

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

Legal Subcommittee

*Unedited transcript*

790th Meeting

Thursday, 26 March 2009, 3 p.m.

Vienna

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Chairman: *Mr. V. Kopal (Czech Republic)**The meeting was called to order at 3.16 p.m.*

**The CHAIRMAN.** Good afternoon distinguished delegates, I now declare open the 790th 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 afternoon. We will continue our consideration of agenda item 6 (a) the definition and delimitation of outer space and (b) the character and utilization of the geostationary orbit. We will continue our consideration of agenda item 7, nuclear power sources. We will also begin our consideration of agenda item 9, capacity-building in space law.

I would also like to kindly remind all delegates to review the provisional list of participants which has been distributed in CRP.2 and provide the Secretariat with any comments or edits they wish to make. At the end of this afternoon's session we will have two working groups. The working group on agenda item 6 (a) the definition and delimitation of outer space which will hold its third meeting under the chairmanship of Mr. José Monserrat Filho of Brazil. Immediately after, the working group on agenda item 4, status and application of the five United Nations treaties on outer space. This working group too will hold its third meeting under the chairmanship of Mr. Vassilis Cassapoglou of Greece.

Are there any questions or comments on this proposed schedule?

I see none.

Distinguished delegates, I would now like to continue our consideration of agenda item 6 (a) the definition and delimitation of outer space and (b) the character and utilization of the geostationary orbit.

I have some speakers for this afternoon on this agenda item and the first of them will be the distinguished representative of the Russian Federation.

**Mr. V. TITUSHKIN** (Russian Federation) (*interpretation from Russian*) Thank you Sir. In our view the questions on the definition and delimitation of outer space are of primary importance for us to have a clear understanding of the limits of the applicability of national sovereignty of States and to abide by their territorial boundaries and to avoid infringing their legitimate rights and interests. Obviously, the legal regimes governing airspace and outer space are very different since States have full and exclusive sovereignty over the airspace directly above their territory whereas outer space is open for research and use by all States. In our view, establishing the boundaries between airspace and outer space would foster the orderly conduct of space activities and, as an example, we would like to offer a situation where there is no legal clarity of liability and responsibility for such activities.

If you look at articles 2 and 3 of the Convention on Liability where, for instance, there is a flight by air or spacecraft or a facility and, it is possibly technically speaking, that such things take to the air, it depends on where the craft or facility in question is, in airspace or in outer space, what the liability regime to be applied is. If damage occurs to such a craft or facility in airspace then, of course, there is a clear and absolute

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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.



understanding of the liability involved. If, however, this craft is damaged in outer space then there will only be liability if blame can be established on the part of the owner of whatever caused the damage.

We would also like to call attention to the fact that even though States which have not declared themselves in favour of delimitation but, nevertheless, in their national laws and legislation do establish an outer limit to their airspace for instance Australia. Australia in 2002 made an amendment to its law on space activity which recognizes space activity as activity which takes place at a height higher than 100 kilometres above the Earth and this is actually very close to the positions stated by the Soviet Union in 1983 where it said 110 kilometres should be the boundary between airspace and outer space.

Obviously, with new types of technology and new types of space activity we are bound to reach a situation where we are going to need to have a clear legal definition of what we understand by outer space and therefore we are also going to need to delimit where airspace ends and outer space begins. In this context, I would like to draw your attention yet again to the initiative put forward in April 1983 by the Soviet Union when the Soviet Union stated that it would be sensible to have that delimitation at a height of 110 kilometres above sea level. If we establish such a boundary this will in no way infringe the interests of other countries in the sphere of space activities since the proposal attached to this was the idea that we should have the normal understanding that we have under the Law of the Sea of free passage for peaceful flight over the territories of other States, not only above that limit of 110 kilometres but below that limit as well and this would also include spacecraft being put into orbit or being taken out of orbit.

**The CHAIRMAN** (*interpretation from Russian*) Thank you very much the distinguished representative of the Russian Federation. I would now like to continue this discussion on questions of the definition and delimitation of outer space which, as you have just stated, are of primary importance for a clear understanding of the limits of national sovereignty of States. Thank you for calling our attention to the proposal which was made as long ago as April 1983 by the then delegation of the Soviet Union and thank you also for stressing the fact, that even if the boundary is set, that will not in any way affect the passage of spacecraft which will be flying through the airspace of territories of other countries. So, thank you very much for that statement.

Now I give the floor to the distinguished representative of Indonesia.

**Mr. W. PRASOJO WIDAD** (Indonesia)  
Thank you Mr. Chairman for giving my delegation the chance to express its view on this particular issue.

With respect to the question of the definition and delimitation of outer space. We have examined this issue carefully and have listened to the various statements delivered at this session. My delegation is convinced that our view has been stated by many delegations on this issue. We are wholeheartedly contributing to the accomplishment of our common responsibility to strengthen the legal regime in our outer space activities. However, my delegation has not been persuaded by the legal argument put forward for \_\_\_\_(?) that the definition and delimitation is not necessary. My delegation's position continues to be unchanged that definition and delimitation are indispensable. This was the reason why this issue has been included to the agenda of this Subcommittee since long time ago and remains there until now. Although my delegation \_\_\_\_(?) on the paramount importance of this matter, my delegation also views that we have to be realistic in setting steps and a road map toward agreement or any other constructive outcome.

