Committee on the Peaceful Uses
of Outer Space
Legal Subcommittee
Forty-seventh session
31 March - 11 April 2008

Joint Statement on the benefits of adherence to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 by States Parties to that Agreement

by Austria, Belgium, Chile, Mexico, The Netherlands, Pakistan, and Philippines

Note by the Secretariat

1. At the forty-seventh session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space, its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space considered, among other things, the issue of the low participation of States in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979.

2. At its second meeting, the Working Group was informed that the delegations of Austria, Belgium, Chile, Mexico, The Netherlands, Pakistan, and Philippines would provide a Joint Statement on the benefits of adherence to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 by States Parties to that Agreement.

3. The Working Group requested the Secretariat to make that Joint Statement available for its next meeting.

RETROACTS

At its forty-sixth session, the Legal Subcommittee of the Committee of the United Nations on the Peaceful Uses of Outer Space approved the report of the ad hoc Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, contained in document A/AC.105/891, Annex I.

The report states that some delegations expressed the view that consideration should be given to the reasons for the low participation of States in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies and that efforts should be made to resolve any identified obstacles to participation.

The Working Group agreed that during the forty-seventh session of the Legal Subcommittee, in 2008, the Working Group, in addressing the low participation of States in the Moon Agreement would:

(a) address activities currently being carried out or to be carried out on the Moon and other celestial bodies in the near future;

(b) identify the international rules governing activities on the Moon and other celestial bodies;

(c) assess whether existing international rules adequately addressed activities on the Moon and other celestial bodies.

The Working Group agreed that an open debate on those issues would include information from States that were already parties to the Moon Agreement about the benefits of adherence to that Agreement.

NATURE OF THE JOINT STATEMENT

This joint statement is based on the experience of States parties to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 and does not, in any manner, constitute a joint position or an authoritative interpretation of the provisions of the mentioned treaties or resolutions. Its sole purpose is to provide the United Nations Committee on the Peaceful Uses of Outer Space with elements for reflection in the framework of its activities aiming at the development and the wider application of outer space law.

RATIONAL AND JOINT STATEMENT

In response to this action, in particular as far as the identification of the benefits from the adherence to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, done on
December 18, 1979, hereafter referred to as “the 1979 UN Moon Agreement” or “the Agreement”, is concerned;

Considering the relatively poor rate of participation in the 1979 UN Moon Agreement and the fact that this agreement is regularly questioned by some States as being part of international law or as being considered on the same level of the four other UN space treaties;

Recalling however that the text of the Agreement has been commended by the United Nations General Assembly (UNGA Res. 34/68) on December 5, 1979, and that this Resolution expressed the General Assembly’s hope for the widest possible adherence to this Agreement;

Recalling that the Agreement has been registered according to Article 102 of the UN Charter, entered into force on July 11, 1984, and, since then, is part of international law;

Considering the growing interest from space faring nations from various regions of the world for new projects, activities and missions, with the purpose of exploring and using the Moon and the other celestial bodies of the Solar System and their resources; considering that, with regard to such projects, activities and missions;

Considering that the 1979 UN Moon Agreement offers a dedicated international legal framework, commended by the United Nations General Assembly and accepted by the international community;

The following States parties to the 1979 UN Moon Agreement, namely Austria, Belgium, Chile, Mexico, The Netherlands, Pakistan and Philippines, jointly emphasize the following aspects and considerations with regard to the advantages of the Agreement, as well as of being party to it:

- The Agreement features provisions which reiterate or develop the principles already provided for by the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, done on January 27, 1967 (hereafter referred to as “the 1967 UN Outer Space Treaty”), some of which are specifically applicable to the Moon and the other celestial bodies of the Solar System; other provisions are specific to the 1979 UN Moon Agreement and constitute its real added value with regard to other outer space treaties.

- Some of those provisions, specific to the Agreement, are of particular interest in the implementation of projects, activities or missions, either because they provide a better understanding of, or a complement to principles, procedures or notions used by other outer space treaties and applicable to the Moon and the other celestial bodies, such as Article 1, §§ 1 and 2, Article 3, §4, Article 7, §§ 1 and 2, Article 10, Article 12, Article 13, Article 14 or Article 15 of the 1979 UN Moon Agreement;
or because they provide for a better international scientific cooperation, as it is the case with Article 5, §§ 1, 2 and 3, Article 6, §§ 2 and 3 or Article 7, §3, of the 1979 UN Moon Agreement.

