

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

Unedited transcript

797th Meeting

Wednesday, 1 April 2009, 10 a.m.

Vienna

Chairman: Mr. V. Kopal (Czech Republic)

The meeting was called to order at 10.24 a.m.

The CHAIRMAN: Good morning distinguished delegates, I now declare open the 797th 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 12, Proposals to the Committee for New Agenda Items. At the end of the morning we will have one presentation pertaining to agenda item 11 by the representative of Belgium entitled "Belgian Space Law".

Thereafter, the Working Group on Agenda Item 11, National Legislation Relevant to the Peaceful Exploration and Use of Outer Space, will hold its third meeting.

Are there any questions or comments on this proposed schedule?

I see none.

Definition and delimitation of outer space, and (b) 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 6)

But before we consider our agenda item for this morning, I would like to inform you that I have had a request from a delegation to allow it an opportunity to make a statement under agenda item 6(a), the Definition and Delimitation of Outer Space, and (b) 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.

With your permission, I would like to invite the distinguished representative of Saudi Arabia to address item 6.

You have the floor Sir.

Mr. M. A. TARABZOUNI (Saudi Arabia): Thank you Mr. Chairman. For to make it easy, I will speak in English.

The delegation of the Kingdom of Saudi Arabia is of the view that the current and foreseeable aviation civil mission would not perform their operations above 100 to 130 miles where there is a potential danger of collision of enormous spacecraft. In this connection, we would like to propose to establish a border between air space and outer space in that region.

Our delegation wishes to propose to the Subcommittee to request, through the Secretariat, representatives of the International Civil Aviation Organization Secretariat, to deliver at the forty-ninth session of the Subcommittee in 2010, a comprehensive presentation on the current and feasible (foreseeable?) aviation civil missions with a particular emphasis on

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the upper equatorial limit of their operation. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Saudi Arabia for your brief contribution by which you attached our attention to a certain danger or risk of collision of special space objects and you suggested to establish a border between air space and outer space for this particular reason and you also addressed with a request the International Civil Aviation Organization. Thank you very much.

I recognize the distinguished representative of Indonesia.

Mr. D. D. AGUSMAN (Indonesia): Thank you Mr. Chairman. My delegation would always support any ideas that could contribute to the issue of definition and delimitation of outer space. Therefore, the idea proposed by the delegation of Saudi Arabia would be timely and even relevant to be considered by this Committee. So, therefore, my delegation supports for the engagement of the Secretariat of the ICAO for the presenting of comprehensive presentations on the current and foreseeable civil aviation activities which might affect the activities in the outer space. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished delegate of Indonesia for your contribution by which you supported any idea relating to the definition because of your constant position and you specifically supported this request addressed to the Secretariat of the ICAO. Thank you very much.

Any other delegation wishing to say something about this particular issue?

I see none.

Yes, perhaps in order to conclude the discussion on this specific request that has been discussed right now, we could also decide whether you would support the idea of asking the Secretariat to prepare a document on this for the next session of our Subcommittee in 2010.

I see no opposition, yes, I see the distinguished representative of the United States.

Mr. S. McDONALD (United States of America): Thank you Mr. Chairman. Which Secretariat are we referring to? Ours or ICAO's?

The CHAIRMAN: Yes, sorry, perhaps I mentioned our Secretariat but it should be the Secretariat of ICAO.

I see no further requests for the discussion so may I take it that you agree with this particular request addressing the Secretariat of ICAO?

Yes.

It is so decided.

Distinguished delegates, I would now like to continue our consideration of agenda item 12, Proposals to the Committee for New Agenda Items.

I would like to start today's considerations by recalling that yesterday the Conference Room Officers distributed a non-paper containing a list of items presently on the agenda of the Subcommittee, as well as a list of those proposed items that were retained for possible future consideration at the last session of the Subcommittee in 2008.

In yesterday's discussion under agenda item 12, the Subcommittee was informed of a proposal for a new agenda item entitled "Regulation of Dissemination of Space Imaging Through the World Wide Web" by the delegation of Saudi Arabia.

In addition, the delegation of Colombia made a proposal that under the existing regular agenda item 6(b), 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, the Subcommittee should play a role in a contribution by COPUOS to the work of the International Telecommunication Union, in particular to: (i) and ITU Workshop on the Use of Spectral Orbit Resources; (ii) a study that will be carried out by the Working Group 4(a) of ITU/R in 2011; and (iii) the Eleventh World Radio Conference of ITU, to be held in the second half of 2011.

The nucleus of this request is that the Subcommittee should play a role in a contribution by COPUOS to the work of the International Telecommunication Union in those particular points.