Mr. Chairman, we have been going through more than 40 years of debate, discussion and exchange of view upon on this matter, it is time for us now to prove to our future generation that our discussion on this matter \_\_\_\_(?). It is indeed a serious business to pave the way for ensuring the sustainability of our outer space environment and for ensuring legal certainty for its utilization.

In this regard, Mr. Chairman, taking into consideration your experience, knowledge and wisdom, my delegation is seeking your indulgence to guide our discussion in order to find whatever consensus we can achieve. In view of achieving progress in this matter, my delegation would like to reiterate our position, as we have stated during the general exchange of views, that it is very timely for us to try to achieve minimum consensus or minimum compromise in a more realistic manner. If discussion on delimitation may potentially bring us to a lengthy philosophical debate then, at this step, we can try to focus our discussion on this issue of definition. Even within the issue of definition we could propose and develop a short list of legal terminologies and collectively consider, by member States, the most basic and fundamental ones such as the definition of space objects or, the definition of peaceful use of outer space.

If defining outer space could potentially bring us to another lengthy philosophical discussion then, for this step, we could also exclude from the short list so it would not undermine the importance of achieving minimum compromise and consensus on other terminologies.

Mr. Chairman, my delegation strongly feels that, no matter how minimum the consensus we could achieve now, it is work appreciated as a \_\_\_\_(?) and it will put the light in the tunnel for our future deliberations. It will also help achieving progress in discussion in other relative issues of outer space. Thank you Mr. Chairman.

**The CHAIRMAN.** Thank you distinguished representative of Indonesia for your statement on item 6 (a) of our agenda in which you, once again, repeated the position of your country to this particular question. I would like to say that I appreciate your appeal, in which you have just made, to try to achieve a minimum consensus or minimum compromise in a more realistic manner, it means to avoid philosophical or theoretical approaches but to stick to realistic and specific terms.

You made, in this conjunction, an interesting suggestion that we could focus on developing a short list of legal terminology, that collectively considered by member States as the most basic and fundamental ones, such as the definition of space objects or the definition of peaceful use of outer space. This is, of course, addressed to the Subcommittee as a whole but particularly to the working group that is dealing with this particular item. Of course I can promise you that I will be doing all my best for devoting a series of discussions in order to find, as you quoted, whatever concerns us we can achieve. Thank you very much.

The next speaker on my list is the distinguished representative of Brazil to whom I give the floor.

**Mr. A. TENÓRIO MOURÃO** (Brazil) Thank you Mr. Chairman. The Brazilian delegation would like to begin this intervention by expressing its satisfaction in hearing the statements delivered in the working group on item 6(a) as well as in the Subcommittee on this issue. We are also pleased to see new replies to the questionnaire on the definition and delimitation on outer space. We are of the view that these opinions are important elements for the consideration of the subject and, in this sense, we encourage other States to present their opinions, other statements or in written form.

Mr. Chairman, according to the 1944 Chicago Convention on International Civil Aviation, States

have exclusive and absolute sovereignty over the air column above their territories. In its turn, the Outer Space Treaty of 1967 establishes that outer space cannot be subject to national appropriation of any kind. Nonetheless, the boundary that separates these very different legal regimes, after more than 40 years of discussion, is still not clear.

While conscious of the difficulties of the subject and the different political positions heard on this matter the Brazilian delegation is of the view that this impasse contributed to the establishment of a contradictory reality. At the same time that the State territory is a limited and defined concept, the vertical limits above its surface remain undefined. Brazil is of the view that the absence of a clear definition and delimitation of outer space is a challenge that must be tackled if we are to make sure and safe progress in space activities. This position bears in mind the fast pace of developments in space technology. We believe it is important to recognize that law must, at some time, precede needs, if we are to safeguard the best interest of society. In this sense,

Mr. Chairman, we would also like to commend the Indonesian delegation on their speech and their proposal for making the best use possible of our time here on this subject. Thank you Mr. Chairman.

**The CHAIRMAN.** Thank you distinguished representative of Brazil for your contribution in which you emphasized the need for discussing this issue and coming to a reasonable conclusion in this respect.

Ladies and gentlemen, this is all that I ....

I recognize the distinguished ambassador of Chile.

**Mr. R. GONZÁLEZ ANINANT** (Chile) (*interpretation from Spanish*) Thank you so much Mr. Chairman, some thoughts if I may, some that are general in nature.

All delegations that have taken a stance on the issue of the definition and delimitation, as appeared clearly this morning, since there are questions that I brought to your attention have not used any legal arguments. It was a good thing to do this in plenary because that left it absolutely clear that there is no legal argument and, to my mind, this is the Legal Subcommittee, it is not a subcommittee of a political nature, it is really a legal subcommittee and we would assume that legal experts are in attendance. Of course, this is not a valued judgement but that they simply made no reference thereto because they are not fully

conversant with the subject. This morning there was a brief relevance to the fact that, simply, it was not to their liking to have delimitation, others said that it was premature, others yet said that sometime soon and yet others said nothing at all so there are no legal arguments.

