

Committee on the Peaceful Uses of Outer Space

Legal Subcommittee

*Unedited transcript***637th** Meeting

Wednesday, 5 April 2000, 3 p.m.

Vienna

Chairman: Mr. KOPAL (Czech Republic)

The meeting was called to order at 3.10 p.m.

The CHAIRMAN: I now declare open the 637th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. Before we begin our substantive deliberations, I would like to outline the probable schedule of work for the remainder of the thirty-ninth session of the Legal Subcommittee.

This afternoon, we will continue and hopefully conclude our consideration of agenda item 9, "Review of the concept of the 'launching State'". Following this, and any general statements regarding agenda item 10, "Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session", we will suspend this meeting of the Subcommittee to allow informal consultations to proceed regarding the agenda of the fortieth session of the Subcommittee in 2001.

Once these informal consultations have been concluded, I would like to resume the meeting of the Subcommittee to conclude consideration of agenda item 10 this afternoon. Following consultations with the Secretariat, I would like to inform delegates that every effort will be made to ensure that we can complete the adoption of the report at our meeting tomorrow morning. However, it is possible that some of the documentation might be available only later in the day. Therefore

delegations should be aware of the possibility that a brief meeting in the afternoon might be required to finalize the adoption process.

We will now continue and conclude our substantive consideration of agenda item 9.

Review of the concept of the "launching State"
(cont.) (agenda item 9)

The CHAIRMAN: The only delegation on my list of speakers is that of the United States, to whom I give the floor.

Mr. J. CROOK (United States of America): My delegation would like to thank the Chair and the Subcommittee for your indulgence in allowing us to make a second statement under this item. We will be brief.

We have thought about the questions the chairman of our working group asked yesterday about how work under this agenda item should proceed. There was considerable discussion about the idea of developing agreed interpretations of portions of the treaties. For the reasons that several distinguished professors of international law in this room have explained very well, the concept of "interpretation" does not seem the correct way to describe what we should be doing.

In international law, "interpretation" is a particular type of highly structured legal activity. It

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involves the disciplined application to a text of legal rules of interpretation articulated by the International Court of Justice and the International Law Commission, and most familiarly stated in the Vienna Convention on the Law of Treaties. With all due respect, this kind of disciplined legal analysis within the framework of the law of treaties is not an area where this Subcommittee can expect to make much progress.

We should try to accomplish more. Our task is to examine the concept of the launching State, not in an abstract way but as it is being illuminated through actual experience and in light of evolving circumstances. We should address the issue of how States are implementing their roles in practice as launching States. Drawing on this experience, we might decide whether there are particular practices or approaches that seem effective or, alternatively, whether there are certain needs not being met. This analysis could provide a solid basis for States to determine how the concept of the launching State is being applied and where further compliance is needed.

The tools for starting this work could readily be available. My delegation would like to ask the Secretariat to give us one tool that would be very useful. As we know, the Secretariat is developing a database of relevant national legislation. We would like to ask the Secretariat to prepare a paper setting out the key elements of existing national space legislation that in their judgement illustrate how States are regulating activities in space.

To this should be added the information on practice drawn from the presentations that we have heard, as well as additional information and assistance as it may be required from Member States. This paper would provide a starting point for discussion next year, aimed at identifying desirable policies and practices and potential gaps. This would not be an exercise of interpretation: we would not be saying that this was something States had to do. We are not judges who can tell States what they must do, but we may be able to develop a set of observations reflecting the judgement of experts here about what States could consider doing.

We hope this suggestion will be favourably received as we believe that this work by the Secretariat would be both feasible and very useful to us all.

The CHAIRMAN: Thank you for your statement on agenda item 9, in which you explained the position of your delegation in relation to the

issue of interpretation. You also addressed a request to the Secretariat for the preparation of a paper setting out the key elements of existing national space legislation that, in the Secretariat's judgement, illustrate how States are regulating space activities. I think the Secretariat has taken note of this proposal.

Does any other delegation wish to speak on this item? I recognize the distinguished representative of Greece, to whom I give the floor.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): I would like to recall something on the concept not of the launching State but of interpretation. In my view, there are two types of interpretation: one is as given in the convention on the law of treaties, in other words, how that convention is interpreted. There is a different interpretation, and that is Article 33 of the Statute of the International Court of Justice, as well as in other jurisdictional forums, be it concerning arbitration or other areas.