The distinguished representative of Greece has the floor.

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

Could you perhaps clear up some doubts that I have? I have doubts about accepting what you have just read out. First of all, the Legal Subcommittee does not have an intersessional representation. That is the first point.

Next, the Legal Subcommittee has no knowledge of a specific nature required to be involved in these types of deliberations, the Radiocommunications Conference and other similar events. These are very highly specialized working groups. They consist of experts, highly-qualified experts in the area of telecommunications. And if this proposal came from the Scientific and Technical Subcommittee, *mutatis mutandis*, I could perhaps accept such a possibility. But to have on an institutional level, a representation in these types of meetings, regulatory or recommendation meetings, and you will recall we have discussed that before, the various workshops of ITU are advisory in nature, they come up with recommendations. So how can we institutionally become involved or be represented?

The only thing that we could perhaps envisage is having not COPUOS, not the Legal Subcommittee, but the Office for Outer Space Affairs to have a representative. What could be the contribution even of the Office for Outer Space Affairs to a workshop of that sort which is an ITU event? To be present at the opening session, a solemn official meeting of plenipotentiary representatives is one thing and there will be such a meeting next year in Mexico. But to be involved in these workshops is different.

In this type of thing, usually it is a representative of the United Nations Secretary-General who addresses the Conference and conveys a message of greetings.

Institutionally speaking, this is not appropriate. The ITU is not a specialized agency even, it is an international technical organization. That is what it used to be called and I still call it that.

And here, we are in a strictly political forum, obviously with the participation of legal and technical and scientific experts, whether it is a political forum.

That is why I find it somewhat exorbitant, if I can use that word, to call for such a participation. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for his contribution. You have expressed a view on the possibility of acting upon these suggestions. Thank you very much for the reasons that you have expounded.

(*Continued in English*) Is there any other speaker that would wish to speak?

Yes, I now recognize the distinguished representative of Saudi Arabia.

Mr. M. A. TARABZOUNI (Saudi Arabia): Thank you Mr. Chairman. I think in my presentation I asked that since the ITU, it is an observer in our Committee, that there will be a meeting between our Secretariat and the ITU to propose something to the meeting in 2010, through the United Nations, through whatever, because it is most of the countries who are here, you know, they are a member of the ITU and they have the right to speak up here or there. Thank you.

The CHAIRMAN: Thank you very much distinguished representative of Saudi Arabia for your contribution. Thank you very much.

Once again the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Mr. Chairman, I am afraid that colleagues, in the plural, have not entirely taken in the point that according to the Statute of Specialized Agencies or International Independent Organizations, each has a specific legal statute, each has a specific legal framework or mandate, and it is only at the level of the Secretary-General of the United Nations that ITU workshops like this can be addressed. If someone comes here to represent ITU, he or she would be representing the Secretary-General of the ITU.

And it has happened, you will recall we have had the report on ITU activities related to the peaceful uses of outer space, nothing else, which is to say that ITU could not and did not become involved in our discussion of substantive issues here. And that is the way it should have been.

Now, as regards representation of the United Nations at ITU, it is a mirror image of the same situation. We cannot be involved in their substantive deliberations but we can be represented at a high level as the United Nations at their major official events.

But the Conference on Radiocommunications and Workshop on Orbit Resources, that is something else.

Now we need to be very clear. We cannot do anything other than convey greetings on behalf of the United Nations and that even goes for the Radiocommunications Conference. We can say this is a representative of the United Nations Secretary-General. It can be Madam Othman or Mr. Hedman and that representative could report on decisions taken within the framework of both the Scientific and Technical Subcommittee and the Legal Subcommittee with regard to, for example, the geostationary orbit, or the GSO or other issues.

That is possible but we cannot be involved in the substantive deliberations of those meetings. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for his contribution and information with regard to the independence of specialized agencies and other organizations within the United Nations families. They are part of the system of United Nations organizations and the representative of the United Nations is usually invited to attend ITU conferences to make a statement not merely to convey greetings to the Conference but also to provide an outline of the way the United Nations perceives the role of this or that Conference. At least that has been my experience. I, myself, once represented the United Nations at an ITU conference.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Yes, you are totally right but you were limited in your role as representative. You informed the Plenary or the Conference which had as an objective the drafting of an international treaty. I am talking about specifically the three major ITU Conferences that have the mandate to do that.

And when you acted as representative, you spoke on behalf of COPUOS or the Scientific and Technical Subcommittee and said we have done this and that and so forth, to report to them on what we have done here, which is different from participating in their substantive work to draft some regulatory instrument or treaty with regard to radiocommunications or to develop recommendations for their subsidiary bodies.

