

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

*Unedited transcript*

736<sup>th</sup> Meeting

Wednesday, 5 April 2006, 3 p.m.

Vienna

*Chairman:* Mr. R. González (Chile)

*The meeting was called to order at 3.02 p.m.*

**The CHAIRMAN** (*interpretation from Spanish*): We do not seem to have interpretation.

Now we have it. One of the microphones was not working apparently.

Anyway, good afternoon to everyone. Once again, I am re-opening this 736<sup>th</sup> meeting of the Subcommittee and we are going to proceed with the agenda and then have another meeting of the Working Group.

But first, we will continue discussing items 6 and 10 and then, time permitting, start on agenda item 8, Definition and Delimitation of Outer Space.

Any delegations wishing to take the floor should now do so. They should put their name down on the list of speakers please.

The Working Group on 6 will as usual be presided over by my friend, Mr. Vassilios Cassapoglou, and they will be discussing agenda item 6.

**Status and application of the five United Nations treaties on outer space (agenda item 6)**

Now, on item 6, I am pleased to call on the distinguished representative of Slovakia.

**Ms. E. SURKOVA** (Slovakia): Thank you Mr. Chairman. First of all, allow me to congratulate you on behalf of my delegation upon your election to

the position of Chairman of the Legal Subcommittee. We are really happy to see you there and wish you all the best success.

We also appreciate the great work done under the chairmanship of Mr. Marchisio and, of course, also by the Office for Outer Space Affairs.

Mr. Chairman, I would like to make a general comment within this agenda item. My delegation would like to express our strong support to the work of the Committee on the Peaceful Uses of Outer Space and its Subcommittees. These are the only international fora for the development of space law which plays an essential role in this area.

We would like to underline the importance of world(?) legal principles, defined in the five United Nations space treaties.

Outer space is the common heritage of humankind and, therefore, the exploration and scientific investigation and the use of outer space, including the Moon and other celestial bodies, must be carried out for the benefit and in the interest of all countries without any discrimination of any kind, irrespective of the level of economic or scientific development.

We would like to stress the necessity of international cooperation in the scientific as well as the legal aspects or of the exploration and use of outer space for peaceful purposes.

This cooperation should be conducted in accordance with the provisions of international law and

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in an effective and appropriate way by the countries, international organizations, agencies and institutions, at all levels or national, bilateral and multi-lateral.

Mr. Chairman, Slovakia was established as a new independent State in 1993. I am pleased to inform the Subcommittee that since then Slovakia became a State Party to the accession, a legal instrument of international law, to four out of five international treaties on outer space. In concrete terms, these are the Outer Space Treaty, the Rescue Agreement, the Liability Convention and the Registration Convention.

Our delegation would like to stress the importance of an existing international legal system on outer space. Nevertheless, the idea of updating this system and accommodating it to new global conditions is worth further discussion and deliberations.

Thank you for your attention.

**The CHAIRMAN** (*interpretation from Spanish*): Thank you so much the distinguished representative of Slovakia for that statement.

Furthermore, I would like to say that I was indeed privileged to also be posted to her country and witnessed the huge progress achieved by that country, her country.

I have no additional speaker on my list unless somebody would come forward enthusiastically and use or abuse that possibility.

No additional speakers so I would next like to continue, rather we should now suspend consideration of item 6 which we had been considering and, provided we get back the Chairperson of the Working Group, we could thus continue and we are also awaiting the results of that Working Group and its deliberations.

**Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (agenda item 10)**

Distinguished representatives, let me continue with 10. That has to do with UNIDROIT.

The first speaker on my list is the distinguished representative of the United States of America. I call on him.

**Mr. M. SIMONOFF** (United States of America): Thank you Mr. Chairman for affording us the opportunity to present the United States' views

regarding the work of the International Institute for the Unification of Private Law and the development of a Space Assets Protocol. Since our last session, there continue to be developments regarding this issue, as we have heard some reference to.

The UNIDROIT Mobile Equipment Convention, now called the Cape Town Convention, and Aircraft protocol, have both come into force 1 March of this year and implementation of the new treaty system is now well underway with the new international finance registry already operational. The experience gathered in implementing these instruments will certainly prove valuable as work on the Space Assets Protocol continues. Last year, UNIDROIT convened the second intergovernmental meeting to discuss the Space Assets Protocol, or the proposed Protocol. The negotiating session was an informative and productive one. The United States participated and looks forward to the next negotiating session, which may be scheduled in late 2006 after continuing consultations are completed.

As we have stated in past years, my Government is a firm supporter of the goals of the proposed Space Assets Protocol. This Protocol offers an opportunity to facilitate the expansion of the commercial space sector, as well as to enable a broader range of States, in all regions and at all levels of economic development, to benefit from this expansion, both by having a better opportunity to acquire interests in space equipment as well as acquiring services generated from space equipment.

