

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

Unedited transcript

833rd Meeting

Tuesday, 5 April 2011, 3 p.m.

Vienna

Chairman: Mr. A. Talebzadeh (Islamic Republic of Iran)

The meeting was called to order at 3.16 p.m.

The CHAIRMAN Excellencies, distinguished delegates, ladies and gentlemen, good afternoon. I now declare open the 833rd meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

We will continue and hopefully conclude our consideration of agenda item 8, 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 continue and hopefully conclude our consideration of agenda item 9, capacity building in space law. We will continue our consideration of agenda item 11, general exchange of information on national legislation relevant to the peaceful exploration and use of outer space. We will then continue with our consideration of agenda item 12, proposals to the Committee on new items for consideration by the Subcommittee, to discuss organizational matters.

We will then adjourn the plenary meeting so that the working group on agenda item 11 can hold its fourth meeting under the chairmanship of Professor Marboe of Austria. At the end of the afternoon's meeting, at 6 p.m. a reception will be hosted by the delegation of the United States of America in the Mozart Room of the VIC Restaurant. Tomorrow, Wednesday, during lunchtime at 2 p.m. in room M7, the Chair of COPUOS will conduct informal consultations on the 2011 declaration.

I would like to also make the following announcement. All delegations are cordially invited to attend on Thursday, 7 April, a guided tour 'Space, about a Dream' the curator of the exhibition, Mrs. Katherine ____ (?) will guide delegates through the exhibition and provide ____ (?). An invitation has been placed in your pigeon holes.

Are there any questions or comments on this proposed schedule? I see none.

Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (agenda item 8)

Distinguished delegates, I would now like to continue and hopefully conclude our consideration of agenda item 8, 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.

The first speaker on my list is the distinguished delegate of the United States. I give the floor to the distinguished representative of the United States, Mr. McDonald.

Mr. S. McDONALD (United States of America) Thank you 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 space assets protocol.

In its resolution 50/27 of 6 December 1995, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that, beginning with its thirty-ninth session, the Committee would be provided with unedited transcripts in lieu of verbatim records. This record contains the texts of speeches delivered in English and interpretations of speeches delivered in the other languages as transcribed from taped recordings. The transcripts have not been edited or revised.

Corrections should be submitted to original speeches only. They should be incorporated in a copy of the record and be sent under the signature of a member of the delegation concerned, within one week of the date of publication, to the Chief, Conference Management Service, Room D0771, United Nations Office at Vienna, P.O. Box 500, A-1400, Vienna, Austria. Corrections will be issued in a consolidated corrigendum.

V.11-82456 (E)



We continue to support the goals of the proposed space assets protocol as originally stated, although we continue to note that there is a lack of consensus among some commercial interests as to whether the purposes of the protocol can be achieved. We recognize that this protocol offers an opportunity to facilitate the expansion of the commercial space sector as well as to enable a broader range of States as well as a broader range of companies to benefit from this expansion. We recognize the improvements in the draft protocol text that were achieved at the recent fifth intergovernmental meeting in Rome however, unless the provisions of the draft protocol can be further improved in the final text that may be reached next year to produce economic benefits and gain sufficient support among users, it is not clear that those objectives would be met. Although this type of treaty framework under the Cape Town Convention has already been established for aircraft and for railroad equipment it has yet to be demonstrated that the same approach will, under today's circumstances, be able to meet the needs of commercial finance in the space sector. We understand that the UNIDROIT Governing Council will now decide whether to authorize a diplomatic conference to conclude a final text, possibly in 2012.

We would like to again comment on one issue, the relationship 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 does not, and is not intended to, affect rights and obligations of States party to the outer space treaty system under those treaties, or the rights and obligations of member States of the International Telecommunication Union. In addition, this subcommittee has reviewed this matter and concluded that there was no conflict between the draft protocol and the outer space treaty system. Indeed, our delegation proposed 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, no State has objected to this proposal.