It is very important to clearly state at this session that there is no will to comply with the preamble of the Fourth Committee resolution adopted on the peaceful uses of outer space where it makes reference to the need to promote progressive development of international law. We are not complying with the resolution in this context and we have an item on the agenda of the subject of which there is no readiness to negotiate despite the fact that the mandate clearly stipulates that this should be done.

We have listened to a very interesting presentation from the Russian Federation and we share the views and support them and also Brazil spoke. They have illustrated, in a very constructive fashion, what needs to be said on the subject, also from Indonesia. They have all given us legal arguments they are therefore in line with the purpose and task of this Committee.

That leads us to say that, though it may appear strange to you Sir, it brings to mind the fact that we are devoting too much time, and I would like to be very clear also in interpretation that we are devoting too much time, to the legal and technical subcommittee in the form of adoption of guidelines. I try to avoid foreign words. Spanish is, after all, a language which is very much in use and has quite a lot of terminology, enough, even 14 per cent of people in the USA are speaking Spanish these days.

The guidelines are brought to this Legal Subcommittee saying that they are not mandatory so it is my impression that in the technical and legal subcommittee we are merely getting together to share cups of coffee and have a friendly relation, that we have had, by the way, for a long time. I was wondering to what extent this Subcommittee is discharging its duties. If we set this against the General Assembly resolution which, in the preambular paragraph, stipulates that one of the basic purposes in this case is the promotion of the development of space law or this Subcommittee is not pulling its weight.

Along such lines I would say where do the dots stem from in connection with the possible need to cut back the sessions. We would have to do that in the Scientific and Technical Subcommittee where often we have to fill up with a series of technical presentations

not all of them fully in line with requirements of developing countries, by the way, I would tend to say that just 20 per cent are in that position.

Indonesia has pointed us in the right direction, seeking ways and means they have suggested to approach a topic that has been under discussion for the past 40 years and I point to the failure of political will and readiness. I still put the question to the room. Is a space object, I am sorry I really have a legal background, legal training, it is not the first time that I put a silly question so possibly it could be a silly question but nothing is worse than not putting the question. A space object, I am asking, could it be permanently stationed in space? And, if it is specifically a satellite, could it be in orbit in the airspace? Because since we do not have a definition of space, *per se*, some could say that we are taking away airspace, in view of the fact that the only convention force is the ICAO Convention referring to the sovereignty over the airspace of States. The situation is really quite surrealistic in nature and, I must say that I go along with my friend, this is part of science fiction or, perhaps, this is because I am ignorant. It would mean that all satellites and all space debris that have created incredible accidents over the past years and urgently require our attendance and attention in legal matters because sometime soon when a disaster occurs in a country that opposes definition and delimitation then you can be sure that we will forge ahead rapidly but not right now. Is this or is this not within the realm of science fiction to assume that these objects are outside the Earth and outside airspace since we do not have a definition of outer space.

Bearing these concepts in mind, Mr. Chairman, we are facing a lot of frustration in respect of the technical and legal subcommittee. They have not been able to provide us with a clear scientific view giving us the possibility of continuing our work on the subject and international law, no doubt, needs to be taken forward in this area.

Finally, I would like to particularly underline the question put this morning that was not answered by anybody. Is there some area of international law, I apologize. Does international law have some connection with an activity that would not have space for negotiation? The Law of the Sea applies to the sea, as far as I know, and aeronautics to airspace, in nuclear law to nuclear activities. Unless we want to change the definition, and we could do that of course, and make reference to delimitation and definition of space activities but it is my impression that this would create a problem for some countries that have elements that, at some point in time, move from airspace to space

beyond but, from every objective point of view, we have not been given any legal elements by the distinguished legal minds attending these meetings that would justify a failure to define or to proceed to delimit outer space. At the same time I have heard no answer to the question made in legal terms so, therefore, we yet again support this statement made by Indonesia, Brazil and, very specifically, along a very convincing point made by the Russian Federation, we have listened to them on several occasions now. Thank you.

**The CHAIRMAN** Thank you distinguished ambassador from Chile for your contribution to our discussion in which you emphasized the legal character and legal needs of establishing a definition and delimitation of outer space. You also repeated your earlier question concerning the sphere of application of space law. This is, of course, one of the main reasons of your arguments in favour of a definition and delimitation of outer space. You also supported, in this respect, the three earlier speakers that we had in favour of the solution of this problem.

I do not have any other speaker on the list of speakers but I recognize the distinguished representative of the United States of America.

**Mr. K. HODGKINS** (United States of America) Thank you Mr. Chairman. Earlier in our discussions there were several questions posed about our views on the definition and delimitation of outer space and I would like to expand on our statement.

The first observation I would like to make is that, during the course of the negotiations of five treaties, there was no attempt as far as I can see, to define outer space and there was ample opportunity to do that and, for whatever reason, the legal scholars at the time decided (a) it was unnecessary or (b) it was not possible or (c) we did not have to define it in order for the treaties to work. What we have is 40 years of the treaties being in existence without a definition of outer space.