As we are all aware, the range and volume of activities in outer space being conducted by the private sector have increased dramatically over the last several decades, and particularly within the last five to 10 years. While there has been a dramatic increase in such activities, it is also true that the commercial space sector faces certain challenges. Commercial space systems are extremely capital-intensive to plan, design, construct, insure, launch and operate. They can take years to complete. There is no established market for commercial financing of such activities as exists for most other capital-intensive sectors and no parallel to capital financing of aviation-related activities. In the absence of a new treaty-based system for obtaining secured financing interests in space activities, that situation is unlikely to change in any significant way. In light of the increasing importance of commercial space activities and the benefits that flow from those activities to all regions and all levels of economic development, the facilitation of financing for commercial space activities, through modern private financing mechanisms, is a pressing need.

The draft Space Assets Protocol to the Cape Town Convention on International Financing of Mobile Equipment aims to address this need. Specifically, it would set up a framework through which States can support a system of asset-based and receivables financing. By permitting such secured financing for the space sector, it has considerable potential to enhance the availability of commercial financing for outer space activities. This in turn could prove crucial to furthering the provision of services from space to countries in all regions and at all levels of development.

We believe that it is appropriate that the examination of the preliminary draft Space Assets Protocol has remained on this Subcommittee's agenda and would like to comment on the two issues that have been identified for discussion.

The first issue is the possibility of the United Nations serving as a Supervisory Authority for the registry for financing interests to be established under the draft Protocol. We were pleased that the Secretariat, in consultation with the United Nations Legal Counsel, completed its report on this issue. We remain open, in principle, to the possibility of the United Nations Office for Outer Space Affairs taking on such a role. As we are all aware, any registry established under a Space Assets Protocol would be a separate and distinct entity from the United Nations Registry established under the Registration Convention and from any records maintained by the Radiocommunication Sector of the International Telecommunication Union with respect to the use of radio frequencies and related orbital locations.

Although the draft Space Assets Protocol is in early stages of development, we anticipate that it will likely approach the registry in a similar manner as has been done with respect to the Aircraft Protocol. Specifically, the registration would be a computer-based registry, including only minimal information as to possible creditor's claims with respect to space assets. Since the registry operator, the Registrar, would not review information filed nor provide any assurances as to its accuracy, we anticipate that registry requirements for staff and other resources would be minimal. The Supervisory Authority, if an intergovernmental organization, would need to be immune from legal or administrative process for any issues relating to the registry and its operation and this immunity would be set forth in the Protocol. As with the Aircraft Financing Protocol, the registry operator would likely be a private sector body that would bear liability. Given these anticipated parameters, we are

open to giving further consideration to the idea of the Office for Outer Space Affairs taking on the Supervisory Authority role.

At the same time, we recognize that, notwithstanding a fair amount of support, there has been a lack of consensus on this matter and we do not see further detailed consideration of this aspect to be particularly useful or likely to lead to consensus at this time. We understand that UNIDROIT and others are examining the possibility of other intergovernmental bodies undertaking this role and look forward to further reports on this during the year from UNIDROIT.

There is also the issue of the relationship between the terms of the preliminary draft Protocol in the rights and obligations of States under the legal regime applicable to outer space. As we and other members of this Subcommittee have stated before, the Space Assets Protocol is not intended to, and as formulated, would not affect rights and obligations of States Party to the outer space treaty system or the rights and obligations of member States of the ITU under the ITU's Constitution, Convention and Administrative Regulations. Rather, it is intended to address only the distinct and important issue of financing for commercial space activities. This issue was considered during both UNIDROIT negotiating sessions and there appeared to be agreement that the Protocol should in no way alter rights and obligations under the outer space treaties or the ITU Constitution, Convention and Regulations. Indeed, our delegation proposed that this principle be explicit in the text of any Space Assets Protocol.

With respect to this Subcommittee, we believe that the Legal Subcommittee and its members have expertise that may be valuable in the development of the Protocol. Ultimately, the UNIDROIT Space Assets Protocol will be negotiated by UNIDROIT member States through the UNIDROIT process but we hope that the Legal Subcommittee will continue to offer its assistance where appropriate. We were pleased that the Office for Outer Space Affairs has participated as an observer in UNIDROIT negotiating sessions and we hope that that participation will continue to be helpful in informing the positions of various member States. Given the ongoing work on this topic, we would look favourably upon the continued inclusion of this topic as a one-year agenda item.

Thank you Mr. Chairman.

**The CHAIRMAN** (*interpretation from Spanish*): I very much thank the distinguished

representative of the United States of America for that statement.