So that is the slight clarification but we seem to be in agreement. There is no difference of opinion between us. Thank you Mr. Chairman.

The CHAIRMAN (*interpretation from French*): Thank you for your understanding once again distinguished representative of Greece.

(*Continued in English*) Is there any other speaker wishing to express his or her opinion on this particular point?

I see none.

Distinguished delegates, after a short consultation between the Secretariat and myself, we came to the conclusion that the second of these proposals that have been introduced by me, it means that concerning the existing regular agenda item 6(b), is out of question now because it was opposed by one delegation and the other delegations remain silent and not expressing any support for it so I believe that it could not be adopted.

On the other hand, you should still express your attitude to the proposal made by the delegation of Saudi Arabia, it means that it was proposed, a new agenda item was proposed entitled "Regulation of Dissemination of Space Imaging Through the World Wide Web". What is your position in relation to this proposal?

May I assume that this proposal could be admitted, accepted?

The distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): I apologize Mr. Chairman, I did not entirely understand the reason for this proposal. Could you be so kind as to read the proposal again and maybe explain what the reason was? Why do we want to introduce into our agenda a subject that does not seem to be a legal issue to me? Maybe I did not entirely understand. So if you would kindly go over this proposal once again, I would appreciate that. Thank you very much Mr. Chairman.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece. The proposed agenda item would be "Regulation of Dissemination of Space Imaging Through the World Wide Web".

(*Continued in English*) ... and probably explanation of the reason as you kindly requested.

I will give the floor to the author of this proposal, it means to the distinguished representative of Saudi Arabia.

Mr. M. A. TARABZOUNI (Saudi Arabia): Thank you Mr. Chairman. Well, concerning what it has been in the Internet and the World Wide Web, it is being used by terrorists in Saudi Arabia to get the house who was in the court trying to discuss a matter of criminals of those terrorists. And, therefore, I think, this should be from the sovereignty of my people and the sovereignty of all people of the world because there is a subject where you can go in there and you put your name, the name of the people, you look at the house, you put the name of the street, the number of the house and everything. So that means it is absolutely, it is an interference in my sovereignty. Thank you.

The CHAIRMAN: Thank you distinguished representative of Saudi Arabia for your interpretation of the item that you had proposed to be included in the agenda of our Subcommittee.

Any other observations, requests?

The distinguished representative of Belgium has the floor.

Mr. J.-F. MAYENCE (Belgium) (*interpretation from French*): Thank you Mr. Chairman. First of all, I would like to thank the distinguished representative of Saudi Arabia for his proposal which seems interesting to us. That said, we have some problems with accepting this proposal and that is a problem for this Subcommittee and even for the Committee as such, COPUOS. These issues, privacy of the use of data, are not part of outer space law. We know that outer space law is a regime of free access to nations, historically speaking, when we are talking about the use of space-generated data and information, either through the Internet or other media, we believe that this is not about space activities as we understand them in this forum. Thank you very much.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Belgium for his comment. You have expressed your doubt as to whether this item is really part of our Committee's mandate.

(*Continued in English*) Any other observations?

Yes, the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much Mr. Chairman. First of all, I recognize the sensitivity

of our colleague and my friend from Saudi Arabia as far as this issue is concerned. But I must, for legal reasons, align myself, associate myself, with the comment just made by my distinguished colleague and friend from Belgium which is to say that it is a question of our mandate, not just the mandate of the Legal Subcommittee, as Jean-François pointed out but of COPUOS itself.

Through you, Mr. Chairman, I would like to inform my colleagues from Saudi Arabia and other colleagues here that ITU, within its framework, has for four years already been conducting work with regard to cyber crime. In that Organization, decisions have already been made on some aspects at least of this big issue. Some are purely technical decisions, again and this is related to the scope of competence and mandate of ITU. But as regards the content of messages and information transmitted electronically, there is a legal lacunae there because that is not part of what ITU does.

There is a good example of international cooperation that I could cite, that is the Convention on Cyber Crime signed under the auspices of the Council of Europe and that instrument has a unique feature, I think, unique in the history of international relations and international legal instruments. They have involved in the drafting of that Convention non-member States, States that do not belong to the Council of Europe, such as the United States and Mexico, unless I am mistaken. And those non-European States have taken active part in drafting this Convention, have signed and ratified it even. And that is a big event from the point of view of a regulatory regime that would address issues pertaining to cyber crime. But again, it is not part of our mandate and we cannot really proceed to trying to regulate the content of those messages. This would be a bigger issue, an issue that would be part of the work to combat propaganda against peace or actions to undermine security. Again, a very important problem and I fully understand why our colleague from Saudi Arabia has raised it. Thank you very much.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for this statement. You have expressed your support of the position laid down by our colleague from Belgium. You have also drawn our attention to the work already underway within the framework of ITU with regard to cyber crime and related issues which is one of the reasons why you have taken the position that you have taken.