When we look at the question, we look at it from the legal standpoint and we have done an extensive legal analysis of this and we look at it from the practical standpoint. If we had a definition of outer space today would that have changed anything that we have done for the past 40 years and, if we do not have a definition of outer space, will that keep us from doing the things we want to do in the future. The answer is obvious. We have been able to operate within the treaties without a definition and we have in all of our countries' space programmes, planned their space programmes without a definition of outer space so, we

ask ourselves what are we going to gain \_\_\_\_ (?) by engaging in an exercise to seek to establish the definition of outer space or a delimitation. From our standpoint this is a very sensible approach and we have not said that there is no need to have a definition it is just that we do not see the urgency at this time and, maybe in the future, we will have to do that but at this stage it seems that the Chicago Convention has operated sufficiently since the beginning of the space age and the treaties that we have negotiated have also operated sufficiently with the absence of a definition of outer space, we have not been hindered in what we wanted to do.

The other questions was, when will we be ready to have a definition or delimitation of outer space. If I could answer that question I would quit my present job and become a fortune teller but I am not going to do that. Thank you Mr. Chairman.

**The CHAIRMAN** Thank you distinguished representative of the United States for your statement, brief but essential, in which you defended the position of your government to this question and, of course, in which you tried also to explain your position in the light of the questions that have been raised here by the proponents of this delimitation. I only wish to add that there have been attempts at establishment of a specific limit for airspace and for outer space during the 40 years of discussions. There were several such suggestions, perhaps more or less practical, more or less precise but there was such a discussion.

After all, there was a specific proposal made in 1983 by the then Soviet Union, which was referred to in the statement of the Russian Federation made here earlier, and there was of course quite an intensive discussion on it during the first years after the adoption of the Outer Space Treaty because it was just a very strong argument raised during the approval of the draft Outer Space Treaty that there should be, at the same time, a definition of outer space there because the Treaty uses the term outer space objects and so on and so on, at almost every provision. Then the draft Outer Space Treaty was adopted in the General Assembly but, at the same time, the request was included in the resolution of the General Assembly to put on the agenda the question of definition and delimitation of outer space. This I do not wish to intervene in the discussion but I just wanted to remind the distinguished delegations about the facts that characterized the negotiations on the definition and delimitation of outer space.

I now give the floor to the distinguished ambassador of Chile.

**Mr. R. GONZÁLEZ ANINAT** (Chile) (*interpretation from Spanish*) Thank you so much Mr. Chairman. In reference to the statement made by my distinguished friend Ken Hodgkins from the USA, I certainly have no intention of applying to him so that I learn more about my future as to when we get a definition so, no need to look into the stars. Then he referred to facts again, he did not mention legal arguments and that justifies what I am saying. He says that initially those active in this area were learned, well, should we not say that that was not really the case, they were not able to define or delimit. He says that there are no practical reasons but practical reasons are not of significance. Are we or are we not acting in step with the 1976 Treaty? If we look at articles 1, 2, 3 and we relate them one to the other you can draw several conclusions. One, that there cannot be any claim of sovereignty on the basis of use. Use being interpreted in a very flexible manner because obviously you have to make use of space or any other form of claim on sovereignty and, even more important, that the exploration and use of outer space must come about for the benefit and in the interests of all countries of the world regardless of their level of development, scientific or economic, establishing a form of positive discrimination that is clearly legal in nature.

The Chicago Convention says nothing about that, quite the contrary it does claim jurisdiction. So there are two contradicting and opposing legal regimes and this is creating quite some harm. Yet again, it has appeared clearly that the arguments simply are not legal in nature and do not explain the lack of a definition. Thank you.

**The CHAIRMAN.** Thank you distinguished ambassador of Chile for your contribution to the discussion and I now have the distinguished representative of Italy on my list of speakers.

**Mr. S. MARCHISIO** (Italy) Thank you Mr. Chairman. Just to try to answer to Ambassador González's question concerning the existence of other branches of international law where there is no definition exact delimitation of the sphere of application. I can mention International Environmental Law. If you look at principle 2 of the Rio Declaration on Environment and Development which is identical, more or less, to principle 21 of the Stockholm Conference of the United Nations of 1972, you will find that, according to this principle, States have the sovereign right to exploit their own resources but, at the same time, they have the obligation, the responsibility to ensure that activities within their jurisdiction are controlled, do not cause damage to the environment of other States or of areas beyond the

limits of national jurisdiction and this is a negative definition. If outer space is included within the areas beyond the limits of national jurisdiction this means that we have the same situation as in space law. The majority of authors think that outer space should be included in this obligation of due diligence and care. I agree with him that there is only a negative, residual definition of outer space for the time being.

**The CHAIRMAN.** Thank you distinguished representative of Italy for your contribution by which you drew our attention to the Rio Declaration as a certain example the impact of the jurisdiction of States also is not precisely defined.

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

**Mr. R. GONZÁLEZ ANINAT** (Chile) (*interpretation from Spanish*) Thank you so much Mr. Chairman. The truth of the matter is that I am very encouraged with my Italian friend's statement. It stems from disagreement. All environmental treaties if you look at them and all the areas to which they apply have, as the name indicates, the environment. A scope of application in respect of principle 2, I do not have this of course because it is the Stockholm Declaration, remind me, 1970 I think it was, thank you, I am getting good help from my friend Mr. Marchisio, establishes a well defined territorial scope. The States' responsibility is the reference that may have a negative impact on another State and this is what shapes international liability and that is not banned under international law.