He has touched on a very important matter and I will make a short statement, if I may, and I am given permission. Thank you.

We are in the presence of a set of circumstances that is almost surrealistic. I am not referring just to this particular agenda item. A number of delegations speak and the observers are not even in the room. This does not make sense. In this case, the UNIDROIT observer, it should be the observer from UNIDROIT who ought to be making a statement first and then delegations would react. But fortunately you spoke, distinguished representative of the United States of America, because that gave us some background information. But this is happening, not just at this meeting but at other meetings as well. Observers are officially in attendance, some of them with their bag at their side in order to board a flight immediately, while in theory they really ought to be present when we discuss the item. If we want to have a serious attitude and rigorous(?) in terms of the work we do, these observers should give us the required information for a full debate because otherwise we cannot really have a full discussion. Regardless of the position and the stance we have, you could be in favour or you could not approve, but you need to have the required material and information to make up your mind. So here, I think, that this is totally inappropriate.

There was no official introduction from the side of UNIDROIT. I welcome the presence here of the European Space Centre, the IAF people, who have been in attendance throughout and indeed many other organizations because they truly discharge their duties as observers. I think we might take a decision in the Committee to the effect that the observers should not exercise remote sensing here, they should be here, they should be available, they should be ready to field questions from delegations so that truly we can have a full-fledged discussion, agreement. We might just as well disagree.

But, anyway, thank you distinguished representative of the United States of America for that statement.

And now, I will have to set this topic aside because I have no additional speakers.

The distinguished representative of Morocco please.

**Mr. S. RIFFI TEMSAMANI** (Royal Kingdom of Morocco) (*interpretation from French*): Thank you very much Mr. Chairman. Thank you for having addressed the issue.

Indeed, the Moroccan delegation has, in its statements over the past three years, posed a number of questions with regard to the Protocol and to this day, we have not had the response. Thank you very much for pinpointing the problem.

**The CHAIRMAN** (*interpretation from Spanish*): Thank you.

Next, the distinguished representative of the Czech Republic.

**Mr. V. KOPAL** (Czech Republic): Mr. Chairman, I have listened very carefully to your comment that you provided for us now about the participation of the representative of UNIDROIT for the purposes of introducing this debate.

First of all, I have to say that UNIDROIT was very careful in this respect during several past years and that they always prepared their very detailed and thorough document on the issues involved and I believe they make it in a way that it will serve as an example for other observers. This year they could not come for the beginning of this session and I submitted this information yesterday or the day before yesterday, asking whether the Subcommittee could postpone the consideration of this particular point until Friday when the representative or observer for UNIDROIT should arrive. So perhaps we should be in this respect a little bit more cautious in the assessment of the participation of UNIDROIT in the consideration of this particular issue. It has been, up till now, very helpful and very kind.

Thank you very much.

**The CHAIRMAN** (*interpretation from Spanish*): Thank you. I will respond immediately to Dr. Kopal.

It took me 26 hours to get here from my country. If each delegation were to ask that the topic that concerns that delegation be dealt with when they arrive, it would be chaotic and that applies to Permanent Representatives and observers. Of course, I am fully aware of the work of UNIDROIT in the past but we should also say that we have an adopted agenda. It has been adopted and the General Assembly is on board on this. You cannot really ignore the fact. You cannot Professor Kopal. We are all witnesses to

the fact that observers have not been attending sessions regularly. I would have liked to have UNIDROIT in the room. Very often, that is not the case. If each delegation were to ask the meeting to start when they can get here, it would be impossible to manage. We have to have a positive and constructive approach so that each and every member can have sufficient information.

I think we should stop here in terms of this debate and I ask the distinguished representative of Greece to please withdraw. We do not have to cause further delay. You are going to preside over the Working Group. Thank you.

**Matters relating to (a) the definition and delimitation of outer space and (b) the character and utilization of the geostationary orbit (agenda item 8)**

Next, we should start our consideration of agenda item 8, the Definition and Delimitation of Outer Space, and the Character and Utilization of the Geostationary Orbit.

I would have wanted to have here in the room the countries directly concerned. Paragraph (a) of 8 would also be considered by the Working Group on the use of outer space, that is, to have its very first meeting tomorrow morning.

I have no speakers on the topic.

And we will, thus, continue tomorrow morning with our consideration of item 8.

We will meet tomorrow at 10.00 sharp to consider this agenda item. And we will also make headway on 10.

The Working Group on 8(a) will hold its first session and it is my understanding that it is chaired by the distinguished representative of Brazil.

Now, I invite the distinguished representative of Greece to preside over the fourth session of the Working Group looking into the five United Nations treaties on outer space.

The meeting is adjourned.

*The meeting closed at 3.22 p.m.*