With respect to this subcommittee, 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 continues. We believe that the Legal Subcommittee and its members have expertise that may be valuable in the development of the protocol. Although the UNIDROIT space assets protocol has been negotiated through the UNIDROIT

process by its member States, we note that the process has included many members of this subcommittee and we note also the practice at UNIDROIT to consider favourably requests from non-member States that wish to attend such sessions. 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.

The CHAIRMAN I thank the distinguished representative of the United States for a very good statement.

No more speakers on my list. Are there any other delegations wishing to make a statement under this agenda item?

I give the floor to the distinguished representative of Canada.

Mr. C. SCHMEICHEL (Canada) Canada shares the views that were expressed by the honourable delegation of the United States. Canada has been very active in the development of the protocol in Rome and is very interested in the successful completion of the work by UNIDROIT and is aware that several stumbling blocks are still there with issues that have to be resolved that are very important. Should the protocol be successful, _____(?) and create a viable and a strong financing market for space activities, this would increase the liberties of States to reach space through the financing. We would like to pose the following question.

This Committee did, several years ago, through a discussion on the concept of a launching State and I would simply ask the following question, that it might perhaps be wise to see if there is a need to update the discussion and the studies of the launching State to see if it would include the State of financing. In the very interesting work, Professor Larsen of the United States at Georgetown University argued that a financing State should be considered a launching State. So we are just wondering if the Subcommittee could update its past work to see if the Rome protocol changes in any way its perception of the launching State. Despite the fact that we do recognize there is the primacy clause in article 34 of the draft protocol and that is very good but there might still be other consequences that should be discussed. Thank you.

The CHAIRMAN I thank the distinguished representative of Canada for a very good statement.

Are there any other delegations wishing to make a statement under this agenda item?

I give the floor to the distinguished representative of UNIDROIT.

Mr. D. PORRAS (UNIDROIT) On behalf of the Institute and of the Deputy Secretary-General, Mr. Stanford, who is no longer here because he had to leave this afternoon, let me first thank the Legal Subcommittee for continuing to consider the space protocol in its work. We also appreciate the statements that were made by the distinguished delegate from the United States and from Canada and, of course, we welcome any help and efforts that might be pursued in the future so that we can make sure to come out with a commercially viable instrument that will achieve its goals.

On this note, I would like to invite and urge all of the member States of COPUOS to participate in the hopefully planned diplomatic conference should the Governing Council decide to have the diplomatic conference next year. This will be decided in May and hopefully invitations will be sent out forthwith. Thank you.

The CHAIRMAN I thank the distinguished representative of UNIDROIT for a very good statement.

I give the floor to the distinguished representative of Italy.

Ms. A. PASTORELLI (Italy) The Italian delegation, considering the positive achievements obtained during the final session of the Committee of Governmental Experts held in Rome last February, would like to propose to keep this agenda item also on the agenda of the Legal Subcommittee in 2012 to give the subcommittee the opportunity to continue to be informed of the hopefully positive final result of this process. Thank you.

The CHAIRMAN I thank the distinguished representative of Italy for a very good statement.

I give the floor to the distinguished representative of Japan.

Mr. K. NISHI (Japan) _____(?) of the work of the UNIDROIT Committee of Governmental

Experts _____(?) preparation of the draft protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, Japan would like to support the position of the United States of America, Canada and Italy. Since the last session of the Legal Subcommittee, substantial progress has been made concerning the status of the preliminary draft protocol on space assets and the Deputy Secretary-General, Mr. Martin Stanford of UNIDROIT, reported yesterday that the preliminary draft protocol was finalized at the fifth session of the UNIDROIT Committee of Governmental Experts for the preparation of the draft protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, held in Rome from 21 to 25 February 2011. Since the diplomatic conference is likely to be convened in the near future to adopt this prospective protocol, I think it might have some possibility to remain as an agenda item at the next session of the Legal Subcommittee. Thank you.

The CHAIRMAN I thank the distinguished representative of Japan for a very good statement.

