

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

Unedited transcript

773rd Meeting

Friday, 4 April 2008, 10 a.m.

Vienna

Chairman: Mr. V. Kopal (Czech Republic)

The meeting was called to order at 10.13 a.m.

The CHAIRMAN: Good morning distinguished delegates, I now declare open the 773rd meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

I would first like to inform you of our programme of work for this morning.

We will continue our consideration of agenda item 8(a), the Definition and Delimitation of Outer Space, and begin our consideration of agenda item 8(b), the Character and Utilization of the Geostationary Orbit. We will continue our consideration of agenda item 9, Nuclear Power Sources, and begin our consideration of agenda item 10, 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.

Are there any questions or comments on this proposed schedule?

I see none.

**The definition and delimitation of outer space
(agenda item 8(a))**

So let us start with the Definition and Delimitation of Outer Space, agenda item 8(a).

I have two speakers on my list of speakers, namely the first one is the distinguished representative of Nigeria. I give him the floor.

Mr. A. OTEPOLA (Nigeria): Thank you Mr. Chairman. Nigeria notes the efforts of the Subcommittee and its Working Group on the Definition and Delimitation of Outer Space with the aim of arriving at a workable understanding on the issue of the definition and delimitation of outer space.

Nigeria has replied to the questionnaire sent to States on the subject within the basis of our addressing the subject. Considering the fact that air law is enthroned in the principle of sovereignty of States so that a State may lay claim to rights of the air space above its territory, the legal basis of space law is granted(?) in the principle that the outer space is a global common. We believe we can find a common ground there.

Freedom(?) from these, a definition and delimitation of the outer space may be necessary as time goes on in order to determine the scope of application of air and space law.

As part of Nigeria's commitment to adhere to all ratified United Nations treaties on outer space, we look forward to seeing new and innovative ideas on how to address this subject.

The work of the Working Group under the chairmanship of Professor Filho is much appreciated in this regard.

Mr. Chairman, Nigeria is among the few developing countries that had launched objects into space but we are yet to have a national practice or(?)

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of(?) seriously address our legal minds(?) to the issue of the definition and delimitation of outer space.

Given the low level of activities in space, as well as the low level of technological development, many developing countries are yet to definitively address the two subjects of definition and delimitation of outer space.

However, inasmuch as it is informative to know the practice of States in this regard, we should be wary(?) of its strict application to the definition and delimitation of outer space lest(?) its continuous use would pass as a customary rule of international law.

Mr. Chairman, this notwithstanding the absence of a definition and delimitation of outer space should not deter States from carrying out their obligations regarding the peaceful exploration and uses of outer space including, as you know, responsibilities in accordance with operating treaties and established rules.

Nigeria believes this Subcommittee will remain actively engaged with the question until we arrive at a mutually acceptable formulation.

I thank you Sir.

The CHAIRMAN: Thank you very much distinguished representative of Nigeria for your contribution to our discussion on matters relating to the definition and delimitation of outer space. You drew our attention to the difference between the principle of sovereignty that applies to air space above the territory of States and the outer space which is a global common. And you then also emphasized Nigeria's commitment to adhere to all ratified United Nations treaties on outer space.

As to the delimitation itself, you brought a new element to the discussion, namely that in the absence of adoption of a definition, we may pass to a customary rule of international law dealing with this particular issue. And you emphasized that notwithstanding the absence of a definition or delimitation, it is important to assume responsibilities in accordance with operating treaties and established rules.

Thank you very much for your contribution and I now wanted to give the floor to another country but in the meantime the name was deleted from the list of speakers on this topic so the distinguished representative of Nigeria was the only speaker on this agenda item.

But I see now the distinguished representative of Greece applying for the floor.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Chairman. Yes, good morning everyone.

I am taking the floor under this agenda item to make a few additional comments as regards what I said yesterday. After little (a), in 1865(?) in Paris, during the First World Conference on a related field, some States, among them Great Britain and the United States, wanted to respond to the invitation of Napoleon III by saying that it is very early, very premature to try and settle the needs of telegraphy, whereas in Berlin in 1905 we had the first bilateral treaty between Prussia and Austria, precisely to sort out telegram traffic. Now Great Britain, in the international convention on this, just a few years later, witnessed the nationalization of a telegraphy company. On the other hand, the United States remained out of this until 1932, that is to say, until the setting up of the International Telecommunication Union. And on the other hand, in 1902, the two countries, including Italy and Great Britain, that is, and the United States were the protagonists with the German Imperial Government in holding the First World Conference to establish the rules for telecommunication.

Now, I mentioned these two contradictory historical examples, if you wish, to prove that leaving a highly technical but also dangerous matter, not just from a political but from a technical point of view up to chance and leave it unregulated is undesirable. So we have seen 1832(?) (1932?) and 1906(?) and there we can see that the first time at the beginning of the last century, they managed to sort some things out and it was supposed to be the century of radio frequency in an exemplary way. The foundations were laid in 1905(?) not just for the immediate future but in a very far-sighted way. Now the rules which set up how radio telegraphy should be conducted as I say go back to 1903 to 1906.

So for us legal specialists here, Chairman, and for us diplomats, I think it should be easy to draw the necessary conclusions as to the need to move forward to regimentation, strict regimentation of outer space, bearing in mind how it fits into the bigger frame of things. And if I can put it like this, the need to administer this in a reasonable fashion and in an effective fashion from the benefit of all of humanity.

That is the introduction, Chairman, to what I wish to say because last night we talked about the need to manage to administer things.

Now, first of all, spatial debris, then space traffic, and thirdly, the destruction of satellites who was the problem of an effective international monitoring of these activities. Now, to my mind, there is a great need at institutional level to have a mechanism, one which is acknowledged by governments, to follow these activities, activities which are highly dangerous for humanity and for the Earth itself as a planet, that is for the cosmic environment as well.

So, Chairman, dear colleagues, without doubt, we need a kind of space ICAO(?). What is more, almost 20 years ago, if I am not mistaken, UNESCO gave us a model, the ICAO. We also have the International Atomic Energy Agency. We also have the International Maritime Organization. Now, it is perfectly possible to bypass the problem of a unique and a solved tool for space by introducing all of these rules, whether legislative rules or regulatory, into the founding text of this. So that might be one idea as a future or a point from which to begin our work.

And since I have mentioned space debris, I think it could be helpful to distribute throughout the world, not just two countries in a club of 11, if I could use that term, because we spoke about the code of the Inter-Agency Guidelines, that there may be some confusion with the inter-agency work of the United Nations, so I refer to them as a club of 11, the 11 major space agencies in the world which have formed this association, which is not a governmental organization, the activity of which was presented very well at the last meeting of the Scientific and Technical Subcommittee, by our distinguished colleague from the Russian Federation.

So to my mind, in one or other way, it is up to us to find the means of distributing these guidelines on space debris. Now, we could prepare a resolution as a kind of a covering letter or even attaching it as an annex to another report, because I think that all lawyers would have access to that, so an annex which refers to space debris and guidelines on space debris.

In conclusion Chairman, I would also like to support the initiative from Belgium and other parties to the Moon Agreement. Now while Greece has not yet ratified that, my country does support that initiative. Thank you very much Chairman.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Greece for your contribution and through which you have continued with the presentation that you already started on yesterday. In today's remarks, you have referred to two major examples from the last centuries, from the nineteenth century. And then you continued in your remarks by referring to the need to establish an international institution, an international body. You referred to this as being an outer space ICAO, an outer space agency, which could indeed take upon itself and take within its hands the management of outer space traffic control and regulation. You have indeed referred to the need to establish such an organization to regulate the issues which are being discussed here.