This has given rise to the fact that some authors refer to this as the doctrine of the abuse of law but that is because we can clearly identify the scope. What I do think is interesting and should shed some light on further consideration of this, is due diligence and the principle of due diligence, where States must attend to their space activities. This could point in the right direction for us to have discussions that stand a better chance of reaching consensus. Having said that, I would like to thank Professor Marchisio and all other speakers for their contribution but, I beg to differ. It could be very dangerous indeed if we were to apply that to other areas such as the Law of the Sea, that there is no exclusive economic area, there are no high seas, we are on a very, very, slippery slope here. Thank you.

**Mr. CHAIRMAN.** Thank you distinguished representative of Chile for your contribution to our discussion.

I now have the application of the delegation of the United States of America. You have the floor, Sir.

**Mr. K. HODGKINS** (United States of America). Thank you Mr. Chairman. I just wanted to make one brief comment concerning the observations that you made regarding the early negotiations of the treaties. It only underscores my point which is that, at the time we negotiated the treaties, we did not define outer space even though there was a desire but the fact that there was no definition of outer space was not a deterrent to any member State becoming a State Party to the Outer Space Treaty and the subsequent treaties. The question then is, when a State decides to become a State Party to the treaties, is that a legal decision or is it a decision based on practical and political considerations as well because if you take the view that treaties cannot work without a definition of outer space then why would you become a Party to the treaties. Well, the answer is that there are other things at stake and that we all have a common understanding of how the treaties work in the absence of that definition, so this debate only reinforces an earlier point that we made which is, you have to look at how the treaties have operated in the past, how do you expect them to operate in the future and whether or not a definition of outer space would make things easier in the future or will it make it more difficult. That is simply the analysis that we have used in looking at this question over the years. Thank you.

**The CHAIRMAN.** Thank you distinguished representative of the United States.

Before giving the floor to the distinguished representative of Canada I would ask your allowance to make one very simple, modest comment. Yes, I completely agree that every State is sovereign in deciding whether it will adhere to the outer space treaties as they stand, it means without a definition and delimitation of the scope of applications of this treaty or not, this is without any doubt. It is also true that, up to now, States adhere to the Outer Space Treaty and other space treaties without insisting on having a definition prior to their accession to these treaties, it is true but, at the same time, I have to draw your attention to one fact, I am drawing only on your attention I am not requesting your approval of this point or the contrary denial of this point. The distinguished representative of Italy raised here the example of the Rio Declaration and before the Stockholm Declaration on principles governing the protection of the environment. To my knowledge, these documents have included recommendations it was not a legally binding treaty at that time, either at Stockholm nor at Rio de Janeiro while the Outer Space Treaty and other

United Nations space treaties are legally binding documents and, in case of a violation of these documents in any manner, there should be responsibility of States \_\_\_\_(?) for such a violation and for violation by all national space activities performed by States, state agencies or by private entities. So this is a certain difference and, for this particular situation if it should really occur, then the question of the scope of validity of the United Nations instrument is, of course, important. So this is my modest personal view on this question.

I still have the distinguished representative of Canada.

**Mr. M. BOURBONNIERE** (Canada) Mr. Chairman, thank you very much. Perhaps I have, like my distinguished colleague from Chile succumbed to temptation, but in his questions for some legal argumentation, I simply wish to point out that definitions are like a \_\_\_\_(?) Damocles, it is a double-edged sword. You include but you also exclude and, by defining space, we are also limiting airspace and it is not within the jurisdiction or the mandate, we believe, of this Subcommittee to limit airspace. A simple argumentation. Thank you very much.

**The CHAIRMAN.** Thank you very much distinguished representative of Canada for your contribution to the discussion.

It still have on my list of speakers the distinguished representative of Greece.

**Mr. V. CASSAPOGLOU** (Greece) (*interpretation from French*) Thank you very much Sir. May I start with a general comment. It is facts which give rise to laws and rights and not the laws and rights which give rise to the facts. If it were otherwise we would be faced with a situation where the great ones of the international scene would be talking about social facts, facts of society. Without these facts we could not be in any way regulating the behaviour of members of any group. So what I wanted to say was, in terms of a general comment so that we should understand what we are talking about here, we are talking about the laws which regulate the behaviour of individuals and groups or individuals within a group and we are not talking about objects here.

May I offer an example, I know it is an oversimplification but, let us take the legal definition of a lake or of a sea, it has no connection and, when I talk about regulation, I am talking about regulating navigation, fishing, all the ways in which people use a lake or a sea, we are not talking about the sea or the

lake as such, just as a thing in itself, we are talking about the way in which it is used. I have spoken about this two or three times yesterday and today and, following on from what my colleague and friend the distinguished representative of Italy was saying, we have 1919 with perfectly sensible changes and the wording here is up to date because technology is always advancing but, as has already been said, we have never defined what we mean by airspace or outer space. That is why, if I may put it this way, this mania about terms and terminology is something new it has only emerged since the Second World War. Under international law we talk about the Anglo-Saxon legal traditions and if we add these definitions what do we get, we get a situation where there is a risk that we are giving either a definition which is too narrow or a definition which is too broad so we may end up in a situation where we are unable to cope with what the future may have to bring, there may be technological changes in the future or other changes which would require change.