Are there any other delegations wishing to make a statement under this agenda item? I see none.

We have therefore concluded our consideration of agenda item 8.

Capacity building in space law (agenda item 9)

Distinguished delegates, I would now like to continue and hopefully conclude our consideration of agenda item 9, capacity building in space law.

The first speaker on my list is the distinguished delegate of South Africa. I give the floor to the distinguished representative of South Africa.

Mr. K. GORRINGE (South Africa) It is a great pleasure to discuss capacity building efforts in the area of space law. South Africa believes that this matter is of fundamental importance in order to increase knowledge of the legal framework within which space activities are carried out.

Capacity building in space law is critically important to growing knowledge and expertise regarding the legal principles governing the exploration and peaceful use of outer space. The application of the existing international law treaties and the further development of an international law regime in space law can only take place on an informed basis and through international cooperation. South Africa believes that adequate support, through the provision of

both expertise and material and financial resources, is necessary to enable institutions to effectively implement courses in space law.

My delegation supports the efforts of the Legal Subcommittee in considering and achieving practical results in the consideration of this agenda item to effectively assist countries, in particular developing countries, with capacity building in space law. We appreciate the efforts of the United Nations Office for Outer Space Affairs in building capacity during the past year, including the space law database which provides comprehensive information on institutions that provide courses in space law and policy. I would like to encourage the Office to continue to support the efforts of developing countries to build capacity in space law notwithstanding the constraints of limited resources. In the past, South Africa has provided this subcommittee with proposals on the various ways through which capacity building initiatives could be achieved and we would like to encourage the various organizations to look into providing online courses, at a reasonable cost, in order to reach a much broader audience.

South Africa is committed to strengthen and promote the development of capacity in space law and related fields. In this regard, South Africa has, in February this year, implemented a certificate course in air, telecommunications and space law, a collaboration between the International Institute of Space Law in Cologne and the University of Pretoria in South Africa. The course focused on international treaties related to space activities as well as developments such as the enactment of national space laws and the increasing privatization and commercialization of space activities. The course was open to decision and policy makers, students, educators and professionals involved in space activities. The University of Pretoria is considering expanding the programme _____(?) masters in space law programme by including a space law specialization component in their public international law programme. The masters specialization is expected to commence in 2012.

In addition, South Africa, through the Cape Peninsula University of Technology, under its French South African Institute of Technology programme, arranged three seminars last year. These seminars focused on various topics including space law and policy and targeted various space stakeholders in the country.

We are very pleased that the International Institute of Space Law is including an introductory round for Africa for the Manfred Lachs Moot Court.

To that end, coordination activities are underway with various academic institutions to get student teams to participate in the Moot Court Competition. We are hopeful that they will continue with this capacity building exercise.

In conclusion, we would like to emphasize that the distance learning, online resources and video conferencing options that were discussed in this subcommittee should also be thoroughly explored as this will reduce the costs of participation in space law programmes as well as make these courses available to more participants. Thank you.

The CHAIRMAN I thank the distinguished representative of South Africa for a very good statement.

No more speakers on my list. Are there any other delegations wishing to make a statement under this agenda item?

I give the floor to the distinguished representative of Austria.

Ms. I. MARBOE (Austria) I will just briefly relate to our communication which is included in CRP.6, however, I would highlight some of the information which is included therein.

Perhaps first, and it should be underlined, that space law forms part of the general course on international law which is a compulsory subject at all Austrian law faculties, in Vienna, Graz, Salzburg, Innsbruck and Linz. In addition, some faculties offer specialized courses on space law as an optional subject, this includes Vienna and Graz in particular. Every year Austrian students take part in the summer course on space law and policy, organized by the European Centre for Space Law. We included also Erasmus students in our list of participants, not necessarily Austrian citizens but, thanks to the generous support of ECSL, it was also possible to include non-Austrian and even non-ESA member students which we find particularly important, for example, Bulgarian students were very interested so we nominated them and they were accepted as participants to the ECSL course. We think that this is an important support of ECSL to enable those students to participate. In 2009 and 2010, six and two Austrian students respectively, participated.