Then you referred to the issue of space debris. You have mentioned that it is possible indeed to possibly pass a resolution on space debris and the possibility of attaching this text in our report to the Subcommittee for its attention.

And then you also supported the initiative on the part of Belgium and other countries which have associated itself with their initiative. So thank you very much for your contribution.

(*Continued in English*) I now have another speaker on my list and it is the distinguished representative of Indonesia.

Mr. _____(?): Thank you Mr. Chairman. I am taking the floor again just for the record that the Indonesian delegation is of the view that it is essential to decide upon the definition and delimitation of outer space as a solid legal basis for States in _____(?) its sovereignty. The absence of the definition and delimitation of outer space could cause the legal uncertainty in international outer space and air space law that could leave to disputes between States. Furthermore, delimitation of outer space will be useful for the concept of national sovereignty, _____(?) States on a _____(?) before international law.

The distinguished delegates of three space-faring nations have stated yesterday that their space activities have continued to be well undertaken all these years without assistance of any clear definition and delimitation of outer space. Our delegation has no intention to deny this. We are pleased to note that the numbers of space objects and the number of States participating in space activities were increasing but mention of the work with some security and guarantee that such activities will not violate their territory. We

cannot allow space governance to be dictated by the countries with space capabilities. We concur with the view that clear definitions will be able to place all States in the core footing(?) with international law.

The 1944 Geneva(?) Convention on International _____(?) Operation(?), Article 1 stated that every State has a complete and exclusive sovereignty of air space above its territory. At the same time, Article 2 of the 1967(?) Outer Space Treaty stated that outer space is not the subject of national appropriation by claim of sovereignty. We need to be able to define where one convention ends and the other starts. For this, we cannot let technology dictate where the define(?) lies. The current maximum altitude _____(?) to be reached by accessing jet fighters on the south and the current minimum altitude in which space objects can still manoeuvre may alter over the years as the technology becomes more advanced. This is where the humankind has to step in and regulate itself through making the legal decision. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished representative of Indonesia for your contribution to our discussion on item definition and delimitation. You emphasized the absence of a definition and delimitation of outer space for the time being which, unfortunately, brings some lack of stability in the present development of space activities. And you also drew our attention to different principles that governed space above our Earth, it means the principle of exclusive and complete sovereignty which is included in the documents relating to the legal regime of air and the principle of freedom of outer space activities and its inappropriateness(?).

Yes, thank you very much once again for your contribution.

Ladies and gentlemen, this has been the last speaker on my list of speakers for this morning. Is there any other delegation wishing to speak on this particular topic this morning?

I see none.

So I believe, sorry, the distinguished representative of Mexico has the floor.

Mr. G. GUIZA VARGAS (Mexico) (*interpretation from Spanish*): Thank you very much Chairman. Just to share a brief idea on these concluding points about the importance in continuing with the development of law on space. Just a few months ago, recently, the world received the idea that a

submarine had gone very deep down under the Arctic and set up a flag underneath the Arctic Poles there representing a flag of its country. It is said that these regions are very rich in mineral resources. Now that was an unusual event with no precedence but apart from surprising us greatly, it also raised some red flags of concern as to the effect that might have. Now in this case, we can draw on legal tools by which we can actually check the legality and propriety of such actions. Now, regrettably in this case, not all affected are interested. States have actually followed this up. It may be to the advantage of some survey(?). It is a very unfortunate situation but we are confident that we have instruments available to deal with that situation.

Now I wanted to try and then transfer that to space in this specific case that we have been dealing with here and the Moon, the advantages that we would have if we did have this type of agreement. We want to avoid the situations of potential conflict of interest in this case so in space. This is still very recent. We still do not know the effect the impact it will have. Nonetheless, in the interest of all, and given the concern of all, we know that we must be able to draw upon necessary tools, things which will help us in this case. I think we should mull this over, this work that we are doing at the moment and we hope that we can avoid this type of case and we can avoid conflict in the future.

I am not in any way trying to justify or evaluate or give a valued judgement on actions by States over their territory in this case but we are thinking about the legal tools, that is what we would like to have available and hence the interest of signatory States in the Moon Agreement in promoting such to avoid this type of situation in the future. Thank you.

The CHAIRMAN: Thank you distinguished representative of Mexico for your contribution in which you brought to our attention a recent event in another environment and you derived from this experience a conclusion that we need to create or establish effective tools, how to avoid such situations in the space environment, particularly, of course, relating to the Moon. Thank you very much.

I now have the application of two speakers. The first one is the speaker for the Russian Federation, the other one will be Greece.

Mr. E. T. ZAGAYNOV (Russian Federation) (*interpretation from Russian*): Thank you very much Chairman. Our delegation had not planned to ask for the floor a second time on this agenda item but I think

that it would be useful to comment upon what was just said by the distinguished representative of Mexico.

As our delegation said yesterday, we agree with a series of States, including Mexico, with regard to the desirability of defining and delimiting outer space, and in this regard, I would like to agree with the distinguished representative of Mexico.

However, the example that the distinguished representative of Mexico has presented to us as an example of possible sources of conflict is, we believe, not quite felicitous in any way. First of all, within the mandate of our Committee, we do not have discussion of the delimitation and definition of the continental shelf, whether it be in the Arctic or the Antarctic. And for that reason, I believe that it is not quite opportune in any way to refer to the actions and the plans that the Russian Federation may have in that regard, though indubitably I would be willing to share with concerned persons the content of this information outside this room.

I would just like to say that the distinguished representative of Mexico could familiarize himself possibly with the official comments of the Ministry of Foreign Affairs of the Russian Federation with regard to the expedition which was conducted in the North Pole area by our country last summer. The contents of this public information is fairly detailed and indeed would give him a fair and fuller picture of what actually happened. This can be easily accessed on the website of the Russian Federation Ministry in question on the Internet. Thank you very much Sir.

The CHAIRMAN (*interpretation from Russian*): Thank you very much distinguished representative of the Russian Federation for your statement and for your input on to our discussion on this matter in which you have stressed that the position of the Russian Federation is indeed, on the whole, very close to that espoused by the Russian Federation, but you have also said that the issue that the distinguished representative of Mexico has referred to when he spoke, does not really fall within the purview, the mandate of our Committee. However, you are ready to speak outside this room about the contents of this reference and information. So thank you very much for your presentation of the point of view of the Russian Federation on this.

The CHAIRMAN: I now give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much

Chairman. The comments made by our colleague from Mexico has spurred me to think that actually we are losing sight of the environmental aspect of outer space. And I will say further why I think this. In the papers, roughly almost a month ago, I read that some States are refusing to ratify the conventions on environmental conservation because in the Polar areas there are some companies which unfortunately are governing the world, and here I am referring to oil companies, know that under the glacial waters of the North Pole there lie enormous oil deposits. And I would not like to place my trust in these rumours spread by journalists, but if this is the case, that is certainly a terrible thing for mankind because the melting of these ice waters, especially for the North Pole, would indeed imperil the existence of Amsterdam, New York, even the Pyrenees(?) (Pioneers?), Marseilles, etc. So governments have to truly govern and not let themselves be governed by oil companies. This is the most important point Chairman, even though this is not fully within our mandated competence. There is a great concern of all of our people in our world with regard to the preservation of our environment in the world as well as in outer space, Moon included. And I would like to say that the position of the United States flag on the Moon when they first landed was never considered as being an act of conquest, it was not. Well, you know that the Conquistadores were the first persons placing their feet on American soil. So that was very clear ever since then. And I believe that since this act took place by the Russian Federation, this has not been regarded in the same fashion.