If we have a very broad definition, a very general definition, there too we might be ending up by risking people interpreting this in a way that could even be seen as abusive. We have 50 years of experience, nobody would dare to say that sputniks or space shuttles were not space activity, they could not say that they are moving somewhere which is not space. Sputniks and space shuttles by their very definition are to do with space activity. It is very clear whether they are space or not space activity. But here we are talking about States' responsibility and their liabilities in the traditional sense of the word both responsibilities and liabilities of the States involved.

There Mr. Chairman those are my comments on the views which we have heard but for a particular State it is not a legal decision for it to decide that it is going to be a part of, or a party to, the space conventions. Thank you Sir.

**The CHAIRMAN** (*interpretation from French*) I thank the distinguished representative of Greece for that contribution to the discussion.

I still give the floor to the distinguished ambassador of Chile.

**Mr. R. GONZÁLEZ ANINAT** (*Chile*) (*interpretation from Spanish*) Thank you so much Mr. Chairman. I am every more encouraged by comments, thank you for having conducted this debate in so effective a manner.

I am going to make a very brief reference to what the representative of Greece has said. If we could say that facts give rise to law then human rights would have to be violated in order to have human rights legislation. It is as simple as that. Yes, I do have this mania for international law and that is reflected in the fact that I paid careful attention to a working group that I have presided over on international law. Most of the space conventions or treaty texts, three of the most important ones, did anticipate in respect of scientific and technical progress and, if we look at other areas, law often comes before the facts. Thank you.

**The CHAIRMAN** Thank you very much distinguished representative of Chile.

Are there any other contributions to this discussion, which was very lively and I think has brought some new views, this is important, some fresh thinking.

I give the floor to the distinguished representative of China.

**Mr. Y. XU** (*China*) Thank you Mr. Chairman. The Chinese delegation follows very closely the debate concerning the definition and delimitation of outer space and we very much appreciate the efforts both of the Chairman and many other delegations to make our work progress.

The Chinese delegation is of the view that the issue of definition and delimitation as a good starting point to develop the space law which is embodied in the five space law treaties. While we have \_\_\_\_\_(?) and visionary debate on the definition and delimitation of outer space we have to look to a much bigger picture that is, the five treaties and the basis of space law shall not be changed and shall not be compromised. During this session we had many innovative or even creative suggestions to replace outer space with space activities and there is also other debate on whether we have made a wrong decision during the negotiations of these treaties. I do have some concerns about whether it will leave bad implications for others which are not Parties to these treaties. So I hope in the future when we have very in-depth discussions on how to define and how to delimit outer space, we have to look how to entrench the basis of space law, that is the five treaties. Thank you Mr. Chairman.

**The CHAIRMAN** Thank you distinguished representative of China for your contribution to this discussion. I think it was a meaningful contribution because you drew our attention to a new aspect that should be taken into account.

I do not have any other delegation applying for this discussion. Is there any other delegation wishing to speak on this particular item?

I see none.

Perhaps, we should now end the discussion for the time being and we will therefore continue and hopefully suspend our consideration of agenda item 6 (a) in the plenary, tomorrow morning, pending deliberations of the working group on the agenda item 6 (a).

We will also continue and hopefully conclude our consideration of agenda item 6 (b) tomorrow morning. This will be the last opportunity tomorrow morning for discussing item 6.

Distinguished delegates I would now like to continue our consideration of agenda item 7, nuclear power sources.

We have the application of the distinguished delegation of the United States of America. I give the floor to Mr. Sam McDonald.

**Mr. S. McDONALD** (United States of America) Mr. Chairman, this standing agenda item is a welcome opportunity to share my delegation's views regarding the Legal Subcommittee's consideration of the principles relevant to the use of nuclear power sources in space.

I would like to commend the Scientific and Technical Subcommittee for its continued work on this topic. The STSC, at its meeting in February 2007, reached consensus to pursue a joint effort with IAEA to develop an international safety framework for the use of nuclear power sources in outer space. At that time the STSC outlined a new three-year work plan for its working group on nuclear power sources which enables a joint group of experts from interested member States of both STSC and IAEA to develop the safety framework for review and approval by the STSC and IAEA in 2010. We applaud the recent progress made by the joint experts group and are pleased to see the STSC, at its most recent meeting in February, was able to adopt by consensus, considerably ahead of schedule, the technical framework for nuclear power source applications in outer space. We welcome consideration of the framework by the IAEA Commission on Safety Standards this Spring and we look forward to consideration of the framework by the full COPUOS when it meets in June.

The achievement of an international consensus on a technically-based framework for space nuclear power source applications will be a significant step forward in ensuring their safe use.

We do not object to keeping a reference to this agenda item on next year's LSC agenda to track the work of the STSC. Thank you for your consideration of the US views on this agenda item.

**The CHAIRMAN** Thank you very much distinguished representative of the United States of America for your statement relating to point 7, the use of nuclear power sources in outer space.

