Town Convention and we can pursue our debate in this regard.

As regards the eventuality that the United Nations might take up the functions of Supervisory Body, we are still of the same opinion to the effect that the United Nations, as a pre-eminently political Organization, and we must not forget the issue of poverty which affects two thirds of the world, the United Nations as a world organization, therefore, should be limited in its own and unique activities and it should not spread into activities which are in the area of commercial activity and, therefore, we do not feel that the United Nations could carry out such functions.

And as of right from the beginning of this proposal when it was first presented, our proposal has always been this role should be entrusted either to the ITU, I said that a few years ago, or given that we do not have a specialized United Nations agency, given that we do not have that agency, we would need to continue discussion on that matter.

With reference to the excellent work done by our friend from The Netherlands and the fact that this work has been completed, thanks to electronic submissions, the Legal Subcommittee has more or less to set its lot when it comes to 8(a). And as regards the pursuing that debate next year, that is the position which I would take up.

Those are the general remarks, Mr. Chairman, that I wanted to say and I would like to reserve the right to take the floor at the right moment later on under this item but we must not forget the contribution made by Professor Kopal and his eminent contribution, in his capacity as Chair of the Ad Hoc Working Group.

Thank you.

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

I now ask if there any other delegations wishing to take the floor on agenda item 8, Examination of the Preliminary UNIDROIT Space Assets Protocol?

I see none.

We now suspend our consideration of agenda item 8, Examination of the Preliminary Draft Protocol on Matters Specific to Space Assets, pending discussions in the Working Group on this item.

Practice of States and international organizations in registering space objects (agenda item 9)

Distinguished delegates, I would now like to continue our consideration of agenda item 9, Practice of States and International Organizations in Registering Space Objects.

The first speaker on my list is the distinguished representative of Brazil. Brazil, you have the floor.

Mr. C. DA CUNHA OLIVEIRA (Brazil): Thank you Mr. Chairman. My delegation would like to inform, Mr. Chairman, under these agenda items that the Brazilian National Parliament continues to analyze the Brazilian adherence to the Registration Convention. So far, the Convention has received favourable reports from the Commission of Science, Information and Communication Technologies, and the Commission of Justice of the Brazilian National Parliament. The matter is now under the consideration of the Commission of Foreign Affairs and Defence.

Brazil regards the strengthening of international space law as an indispensable means to provide better governance and to promote the development of international space activities and my country shall take the necessary steps in that regard.

My delegation intends to make a presentation during the next session of the Legal Subcommittee on the national developments attained in the field of space objects registration.

Allow me to highlight, Mr. Chairman, as an important development that the Treaty, ratified by Brazil and Ukraine in 2004 for the joint development and commercialization of launching services takes into account the provisions established by the Registration Convention.

Thank you very much.

The CHAIRMAN: I thank very much the distinguished delegate of Brazil for his statement.

I now give the floor to the distinguished representative of the Republic of Korea. Republic of Korea, you have the floor.

Mr. LEE (Republic of Korea): Thank you Mr. Chairman. As my delegation already mentioned in their general statement of last week, we believe that discussion on this issue in the Legal Subcommittee will effectively enhance the implementation of the Registration Convention.

Mr. Chairman, the Republic of Korea has registered eight outer space objects with the United Nations in accordance with the Registration Convention since it became a party to the Convention in 1981. In this regard, the Korean Government has notified the United Nations of all necessary information as required in Article IV of the Convention whenever a space object was launched.

Also, the Republic of Korea is _____ (*not clear*) in the field of outer space activities. They had been conducted by the Government research who are public entities with other specific domestic regulations implementing the Registration Convention.

However, in view of the expected expansion of private outer space activities, we are also facing an increasing need for relevant domestic legislation.

Mr. Chairman, last year my delegation reported to the Subcommittee that we were drafting a comprehensive domestic legislation for the four United Nations outer space treaties to which country is a party. This year we are pleased to inform that the Korean Government has completed the information drafting and the view has already been submitted to the

National Parliament for its consideration and final approval.

In this field, there are three articles exclusively for the registration of space objects. Those articles provide for the requirement for domestic and international legislation of a space object in compliance with the Registration Convention.

Thank you Mr. Chairman.

The CHAIRMAN: I thank you very much distinguished representative of the Republic of Korea.

Are there any other delegations wishing to take the floor on agenda item 9 at this afternoon's session?

I see none.

We will, therefore, suspend our consideration of agenda item 9, Practice of States and International Organizations in Registering Space Objects, pending discussions in the Working Group on this item.

Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fifth session (agenda item 10)

Distinguished delegates, I would now like to continue our consideration of agenda 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-Fifth Session.

I have no speakers on my list so if there are any delegations wishing to take the floor on this agenda item, please raise your hands.

No delegations wish to speak at this stage of our deliberations.

We will, therefore, continue our consideration of agenda 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-Fifth Session, tomorrow morning.

Distinguished delegates, I would now like to adjourn the 726th meeting of the Legal Subcommittee so that the Working Group on the Practice of States and International Organizations in Registering Space Objects can hold its fourth meeting, and the Working Group on the Preliminary Draft Protocol on Matters Specific to Space Assets can hold its sixth meeting.

Before doing so, however, I would like to inform delegates of our schedule of work for tomorrow morning.

We will reconvene here tomorrow morning promptly at 10.00 a.m. At that time, we will continue our consideration of agenda 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-Fifth Session.

In case there is time permitting, we will also convene the Working Group on Agenda Item 8, if necessary, or the Working Group on Agenda Item 9, Not 9. OK. Only the Working Group on Agenda Item 8, if necessary.

Are there any questions or comments on this proposed schedule?

I see none.

I now invite Niklas Hedman of Sweden to chair the fourth meeting of the Working Group on the Practice of States and International Organizations in Registering Space Objects. This will be followed by the sixth meeting of the Working Group on the Preliminary Draft Protocol on Matters Specific to Space Assets, chaired by Vladimir Kopal of the Czech Republic.

This meeting is now adjourned until 10.00 a.m. tomorrow morning.

The meeting closed 5.01 p.m.