



# General Assembly

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**Committee on the Peaceful  
Uses of Outer Space**  
Legal Subcommittee  
Forty-second session  
Vienna, 24 March-4 April 2003

## **Draft report of the Legal Subcommittee on the work of its forty-second session, held in Vienna from 24 March to 4 April 2003**

### **Addendum**

#### **VII. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001)**

1. The Legal Subcommittee recalled that the General Assembly, in its resolution 57/116 of 11 December 2002, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider an agenda item on “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001) as a single issue/item for discussion. In accordance with resolution 57/116, the Subcommittee considered two sub-items under this agenda item: (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol; and (b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space.

2. The Legal Subcommittee had before it the report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>1</sup> (opened for signature in Cape Town on 16 November 2001) and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as supervisory authority under the protocol (A/AC.105/C.2/L.238).



3. Some delegations expressed the view that the issue of which organ of the United Nations should perform the functions of Supervisory Authority required further study.
4. Some delegations expressed the view that the functions of Supervisory Authority were administrative rather than legislative in nature and should be assumed by an entity of the United Nations Secretariat, such as the Office for Outer Space Affairs.
5. Some delegations expressed the view that the functions of Supervisory Authority could, in principle, be entrusted to the United Nations and that there were no insurmountable legal problems to the United Nations assuming the role of Supervisory Authority under the space assets protocol.
6. Some delegations expressed the view that the United Nations' assuming the functions of Supervisory Authority would enhance the primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space.
7. Some delegations expressed the view that the Legal Subcommittee should start work on a draft resolution for adoption by the General Assembly under which the United Nations would accept, in principle, the functions of Supervisory Authority, pending an invitation to assume such a function by the diplomatic conference to adopt the protocol on matters specific to space assets.
8. Some delegations expressed the view that there were concerns and doubts about the appropriateness and readiness of the United Nations to assume the functions of Supervisory Authority under the space assets protocol.
9. Some delegations expressed the opinion that, in view of the issues identified in the report by the Secretariat (A/AC.105/C.2/L.238), it was not possible at the present time to take a decision on whether the United Nations could assume the functions of Supervisory Authority under the space assets protocol. The view was expressed that the International Institute for the Unification of Private Law (Unidroit) should consider other options for establishment of a Supervisory Authority under the protocol, including a mechanism to appoint a Supervisory Authority consisting of States parties to it.
10. The view was expressed that the Legal Subcommittee should convey to Unidroit a list of concerns regarding the possibility of the United Nations acting as Supervisory Authority, so that Unidroit could take those concerns into account during its deliberations.
11. Some delegations expressed the view that, as had been the case for the International Civil Aviation Organization (ICAO) accepting, in principle, the functions of Supervisory Authority under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (the "Aircraft Protocol"),<sup>2</sup> any acceptance by the United Nations of the functions of Supervisory Authority under the space assets protocol should be on the understanding that all costs incurred by the United Nations would be recovered from user fees and voluntary start-up funding and that the United Nations would not accept any liability and would retain full immunity with respect to the performance of those functions.