You evaluated the adoption of the international safety framework for the use of nuclear power sources in outer space at this year's session of the working group of the Scientific and Technical Subcommittee. You also appreciated the consideration of this safety framework in the International Atomic Energy Agency and you expressed the hope that this framework will be met with consensus during the session of the full Committee. I also recorded your last but one sentence in which you stated that you would not object to keeping a reference to this agenda item on next year's Legal Subcommittee agenda to track the work of the Scientific and Technical Subcommittee.

Ladies and gentlemen, is there any other delegation wishing .. yes, the distinguished representative of Greece.

**Mr. V. CASSAPOGLOU** (Greece) (*interpretation from French*) Thank you very much Mr. Chairman. So, if I have understood correctly, we must start by saying how grateful we are, I would put it that strongly, to the groups who worked on the drafting of this text after so many years of negotiations. This really is a text which serves humanity and it serves the environment, protecting the environment, particularly the environment of space. It truly can be said that this is an opportunity to use this achievement as an example because, politically speaking, it really is an achievement, an achievement belonging to the international community. It also imposes upon us a possibility and a duty to continue this work without affecting the declaration on the principle of the peaceful uses of outer space.

Mr. Chairman, I consider that, even though it may not be within our terms of reference at the moment, next year with the approval of the IAEA, this framework text can be finalized and then it could be put into a resolution for the General Assembly which would give it the publicity it needs, the exposure it

needs, in other words it should not be kept just as part of the Scientific and Technical Committee's report. No, we should have a higher level document to make sure that the members of the General Assembly, those countries which are not members of the Scientific and Technical Subcommittee, would be aware of this event, of this achievement. Thank you, Sir.

**The CHAIRMAN** (*interpretation from French*)

I thank the representative of Greece. Have I understood you correctly? Are you proposing that the General Assembly should adopt a resolution which would be specifically containing the text of this document, that is your proposal?

**Mr. V. CASSAPOGLOU** (Greece)

(*interpretation from French*) Thank you very much, Sir. In other words, I think we should suggest to the Scientific and Technical Subcommittee or perhaps we should propose at the plenary that this text, the finalized version, should, in the future, be part of a separate resolution and not just be the omnibus catch-all General Assembly resolution but, in December 2010, it should be a separate resolution. Thank you.

**The CHAIRMAN** (*interpretation from French*)

I just wanted to clarify what exactly you were proposing, now I understand. Thank you very much to the distinguished representative of Greece.

Any other speaker wants to contribute to this discussion on item 7, nuclear power sources?

I see none for the time being.

We will therefore continue and hopefully conclude our consideration of agenda item 7, nuclear power sources, tomorrow morning.

Distinguished delegates I would now like to begin our consideration of agenda item 9, capacity-building in space law.

I do not have yet any speaker on this particular point. Are there any delegations wishing to speak on item 9, capacity-building in space law?

The distinguished representative of Greece.

**Mr. V. CASSAPOGLOU** (Greece)

(*interpretation from French*) Thank you Sir. Mr. Chairman, I would just like to say, first and foremost, how grateful we are to our colleagues and particularly to the Office and to our colleagues, the

lawyers there, for their contribution to the drafting of this first text.

I am terribly sorry I do not actually have the specific document in front of me, CRP.5, the draft education curriculum on space law. This is a remarkable piece of work inspired by the work of others. I do not want to misuse this adjective but I consider this is a monumental body of work which has been done, over the last 15 years and more, in the Office for Outer Space under Professor Haubold. Organizing education on science and technology is something that the regional centres have also been engaged in. These regional centres were also set up by the Office and our colleagues there have worked excellently so thanks to them and thanks too to the colleagues who drafted the modules which cover the five main bodies of subjects which are taught in the regional centres. When you look at them, the way that this curriculum has been structured corresponds to the five modules as they are taught in the regional centres.

I think this is an important contribution to spreading knowledge on space law particularly within the framework of the teaching offered by these regional centres whose role is of great importance, not only for science but in the cultural sense as well or in the broader sense of what we called science and knowledge. This is a way in which knowledge of law but also knowledge of our obligations will be communicated to those who are going to be working with space applications. It is very important that the engineers, the researchers, the scientists, should be aware of the legal framework within which they are working and in which their discipline is developing.

That is a preliminary response to this text, the preliminary draft education curriculum and our view on capacity-building in space law too. Thank you Sir.

**The CHAIRMAN** (*interpretation from French*)

Thank you for your contribution and your very positive assessment of this document which was drafted by an expert group working together with the Office for Outer Space Affairs. I would like only to emphasize that it is a preliminary draft, education curriculum on space law so further notes and comments and suggestions of course will be welcome in order to prepare the final text of this document.

I now recognize the distinguished representative of Austria.

**Ms. I. MARBOE** (Austria) Thank you Mr. Chairman. I also congratulate the drafters of this education curriculum on space law, it is a great effort

and we appreciate it very much and we would be very interested in being continuously informed about the progress of this initiative. However, as a point of reference regarding international law I would like to know because I understand it should be an introduction for also non-lawyers maybe to get an understanding what is law, what is international law in particular. However, it strikes me as a first reading, as an international lawyer I must apologize, professional deformation, that the sources of international law leave out general principles of law which is explicitly mentioned in article 38 of the Statute of the International Court of Justice, could you please maybe give an explanation why you left out this source. Two sources are mentioned here but the third source is not mentioned, in particular because it is an important source of law for areas which are not yet codified and it is in an area where law develops and general principles of law can be an important source for development of the law in this area. It is not necessary to answer this question immediately but maybe you could convey this question to the drafters of this curriculum. I would appreciate to include it in order to avoid an imperfect understanding of their sources of international law. Thank you very much.

