

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

Unedited transcript

753rd Meeting

Wednesday, 28 March 2007, 3 p.m.

Vienna

Chairman: Mr. R. González (Chile)

The meeting was called to order at 3.05 p.m.

The CHAIRMAN (*interpretation from Spanish*): I call to order the 753rd meeting of the Legal Subcommittee. We will continue our consideration of agenda item 4, so far I do not have any speakers on the list for this item. Would any delegation wish to take the floor on item 4, or have any comment to make, in the light of what we have been discussing? That does not appear to be the case, so the Working Group on agenda item 4, will hold its third meeting under the chairmanship of Mr. Cassapoglou, so we will adjourn the meeting and entrust the room to the Chairman of the Working Group. The meeting is adjourned.

My apologies, I have a very efficient secretary and if it were not for that, then I would be in dire straits. So let us move on to our consideration of agenda item 5, and I am delighted to give the floor to the distinguished delegate of the United States. I take it, it is on item 5 or is it on something else? In this case, it was just a shortcoming in my attention. You have the floor.

Mr. M. SIMONOFF (United States of America): The activities of international organizations relating to space law are significant and have contributed much to the development of the field. Many space activities rely on regional or global cooperation and such cooperation has enhanced the abilities of individual States to improve and advance space activities and technologies. International organizations also have an important role to play in the strengthening of the legal framework applicable to space activities. They can consider steps they can take to encourage their members to adhere to the four core

outer space treaties, so as to bring the activities of the international organizations within the framework of these treaties.

The outer space treaties were drawn up in full awareness of the possibility of international organizations conducting space activities, indeed, several of the treaties contain mechanisms to permit international intergovernmental organizations that conduct space activities to do so, within the treaty framework. The Rescue and Return Agreement, the Liability Convention and the Registration Convention, each contain provisions specific to international intergovernmental organizations, as well as, the Outer Space Treaty. Several extremely important international intergovernmental organizations are not operating within the treaties because not enough of their members have become party to both the Outer Space Treaty and, respectively, to either the Rescue and Return Agreement, the Liability Convention or the Registration Convention. As the framework established by the Rescue and Return Agreement, the Liability Convention and the Registration Convention, is an important and beneficial one for global conduct of space activities, it is surely desirable for international organizations to conduct their space activities under the coverage of these significant instruments. We hope that international intergovernmental organizations that conduct space activities, will consider steps they can take to bring their activities within the rubric of these conventions. We believe that doing so, could provide a useful improvement in the coverage and effectiveness of the core outer space treaties.

The CHAIRMAN (*interpretation from Spanish*): I thank the distinguished representative of

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the United States for his statement on item 5. The representative of Colombia wishes to speak, you have the floor, Ambassador of Colombia. Is it on item 5?

Mr. A. REY-CÓRDOBA (Colombia) (*interpretation from Spanish*): Before making a brief comment, you had convened the Working Group and I am not sure, if we are talking about the activities of international organizations, or item 4, which was the status and applications of the five United Nations treaties. We have just heard the statement from the delegate of the United States, which seemed to cover the whole question of application of the five United Nations treaties. If we are still on that item, then could I make a statement?

The CHAIRMAN (*interpretation from Spanish*): You can always speak and you will always be listened to, we are only too happy to listen you. It is a procedural matter and it was not such a procedural problem, it was a mental blackout on my part, more than a procedural problem. We were taking the statement from the United States delegation on item 5. The Working Group of item 4, has not yet been convened, so you are in a position to make whatever statement you deem necessary or relevant, naturally within the appropriate context of the items in this Subcommittee. You have the floor.

Mr. A. REY-CÓRDOBA (Colombia) (*interpretation from Spanish*): I just wanted to refer, very briefly, to one general aspect of the status and application of the five United Nations treaties on outer space item. Perhaps, as they say in Argentina, this may be intended to warm things up a little on this issue but I have been following the proceedings on this item, and it has been mulled upon with great wisdom, for a working group to be set up to follow-up this whole issue of the status attached to the five United Nations treaties on outer space. This item emerged, precisely when the Legal Subcommittee, a few years ago, some six years ago, was virtually in a state of limbo and it seemed to be short of issues for discussion and consideration, within the context of the Legal Subcommittee of the Committee on Outer Space and, when new items were discussed, this item was put forward, though that is the question of how we can make headway with signature and ratification of these five treaties.