(*Continued in English*) Any other speakers?

I now recognize the distinguished representative of China.

Mr. Y. XU (China): Thank you Mr. Chairman. I would like to join in to thank the distinguished delegate of Saudi Arabia for his proposal concerning the dissemination of space imaging. It seems to me that we have the same sympathy as those voiced by the distinguished delegates of Belgium and Greece. I think perhaps the timing is not mature for us to make a definite on that but whether those kind of disseminations both in the mandate of this Legal Subcommittee, I do feel that I cannot agree with the suggestion made by the distinguished delegates of Belgium and Greece. Perhaps we have not looked to the principles relating to remote sensing of the Earth from outer space. It definitely covered that dissemination of the processed data, whether it is through the Internet or by the traditional ways. The remote sensing activity, it seems to me, it definitely is a kind of space activity. So it seems to me that clearly it is covered by this Legal Subcommittee. But, although in some sense, that those data can be used by cyber crime activities, but I am not sure whether it will be probably dealt with by those other crime commissions of the European Council or by any other delegations, other instruments. It seems to me that in the future when the time is coming, it is a job for us to make sure that those data cannot be abused.

And I also would like to draw your attention to the principles for of that remote sensing principles is made quite clear that such activities, it means that remote sensing activities, shall not be conducted in a manner detrimental to the legitimate rights and interests of _____(?) States. It does fit the background for Saudi Arabia's proposal. I have to say that we have no position on how to deal with this proposal but we have a strong feeling that it is a good candidate for the future's agenda. Thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of China for your contribution by which you expressed some additional views like the positions and reasons for such positions by the distinguished representatives of Belgium and Greece but you conceded that perhaps it might be more appropriate to consider this question some time in the future, for reasons that you explained, also for reason of interconnection of this proposal with the mandate of the Subcommittee in the field of remote sensing and so on and so forth.

I now give the floor to the distinguished representative of Saudi Arabia.

Mr. M. A. TARABZOUNI (Saudi Arabia): Thank you Mr. Chairman. First of all, I would like to thank the representative of China for his support and the other things that I would like to talk about in the remote sensing and we are talking about the provider. The provider when they sign an agreement with the country, they give you _____(?) over your country and then you can act even your stations cover a big area then you can even distribute data to other nations without the agreement of the provider and now remote sensing is becoming more commercialized than when it was private governmental organizations. Therefore, I really would like to support the Chinese proposal and we would like to have this to be discussed later on. Thank you.

The CHAIRMAN: Thank you distinguished representative of Saudi Arabia for your intervention and I appreciate your willingness to perhaps build up on the suggestion of the distinguished representative of China, it means to postpone the consideration of this proposal for a later date as the time is appropriate for it.

I now have the distinguished representative of Iran on the list of speakers.

Mr. N. SHIRAZI (Iran): Thank you Mr. Chairman. Mr. Chairman, my delegation yesterday supported the proposal made by the distinguished delegation from Saudi Arabia and other mentioned my delegation is convinced that irresponsible and mis-use of satellite imaging through the World Wide Web is a matter of grave concern for my country, the Islamic Republic of Iran, due to its harmful effects to all societies and national security.

And I have carefully listened to what has been said by the distinguished delegates from Belgium and Greece. I think we have before us two questions, the questions of substance and the questions of format. I think as far as the substance is concerned, it is a matter of relevance to the work of the Legal Subcommittee and COPUOS. It is, I think, a fair expectation that COPUOS pay due attention to this importance issue that is a matter of concern for member States.

And in the terms of format, I would like to join the idea made by the distinguished delegation from China, and supported by Saudi Arabia, to have further consultation on this specific issue and also to request the Secretariat to come up with a proposal on the format of the discussions that would be legally compatible to the mandate of the COPUOS and the Legal Subcommittee. I thank you Mr. Chairman.

The CHAIRMAN: Thank you distinguished representative of Iran for your intervention during this discussion by which you put before us the two questions, one of substance, one of format, and you, as I understood you more or less supported the view that the consideration of this issue might be postponed, and also the format of this discussion should be explored. Thank you very much.

Is there any other delegation?