**The CHAIRMAN** Thank you very much distinguished representative of Austria. I am grateful for your cooperation that we need not necessarily discuss it here but that it would be your comment for the drafters of this document when preparing the final text of this education curriculum.

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

**Mr. M. BOURBONNIERE** (Canada) Thank you very much Mr. Chairman. Canada firstly wants to congratulate the drafters of this document, it is a very thorough document, it is excellent, it is very impressive.

Simply, one small comment and documents are never perfect. In the sources of international law, it does mention the treaties, it does mention customary law, however then when it discusses the legal regime of the conduct of space activities, it is all treaties and there is no mention or there is no subject of customary international law. So the application of customary international law to the legal regime I think should be included in here to make the document a bit more consistent with itself.

Thank you, just a small observation. Being a law professor I always like to see also a discussion of

legal theories and theories of justice but that is another issue altogether. Thanks a lot.

**The CHAIRMAN** Thank you distinguished representative of Canada for your contribution and, of course, we will proceed along the same lines as I indicated when commenting the contribution of our colleague from Austria.

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

**Mr. V. CASSAPOGLOU** (Greece) Thank you Mr. Chairman. Just to remind our distinguished colleague from Austria and the distinguished colleague from Canada that, on page 8, of this preliminary draft education curriculum, in I. International law, we have five Arabic numbers, what is law, subjects of international law, sources of international law, (a) treaties, UN Charter, Vienna Convention, \_\_\_\_(?) international law. I think that somewhere, I do not remember where exactly in which page, it is also a reference to the article 38 of the Statutes of the International Court of Justice. Even though there is a long discussion about the general principles as appeared in article 38 but it says it is not for us. In any case I think the question of this introduction is already covered in module 1.

I have also to remind dear colleagues that this course of module 1 will be repeated in the five main subjects of the educational programme of the regional centres, if I am not wrong please I ask you either Madam Othman or Professor Haubold to correct me. Thank you very much Mr. Chairman.

**The CHAIRMAN** .. complete your contribution that article 36 is mentioned among the cross-cutting questions for all space law modules on the last page, page 27 of this document. Thank you very much for your contribution.

Any other contribution to the discussion on the capacity-building in space law, it means not only on the preliminary draft but also on other questions and aspects of the capacity-building in space law, agenda item 9.

Is there any application, neither the observers have any comments or contributions to this discussion?

With your allowance, I will now give the floor to our distinguished staff member and that will be secretary of this Subcommittee, Ms. Natercia Rodrigues, you have the floor Madam.

**Ms. N. RODRIGUES** (Secretariat) Thank you Mr. Chairman. Also just for the assistance of delegations, the education curriculum is very much a work in progress and we are in constant contact with the educators and the representatives of the regional centres. All comments that we get will be very much welcome. We would appreciate if we can get just brief notes in writing because we would like to pass them on to the group so they can take into consideration as they continue to finalize the document for you. Thanks very much.

**The CHAIRMAN** Thank you very much I think it was a very good observation or, better say, an appeal to help the Secretariat in the work on finalizing this document.

Are there any other delegations? Yes, the distinguished representative of Greece.

**Mr. V. CASSAPOGLOU** (Greece)

Mr. Chairman I would like, because I feel a bit guilty because of the non-completion of the module 4 on page 23 of the document. I am responsible but, as my technical knowledge of this specific topic needs to be completed, I ask Professor Haubold to shout at me in order to produce this text. Unfortunately, in February last month, during the Scientific and Technical Subcommittee, we were very, very, busy so it was not possible to have this preparation. I hope that we find this opportunity during this session and I have to apologize vis-à-vis to the colleagues not to be on time in preparing my proper work. Thank you for your comprehension.

**The CHAIRMAN** Any other delegation wishes to take the floor now? I see none.

Therefore we will continue our consideration of agenda item 9, capacity-building in space law tomorrow morning.

Distinguished delegates, I will shortly adjourn this meeting so that the working group on the definition and delimitation of outer space can convene its third meeting to be followed by the third meeting of the working group on the status and application of the five United Nations treaties on outer space.

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 continue and hopefully suspend our consideration of agenda item 6 (a) definition and delimitation of outer space and, continue and hopefully conclude item 6 (b) the character and utilization of the

geostationary orbit. We will also continue and hopefully conclude our consideration of agenda item 7, nuclear power sources and we will begin our consideration of agenda item 8, draft protocol on matters specific to space assets. We will then continue our consideration of agenda item 9, capacity-building in space law.

Are there any questions or comments on this proposed schedule?

I see none.

I now invite Mr. José Monserrat Filho to chair the third meeting of the working group on the definition and delimitation of outer space and this meeting is adjourned until 10 a.m. tomorrow.

*The meeting closed at 16:42.*