There would also be an interpretation according to individual practice in States through the application or implementation of international treaties. However, the conduct of States in applying the terms of a treaty is an element that is not only legal but also socio-political in terms of interpretation of the treaty, under the conditions provided for in the Vienna Convention on the Law of Treaties. There is more, but that goes beyond state or international boundaries.

In any event, it is not a question of interpretation of only two treaties, where the term "launching State" is used. I agree with the distinguished representative of the United States on the question of how States interpret this concept, and the term "launching State", what cases this might be related to. It is not only a legal or political issue, but also an intellectual question. I do agree it has nothing to do with the mandate of this Subcommittee. We cannot give it an authentic interpretation: that is for the State in cases of implementation, or the court, or the International Court of Justice, or arbitration tribunals in cases of dispute.

The CHAIRMAN (*interpretation from French*): Thank you for your comments. I now give the floor to the distinguished representative of Belgium.

Mr. J. MAYENCE (Belgium) (*interpretation from French*): The proposal made by the distinguished representative of the United States

seems to us to be a constructive one, especially as concerns any document that might be sent to the Secretariat with an inventory or commentary on national legislation on space activities. My delegation also agrees that the term "interpretation" is one that we should look away from, as it does bring with it too much ambiguity.

However, in the working group we feel the discussions should address the clarification of this: we have not only referred to "the interpretation" but also "possible interpretations" of the concept of the launching State. Is it therefore not merely a problem of resolving the question but also of arising the question, in order to see what possible interpretations there might be, in order to convince States that important work must be carried out to draw up laws on space activities. We must therefore look at application at the international level, and it must be understood before that can be done.

My delegation believes that the Legal Subcommittee is the forum where we could have the greatest expectation to understand and clarify such issues. We agree with the proposal of the United States delegation but would like to express our concern once again that questions of clarification (not interpretation) of the concept of the launching State should be dealt with in the working group.

The CHAIRMAN: Thank you for your contribution. I now give the floor to the distinguished representative of Japan.

Mr. Y. KINOSHITA (Japan): Presentations on new launch systems and ventures made this year were very interesting to my delegation. We have been able to obtain the latest information on ongoing launch initiatives and legal measures taken in respective States to ensure the responsibilities provided for in the space treaties. As this review is being undertaken in accordance with the three-year workplan, my delegation believes the discussion should proceed on a step-by-step basis under the title "Review of the concept of the 'launching State'", as contained in the Liability Convention and the Registration Convention, as applied by both States and international organizations.

Next year we will review how Member States apply the concept of the launching State in their domestic activities. This year's presentations include useful information on measures taken by Member States. Next year, the best possible use should be made of the insights gained from these presentations. It is important to focus next year's discussion and base it on the outcome of this year's

work. In this respect, my delegation supports the proposal made by the United States delegation and looks forward to a productive and constructive discussion next year.

The CHAIRMAN: Thank you for your contribution. I recognize the distinguished representative of Germany, to whom I give the floor.

Mr. K-U. SCHROGL (Germany): I have listened with interest to the proposal made by the distinguished representative of the United States, in particular concerning the request to the Secretariat to prepare an analysis. This proposal has already been supported by the delegation of Japan.

I would like to recall that during our working group meeting, a request was made that the Secretariat should prepare a compilation of relevant legal texts. If the Subcommittee agrees with both these proposals, I would suggest that these should be merged; rather than two separate documents, the legal text should perhaps be annexed or, if it is part of the original analysis, be put together with this exercise that has been proposed by the United States delegation.

The CHAIRMAN: Thank you: this means that the Secretariat should produce not two but one paper to serve as the basis for our further deliberations. I give the floor to the distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): I have a question, rather than a comment, albeit possibly a naïve one. From what we already know, there are very few domestic laws on space activities, with the exception of some United States legislation. There is some legislation that exists in Brazil, Sweden and Australia, and that is about all I am aware of. There may be one or two framework laws; as far as I am aware, the Australian law is a 250-page volume. I do not know how many hundreds of pages are contained in the United States laws.

It is not only our kind but also our poor colleagues in the Secretariat who will have to wade through this volume of paper. It is a huge amount of existing legislation that I would imagine is difficult to handle. Therefore I think the Subcommittee should clarify exactly what we are asking for from the Secretariat. This is why I say this might be a naïve question, but what would the content of this paper be?