12. In that respect, the view was expressed that it would be useful to continue to study the experiences of ICAO in its role as Supervisory Authority under the Aircraft Protocol.
13. Some delegations expressed the view that, if the United Nations assumed the functions of Supervisory Authority, the responsibilities and costs of those functions should be limited, those costs should be met through extrabudgetary funds and not from the United Nations regular budget and there should be no liability.
14. Some delegations expressed the view that the Convention on International Interests in Mobile Equipment and the protocol on matters specific to space assets had a significant potential to promote the financing of space activities, with particular benefit to developing countries and countries with economies in transition.
15. Some delegations expressed the view that there were no inconsistencies between the text of the preliminary draft protocol on matters specific to space assets and the United Nations treaties on outer space. The view was expressed that, for that reason, there was no legal need to address the relationship between the space assets protocol and the United Nations treaties on outer space within the space assets protocol.
16. The view was expressed that the United Nations should request the meeting of governmental experts convened by Unidroit to discuss the relationship of the space assets protocol with the United Nations treaties on outer space, in order to avoid the simultaneous discussion of that issue in two forums.
17. The view was expressed that, to the extent that any inconsistency existed between the United Nations treaties on outer space and the space assets protocol, the norms of public international law should prevail.
18. The view was expressed that the relationship between the United Nations treaties on outer space and the space assets protocol should be governed by the Vienna Convention on the Law of Treaties,<sup>3</sup> under which the later treaty prevailed to the extent of any incompatibility, as between the States parties of both treaties in question.
19. Some delegations expressed the view that, while the transfer of ownership of space objects between States was not an issue created by the space assets protocol, the protocol might increase the frequency of those transfers. Those delegations expressed the view that further consideration should be given to the implications of transfers under the space assets protocol with respect to the United Nations treaties on outer space, as well as to the Constitution and Convention<sup>4</sup> and Radio Regulations<sup>5</sup> of the International Telecommunication Union.
20. Some delegations expressed the view that some potential problems created by transfers under the space assets protocol could be solved by States enacting national laws to provide authorization and continuing supervision of the activities of their national entities in outer space.
21. The view was expressed that it might be necessary for the space assets protocol to provide for consideration of the transfer of any satellite licence by the State or States concerned.
22. The view was expressed that the definition of space assets in the preliminary draft protocol was broad and ambiguous and that the protocol should include a list

of specific space assets to which it applied, as had been done for aircraft equipment under the Aircraft Protocol. That delegation expressed the view that there was uncertainty about whether authorizations and approvals could be included as “space assets”, since many authorizations and approvals were not subject to transfer. That delegation further expressed the view that the space assets protocol might affect regimes for the control of rocket and missile technology, which should have absolute priority over the protocol. For those reasons, that delegation expressed the view that States parties should be able to make reservations on the non-application of the space assets protocol in various circumstances.

23. Some delegations expressed the view that the relationship between the United Nations treaties on outer space, other space-related bilateral and multilateral agreements and the space assets protocol was a very complex issue that required further study.

24. The view was expressed that preserving the rights and obligations under the United Nations treaties on outer space during the application of new instruments was not a new issue, since it emerged also in other areas of international law and in the relationship between international space law and national space laws adopted by individual States.

25. The view was expressed that, because space assets could include assets not launched into outer space, certain space assets registered under the space assets protocol might not be registered under the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex). That delegation expressed the view that it might be difficult for the two registration systems to operate independently and that discussions in the Legal Subcommittee should aim at integrating both registration systems.

26. As mentioned in paragraph [...] above, at its 674th meeting, on 24 March, the Legal Subcommittee established a Working Group on agenda item 8. The Working Group was chaired by Sergio Marchisio (Italy). The Working Group held [...] meetings. At its [...] meeting, on [...] April, the Subcommittee endorsed the report of the Working Group, which is contained in annex [...] to the present report.

27. The full text of statements made by delegations during the discussions on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.685- [...]).

## **VIII. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-third session**

28. The Legal Subcommittee recalled that the General Assembly, in its resolution 57/116 of 11 December 2002, had noted that the Subcommittee, at its forty-second session, would submit its proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Subcommittee at its forty-third session, in 2004.

29. The Legal Subcommittee, based on the working paper submitted by Australia, Austria, Canada, the Czech Republic, France, Germany, Greece, India, Japan, the

Netherlands, Sweden, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.105/C.2/L.241 and Add.1), agreed to begin consideration of a new agenda item entitled “Practice of States and international organizations in registering space objects” under the following four-year work plan:

- 2004 Invitation to Member States and international organizations to present reports on their practice in registering space objects and submitting the required information to the Office for Outer Space Affairs for inclusion on the Register.
- 2005 Examination by a working group of the reports submitted by Member States and international organizations in 2004.
- 2006 Identification by the working group of common practices and drafting of recommendations for enhancing adherence to the Registration Convention.
- 2007 Report to the Committee on the Peaceful Uses of Outer Space.