Yes, the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you Chairman. Just two brief comments. I believe that the proposal of our colleague from the Chinese delegation is a very wise one and the initial question put by our colleague from Saudi Arabia is really truly very important. I think that we have to operate a slight distinction, you know, between remote sensing and the products of past remote sensing and other transmissions, not only of other data but of other electronic measures, be they audio-visual or be they a different sort of message, but of which we are not aware of the contents. Up until now, since 1936(1986?) until now, the United Nations has never dared actually intervene to seek to regulate the contents of messages of data transmitted, whether or not they please certain countries. This is not the appropriate forum to really discuss this to good intent. Of course, the Freedom of Information is indeed consecrated by centuries-old traditions of peoples. However, that is not the issue for here. Maybe UNESCO would actually be the more appropriate forum for this sort of debate. In UNESCO there has been a wide-ranging discussion on this general field which is both philosophical, legal, socio, etc., and it is cross-cutting. The debate which has been ensuing there and I think that we can indeed rally to the proposal made by our friend from China to possibly come back to this and possibly under the Any Other Business item. We could somehow broach this or possibly the peaceful uses of outer space angle. We could engage in the extensive discussion on this very important point. Thank you very much.

The CHAIRMAN (*interpretation from French*): Thank you distinguished representative of Greece for your comment and for the brunt of your second comments and your third comments, of course, very much appreciated by us all. The gist of the comments made, I believe, was that you had joined the proposal voiced by our colleague from China and you naturally indicated the reasons behind the endorsement that you have just expressed.

(*Continued in English*) We have once again the representative of China for the floor.

Mr. Y. XU (China): Thank you Mr. Chairman. Thank you for giving me the floor again. Very briefly, I thank the distinguished delegate of Greece for sharing with me the background information about the 1986(?) Principles. We agree that we will be very sensitive about any revision of these Principles but I have to make it clear that we are not talking about the contents of the data, we are talking about the conduct of applying those data so I have to make it quite clear that we are not talking about how to regulate the content of the data but we target those abuse of this processed data and we look forward to working on that with all the delegations in a very constructive way. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much distinguished representative of China for your additional intervention in which you made clear that what would be the subject in which you are really interested, it means not the content but rather the abuse of such means of communication.

I now give the floor to our distinguished Secretary who will explain some aspects of this discussion.

Mr. N. HEDMAN (Secretary, Office for Outer Space Affairs): Thank you Mr. Chairman. Yes, just a note from the Secretariat. There was a proposal, a request to the Secretariat, to prepare a paper or a report until next year's Legal Subcommittee on how such a discussion could be fitted into the mandate of the Legal Subcommittee and, of course, the Secretariat is prepared to assist the Subcommittee in any way but we need some more guidance and clear guidance on what is exactly requested to the Secretariat in this regard because the mandate of the discussions in the Legal Subcommittee and also in the Committee are, after all, in the hands of the member States of the Committee. So we would need some more guidance. Thank you Mr. Chairman.

The CHAIRMAN: Thank you very much Mr. Secretary for your statement.

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

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Chairman, thank you. After what was said by our dear friend, the Secretary of the Subcommittee, it seems to me that there is a slight

risk that might be run here. In other words, the Office might not be able to pronounce on the competence as per the mandate of our Subcommittee. It is the General Assembly that could do this, I believe, in other words, to States and, of course, the General Assembly, the member States. They can legitimately say whether it is the Legal Subcommittee or the Scientific and Technical Subcommittee or the Committee of the Whole are yes or not, are or are not qualified to address this. It is not up to the Office, *per se*, to say this nor the Organization *per se*, it is the member States that have to make that decision. In other words, they should indeed state whether or not the Committee is acting within the proper framework of its mandate because I see the possible risk of coming up against, well basically jurisdictional issues. I am just being totally frank here. Thank you.

The CHAIRMAN (*interpretation from French*): Thank you distinguished representative of Greece for your comments on this point but it does seem to me that the input, the information from the Secretary, was actually going in another direction, i.e., that there was a request for a document that was to be prepared by the Secretariat that needed some clarification. It was not a matter of the Office interpreting or construing something. It was just a simple question that needed a clarification and it needed to be put to be clarified so as to enable the Secretariat to properly do its work. They were asking for clarification.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Precisely. It was in order to protect the Secretariat from preventing, preventively protect the Secretariat to forestall it eventually becoming embroiled in a discussion of competence or lack thereof. I was just making somewhat preventive comments.

The CHAIRMAN (*interpretation from French*): Thank you very much for your input distinguished representative of Greece and your concern, of course, which we certainly take on board and this in order to shield the Secretariat preventively.