- In particular, it must be pointed out that the following provisions of the Agreement provide added value to it over and above the 1967 UN Outer Space Treaty:

  o **Procedure for the establishment of stations (Article 9).** While recognizing the freedom of states parties to establish stations, such establishment is subject to reasonable substantive and procedural conditions relating to the location of the station, the installation of the station and the furnishing of information to the UN Secretary-General;

  o **Safeguarding of life and health of persons (Article 10).** The designation of persons as astronauts within the meaning of the relevant provisions of the 1967 UN Outer Space Treaty and personnel of a spacecraft within the meaning of those of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, done on April 22, 1968 (hereafter referred to as “the 1968 UN Rescue Agreement”), offers protection to nationals of States parties;

  o **Prohibition of acquisition of property (Article 11.3).** This clarification of Article 11.2 of the Agreement, in conjunction with Article II of the 1967 UN Outer Space Treaty, is helpful to States parties to reject the idle claims to property rights that have surfaced in recent years, in particular since the difference between the two agreements is used to support those claims;

  o **Use of vehicles, equipment, facilities, stations and installations (Article 12).** The application of the relevant provisions of the 1968 UN Rescue Agreement offers protection to the vehicles, installations and equipment of States parties. In addition, it provides a regulation for use by States parties in the event of an emergency of the equipment, vehicles, installations, facilities and supplies of other States parties. Moreover, it clearly extends States’ jurisdiction to their stations, facilities, personnel or equipments, which constitutes an fundamental legal element for the implementation of outer space law’s principles;

  o **Compliance (Article 15).** The attribution to States parties of visitation rights to assure the compatibility of activities of States parties with the 1979 UN Moon Agreement is comparable to the procedure under the Antarctic Treaty, done in Washington on December 1, 1959. This procedure is conducive to and in accordance with the principles of international cooperation that govern activities on the Moon and other celestial bodies.
The most discussed provision of the 1979 UN Moon Agreement, Article 11, providing for a specific status of Common Heritage of Mankind applicable to the Celestial Bodies and their natural resources is actually the only provision in the UN outer space treaties which foresees the possibility of exploiting resources in outer space. Although such exploitation is not prohibited by international law, it must be considered subject to respect for the principles applicable to outer space, in particular Article II of the 1967 UN Outer Space Treaty. By foreseeing the possibility and the feasibility of the exploitation of those resources, Article 11 of the 1979 UN Moon Agreement offers an obvious legal solution to it, subject to respect for Article II of the 1967 UN Outer Space Treaty and the other principles of outer space law.

It is remarkable that the 1979 UN Moon Agreement doesn’t propose a closed and complete mechanism, but, to the contrary, follows an intelligent approach, leaving to the States involved at the time the exploitation of Celestial Bodies’ natural resources will become feasible, the responsibility to define, set up and implement such a regime, responding to the status of Common Heritage of Mankind and other principles of outer space law. This should be done by taking into account simultaneously the reality of political, legal and technical facts, possibilities and requirement as known at that time. To that extent, the 1979 UN Moon Agreement appears as a proactive instrument for achieving a consensus between all nations, taking into account the interests of developing countries. The Agreement does not pre-exclude any modality of exploitation, by public and/or by private entities, nor forbids commercial treatment, as long as such exploitation is compatible with the requirements of the Common Heritage of Mankind regime.

It must also be noticed that, to this day, no other solution allowing a possible exploitation of Celestial Bodies’ natural resources has been proposed under the provisions of the UN outer space treaties.

Finally, the 1979 UN Moon Agreement participates in preventing the development, the placement, or the use of armament systems or weapons in or from outer space.

Therefore, it must be noted that the participation in the 1979 UN Moon Agreement offers substantial benefits and guarantees with regard to the participation in the other UN outer space treaties: not only a better understanding of concepts of international space law and a better description of concepts or procedures, but also and most of all, a mutual commitment to seek for a multilateral solution for the exploitation of Celestial Bodies’ natural resources in accordance with the general principles of outer space law.

The States parties encourage States having signed but not yet ratified the Agreement, as well as other States, to become parties to it, in particular considering their possible involvement in forthcoming missions or projects for the exploration of the Celestial Bodies.