If there were solutions that would be adopted, I think that the first region of the world that would be affected, unfortunately it would be that of the Russian Federation. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you very much for your statement distinguished representative of Greece. You, in your comments, have stressed the need to not neglect the need to take measures to protect the environment and correlated measures. And you have, of course, gone into much greater detail than that but you have stressed the principle that governments should really govern and not just be influenced by the actions of other entities. Thank you once again.

And now I would like to give the floor to the distinguished representative of Mexico.

Mr. G. GUIZA VARGAS (Mexico) (*interpretation from Spanish*): Thank you Chairman. Simply to share one comment with you. It was simply an example what I set out. I am not judging the

legitimate right of any State as regards its claims on the sea. This was just an idea that I was trying to transfer to the situation in space, particularly thinking about particularly for those who have signed the Moon Agreement. It is a situation we have. I am not trying to judge anyone. It was simply a very real and not so hypothetical case that we could think over in this room. Thank you.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Mexico for your renewed comments. In your comments you have just explained further the thrust of your previous comments.

(*Continued in English*): I no longer have any speaker on my list distinguished delegates. Is there any other delegation wishing to speak at this moment on our agenda item 8(a)?

Belgium please.

Mr. J.-F. MAYENCE (Belgium) (*interpretation from French*): Thank you Chairman. On 8(a), my delegation, I think that we have already had the opportunity this session or in previous sessions of the Legal Subcommittee to present the views of Belgium on this matter and we have not changed an iota actually. I just wanted to say that there are indeed certain items which remain to be discussed or issues and we are perfectly well aware of the fact that one can seek to obtain a clear picture as to the problems that might arise in the near future with regard to the definition and delimitation of outer space.

I think that the point of having a scientific exploration of these issues is far from being a bad one actually and I would like to thank the Chairman of the Working Group for having proposed this. Belgium could participate in this sort of reflection process as long as it be clearly recognized that this might also afford us the opportunity to not just enter into analysis of the pros with regard to the definition and delimitation as well as the cons because so far we have just heard a lot about the advantages and benefits that could derive from this.

And then that I have also heard a second school of thought which says no problems, no need to do this. I think that a third avenue of approach could venture into the line that this could make for new problems, there could be new horizons and I think that we intellectually have to be open-minded and be willing and able to entertain all three schools of thought.

Belgium would be interested in participation in this sort of discussion in whatever context it might take place in. We could be very flexible on this. It could be a scientific event that could take place, in parallel to this Subcommittee's work. I do believe that we should possibly envisage the entire question, the question as a whole. I do not know whether some issues could be debated as to the organization of this sort of symposium here, whether this could be in parallel to the Legal Subcommittee or whether it could be rather annexed to the other symposium which is very often set up within our general session but certainly we would be interested in participating in this sort of venue if ever it were organized.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Belgium for your contribution. You have flagged your interest on various new, novel aspects relating to the issue of the definition and delimitation of outer space. And I certainly appreciate the fact that you have stressed not just the two approaches to this issue, the need to define and delimit and hesitations as to definition and delimitation but that you have also drawn our attention to the fact that there is yet a third possible angle of considering this issue that one could explore with the consequences of such definition might entail.

I heard with great interest your arguments in favour of discussing all of the aspects regarding delimitation and within either symposium around our Working Group under Professor Monserrat or in a specially organized workshop or symposium which would be working in the margin of our Subcommittee.

Thank you very much for your comments.

And now I would like to recognize the distinguished representative of Brazil.

Mr. J. MONSERRAT FILHO (Brazil) (*interpretation from Spanish*): Yes thank you very much Chairman. A very brief contribution simply to say that we note with great satisfaction the comment, the contribution made a few minutes ago by the very distinguished representative of Belgium and we are very grateful for this. And we noticed that there was the idea of including all of these points including that raised by the very distinguished delegate of Belgium. I think it is a very positive point and we welcome it very warmly. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Brazil for your intervention by means of this intervention. You

supported and expressed your interest in the declaration made by the distinguished representative of Belgium and supported his initiative in this respect. Thank you very much.

I recognize the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Chairman. I just wanted to support the proposal of our colleague from Belgium and with regard to the idea that was tabled yesterday during the Working Group's meeting on definition. I think it is very important to speak about this.

If I may quote a proverb or an axiom rather of Jean Jacques Cousteau(?) who said that the fruits belong to all but the Earth does not belong to anyone. Thank you very much Chairman.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Greece for your comments in which you have supported the ideas tabled today and yesterday and part of our distinguished colleague from Belgium.

(*Continued in English*) I now give the floor to the distinguished representative of the United States of America.

Mr. M. SIMONOFF (United States of America): Thank you Mr. Chairman. This is just to note briefly that there was discussion of this proposal of a symposium in the Working Group under this agenda item and there was a conclusion yesterday afternoon that there was no consensus on this proposal. Thank you.

The CHAIRMAN: Thank you distinguished representative of the United States for your intervention by which you drew our attention to the yesterday discussion and to the conclusion that was yesterday reached. Of course, we still discuss this item today and, therefore, I think the discussion may continue.

I now give the floor again to the distinguished representative of Belgium.

Mr. J.-F. MAYENCE (Belgium) (*interpretation from French*): Thank you Chairman. Sorry for taking the floor again. Just one point of clarification. When I spoke I referred to the possible opportunity, as Belgium sees it anyway, to engage in a

scientific sort of discussion on this but possibly I was not quite clear enough. We would prefer not to have this within the context of the Subcommittee, what we would rather have is a scientific discussion either outside the Subcommittee or during the annual symposium organized by the IISL at the beginning of each session of the Committee but we would not particularly care to have the scientific discussion to be staged, as the Working Group's Chairman, be organized within the Legal Subcommittee's work itself. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you distinguished representative of Belgium for your clarification. Sorry I did not quite perfectly understand the point that you had been making so now it is correct.

(*Continued in English*) Ladies and gentlemen, I no longer have any other delegations wishing to speak. Is there any other delegations wishing to speak on point 8(a)?

Is my interpretation correct that there is none, no such delegation? Yes, I see it.

The character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (agenda item 8(b))

I believe that we can now proceed with the following item on our agenda, the Character and Utilization of the Geostationary Orbit, it means agenda item 8(b), the Character and Utilization of the Geostationary Orbit.

And I see on my list of speakers the distinguished representative Ambassador of Colombia.

Mr. C. ARÉVALO YEPES (Colombia) (*interpretation from Spanish*): Thank you very much Chairman. For Colombia, the use of geostationary orbit must be conducted, bearing in mind that it is a limited natural resource with obvious risks of saturation for which its use must be rational, effective, economic and fair. This is a fundamental principle to preserve the interests of developing countries and, as rightly pointed out in paragraph 196, to the Constitution of the ITU in a modified form by the Conference of Plenipotentiaries held in Minneapolis in 1998, hence at the thirty-ninth session of aspects relating to the use of geostationary orbit at this Subcommittee and resolution 55/122 of the 8

December 2000 which the General Assembly expressed its satisfaction for the agreement at which the Subcommittee came to on the matter of the character and the use of geostationary orbit and these represent substantial progress in the matter.

The Agreement approved by the Legal Subcommittee, A/AC.105/738, Annex III, which is being acknowledged as one of the major achievements of COPUOS and being included in the Compendium of Instruments with the United Nations Treaties and the Principles of the General Assembly, thanks to a proposal from Sergio Marchisio of Italy, whom we thank, also consisted of proposing some patterns to coordinate and to preserve the interest of developing countries and keeping the matter on the agenda in two separate parts, one, or definition and delimitation of outer space, which you have just concluded, and the other corresponding to the character and use of geostationary orbit, including consideration of means and arbiters(?) to assure the rational and fair use of geostationary orbit, taking into account the role of the International Telecommunication Union.