(*Continued in English*) Once again the distinguished representative of Saudi Arabia.

Mr. M. A. TARABZOUNI (Saudi Arabia): Sorry to take the floor again but I really would like to add this, our comments to one of these comments (a), (b), (c), (d), (e) and (f) and we can put it as number (g). Thank you.

The CHAIRMAN: Yes, the distinguished representative of Saudi Arabia, I have just been advised by the Secretary of the Subcommittee that indeed your request might be reflected in this part dealing with possible discussions at the subsequent sessions under sub-paragraph (g). Thank you very much.

The distinguished representative of Belgium has the floor.

Mr. J.-F. MAYENCE (Belgium) (*interpretation from French*): Sorry Chairman, I am a bit lost here. I am a bit at sea. I had thought that the proposal of Saudi Arabia had been postponed. Could somebody clue me in as to exactly what the status is as per this proposal under item 12? Has the heading changed or is there going to be any review of the possibility of redoing the language on this proposal in the following years or have we kept the proposal as it stands?

The CHAIRMAN (*interpretation from French*): Well, Belgium, you know that in this non-paper part, there are the subjects which have been proposed by the various delegations which are still to be entertained as possibilities for the purpose of future discussion. And I believe that that is in full accordance with the proposal which has been made here by China, which has been supported by various delegations. And, for that reason, the proposal of Saudi Arabia could be included in this list of possible topics, possible subjects. It has not been decided yet when, if it has not been decided nor when, two conditions have not been addressed yet. It is just a possibility for some more or less distant future.

OK thank you very much distinguished representative of Belgium for your understanding.

(*Continued in English*) Mr. Hedman has just advised me that perhaps we could now interrupt the discussion on the non-paper because we will have still agenda item 12 on the programme of our afternoon meeting and then we could still return if you wish but in any way we should finalize this discussion this afternoon, today, and, therefore, for those delegations which might want to speak on this question again, to return to it or to bring some new observations, they will have the opportunity to do so in the afternoon.

And perhaps we will now continue by our presentation for now and then, of course, we will suspend the meeting of the Subcommittee and we defer(?) the room for further discussions of the Working Group on Item 11.

Is this procedure acceptable for you?

I see no opposition.

It is so decided.

Presentation

I will now give the floor to the first speaker in our small series of presentations and I think it is the distinguished representative of Belgium who will speak on "Belgian Space Law". You have the floor Sir.

Mr. J.-F. MAYENCE (Belgium) (*interpretation from French*): Thank you very much Chairman. I am going to try to be as concise as possible because, as was recalled yesterday by the Chairman of the Working Group on National Legislation, the Belgian space law has already been presented in the Subcommittee. I think it might be valuable and interesting to have this presentation today just because an implementation or a Decree of Application, rather, has been recently passed, and secondly, because this affords me the possibility to field those questions which have been put on the table for discussion in that Working Group on National Legislation, and here I am referring to the Working Group under item 11 of our agenda.

Now, to get back to the initial question, we are going to be trying to field the questions as far as I speak. I would like to recall that Belgian space law is one of the first legislations of this new generation of legislative instruments. This provides the possibility of factoring in new aspects into its legislation, such as transfer in orbit or environmental protection concerns.

Why have we endowed ourselves with this sort of legislation? Three main reasons, to comply us with international law, I think we have to mention this because when we refer to international obligations, on the Belgian side, we think in terms of Articles, 6, 7 and 8 of the Outer Space Treaty, and that explains why the objects of our legislation are focused exclusively in certain kinds of activity and not on others. I will expand on this subsequently.

The second reason is that Belgium does not have launching operations or launching structures, *per se*, on a national basis it does not have a rocket launch centre or satellite placement system. We do, nonetheless, have a ground station which is the ESA Ground Station, and within the context of the eco-social, economic retarded(?) development, it has been suggested that that Station should be used as an

incubator for new activities which were not necessarily within the purview of the purely ESA activities. In other words, a partnership has been set up which can permit, and does permit, the conduct of private-type of activities in satellite operations, the satellite, the leader operations. So Belgium has thought it necessary to establish legislation which makes that possible because basically this does not belong strictly within the ambit of only ESA activities, *per se*.

And the third reason, it is because Belgian legislation now makes it possible to have national transposition of international standards, which we are familiar with, let us say, space debris standards.