The Legal Subcommittee also agreed that a working group would be established to consider this item in 2005 and 2006.

30. The Legal Subcommittee noted that, in paragraph 30 of its resolution 56/51 of 10 December 2001, the General Assembly had requested the Committee on the Peaceful Uses of Outer Space to prepare a report on the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III). The Subcommittee noted that a draft of the report was being prepared by a working group of the Committee, which had agreed that it should be assisted in that task by the Chairman of the Legal Subcommittee, with the initial contribution to be prepared by the Legal Subcommittee in 2003 and finalized in 2004. Based on a proposal submitted by Sweden (A/AC.105/C.2/2003/CRP.11 and Corr.1), the Subcommittee agreed to consider a new agenda item entitled “Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)” as a single issue/item for discussion. In that regard, the Legal Subcommittee agreed that the Office for Outer Space Affairs should prepare a draft text reflecting the contributions of the Legal Subcommittee to the report of the Committee to the General Assembly, in consultation with the Chairman of the Legal Subcommittee and the Chairman of the Committee’s Working Group, on the basis of inputs to be provided with regard to the elements listed in the proposal by Sweden (A/AC.105/C.2/2003/CRP.11 and Corr.1).

31. Some delegations expressed the view that the development of an international convention on remote sensing was necessary to update the Principles Relating to Remote Sensing of the Earth from Outer Space (General Assembly resolution 41/65, annex) and for the development of rules relating to the new situation that had resulted from technological innovation and commercialization of remote sensing activities, as described in a working paper submitted by Brazil (A/AC.105/L.244). Those delegations expressed the view that the Subcommittee should consider a new

agenda item entitled “Discussion on the development of an international convention on remote sensing” as described in a working paper submitted by Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Greece, Mexico and Peru (A/AC.105/C.2/L.245). Those delegations held the view that international cooperation in remote sensing was essential to ensure that developing countries would have better access to data and remote sensing images of their own territories.

32. Some delegations expressed the view that it was not necessary to update the Principles, as they were operating well. Those delegations held the view that the increasing number of developing countries with their own remote sensing satellites, the fact that direct access was available to other States and the spread of remote sensing technology to all countries demonstrated that international cooperation had flourished under the Principles.

33. Some delegations expressed the view that the high cost of remote sensing data and images had a negative effect on the capacity of developing countries to benefit from those applications. Those delegations expressed the view that States whose territories were sensed should benefit from the sale of the resulting data and images and should be compensated for the sensing of their territories from outer space.

34. The view was expressed that it would be impractical for sensed States to be compensated as this would lead to additional costs and make remote sensing uneconomical for satellite operators. That delegation was of the view that the Principles set a framework for the sharing of information and were never intended to regulate costs of remotely sensed data and derived information, which needed to remain reasonable in order for operators to continue providing those services.

35. Some delegations expressed the view that it was necessary for the Legal Subcommittee to continue the development of international space law, especially in view of the increasing commercialization of space activities and the technological advances being made.

36. The Subcommittee noted that the sponsors of the proposal submitted by Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Greece, Mexico and Peru (A/AC.105/C.2/L.245) would revise the proposal taking into account comments from other delegations and make it available for consideration by the Legal Subcommittee at its forty-third session.

37. Some delegations expressed the view that the appropriateness and desirability of drafting a universal comprehensive convention on international space law should be considered by the Legal Subcommittee as a single issue/item for discussion. Those delegations expressed the view that discussion of such a convention would allow the international community to consider in a unified manner a number of issues resulting from new developments in space activities, as well as possible lacunae in the international space law system. Those delegations also noted that, under the proposed agenda item, the Subcommittee would only discuss the appropriateness and desirability of drafting a universal comprehensive convention and that the development of the convention should not reopen the debate on existing principles of international space law contained in the United Nations treaties on outer space.