I would like to draw the attention of COPUOS members in particular to the Space Studies Programme (SSP) of the International Space University (ISU) which will take place this year in Graz from 11 July to

9 September 2011, this is approximately six weeks of intensive space teaching and space learning and the programme contains an important focus on space law. Thank you.

The CHAIRMAN I thank the distinguished representative of Austria for a very good statement.

Any other distinguished representatives want to make a statement under this agenda item, capacity building in space law? I see none.

We have therefore concluded our consideration of agenda item 9.

General exchange of information on national legislation relevant to the peaceful exploration and use of outer space (agenda item 11)

Distinguished delegates, I would now like to continue our consideration of agenda item 11, general exchange of information on national legislation relevant to the peaceful exploration and use of outer space.

No speakers on my list. Are there any delegations wishing to make a statement under this agenda item?

I give the floor to the distinguished representative of France.

Mr. J. MARIEZ (France) (*interpretation from French*) France would like to share a brief piece of information about its own legislation. On the law relating to space operations adopted a while ago and which came into force last December. In this regard, at the last session of the Legal Subcommittee France gave a presentation and that set out in detail the contents of this act, notably the applicable procedures. This law on space operations obviously comes immediately out of international space law and puts forward good practices which have been applied for some while now in France, notably by CNES, without these practices actually having legislative power. In line with these and space operations, any space operation under French jurisdiction notably _____(?) conducted by private operators, are now the subject of an authorization from the French government including from the minister in charge of space affairs. These authorizations are given after a technical inspection by CNES and, by space operation, we mean both launch operations and handling or manipulation in space. This relates both to activities conducted from French territory and activities conducted by a French national from a third country, so territorial and personal

competence in this case. This law came into force in December and is now fully in force and the last three launches of Ariane-5 from the centre in Guyana have been subject to an authorization from the French government. The same applies to handling in space, French satellites operated by Eutelsat and by Astra. Thank you.

The CHAIRMAN I thank the distinguished representative of France for a very good statement.

Any other delegation wishing to make a statement under this agenda item? I see none.

We will therefore continue our consideration of agenda item 11, general exchange of information on national legislation relevant to the peaceful exploration and use of outer space, tomorrow morning.

Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fifty-first session (agenda item 12)

Distinguished delegates, I would now like to continue our consideration of agenda item 12, proposals to the Committee for new agenda items, to discuss organizational matters of the subcommittee.

This afternoon we will continue our consideration of organizational matters but first considering the proposal for discontinuing the unedited transcripts and then continue our discussion on the overall organization of work of the subcommittee.

Firstly, we have had deliberations on A/AC.105/C.2/L.282 with the proposal for discontinuing the use of unedited transcripts. We have also been provided with explanations by the Secretariat.

May I take it that the subcommittee wishes to approve the proposal as contained in this document. I see no objection. We shall proceed accordingly.

We have therefore approved the proposal contained in A/AC.105/C.2/L.282.

Secondly, last week and this morning we had a good and forward looking exchange of views on overall organization of work of the subcommittee including on ways and means of rationalizing and optimizing our work and on matters relating to the duration of our sessions.

I have reviewed the different opinions expressed during the course of our debate. My understanding is that there is a broad consensus to take measures to further rationalize our future work by means of maximizing the flexibility in scheduling our work. However, my understanding is that there is no consensus regarding the issue of duration of sessions. I would therefore like to hear your views on the possibility of establishing a mechanism within the agenda for discussing the matter further. There are also other issues related to the overall organization of work and rationalization of our method of work that could benefit from further consideration such as mechanisms could be renamed item 12 as follows: Organization of work of the Legal Subcommittee and draft provisional agenda for the fifty-first session of the subcommittee.

Are there any statements by delegations?