The Agreement referred because also to access to frequency bands already planned, which and on the basis of first come, first served. This focus could disadvantage developing countries, in particular those which do not have access to orbit. Existing procedures for coordination(?) which apply to unplanned frequency bands are being conceived to overcome these difficulties but they are not necessarily satisfactory, completely satisfactory, hence there is a need to facilitate access to the resource of the spatial orbit by developed countries and help less developed countries so that they can have access to reserves so that we can bring about fair access among countries, among those who already have access to this and those who are trying to gain this access.

On the other hand, Chairman, we note with satisfaction that the WARC-07 considering the principle of due diligence has decided to update application of the basic principles of Article 44 of the Constitution of the ITU, taking into account the recommendations of the Legal Subcommittee contained in the Agreement on the thirty-ninth session where they were presented. Hence, on the basis of Article 12 of its Constitution, it was decided to carry out studies on a procedure to measure and analyze application of these principles. This shows in a very specific way the inter-relation which exists between the two bodies, COPUOS and ITU, and the need, as has been said on previous occasions, to work closely together.

In this spirit, Colombia proposed in this forum to revise on the basis of specific variables, the definitions of rationality, efficiency, economy, fair access and the specific needs of developing countries to be able to measure this way the behaviour of each variable over the more than 40 years of exploitation of GEO.

At the same time, our delegation proposed to the Scientific and Technical Committee that it contributes to this process through the GOAT, that is the Geo-Occupancy Analyzer Tool, as a support in analyzing and to the studies proposed.

Chairman, as to the definition and delimitation of outer space, Colombia considers that this is the matter which deserves the complete attention of the Subcommittee given that lack of progress in this matter has created complete legal uncertainty. I mention it now given that we believe that there is a correlation between point (a) and (b) of this matter. We have put forward on previous occasions that the geostationary orbit, which has very *sui generis* characteristics, is part of outer space. Hence, we repeat our position in principle that geostationary orbit requires a special regime for which we need to continue studying it in the context of COPUOS. And I would be grateful in addition, I would like to point out how pleased I was to hear what the distinguished delegate of Greece said his time when it comes to extending this type of analysis and study to what he calls lower orbits.

That is all and I would like to repeat once again my thanks for previous comments on the need for greater relation between ITU and COPUOS. Thank you.

The CHAIRMAN: Thank you distinguished representative of Colombia for your statement on point 8(b) which is now under discussion in this Subcommittee. In your intervention, you drew our attention to the character of the geostationary orbit as a limited source and that should be available for all nations and particularly for developing nations and other countries with special geographical position.

Then you turned our attention to the necessity to ensure a fair access to this orbit and particularly with regard to the future needs of those that are not yet in a position to do it now. And you also emphasized the need of a close cooperation in this respect between the COPUOS and the ITU.

Finally, you called our attention to the fact that the geostationary orbit should have a special

regime and the questions relating to such a regime should be studied in the framework of the COPUOS.

Thank you very much for your statement.

I now give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you Chairman. I would like to add some points and if I might, to the data (day?) just referred to by our distinguished colleague, the representative of Colombia, on small (b) of our agenda of the day. I think, Chairman, we have to make a distinction between the two legal regimes which are different. We have the United Nations legal regime and we have that of the ITU. And the United Nations approach is that of the outer space treaties which is constitutional, if I could put it that way. It is legal political. On the other hand, the ITU approach is a purely technical approach. From the ITU legal standpoint, it is a matter of regulatory rules, I repeat, regulatory rules.

The problems raised by Article 44 of the ITU Constitution as completed by the Radiocommunications Provisions position the problems on a functional basis, as it were, because if one does not observe the ITU Rules, it is impossible, strictly impossible to have the outer space system, telecommunications aspects or other, to actually work. And this is why in 1982, in Nairobi, we actually established the principle of the use of the dual resource, or orbital position on GEO, in other words, on the geostationary satellite orbit, with associated radio frequencies. Because if one does not have a fair equitable use which is in conformity with the rules of physics and the rules of nature, it is impossible to have a functional way of operating outer space systems. When I refer to outer space systems, here I am not just referring to telecommunications but to all of the technological outer space applications using that orbit. In ITU, we do not have any other way of approaching this in that.

In 1998, in Minneapolis, during the ITU Plenipotentiary Meeting, we further improved the provisions of the former Article 33 of the Nairobi Convention by adding something to keep the pace with the development of technology and all other orbits, with reference to "and all other orbits". So the principle of equitable operations and reasonable and fair operations were made to apply to developing countries, economically and technically not so developed countries. These countries were also

protected, their rights were protected, vis-à-vis, telecommunications.

Now where are the problems actually? Yes, among the Nairobi and the Minneapolis criteria were also the criterion of geographics. In other words, due account was taken of the geographic position of certain countries. When this wording of Article 33 was crafted in Nairobi, which was repeated since then, with the assistance of the former Ambassador of Colombia at the time who has since passed and the Head of the former USSR delegation as well, an excellent telecommunication engineer, Este(?) Eteem(?), we had on the one hand the equatorial countries, and on the other hand, we had the countries of the northern region of the USSR at the time. There are also problems in connection with the use of this orbit, the GEO, and it is because of that the USSR did not have the system which was other than the world system, it did not use only the former.

Then there was a very simple recommendation issued by the World Radiocommunications Session which was held in October/November last year. This was actually an appeal to the Office of Radiocommunications, which is headed by a former Russian Vice Minister of Radiocommunications and a wonderful radiocom engineer who is mandated with conducting a study on future use of orbits, with due account to be taken, of course, with what we have decided here. But the ITU will never tangle or get involved with the legal regime of this region, whether it is GEO or other because we have four categories of orbits on the Moon.

The major problem which arises with regards to the protection of the rights of developing countries is as follows. Since, unfortunately, one still has the Berlin system, in other words the implementation of pretemporary(?) force in jury(?), in other words, first time, first served, says the delegate. There is, to a certain extent, an appropriation of certain orbital positions, even some low-Earth orbits which, I think, could deprive non-industrialized countries. I hate saying undeveloped countries. This is unacceptable to use this term after 40 years have past since colonization but after all, it is not up to us to intervene in ECOSOC decisions. Protection, as afforded, could be more effective if one were to apply planning to the use of GEO resources because if plans were laid, and we have three plans, as Annex 30, 30(a) and 30(b), to the Radiocommunications Regulations, where each country has its own orbital position plus associated frequencies thereto. If this planning system is extended, then there would be no question of protection arising. Of course, there would be a system

of some protection with this electronic coordination approach which could be facilitated.

There is another problem that I would like to draw the attention, especially of my friend and colleague from Colombia, as well as the other representatives from the equatorial region present here, as well as other countries which are not equatorial which either have the tendency or the ambition of having their own national satellites. I believe that they should see that it is necessary to have a criteria of technological and economical viability respected within the national satellite resources system. This is possibly a good area for regional or sub-regional cooperation where people from countries with common interest could have a common satellite because otherwise we would have the repetition of a very savage(?) phenomenon which has arisen since colonization where each country set up its own national airline, for example, and then this is proved over a certain stretch of time to be purely catastrophic for all of these airlines. Up until very recently, you could discover the African geography, for example, as from the prism of their airlines.