So, which activities require authorization? Here, I am going to be skipping through this narrowly. Launching operations, to start off with, in Belgium, these are highly hypothetical, to put it mildly. Something of more interest to us is rather in-orbit operation activities, guidance manoeuvres of all sorts, and also the transfer of such activities, for example, the transfer is subjected to the same requirements. You have to get the AOK from the competent Ministry for such transfers. And it is not the transfer of the property or assets of such activities, *per se*, the actual control exercised over the space object. So you can perfectly well transfer property or assets without transferring effective control over the space objects, this depending on ministerial authorization specifics(?). This also excludes specifically R&D activities, research and development activities, and also excludes payload exploitation, everything having to do with signal emission, etc.

Now, activities comprised from a jurisdictional point of view are the activities exercised or conducted by Belgium or foreign nationals under or within the ambit of Belgium's jurisdiction, i.e., and here, with the exception of parts of the Belgian territory not under Belgian jurisdiction, here I am thinking of the ESA Station in Redou(?), that is within ESA jurisdiction to the extent that the ESA Convention grants jurisdiction to the Agency and to the extent that the Headquarters Agreement makes that possible and enables it.

And also activities which are outside Belgian territory, from locations, under the jurisdiction or the control of the Belgian State, and here I am thinking particularly of the vessels, the platforms flying the Belgian flag, basically which launch from the High Seas, in other words, a ship registered in Belgium and may be used for High Seas launching activities and that means that Belgium is the State of jurisdictional

control to the extent that that ship or vessel participates in such activities.

There is another case where the activities are within Belgian jurisdiction that fall within the ambit of this law and these activities which are subject to special international agreements, for example, bilateral agreement or multilateral agreements ensuring that in a given case, it is Belgian jurisdiction that applies. For example, if a Belgian company is conducting activities on the territory of the third case (State?), if there is an agreement between Belgian and that third case (State?) which provides a Belgian jurisdiction will be applying to those activities in the entirety or in parts thereof, then that is what happens and that it will be Belgian law that applies.

By way of a tangential story, there is a provision made that if a space debris piece falls on Belgian territory, it cannot be appropriated, and then a Belgian national authority has to turn it in to the Belgian Government which will then proceed to returning it according to the 1968 Treaty having to do with the return of space objects.

Then there is also the rights of the person who possibly has been subject to fall-out or of the self-same space objects and possibly the right of that person can possibly also be impinged upon, etc., within the general return of such objects.

Now, the competent Minister, competent for the space sector, the Federal Minister of Science _____(?), can be assisted by Special Committee on a general or on an ad hoc basis. There is a Committee of Experts that is provided for, comprising of representatives of all the concerned Administrations. They can also be backed up with a certain technical pool of expertise and the law provides for tapping into international experts as well, for example, from ESA. In that case, it is possible, on the basis of an agreement or specific ESA contracts, to run technical expertise. I am saying ESA but it could be other technical agencies which would like to work hand-in-hand with Belgium to make available experts to the Belgian structures which are capable of validating operations and giving the green light to the conduct of such operations.

Belgium is very interested in this sort of capability of tapping into expertise because we are just a small State. We do not necessarily have this sort of pool of expertise at national level available and on tap.

Now, the conditions available and imposed by the law are those which are referred to by the law itself. So a private law entity has to abide by the principles of

space law, in fact that there should be compliance with other national legislation, that is also important. In other words, Belgian space law does not derogate(?) away from other legislations, economic, environmental protection, the specificities, urban land use regimes, we did not wish to create any preferential ambits. There is the common and joint laws that apply for all these sorts of activities that apply to space law as well.

Then there is specific conditions imposed by the King. Insurance, the King can impose insurance arrangements and also compliance with international standards or norms. This can be done for certain kinds of operators or for all operators. The King cannot be regularly for a given operator. If it is a matter of a given operator having a special condition imposed by him, then necessarily we switch over to the third case special conditions imposed by the Minister on a case-by-case basis. There again, insurance arrangements on a case-by-case basis is a possibility thereof.

There is also certain proper financial guarantees which indeed can be applied. Then also restrictions can be applied. As you see on the screen, and all of this, and it is important to point it out, has to be justified and explained on a case-by-case basis. So according to Belgian administrative law, if there is a measure taken by the authorities on a particular case and where this can be taken to court and appealed by the subject of these conditions, then the Minister has to provide justification appropriately. This is to avoid preventively any court cases which are undue.