There has been substantial progress made but it has all been a little too formal, in the sense that, one is only looking at progress in respect of ratification of these treaties. I have always had a shortcoming, and you know it, Mr. Chairman, that with Professor Kopal from the Czech Republic and for the other old sages,

such as yourself, in this Subcommittee, it has been some 25 years that I have been working on these items. One of the most fascinating times, was when space law was actually being created in this Subcommittee and a whole host of things came forward, documents, draft treaties, draft principles, which subsequently were analysed by the United Nations General Assembly. Those drafts were then adopted. The whole question of remote sensing, nuclear energy and so on, related to the five treaties then emerged, this was a whole period of time when the Legal Subcommittee was effectively concocting international space law. One may think that what is already in place is fine, nothing needs to be done with it and it is a good resource, a good reserve of work but I think that probably, we should not find ourselves not seeing the wood for the trees and it is possible, that there may be a whole host of new things which we can take a look at, within the context of the treaty, which the Legal Subcommittee might perform. I will explain myself.

Firstly, the Legal Subcommittee, in some way or another, has to become the crucible for space law again, it has to revert to that role, it should be the source for space law. Space law should be merging from within our ranks.

Secondly, we are not talking about taking the lid off of Pandora's box in trying to see which new items might be appraised or changed, that is not at all what I am saying, but I do think, that the development of technology and the development of science have created an array of new situations which would, indeed, warrant some analysis by the Legal Subcommittee, in an endeavour to tailor or match space law to all of these new technological developments. These new developments in the modern world, with the globalization of telecommunications, Internet boom, the question of low-earth orbits and so on, a whole host of issues, which I am certainly not going to list exhaustively here, but in any event, this is an issue which we must try to pinpoint, not in an attempt just to cook up new agenda items, but for the reason that I think that it naturally behoves the Legal Subcommittee to start to take a look at, mull over, ponder upon and perhaps even propose, at some point in time, some new visions in the light of the modern world and the developments of the modern world which may, therefore, lead to new law making, new treaty making, in this Committee which has lagged behind in recent years. That is one thing.

On the other hand, there are certain things in the treaties themselves, which have been adopted, signed and ratified, for which you can see, which countries have signed, which countries have not

signed, which countries have ratified, which have not ratified. I was prompted to make this statement by what happened yesterday, with the dialogue between the people on this top-notch panel we had yesterday and the distinguished delegate of the Netherlands, referred to the Moon Treaty in that context and, having listened to the distinguished legal experts on the podium, having listened to the comment from the Netherlands on the Moon Treaty, I was left thinking, that perhaps this Legal Subcommittee had overlooked a number of issues, which we are virtually compelled to look at under the terms of the treaties themselves, in the light of the relevant bodies of the United Nations, given the COPUOS Committee itself, the various subcommittees, all of the people involved in these procedures but in thinking in rough terms, it seemed to me, that there are a number of mandates, a number of issues, which we should be discussing.

Again, I am not advocating opening a Pandora's box and taking the lid off all the international treaties, we know what was involved in reaching those treaties, which have been marvellous for the whole development of space law and to which I certainly pay tribute, but just to give some examples. If we look at the item phrased by the distinguished delegate of the Netherlands, when he referred to the Moon Treaty, one of the problems facing ratification he said, was the provisions of article 11 of the Moon Treaty, referring to the common heritage of humanity, natural resources, and so on, and the idea that there is a new concept of how we should understand the common heritage of humanity and related issues. Obviously, both legal practice and doctrine have evolved in these fields and there are new concepts, but if we read in detail all of these treaties, we can see that this article 11 of the Moon Treaty, under subparagraph 5, says that, the States Parties to this Agreement, hereby undertake to establish an international regime, including appropriate procedures to govern the exploitation of the natural resources of the Moon, as such exploitation is about to become feasible. This provision shall be implemented in accordance with article 18 of this Agreement. If we turn to article 18, article 18 says, ten years after the entry into force of this Agreement, and I am pretty sure that this Agreement is in force now, I am not sure when it happened, the Secretariat can tell us but I am sure that ten years have passed, then it says, the question of the review of the Agreement shall be included in the provisional agenda of the General Assembly of the United Nations, in order to consider, in the light of past application of the Agreement, whether it requires revision. It does not call for revision but it says, that one may take a look at what the status is, not in terms of a formal question of whether the treaties have been ratified or not, but rather to see how

the treaties operated, it may well be that it is operated perfectly well, it has functioned fine and there is no need to do anything with it, or perhaps, some re-touches are required, or some certain things may need to be deleted, but this does not mean that we should not be looking at substantive aspects of the treaties, not just the statistics of whether such and such a number of States have ratified this Agreement and informing us about which country has wonderfully ratified it or not, as the case may be.