So I would conclude on the point that it is very important for all countries, all countries using the C-Band, which unfortunately is being claimed by the mobile companies which would like to apply the Broadband system or the fourth generation system, 4-G system. The C-Band is used by three quarters of the countries in our world and this is used for remote medicine, remote educational purposes, etc., with the public services that are using this Band. And now this is being threatened by certain companies, three or four mobile phone companies in the world. They are interested in taking hold of this to distribute their little diabolical devices so that people can watch soccer while they bask on beaches. This is the sort of use that is going to be made of these most advanced cutting-edge phone devices. So possibly we should give thought to the redistribution of radio frequencies in the C-Band.

Thank you very much Chairman for your attention and for bearing with me.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Greece. Thank you for your very profound contribution because you are a renowned expert in the field of telecommunications. You draw upon vast experience in the work of the ITU and related bodies. And you drew our attention during your presentation to the need to differentiate between the two existing regimes, that of the United Nations

system, if I can put it that way, and the ITU system. You were also so good as to give us more detailed information and a historical overview, one could say, of this problem, from its inception until the present day.

And finally, you put forward one particular point. You drew our attention to the C-Band. So many thanks. Of course, many of these things are still a matter for the ITU but it is still valuable information for us here, very valuable. Thank you.

(*Continued in English*) Distinguished delegates, I have still one speaker on my list of speakers, namely the distinguished representative of Ecuador. You have the floor Sir.

Mr. I. GARCÉS BURBANO (Ecuador) (*interpretation from Spanish*): Yes, thank you very much Chairman. My delegation would like to restate its attachment to principles and defence of legal equality of States laid down in the United Nations Charter. Ecuador considers that law is one of the few resources to which developing countries have, and for this reason, this essential reason, advocates the setting up of international space law which, takes into due account the urgent needs of countries which have not yet achieved or managed to gain benefit from the use of space technology for peaceful ends. As a full member of COPUOS, more than 40 years ago, the aim being to cooperate with the creation of an international legal framework, Ecuador has also played its part, and bearing in mind the legitimate rights and interests of developing countries and particularly those with a specific geographical position. We would like to point out these past situations to draw the attention of the international community to the fact that Ecuador's position should be properly understood, given that the subject of the geostationary orbit is a matter of national interest laid down in its Constitution.

Everyone knows the Principles of the 1967 Treaty which established that space activities must be conducted to the benefit of States, whatever their levels of development and prescribes a norm of non-appropriate international cooperation access to scientific data, no pollution international liability among others. Nonetheless, since the 1950s, since when humans have conducted activities in space, the benefits from research and exploration of outer space has not been apparent to developing countries. In this context, it will be desirable to find adequate mechanisms to allow for a balance between the interests of States which explore space and the benefit that its exploration should generate for all of humanity. *Inter alia*, we need to have legal regulation(?)

(regimentation?) which ensures fair access to resources of outer space.

Now, it leads us to maintain that the Working Group on Definition and Delimitation of Outer Space must continue with its work of analysis and at the right moment my country spoke out in favour of a unified legal regime for the navigation of an aerospace object and considers it opportune to mention that there is a serious legal void both in space law and in aeronautical law caused by the lack of a delimitation of air space. Hence, Ecuador would encourage us to continue examining this sub-matter.

In the year 2000, during the thirty-ninth session of the Legal Subcommittee, the work carried out concluded with the thematic separation of the definition and delimitation of outer space and geostationary orbit. It was decided at the same time that only for the first matter would the Working Group meet. Consequently, this thematic division did not mean that the matter of the geostationary orbit was lower than any importance. On the contrary, Ecuador considers that it was given the most important status which it deserves, one of the aspects most emphasized in this period of sessions with the strengthening of relations between COPUOS and the ITU in line with Article 44, reformed by the Minneapolis Convention of 1998 and it specifically approves the use of geostationary orbit for developing countries and with a specific geographical position. This legal exercise necessarily leads to recognition of the competence of COPUOS and this Subcommittee to examine legal and political aspects relating to this matter.

Due to an essential link, discussions on the definition and delimitation of outer space have ramifications for the topic of geostationary orbit, a legal treatment of which, let me repeat, is a priority.

Chairman, orbit, historically, has been used for a variety of things. The presence of developing countries there is very limited and countries with a specific geographical position is zero to date. So we should add that in line with the information available, it is likely that orbit could be saturated imminently. This situation necessarily means that interests and concerns of States, whether it is a social, political and legal nature, be addressed to avoid discriminatory practices in which safeguard only the interests of technologically advanced countries and so maintain some consistency with what is set out in the Millennium Declaration and Goals perceived for this.

From what I said, it remains clear that legal regimentation(?) by the United Nations must guarantee

developing countries and with a specific geographical situation, their presence with a voice and a vote in conciliation process on space in particularly in those cases where their interests are affected. We need the right to reserve our positions in orbit so that when our capacity to launch satellites is greater than it currently is.

Chairman, in conclusion, my delegation would restate the importance that the subject of the use of geostationary orbit has is of transcendental importance for developing countries like Ecuador and they should continue to be debated broadly to try and find consensus corresponding to the *sui generis* characteristics of this limited natural resource. And in this context, my delegation would urge the International Telecommunication Union to play a greater role within COPUOS and its subsidiary bodies. Thank you very much.

The CHAIRMAN: Thank you very much distinguished representative of Ecuador for your statement on agenda item 8(b). And in this statement you have explained in some greater detail the position of Ecuador as you did already in previous years but once again you have repeated it and elaborated it once again. And in your speech, you explained some, or emphasized some special points, for example, the fact that the developing countries and so far can use only in a very limited way the benefits of the exploration of outer space and of the geostationary orbit and as to the countries in a special geographical position the same are still last year.

Then you emphasized the need for delimitation of the air space and the outer space and the relation of this particular issue with the use of the geostationary orbit which is also a new aspect of this complex problem. You also mentioned the necessity to improve and extend the cooperation between the COPUOS and the United Nations and the ITU in this particular field.

And finally, you emphasized once again that the theme of use of the geostationary orbit and particularly by the developing countries and the countries with special geographical position is important for your country and for other developing countries. And, therefore, you also emphasized the need for close cooperation of the ITU with our Committee, with the Committee on the Peaceful Uses of Outer Space, and greater participation in our work. Thank you very much.

I still have one more speaker on my list and it is the distinguished representative of Venezuela.

Ms. _____(?) (Bolivarian Republic of Venezuela) (*interpretation from Spanish*): Yes, thank you Chairman. The delegation of the Bolivarian Republic of Venezuela repeats its commitment to the principle of freedom of access to outer space on an equal basis in favour of all States and without any discrimination, whatever its level of scientific, technical or economic development and also emphasizes the importance of promoting fair and rational use of differing orbital positions used by satellites, its exclusive use for peaceful ends at the distribution of its benefits to all. We should think about fair access for all nations that their use of geostationary orbit and this could be threatened by the increasing greed of private, that is commercial operators using this limited natural resource. Geostationary orbit and its links with telecommunications represents a strategic resource for humanity, for its potential, for the implementation of social programmes to the benefit of the most needy populations, those who need greater education and medicine and the guarantee that access to means of information and communication so as a source of these things to bolster their development and foster exchange of knowledge without the involvement of commercial interests. Thank you Chair.

The CHAIRMAN: Thank you distinguished representative of Venezuela for your contribution to our discussion on the geostationary orbit in which you emphasized the need for ensuring the access to the geostationary orbit for all States and, of course, with special regard to the developing countries and for fair distribution on positions in this area. You used the term, I think, that the geostationary orbit, if I understood you correctly, is a strategic resource for all humanity and therefore it is necessary to foster development of just use of this particular area.

I do not have any other speaker on the list of speakers. Is there any other delegation wishing to speak on item 8(b)?

Yes, I recognize the distinguished representative of Indonesia to whom I give the floor.