38. Some delegations expressed the view that key space law instruments had established a framework that had encouraged the exploration of outer space and

benefited both space-faring and non-space-faring countries. Those delegations expressed the view that the Subcommittee should undertake activities that supported the continued vitality of that legal framework. Those delegations expressed the view that to entertain the possibility of the negotiation of a new, comprehensive space law instrument could only serve to undermine the principles in the existing space law regime.

39. Some delegations expressed the view that, with the recent adoption by the Inter-Agency Space Debris Coordination Committee of Space Debris Mitigation Guidelines (A/AC.105/C.1/L.260) and the presentation of those guidelines to the Scientific and Technical Subcommittee in February 2003, there was a need to promote their universal and prompt application. To that end, the Legal Subcommittee should consider a four-year work plan on legal implications of the Guidelines, covering the period 2005-2008, as contained in the proposal for a new agenda item submitted by France and supported by member and cooperating States of the European Space Agency (A/AC.105/C.2/L.246).

40. Some delegations expressed the view that it was premature for the Legal Subcommittee to consider legal aspects of space debris in view of the multi-year work plan on space debris mitigation guidelines being carried out in the Scientific and Technical Subcommittee.

41. The view was expressed that it would be useful for the Legal Subcommittee to formulate an indicative list of possible legal issues regarding space debris.

42. The Legal Subcommittee conducted informal consultations coordinated by Niklas Hedman (Sweden) with a view to reaching agreement on the various proposals before it for consideration under this agenda item.

43. The Legal Subcommittee agreed on the following items to be proposed to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the Subcommittee for its forty-third session:

*Regular items*

1. Opening of the session, election of the chairman and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.
4. Status and application of the five United Nations treaties on outer space.
5. Information on the activities of international organizations relating to space law.
6. Matters relating to:
  - (a) The definition and delimitation of outer space;
  - (b) The character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

*Single issues/items for discussion*

7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
8. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature in Cape Town on 16 November 2001):
  - (a) Considerations relating to the possibility of the United Nations serving as a Supervisory Authority under the preliminary draft protocol;
  - (b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space.
9. Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III).

*Items considered under work plans*

10. Practice of States and international organizations in registering space objects.
- 2004 Invitation to Member States and international organizations to present reports on their practice in registering space objects and submitting the required information to the Office for Outer Space Affairs for inclusion on the Register.

*New items*

11. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fourth session.
44. The Legal Subcommittee agreed that the Working Groups on agenda items 4 and 6 (a) should be reconvened at its next session. The Legal Subcommittee also agreed that the Working Group on agenda item 8 should be reconvened at its next session to consider sub-items 8 (a) and (b) separately.
45. The Legal Subcommittee noted that the sponsors of the following proposals for new items to be included in the agenda for the Subcommittee intended to retain their proposals for possible discussion at subsequent sessions of the Subcommittee:
- (a) Discussion on the appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine as a single issue/item for discussion;
  - (b) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, with a view to possibly transforming the text into a treaty in the future, proposed by Greece;



(c) Review of existing norms of international law applicable to space debris, proposed by the Czech Republic and Greece;

(d) Discussion on the development of an international convention on remote sensing, proposed by Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Greece, Mexico and Peru;

(e) Space debris, proposed by France and supported by member and cooperating States of the European Space Agency.

46. The full text of the statements made by delegations during the discussion on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.683-685 and T.691).

*Notes*

<sup>1</sup> DCME Doc. No. 74 (ICAO).

<sup>2</sup> DCME Doc. No. 75 (ICAO).

<sup>3</sup> United Nations, *Treaty Series*, vol. 1155, No. 18232.

<sup>4</sup> *Ibid.*, vol. 1825, No. 31251.

<sup>5</sup> United Nations publication, Sales No. 92.I.30.