This occurred to me yesterday, when we were talking about the Moon Treaty but if we also take a look at the very important treaty on International Liability for Damage Caused by Space Objects and we turn to article 26, it says, ten years after the entry into force of this Convention, the question of the review of this Convention shall be included in the provisional agenda of the United Nations General Assembly, in order to consider, to consider, estudiar in Spanish, in the light of past application of the Convention, whether it requires revision. However, at any time, after the Convention has been in force for five years and at the request of one-third of the State Parties and so on, and so forth. So, the treaties themselves are saying, take another look at it, look where we stand, see whether we are functioning properly or not, study it and take a decision on the matter. Furthermore, the Convention on Registration of Objects Launched into Outer Space, in article 10, also says, ten years after entry into force of this Convention, the question of the review of the Convention shall be included in a provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision.

I am not advocating a revision of the treaties, what I am proposing is, that we discharge the mandates entrusted to us under the treaties, which request a review to see whether these treaties are operating properly or not, or to look at the effects of these treaties. This would be returning to the Legal Subcommittee, the substantive work on space law, reviewing, revising space law and updating, if necessary, the agreements which are already in force. I repeat again, new technologies may also bring new items on the table for our study.

Mr. Chairman, I am just saying that I take issue with our having a working group just to discuss how ratification is going on the treaties or, what statistics exist because that can perfectly well be done by the Director of OOSA and, I take issue with the idea that we should forget the work which was truly intended for this Legal Subcommittee when it was set up. When it was set up by the General Assembly, what

we decided was, that we would bring together scientific and legal specialists to study these space issues and we set up a committee in COPUOS and subsequently, COPUOS decided to set up two subcommittees, the Technical and then the Legal Subcommittee, to go through the nuts and bolts of the work relevant to those issues, so that we would actually roll up our sleeves and write down what was required and what politicians should adopt and not adopt. Let us not forget, that when we set up a working group or when something is called a subcommittee, it is actually to do something and to do the things which subsequently may be reviewed by politicians and diplomats and the senior people in the United Nations system. But I must take issue with us limiting ourselves to just a formal quantitative job, when we can and must, take a stand on substantive issues, on qualitative substantive matters and revert, as a Legal Subcommittee, to the role of creation, creating space law. Thank you.

The CHAIRMAN (*interpretation from Spanish*): Thank you distinguished Ambassador of Colombia. Before giving the floor to the next speaker, which is the distinguished representative of Chile, I just want to make a very brief comment.

Firstly, I am not going to take issue with what you have said about the statistics and the job which is done on the question of ratifications of treaties because we have an excellent long-standing expert to the right, from OOSA, the Legal Office, but there is one point where I think there is a tacit and, indeed, explicit, agreement between us. As you have said, we have seen repetition of this exercise of statistics, which countries have ratified, which States have not ratified but ultimately you realize, that we are talking about numbers rather than substance or content but that is a matter for the working group, chaired by the representative of Greece and, in a few moments, he will be chairing the working group in question, to tackle the substance of those matters.

The second objective fact, a purely objective fact, is that the last time this Subcommittee produced legal standards, which were turned into principles, we all know about the set of principles being adopted by the United Nations General Assembly, the General Assembly establishes customary law and practice which make those principles binding, this was the case on 23 December 1996, eleven years ago, and really nothing much as been done ever since, in the last eleven years. I have a relatively optimistic view, we have made some progress, _____ (*inaudible*) progress in the spirit of negotiation, which I have certainly sensed very strongly over the last couple of years.

There are a series of elements which are now on the table and the important work to be done as of tomorrow, by Professor Kopal, is now ahead of us, that is to compile, consolidate and give some dynamism to the proposals, initiatives, put forward by various delegations on various legal issues which have been discussed. There are some 73 members at present, coming from various schools of thought, religious, cultural and traditional, but I think we are relatively high up the table in that sense of in the United Nations system, the objective, frankly, is that.

The second one, is that there are new technological developments, look at what is happening with the Internet, look at low-earth orbiting satellites, look at what is happening with information provided by remote sensing satellites. These are elements which may work in favour, or against, the idea of legal regulation or not, but we need to leave it there as a further element to be considered. If my friend will permit, let us finish this question of treaties and then I will give the floor to the distinguished representative of Chile, because the Legal Office is much better placed than I am to resolve or assuage this legitimate misgiving or appeal, which has been voiced by the delegate of Colombia. On this question of opening up the discussion on certain treaties, bearing in mind, what is stipulated in some of those clauses.