Mr. _____(?) (Indonesia): Thank you Mr. Chairman. With regard to the issue of the GSO, my delegation would like to reiterate our position. The use of GSO should be based on the Space Treaty and can be fully accessed by all States. It is a limited natural resource with *sui generis* characteristics that risk saturation. We have heard by the statements of some space-faring States that so asked that the data taken from this orbit is provided

fully for all mankind. But we need further assurance that the utilization of the GSO orbit itself has to be extended to and for the benefit to all countries by applying the principle of equitable access for all States, taking into particular account the needs and interests of developing countries.

The CHAIRMAN: Excuse me distinguished representative of Indonesia, unfortunately, something is wrong. Either somebody uses a mobile or there is some disturbance. Please, Mr. Engineer, could you ... Is it now in order, Mr. Engineer. Yes, he is nodding. You have the floor again. Repeat everything but the _____ the last part of the first part of your statement.

Mr. _____ (Indonesia): Thank you Mr. Chairman. With regard to the issue of GSO, my delegation would like to reiterate our position that the use of GSO should be based on the Space Treaty and can be fully accessed by all States. It is a limited natural resource with *sui generis* characteristics that risk saturation. We are _____(?) by the statement of some space-faring States that so ask that the data taken from this orbit is provided fully for all mankind but we need further assurance that the utilization of the geostationary orbit itself has to be extended to and for the benefit to all countries by applying the principle of equitable access for all States, taking into particular account the needs and interests of the developing countries with a certain geographical position even if some currently do not have the capacity to launch an object to the GSO. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of Indonesia for your contribution by which you reiterated the position of your country in this respect and emphasized the special characteristic of the geostationary orbit that should be governed by the principle of equitable use of all States and by ensuring also the interests of those States which have not had the possibility to do so.

I now give the floor again to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you Chairman. Sorry for taking the floor again but I must vow that I just could not resist, a couple of minutes ago we were the witnesses of this radio-electrical cataclysm. It was a demonstration of those mobile diabolical devices at work you see. Our colleague was using his laptop and he had a mobile connection and that is what set off those disturbances. He unwittingly saturated the telecommunications here. So this is why we have to be

much stricter, you see, with regard to the persons using mobile devices. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of Greece for your appeal. I think that I would just like to recall that at the beginning of our session I was already asking people to switch off their cells.

(*Continued in English*) Again, is there any other delegation wishing to speak now on this particular point?

I see none.

So I believe that for the time being this discussion on item 8(b) is now exhausted. We will, therefore, continue our consideration of agenda item 8(b) this afternoon.

Now we have still on our agenda for this morning's session, item 9, Nuclear Power Sources.

Are there any speakers on this item?

Yes, I have one speaker, namely the distinguished representative of France.

Mr. _____ (?) (France) (*interpretation from French*): Thank you Chairman. Chairman, the French delegation is noting with satisfaction that there is a joint meeting between the Scientific and Technical Subcommittee of our Committee and the Agency, the IAEA, and we would like to encourage the pursuit of this work on nuclear energy sources within the Scientific and Technical Subcommittee so that our Committee subsequently will also be able to broach this issue.

For this reason, the French delegation would like this issue to remain on the agenda of our Subcommittee. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you very much distinguished representative of France for your contribution. You have indeed noted with satisfaction the developing cooperation between the Scientific and Technical Subcommittee and the IAEA and their joint efforts. And you have also called for this agenda item to be maintained on the agenda for an upcoming session. Thank you very much.

Are there any other speakers under this agenda item?

(*Continued in English*) So I do not have any other speaker for this particular point, for agenda item 9, and therefore we could perhaps postponed further consideration of this particular point for the session in the afternoon.

And now we should start our consideration of agenda item 10, 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. Yes, that is also on our agenda for this morning.

I have two speakers on my list of delegations wishing to speak. The first one is the distinguished representative of Italy.

Mr. S. MARCHISIO (Italy): Thank you Mr. Chairman. I would like, if there is no objection, you to allow me to read the statement of the observer representing UNIDROIT. May I go ahead?

The CHAIRMAN: Excuse me, I switched off for a while and did not listen to your kind request. Of course, you are permitted, you are allowed to do so, on the contrary we are glad that you assumed this role and that in this way we can hear the statement prepared by the representative of UNIDROIT who unfortunately is not among us. You have the floor Professor Marchisio.

Mr. S. MARCHISIO (Italy): Thank you very much Mr. Chairman. I will do that in my capacity as Chairman of UNIDROIT Intergovernmental Committee of Experts in charge with the drafting process of the Space Assets Protocol to the Cape Town Convention and, of course, this is also the wish of the observer from UNIDROIT, Mr. Martin Stanford.

The statement is the following.

The International Institute for Unification of Private Law greatly appreciates the invitation it has received from the United Nations Office for Outer Space Affairs to report to the forty-seventh session of the Legal Subcommittee on the developments that have taken place since the last session of the Legal Subcommittee concerning the preliminary draft Protocol to the Cape Town Convention.

In the first place, it wishes the Legal Subcommittee every success in its deliberations, greatly regrets its inability to be represented on this occasion due to the supervening ill health of the observer who was due to represent it.

UNIDROIT is most pleased to bring promised(?) news to the Legal Subcommittee regarding the latest developments in connection with its preliminary draft Protocol. While the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment, continue to attract new Contracting Parties, there has been substantial progress with the moving forward of the preliminary draft Protocol on Space Assets.

Thus, the promising(?) news that UNIDROIT was able to bring to the last session of the Legal Subcommittee regarding the process accomplished in the intersessional work decided here upon by the UNIDROIT Committee of Governmental Experts at its second session, has been amply confirmed over the past 12 months.

The first major development to be reported in this connection concerns the Second Government Industry Meeting, held in New York on 19 and 20 June 2007. On that occasion, a representative sample of the governments serving on the Committee of Governmental Experts and of the International Commercial Space Financial and Insurers Community reached a significant conclusion that the substantial work on the key and outstanding issues referred for intersessional work constituted a sound basis for an early resumption of the intergovernmental consultation process. This conclusion was reached after the meetings consideration of reports prepared, *inter alia*, on the rules needed to extend the application of the Convention on International Interests in Mobile Equipment in respect of space assets to debtors rights and related rights. The most appropriate criteria to be employed for the identification of the various categories of space assets and compassed(?) by the current sphere of application of the preliminary draft Protocol and the extent to which creditors rights under the Convention is applied to space assets should be capable of being cut down where the space assets in question is performing a public service.

These reports were the result of intensive consultations carried out by the UNIDROIT Secretariat, valiantly assisted by Professor Sir(?) Roy Good in his capacity of Advisor to the UNIDROIT Secretariat on the Committee of Governmental Experts, with key governments and representatives of the International Commercial Space Financial and Insurers Communities.

The principle conclusion reached at the New York meeting concerned the sphere of application of

the future instrument. This arose out of the meeting's consideration of the vexed(?) question of the criteria capable of being employed for the purposes of the registration of the considerable variety of space assets currently within the preliminary draft Protocol's purview.

The difficulties that this consideration threw up at the practical level was one of the reasons which led the meeting to conclude that it would be desirable to narrow the sphere of application of the Protocol so as to facilitate the compilation of the Protocol itself. It was suggested that the most appropriate way of achieving this solution was by limiting the application of the draft Protocol to those space assets which were currently the subject of the type of asset-based financing contemplated by the Convention of Cape Town.

Rather than seeking to be over-ambitious, in recognition of the unwillingness of key sways(?) of opinion to contribute their time to a project conceived also, is a blueprint for future developments in the financing of commercial space activities. In this connection, the conclusion was reached that it would suffice(?) for the preliminary Protocol to concentrate essentially on the satellite itself which, in the opinion of the meeting, represented at least 90 per cent of the assets covered by the draft Protocol which were currently the subject of the type of financing that it was designated to facilitate.