I give the floor to the distinguished delegate of Spain.

Mr. S. ANTÓN ZUZUNEGUI (Spain) (*interpretation from Spanish*) Spain would like to express its thanks for the proposal to the Chair. Spain looks favourably at the idea of adding this agenda item 12 to be dealt with in subsequent subcommittees, that is working methods for the subcommittee. The proposal is along the lines of what was proposed by the Spanish delegation last week on the need for an agenda item to address these matters in greater depth. In the discussions we have had, both today and previous days, very good ideas have been circulated but we have not managed to be more specific than that. We need an agenda item under which we deal specifically with the working methods of this subcommittee to make it more efficient and to rationalize the work of the subcommittee. In any event, this delegation also has taken part, with some sadness, in some committee meetings which finished only half an hour after they began.

We are aware that there is no consensus on the idea of changing the dates of sessions, we understand the hesitation of some countries to reducing the timetable for the subcommittee, we understand the concern for them particularly as regards the Legal Subcommittee. What is sure is that this situation reflects very badly on the subcommittee and, under these conditions, we do not think we will be able to continue for ever like this. Spain thinks that creating special agenda items to deal with this type of thing would allow us to consider them in greater depth. Thank you.

The CHAIRMAN I thank the distinguished representative of Spain for a very good statement.

The next speaker is the distinguished representative of France. I give the floor to the distinguished representative of France.

Mr. J. MARIEZ (France) (*interpretation from French*) My delegation would like to thank you for the proposal you have made which represents a step in the right direction in our eyes but just one step.

Picking up from what the distinguished delegate of Spain has just said, my delegation considers with great regret the way in which the work has been conducted in this subcommittee and the image that we project when we say that there is so much at stake, the image that we give of the results attained and the time that we devote to come up with these scant results, all of this casts us all in a very bad light, in a collective way, and to the way we organize our work. The French delegation thinks that what you are proposing is the beginning of a process and we repeat our request to shorten the length of the Legal Subcommittee. We think valuable proposals have been made and supported by several delegations as regards reassigning resources, both the time _____(?) for the plenary and we have heard the Secretariat and the Office for Outer Space Affairs explain the difficulties they had in programming work in plenary given the growing number of technical presentations and the importance of items on the agenda. For all of these reasons we need to speed up this process and that this reflection must be continued. Thank you.

The CHAIRMAN I thank the distinguished representative of France for a very good statement.

Any other delegations wishing to make a statement?

I give the floor to Mr. Hedman from the Secretariat for an announcement.

Mr. N. HEDMAN (Secretariat) Just a clarification on what the Chair proposed for a renaming of the current agenda item 12. It would not, as all delegations are aware, be a draft provisional agenda for the fifty-first session of the subcommittee, this would be a new item that we are now proposing which means that it should then read as follows. Organization of work of the Legal Subcommittee and draft provisional agenda for the fifty-second session of the subcommittee because it will appear for the first time on the agenda next year. Thank you.

The CHAIRMAN Thank you very much to Mr. Hedman for the explanation.

I give the floor to the distinguished representative of Venezuela.

Mr. M. CASTILLO (Venezuela) (*interpretation from Spanish*) As to this proposal, are we approving something now? Or is this a proposal which will be submitted to plenary to be analysed so we can make any comments or observations then? In other words, we would like to have some clarification as to how we proceed from here. Thank you.

The CHAIRMAN I thank the distinguished representative of Venezuela for your comment.

Any other delegations wishing to make a statement?

I give the floor to Mr. Hedman from the Secretariat.

Mr. N. HEDMAN (Secretariat) Just to respond to the question put by Venezuela. We are in plenary, this is the plenary session of the Legal Subcommittee. All decisions made by the Legal Subcommittee will go to COPUOS, the Main Committee session, in June. Eventually, all decisions made by the subcommittees are being considered and eventually a decision taken by the Main Committee in June but we are in plenary of the Legal Subcommittee right now. Thank you.