Mr. A. TEREKHOV (Legal Office): Thank you. I am just in a position to make a simple, factual clarification. I am a little hesitant, as a member of the Secretariat, to enter into a substantive debate, which is very interesting and encouraging, which is happening in this room. However, since there was a reference by the distinguished representative of Colombia to article 19 of the Moon Agreement, which provides that after ten years after entry into force, the question of the review shall be included in the provisional agenda of the General Assembly. I would recall that, this Agreement, as we all know, entered into force on 11 July 1984 and ten years after the entry into force, the question of the review of this agreement, was indeed included in the agenda of the General Assembly. I remember that I had the special privilege of drafting a note from the Secretary-General to the General Assembly, including this item of the agenda. However, in all honesty, if I remember correctly, this particular issue did not provoke much of substantive debate and, if I remember correctly, I do not have the text of the resolution itself, but it all ended up in a paragraph in an omnibus resolution on outer space, which is adopted tentatively, where the General Assembly stated that, it decided that there was no need, at this stage, to address the issue of revision of the Moon Agreement and, since this article, article 18 of

this instrument provides for only one opportunity to have this revision, ten years after the entry into force, not 20 years, 30 or whatever, now the initiative for the revision of this agreement, if any, should come from parties to this agreement as provided in its provisions. I just wanted to clarify this _____ (*inaudible*) situation.

The CHAIRMAN (*interpretation from Spanish*): Thank you, I think that has been a very clear clarification, if I may put it in those terms and a very important clarification, too. I give the floor to the distinguished representative of Chile.

Mr. J. LAFOURCADE-RAMÍREZ (Chile) (*interpretation from Spanish*): Thank you. To a large extent, the comments which I was going to make, have already been made, so I will make my statement much briefer as a result. I would certainly like to hail the enthusiasm and wisdom of the representative of Colombia. I share many of his views and I think the work has been a little bit too procedural, these are items which, in my opinion, could easily be dealt with in informal consultations, in the group chaired by Mr. Kopal, representative of the Czech Republic and then, when it comes to new items, this may generate a substantive debate with respect to the content of the treaties, without this in any way being detrimental to discussion within the Legal Subcommittee as a whole. Thank you.

The CHAIRMAN (*interpretation from Spanish*): I thank the distinguished representative of Chile, a country on the southern tip of the world and it is a long way away. My comments may seem a little off beat but I certainly pick up on what was said earlier. We have proposals on the table on those new legal issues which have been brought to the attention of Mr. Kopal and then secondly, which is my intention, to ask the Working Group on this item to discuss the substance of this because this is also an opportunity for an exchange of views, in a reasonably flexible environment, which is not necessarily going to be binding upon the plenary when we move from working group to plenary. There is an incipient consensus, nonetheless, by what might come forward, then it is for the plenary to decide, whether or not it is going to adopt the decision on it or not.

Before winding up this plenary meeting, before I do so, are there any comments? I wanted to say something which has nothing to do with what we have been discussing. I have a serious concern because unfortunately, as of June of this year, my friend and very distinguished colleague, Mr. Camacho, for whom we have the greatest esteem, is going to cease to be the Director of OOSA. He has been of an unstinting,

inestimable support for all of us. The rules of the United Nations are way behind the times, when we should be able to benefit from the experience of an individual, such as Mr. Camacho, and we need to find some way or means of sending a letter to the United Nations Secretary-General or the representative, Mr. Costa, the representative of the Secretary-General here in Vienna, requesting him to appoint a Director who meets the conditions necessary, with the safeguards and guarantees of efficient work, that we have with Mr. Camacho. It is not going to be easy but I would certainly plead for positive discrimination, especially bearing in mind, the needs of the developing countries, this may not be consistent with what is said in the treaties but it is certainly in the spirit of the treaties.

Secondly I have an announcement, which is purely formal for tomorrow. I am being ordered to make a public statement, so I am going to adjourn this meeting so that the Working Group can be convened and hold its third meeting and I would like to remind delegates of our work for tomorrow morning. We will meet promptly at 10 a.m. as usual and we will continue and suspend our consideration of agenda item 4. We will then go on to considering agenda item 5 and then, time permitting, consideration of agenda item 6, definition and delimitation of outer space. The Working Group on item 6 will hold its first meeting under the chairmanship of my friend, Mr. Jose Monserrat Filho. Once again, I would like to ask the distinguished delegation of Germany, to contact Kai-Uwe Schrogl, in order to tell him to expedite the work for the Working Group, which he will be chairing, as of Friday. It is going to be a Holy week and we are all going to be very busy thinking about going back to our respective work places. The Working Group he chairs is of great importance, so I think it should be given the necessary adequate time, I think I said yesterday, we need to ensure that group does its work in time. Tomorrow we need to meet all the requisite formalities, with a technical presentation made by the representative of the World Intellectual Property Organization. Mr. Miyamoto is going to speak about WIPO and patents in relation to space activities. That is an issue of extraordinary importance and which we have not studied properly in the past. There have been a lot of references to intellectual property rights but it has not been with a purpose for proper debate but this could well contribute to launching a dialogue on this issue which might shed light on a number of points, which in my judgement at least, have not been sufficiently considered. Thereupon I proceed to adjourn this meeting and the Working Group is reconvened.

The meeting closed at 3.45 p.m.