The second major development which arose out of the New York meeting and in particular the broad agreement reached there as to the satisfactoriness(?) of the intersessional work accomplished to date is a basis(?) for the earlier reconvening of the Committee of Governmental Experts, reflected the awareness of the meeting that it would, however, prior to the Committee being reconvened, be essential to bid consensus around important conclusions that the New York meeting had reached, both among government and international commercial space financial and insurance community.

With this in mind, following the New York meeting, UNIDROIT conducted wide-ranging consultations with the key governments and representatives of the key players in the international commercial space communities with a view to determining the best meaning of taking the preliminary draft forward and in particular building the sort of broad consensus advocated by the New York meeting.

The overwhelming consensus that emerged from these consultations was first as to the importance

of taking the process forward in a timely fashion on the basis of the provision conclusions reached in New York, and secondly, that it would be appropriate for this purpose to create a new vehicle designed to build the necessary degree of consensus.

There was agreement, moreover, that the format employed in the intersessional meetings to date, which had proven so successfully in permitting the reaching of conclusions satisfactorily to both government and industry, namely having representatives of key governments and representatives of leading players in the international commercial space communities participating in these deliberations on an equal footing, was the best guarantee for the achievement of the sort of broad consensus capable of ensuring the realization of a viable instrument.

There was a Coding(?) Agreement that it would be desirable to ensure that this format continue within the new vehicle.

UNIDROIT accordingly laid the proposal before the General Assembly of UNIDROIT member States at its sixty-first session in Rome, 29 November 2007, for the setting up a new Steering Committee under the auspices of UNIDROIT, with the government represents of the international commercial space financial and insurers community that had participated in the intersessional meetings and to date as members thereof and participating therein on an equal footing for the building of broad consensus around the provision conclusions reached in New York.

This proposal was endorsed by the General Assembly and the Government of the Federal Republic of Germany subsequently kindly agreed to host the launch meeting of such a Steering Committee in Berlin from 7 to 9 May 2008. Invitations to participate in this meeting have been sent out on the basis determined by the General Assembly, namely as a rule to those governments and representatives of the international commercial space communities having participated in the intersessional meetings to date.

The principle aims of this Berlin meeting will be first to consider the sort of drafting solutions that have to be envisaged as a means of implementing the provisional conclusions reached in New York, and secondly, to consider the most appropriate means of organizing the building of the necessary consensus around such conclusions.

UNIDROIT greatly values the input being made by members of the United Nations COPUOS to

the important intersessional work that has, it believes, already attained important results and looks forward to working closely with them in the new Steering Committee.

Once again, it greatly regrets its inability to be with members of the Legal Subcommittee at its current session and very much hopes that it may remedy this unfortunate situation next year.

And this ends the statement of the UNIDROIT observer.

I thank you distinguished delegates for your patience. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Italy for your kind presentation of the statement by the observer representing UNIDROIT in this Subcommittee and you did it in your personal capacity of Chairman of the Governmental Experts of UNIDROIT. I believe that this information has been very useful for us because the negotiations and discussions within the UNIDROIT continue and seeking in particular close cooperation and agreement between the representatives of the most interested governments and the commercial circles and the banks that are involved in this particular project. I believe that the text of this statement would be available to all delegations so that it will be up to you to read it and to derive the conclusions from this detailed report.

I still have on my list of speakers two other delegations for the time being and the first among them is the distinguished delegate of the United States of America.

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, UNIDROIT, and the development of a Space Assets Protocol.

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. The Protocol would accomplish that by creating a framework under the

Cape Town Convention, the Treaty-based secured financing interests in assets used in outer space commercial activities.

Such a framework has already been established for air space so is coordinated with the rights and obligations under existing multilateral treaties applicable to commerce in air space. The same coordination has taken place and will continue with regard to the Outer Space Treaty of 1967 and other related instruments previously elaborated by COPUOS.

We believe that it is appropriate that the examination of the preliminary draft Space Assets Protocol has remained on the Legal Subcommittee's agenda so that appropriate review of developments in this regard can continue.

We would like to comment on two issues. First, as we have noted previously, there has been a lack of consensus on the possibility of the United Nations serving as the Supervisory Authority for the registry for financing interest to be established under the draft Protocol and we do not see further consideration of this aspect as useful at this time.

Another issue is the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regime applicable to outer space. As we and other members of this Committee have stated before, the Space Assets Protocol is not intended to and as formulated would not affect rights and obligations of States Parties to the outer space treaty system with the rights and obligations of member States of the International Telecommunication Union.

Indeed, our delegation propose that this principle be explicit in the text of any Space Assets Protocol, recognizing that UNIDROIT's draft Protocol is intended to address only the distinct issue of private transactional law related to financing for commercial space activities.

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. While the UNIDROIT Space Assets Protocol will be negotiated by UNIDROIT member States with the UNIDROIT process, we note that the process has included many members of the Subcommittee who we know that also that practice at UNIDROIT, to consider requests from non-member States who wish to attend such sessions. We also note that while work on the Space Assets Protocol was deferred while UNIDROIT was concluding a second

Protocol to the Cape Town Convention Other Matters, we understand that informal discussions are expected to be resumed in the near future leading to a resumption of intergovernmental negotiations on space assets at UNIDROIT.

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: Thank you very much distinguished representative of the United States of America on agenda item 10, UNIDROIT Space Assets Protocol. I think that you, among other ideas, emphasized that it would be appropriate that the examination of the preliminary draft Space Assets Protocol remained on the Legal Subcommittee's agenda so that appropriate review of developments in this regard would continue.

You also commented the two issues that were discussed in past years in greater detail in this Subcommittee and took position to these issues, to further discussions on these issues. You also proposed that the principles that there is no disharmony between the expected Space Assets Protocol and the United Nations outer space law, I would say, that there is not disharmony between these two different legal sets or regimes, if you wish, and that it should be explicitly stated in the text of the Space Assets Protocol.

And finally, you also commented the participation of the members of this Subcommittee of the Committee on the Peaceful Uses of Outer Space and also eventually non-members of the Subcommittee in the further discussions of UNIDROIT on this important topic.

And given the ongoing work on this topic, you also expressed the request for considering favourably the continued inclusion of this topic as a one-year agenda item.

Thank you very much distinguished representative of the United States.

I now give the floor to the distinguished representative of China.

Mr. G. TANG (China) (*interpretation from Chinese*): First of all, I would like to thank the delegate from Italy for his statement on behalf of UNIDROIT. The Chinese delegation agrees to the adoption of rules and regulations to regulate outer space activities. We appreciate the efforts made by UNIDROIT to complete the work on the Space Assets Protocol without delay. We have already received their invitation to the Conference in Berlin next month. The Chinese delegation will send some representatives to that meeting. We will participate in that meeting in a constructive manner.

Mr. Chairman, the existing space law has played an important role in regulating the activities in inviting activities carried out by States and ensuring the interests and rights of countries in space and in promoting cooperation in outer space. At the same time, with the accumulation of our practices in outer space, we can see the deficiencies and demerits in the existing space law. Therefore, to formulate a Space Assets Protocol is an attempt to make up the deficiencies without compromising the rights and principles and regulations laid down in the existing outer space treaties. Therefore, it is a very good example for carrying out such work. It sets a good example to supplement and make up the deficiencies in the legal regime and this is also good practice for making up deficiencies in other aspects related to space activities.