The CHAIRMAN Thank you Mr. Hedman for your comments.

Any other delegation wishing to make a statement?

I give the floor to the distinguished representative of Brazil.

Mr. J. FILHO (Brazil) (*interpretation from Spanish*) I have to say that in principle we agree with the proposal you have just shared with us but in this regard this proposal should also be supported by a text with the characteristics and the goals as is always done here in this committee. When a new item is included on the agenda we then have a working plan or a definition of the goals and just how we are going to work, what is actually involved, so we have a more comprehensive idea of what we are talking about. We need this kind of exercise to shed light on it, a more formal exercise if you will. Thank you.

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

Any other delegations?

I give the floor to the distinguished representative of Iran.

Mr. A. SHAFAGH (Islamic Republic of Iran) We support the idea raised by the distinguished Brazilian delegation and also we would like to have a very clear justification for including this new item. Thank you.

The CHAIRMAN I thank the distinguished representative of Iran for your statement.

I give the floor to Mr. Hedman for an announcement.

Mr. N. HEDMAN (Secretariat) Just to provide some clarification. As the Chair said, this is not a proposal for a new agenda item it is a proposal for renaming the current agenda item 12 that we have on our agenda for this session. In that regard, it is a mechanism that would provide certainty on two issues to be considered by the subcommittee.

One is organizational work that we have discussed already at this session and to have a mechanism to discuss further, as appropriate, different ways and means to rationalize our organizational work and method of work and of course also to retain considerations on agenda for the next coming session of the Legal Subcommittee. It is not a new agenda item, it is the renaming of a current agenda item. Just to provide the clarity in what we already now bringing up under that particular agenda item. Thank you.

The CHAIRMAN I thank Mr. Hedman for your comment.

The next speaker is the distinguished representative of Venezuela. I give the floor to the distinguished representative of Venezuela and then Russian Federation.

Mr. M. CASTILLO (Venezuela) (*interpretation from Spanish*) Along the same lines as what was set out by our colleague from Brazil, we would like to say that any change proposed should be on the agenda for next year. It should be clearly explained. We would also like to see it in writing. We would like to see the motives for such a change. Thank you.

The CHAIRMAN I thank the distinguished representative of Venezuela for your comment.

I give the floor to the distinguished representative of the Russian Federation.

Mr. V. TITUSHKIN (Russian Federation) (*interpretation from Russian*) Very briefly. We hope that the report will reflect the actual discussion that took place here and it will reflect not only the opinions of those delegations which advocated for shortening the duration of the Legal Subcommittee session but also other opinions, including that of my delegation, to the effect that we should exercise a more balanced approach to the issue. Thank you.

The CHAIRMAN I thank the distinguished representative of the Russian Federation for your comment.

Any other delegation wishing to make a statement or comment?

We will continue our consideration of agenda item 12, proposals to the committee for new agenda items, tomorrow morning.

Distinguished delegates, I will shortly adjourn the plenary meeting so that the working group on agenda item 11 can hold its fourth meeting under the chairmanship of Professor Marboe of Austria.

Before doing so, I would like to remind delegates of our schedule of work for tomorrow morning. We will meet promptly at 10 a.m. At that time we will begin our consideration of agenda item 7, nuclear power sources. We will continue and hopefully conclude our consideration of agenda item 11, general exchange of information on national legislation relevant to the peaceful exploration and use of outer space. We will continue with our consideration of agenda item 12, proposals to the committee for new items for consideration by the subcommittee to consider proposals for new agenda items.

At 2 p.m. informal consultations by the Chair of COPUOS on the draft declaration of the fiftieth anniversary of human space flight and the fiftieth anniversary of COPUOS will be held in room M7.

Are there any questions or comments on this proposed schedule? I see none.

I now invite Professor Marboe from Austria to chair the fourth meeting of the working group on agenda item 11.

This meeting is adjourned until 10 a.m. tomorrow.

The meeting closed at 4.02 p.m.