The CHAIRMAN: Thank you for raising that point. It might be a little more complicated than

we had thought, and perhaps we could ask the Secretariat for an explanation.

Mr. P. LÁLA (Secretariat): We are happy to take on this task. We already have a set of national legislation provided by Member States, and we will ask for additional data to complement this material. We will then proceed to work on it and if encounter any problems we will of course ask Member States for their guidance. However, I think we can produce a document which will satisfy delegations concerning both issues: to have a set of national legislation that already exists, and to provide an analysis on how the issue of the launching State and launch activities are covered in this legislation.

The CHAIRMAN: Thank you. I now give the floor to the distinguished representative of the Russian Federation.

Mr. Y. KOLOSSOV (Russian Federation) (*interpretation from Russian*): In brief, my delegation would like to state that as we consider the concept of the launching State, we cannot just refer to two treaties (namely the Liability and Registration Conventions). That would not reflect the true state of affairs in outer space law.

A statement was made indicating that ESA, which has undertaken the commitment pursuant to the Convention, is also in favour of the launching State being construed in this fashion. However, in the Rescue Agreement another concept is used, i.e. the authorities that launch. In an article of that Agreement there is a definition of the launching authority; in Article 6 it indicates that the international organization in this particular instance is not the launching State but the launching authority. The Outer Space Treaty must also be taken into account; the same terms are used there as well.

My delegation did not object to the agenda item being couched in terms of the "launching State", but this is a restrictive approach and confirms the point we are trying to make. We will only be able to make progress here if we have one single, comprehensive law. To work in an isolated or fragmented fashion is worthless.

The CHAIRMAN: Thank you for your statement. Does any other delegation wish to take the floor, at what is the last opportunity to do so? I see none. We have thus concluded our substantive consideration of agenda item 9, "Review of the concept of the 'launching State'". We expect the report of the working group on this subject to be considered tomorrow morning during our plenary meeting.

We will now continue our consideration of agenda item 10.

Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session (*cont.*) (agenda item 10)

The CHAIRMAN: Does any delegation wish to take the floor at the present time, before we adjourn for further consultations? I have no speakers on my list, and I see no applications to take the floor at the present time.

I have been informed that some additional progress was made during the informal discussions on proposals for a new agenda item this morning. I would therefore propose that perhaps one further session of such informal discussions might be useful this afternoon. If I hear no objections, we will now suspend the meeting of the Subcommittee; thereafter, informal consultations could continue with a view to concluding that work this afternoon.

Following the conclusion of the informal consultations, I would suggest that the Subcommittee reconvene its meeting to finalize discussions on agenda item 10 in the plenary. Are there any objections to proceeding in this manner? I see none. We will therefore proceed accordingly. I give the floor to the moderator of the working group, the distinguished representative of Sweden.

Mr. N. HEDMAN (Sweden): This is just to advise the Subcommittee that these consultations will begin in 15 minutes (at 3.50 p.m.).

The CHAIRMAN: Thank you. We will now suspend this meeting of the Subcommittee so that the informal consultations can begin at 3.50 p.m.

The meeting was suspended at 3.35 p.m. and resumed at 4.20 p.m.

The CHAIRMAN: We will continue our consideration of agenda item 10, "Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session", in the plenary.

Does any delegation wish to make a statement at the present time? I see none. We have thus concluded our substantive consideration of this agenda item. I would like to warmly thank the distinguished representative of Sweden who assumed the heavy burden of moderating the

informal discussions, which have in my opinion proved to be very effective.

I will shortly adjourn this meeting of the Subcommittee. Before doing so, I would like to remind delegations that we will begin our adoption of the report at tomorrow morning's meeting. We will also approve the report of the working group on the concept of the launching State. I would also remind delegations that while every effort will be made to ensure that we can complete our adoption of the report at tomorrow morning's meeting, it is

possible that some of the documentation might only be available only later in the day. Therefore, delegations should be aware that the possibility of holding a brief meeting of the plenary in the afternoon might be required to finalize the adoption process.

Are there any objections to proceeding in this manner? I see none. This meeting is now adjourned.

The sitting adjourned at 4.35 p.m.