Mr. Chairman, we believe that private and commercial space activities should be guaranteed sufficiently by a legal order. The United Nations or other appropriate bodies should play a useful role in this regard. They can play a role in normalizing or regulating space activities. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of China for your contribution to our discussion on the item relating to the UNIDROIT Project of Space Assets Protocol. I have taken note of your position. It means that you appreciated the efforts of UNIDROIT in this particular field and that your country will be represented in further discussions that have been convened in Berlin. I also appreciated your evaluation of the importance of regulations of commercial activities and financial aspects of these activities in outer space. Once again thank you very much.

I still have on my list two other delegations, one of them is the distinguished representative of Japan to whom I give the floor now.

Mr. _____ (?) (Japan): Thank you Mr. Chairman. Our delegation is thankful to the distinguished delegate of Italy about the valuable information about the UNIDROIT proceedings. Recently, the Japanese Government was also informed from the International Institute for Unification of Private Law, UNIDROIT, about its current status and development of the future Space Assets Protocol to the Convention on International Interests in Mobile Equipment with a view to beginning said Protocol to compression(?).

Based on the result of the above-mentioned New York meeting, this Legal Subcommittee will be able to proceed to the substantial discussion. Our delegation is accordingly proposed the in-depth consideration to be conducted at the forty-eighth session of the Legal Subcommittee in 2008. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of Japan for your contribution on item 10 of our agenda and in this contribution in plenary(?) you have expressed the interest of your delegation in further consideration of the results of intersessional discussions in UNIDROIT and on the thorough consideration of this issue again at the next session of the Subcommittee.

I now give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Chairman. On this agenda item, I would like to reiterate our opposition to firstly the institutional issue. We have not changed our views that the United Nations is not the appropriate body to serve the interests of banks and other financing institutions. The goal of the United Nations is eminently political and human. Possibly other organizations could assume this role. We have spoken about this extensively so I do not believe that it is necessary to burden our colleagues with the line of argument on this aspect.

As to the substance of the preliminary draft Protocol in question, we fully appreciate the efforts of UNIDROIT among this line but I believe that there is at least one major issue that we do not yet have a satisfactory response on and that is as follows. The competence, the national competence as regards the enforcement of the judicial decision taken by national courts as regards outer space. This is something which certainly has to be reviewed in connection with the provisions of the Protocol.

Chairman, outer space is not open to any activity on the part of the States, legal activity by the States. They are acting in outer space as agents of the international community and I do not care to repeat the words "public international services" but that is what I have in mind. It is up to the States to ensure the operations of services in outer space, be they radiocommunications, satellite systems, etc., it is through the licensing system that the States could intervene possibly thereby ensuring the viability, the economic viability, not just through technological viability, of private enterprises undertaking ventures in outer space.

Now if there are issues of economic problems, possibly bankruptcies or other problems, for example, in the United States, there was the real estate problems that were recently experienced and this has had serious effect on the United States economy, why intervene in outer space? I think that it is necessary to find ways to protect activities without having an intervention of the private into public affairs in outer space. If there is no certitude of non-breach of international rules in outer space, then possibly we could accept regulation of wrongs(?) because that is what is at stake, it is a credit security. Usually, normally that is what the aeronautics industry extends to, its clientele. So possibly it is a matter of covering creditor interests, vis-à-vis, the interests of industry, of the aeronautics industry. And the latter has its own banks and its own financing institutes to finance private undertakings, as well as public actually.

I do not believe that the Legal Subcommittee is empowered into these details of UNIDROIT. The only thing that we can do is to be informed as to the details of negotiations, of the studies undertaken, etc., but we should not, ourselves, intervene and delve into the substantive details of the draft on Space Assets.

That is our proposal Sir and, of course, we can contribute to the Berlin meeting which I certainly hope does take place because it is several years now that we have not had a meeting of governmental experts staged after all. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you distinguished representative of Greece for your contribution on item 10 of our Subcommittee's agenda. You have mentioned and reiterated the Greek delegation's view on this matter which you have already expressed at previous sessions of our Subcommittee and at various levels. A debate was held on this matter. You have also referred to the connection with the institutional aspects of the matter. You have noted with satisfaction the efforts of

UNIDROIT and you have also developed various ideas, *inter alia*, dealing with the competence of national judicial rulings with regard to outer space issues and cases. And you have also, I feel, made interesting comments on international public services extended. These were your private comments.

I would just like to recall that the objective of today's session of our Subcommittee is to share information on developments with regard to UNIDROIT and its UNIDROIT which is the leading body on this avenue of exploration. We can just keep ourselves informed on what is going on there.

Now I would like to give the floor to the distinguished representative of Belgium. You have the floor.

Mr. J.-F. MAYENCE(?) (Belgium) (*interpretation from French*): Thank you Chairman. I will be all the briefer since I would be following what has just been said by the distinguished representative of Greece, my friend, and which you have yourself said Chairman. Belgium has always been noting with satisfaction the initiatives taken by UNIDROIT and this without any prejudice to the decision to be taken on space assets, we have noted various delegations saying that they wish to have this item be maintained on the Subcommittee's agenda. We have no quarrel with that. We just believe that your repeated reference to this is quite timely. It is necessary for us, indeed, to keep up with what is happening in UNIDROIT as a forum on space assets but possibly we should keep away from references to the substance here which actually are more closely related to the competence of UNIDROIT rather than our Subcommittee.

Belgium is a member of UNIDROIT and if we have something to say on the draft on Space Assets Protocol, we will do that within UNIDROIT. This matter, I believe, initially surfaced here in the Subcommittee to identify the various points of compatibility between our purview and the other forums mandated purview. What we would like to know is whether this particular preliminary draft raises any new points of issues regarding the compatibility with regard to space law which would be different from previous points of compatibility or common denominator which have been noted. But I think that we could usefully draw a line of distinction, demarcation between the two reserves of interest.

I would like to also note with interest what was said by the United States delegation as to the United Nations as a Supervisory Authority which could be given to the Office for Outer Space Affairs in

particular. You know that Belgium had some problems with this idea so we noted with satisfaction what the United States has said in this regard, regarding this matter being set aside within the Legal Subcommittee's work. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you very much Belgium for your comment. You are right on this institutional point, as Greece has flagged. That is certainly the case for this session.

As for the results of the consultation, other fora, for example, UNIDROIT, certainly we are going to be awaiting further information on developments that would be forthcoming and, of course, we will be maintaining the interests of COPUOS in this particular angle and approach.

I do not have any other speaker for this particular item concerning the developments in UNIDROIT. Is there any other delegation wishing to take the floor?

No, I see none.

So, ladies and gentlemen, I believe that we can now postpone further discussion on this item and we will return to this item this afternoon again.

Distinguished colleagues, before I adjourn this meeting, I would like to remind you of our schedule of work for this afternoon.

We will meet promptly at 3.00 p.m. At that time, we will continue our consideration of agenda item 8(a), the Definition and Delimitation of Outer Space, and agenda item 8(b), the Character and Utilization of the Geostationary Orbit. We will continue and hopefully conclude our consideration of agenda item 9, Nuclear Power Sources. We will also continue our consideration of agenda item 10, 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. We will also begin consideration of agenda item 11, Capacity-Building in Space Law.

And time permitting, the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space will hold its fifth meeting.

I would also like to remind delegations that the Secretariat calculated earlier in this week the provisional list of participants distributed as

Conference Room Paper No. 2 and would like to request delegations to kindly provide the Secretariat with possible corrections to the list by the end of Monday, 7 April.

Are there any questions or comments on this proposed schedule?

I see none.

And, therefore, this meeting is adjourned until 3.00 p.m. this afternoon. Bon appetit.

The meeting adjourned at 12.39 p.m.