Now liability. As I explained two years ago, Belgium is held liable according to Article 7 of the Outer Space Treaty of 1967 or according to the provisions of the 1972 LC(?), an action by the Belgian State against the operator cases. That creates objective liability against the operator but is limited, there is a ceiling as to the amounts that can be referred to, for example, recently the amount was fixed by the King as per 10 per cent, not of the damages which is important, not of the damages but 10 per cent of the operators average turnover, the idea being to avoid any bankruptcy on the part of the operator because of full liability exposure because sometimes considerable astronomical amounts of money can be involved. And since we do not want to have our operators collapse or be penalized unduly, even 10 per cent, after all, sometimes in these cases can be a bankruptcy that is triggered so we want something which is based on his true financial capability or capacity except if the operator has been proven has committed fraud or arbitrary misappropriate or misdoings. For example, if there is some arbitrary and deliberate action which is

fraudulous or abusive, then direct action can be taken against the operators insurance.

Now participation of the operator in governmental discussion of the value of the damage. We are talking about inter-State liability so the whole system is an artificial system which intends to transfer space liability as against its operators. But since the operators are not parties to the Space Treaty or the Liability Agreement, there is no provision made for their involvement in consultations or cooperative efforts to try to determine the inter-State range of liability of payment liability. And this has no third party effect, in other words, it is Belgium that has negotiated this. However, they can perfectly say "hey, we don't agree with this evaluation, we weren't party to the consultations, we're not going to go along with this". So this makes it possible for a certain degree to have involvement insured so as to enable us to have a certain degree of liability applicable in third party effect, you see, and this within the context of the application of the Liability Agreement.

We should also emphasize, as the 1972 law allows for, there is also the possibility of agreements against, complementary actions against the operator on the basis of liability restricted as per the Article 7 provisions or the 1972 provisions, all of this does not rule out the complementary actions being taken against the operator on the part of victims, the direct victims of possible incidents. And this sort of remedy is provided for in the Agreement of 1972.

Now registering information. There are several sources operated which are communicated to the Belgian State and which the Belgian State has to communicate and inform the United Nations of. The law establishes the National Register of Space Objects. So far we do not have any registration but we have the legal capacity for such registration. There is also a National Repertory of Authorization. The scope of actions are not the same because these authorizations granted by the Belgian Government under Article 6 and not Article 8 registered space objects under the Space Treaty.

Now there is also information collected. The first document is the form to apply for authorization. The second source of information is the National Registration Form for Space Objects. This has to be filled in by the authorities. It is the Minister who decides on the registration, not the operator.

And there are also forms having to do with environmental impact which specify certain requirements that have to be met by the operators,

ground impact, space impact as well, and measures that have to be taken, both for launching as well as for the operation of space objects.

I am not going to be giving you all the technical information here. You have this listed on the screen. What is important is that when there is access to information on the part of a commercial operator, the main concern is to avoid having this sort of information, which may be sensitive indeed, made available to the public at large. So we wish to strike a balance, a good balance between the legitimate needs-to-know of the operator and that is accessible on the Internet. And there is another interest which is that of the public at large to have access to such information on space activities. So the law seeks to establish a fine balance, and I think that it is successful in that regard. It seeks to strike a proper accommodation of the requirements and needs-to-know of the ones and of the others without the exaggeration thereof on either end.

Now enforcement, various actions are provided for the authorization for withdrawal or suspension cases of non-compliance with conditions imposed. There is also the visiting rights, accessed by designated experts, operators facilities and premises. The operator can refuse such but then he risks a withdrawal of authorization or a suspension thereof according to the case.

I have mentioned the case where the operator does not benefit from a ceiling on his liability. There is that too. And then there also the criminal sanctions, maximum one year imprisonment and a maximum a 25,000 Euros fine, so if there is any contravention of the Belgian law and its provisions.

Thank you very, very much for this opportunity of sharing with you the gist and the details of the Belgian law in this regard. Thank you very much.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Belgium for his presentation. Obviously, I have to ask all delegations if they have comments, questions. If I understood correctly, our colleague from Belgium is prepared to take questions and comments in the format of the Working Group which is going to take place according to our programme.

(*Continued in English*) Distinguished delegates, I would now like to adjourn this meeting of the Subcommittee so that the Working Group on Agenda Item 11, National Legislation Relevant to the

Peaceful Exploration and Use of Outer Space, could hold its third meeting.

But before doing so, I would like to remind delegates 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 12, Proposals to the Committee for New Agenda Items, as already advised.

At the end of the afternoon, we will have another presentation pertaining to agenda item 11 by the representative of Japan entitled "Japan's Basic Space Law".

Thereafter, the Working Group on Agenda Item 11 will hold its fourth meeting.

Are there any questions or comments on this proposed schedule?

I see none and, therefore, this meeting is adjourned until 3.00 p.m.

The meeting adjourned at 11.46 a.m.