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**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Forty-third session
Vienna, 29 March-8 April 2004

Draft report of the Legal Subcommittee on the work of its forty-third session, held in Vienna from 29 March to 8 April 2004

Addendum

VII. 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)

1. The Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider an agenda item entitled “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)” as a single issue/item for discussion. In accordance with resolution 58/89, the Subcommittee considered two sub-items under that agenda item:

(a) Considerations relating to the possibility of the United Nations serving as 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.

2. The Subcommittee had before it the following:



(a) Report of the Secretariat on the Convention on International Interests in Mobile Equipment¹ (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);

(b) Preliminary draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets, as amended by the Unidroit committee of governmental experts (A/AC.105/C.2/2004/CRP.5).

3. The Subcommittee noted that the member States of the Committee on the Peaceful Uses of Outer Space had been invited to the first session of the committee of governmental experts convened in Rome by the International Institute for the Unification of Private Law (Unidroit) from 15 to 19 December 2003, to prepare a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets. The Subcommittee also noted that, at its first session, the Unidroit committee of governmental experts had revised the text of the preliminary draft protocol.

4. The Subcommittee noted that a colloquium on the preliminary draft protocol on space assets had been held in Paris on 5 September 2003 and that a further colloquium on the same topic would be held in Kuala Lumpur from 22 to 23 April 2004.

5. The Subcommittee noted that the Unidroit committee of governmental experts would hold its second session in Rome from 25 to 29 October 2004 and that member States of the Committee would be invited to attend that session as well.

6. The Subcommittee also noted that the Unidroit secretariat had approached IMSO, ITU and ESA with a view to ascertaining their interest in being considered for the role of the supervisory authority of the future protocol.

7. Some delegations expressed the view that the Convention on International Interests in Mobile Equipment and the future protocol to the Convention would contribute to the expansion of space activities of developing countries, as well as developed countries, by reducing the financial risks and burdens arising from such an increase in space activities.

8. Some delegations expressed the view that the responsibilities of the supervisory authority should be entrusted to the Secretary-General.

9. Some delegations expressed the view that, if the United Nations were to assume the functions of the supervisory authority, that would enhance the primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space.

10. The view was expressed that the United Nations was, in principle, the most appropriate organization to exercise the functions of the supervisory authority and that, by exercising those functions, the United Nations would contribute to international cooperation in solving international problems of an economic, social, cultural or humanitarian character, in accordance with the Charter of the United Nations. That delegation was also of the view that, if the United Nations

¹ DCME Doc. No. 74 (ICAO).

assumed the functions of the supervisory authority, that would further the aim of UNISPACE III.

11. The view was expressed that, while the possibility of the United Nations serving as the supervisory authority could be considered, other options should be explored, such as the establishment by the conference of States parties to the Convention of a mechanism for appointing a supervisory authority consisting of States parties to the Convention, once it entered into force.

12. Some delegations expressed the view that the functions of the supervisory authority could be undertaken by a specialized agency of the United Nations system, such as ITU.

13. The view was expressed that the international registry and the functions of the registrar could be undertaken by Unidroit itself, another intergovernmental organization or a body especially created for that purpose.

14. Some delegations expressed the view that it would be inappropriate for the United Nations to serve as the supervisory authority, as those functions fell outside the goals and objectives of the United Nations, as set out in the Charter of the United Nations.

15. The view was expressed that the functions of the supervisory authority were not merely administrative in nature but also legislative and quasi-judicial.

16. The view was expressed that, as the Convention and the preliminary draft protocol had been developed under the auspices of Unidroit, it would be more appropriate for Unidroit to assume the functions of the supervisory authority. That delegation believed that, if the United Nations accepted the functions of the supervisory authority, it would be setting an undesirable precedent for similar initiatives.

17. The view was expressed that, at the current stage, it was unnecessary to name the supervisory authority in the preliminary draft protocol and that the United Nations should be invited to assume the functions of the supervisory authority during the diplomatic conference to be held to adopt the draft protocol or even during the first conference of States parties to the Convention, to be held after the Convention entered into force. That delegation was of the view that that procedure would give the United Nations additional time to fully consider the issues arising from the assumption of such obligations.

18. Some delegations expressed the view that the Subcommittee should begin preparing a draft resolution, for adoption by the General Assembly, on the assumption by the United Nations of the function of the supervisory authority under the future protocol. Those delegations proposed that member States should set up an intersessional electronic drafting group to prepare such a draft resolution for consideration by the Legal Subcommittee at its forty-fourth session in 2005.

19. Some delegations expressed the view that the issues identified in the report of the Secretariat (A/AC.105/C.2/L.238) would need to be adequately considered before a decision could be taken on whether the United Nations could assume the functions of the supervisory authority under the future protocol.

20. Some delegations expressed the view that it was important to continue to consider carefully the possibility of the United Nations serving as the supervisory

authority, taking into account the present mandate and current activities of the United Nations, the need to avoid any risk of the United Nations incurring liability for damages, the need to avoid placing any additional financial burden on the United Nations and the lack of practical experience on the part of the United Nations in fulfilling such functions.

21. The view was expressed that, if the United Nations assumed the functions of the supervisory authority, the costs associated with those functions should be met through extrabudgetary funds and not through funds from the regular budget of the United Nations and there should be no liability.

22. Some delegations expressed the view that the Convention and the future protocol should neither undermine nor compromise existing principles and norms of international space law and that, in case of conflict, the existing principles and norms should prevail.

23. The view was expressed that the preliminary draft protocol was not intended to affect the rights and obligations of States parties to the United Nations treaties on outer space or the rights and obligations of States parties to the ITU Constitution, Convention and Regulations.

24. The view was expressed that provisions regarding the primacy of the outer space treaties should be included both in the preamble and the operative part of the preliminary draft protocol in order to ensure its compatibility with the United Nations treaties on outer space.

25. The view was expressed that the relationship between the United Nations treaties on outer space and the future protocol should be governed by the Vienna Convention on the Law of Treaties, under which the later would prevail to the extent of any incompatibility, such as between the States parties to both treaties in question.

26. Some delegations expressed the view that the provisions of the third preambular paragraph and the inclusion of article XXI (bis) of the preliminary draft protocol by the first session of the Unidroit committee of governmental experts adequately addressed the relationship between the United Nations treaties on outer space and the preliminary draft protocol.

27. The view was expressed that some provisions of the preliminary draft protocol needed to be brought in line with United Nations treaties on outer space in order to avoid any possible conflict between the protocol and the provisions of the treaties on outer space. While the preliminary draft protocol addressed in detail the rights and interests of the financier in case of any default on the part of the debtor, it did not adequately address the issues relating to the obligations of the creditor and the State to which the financier belonged, particularly as regards the obligations of States under articles VI and VII of the Outer Space Treaty and article I, subparagraph (a), of the Registration Convention.

28. The view was expressed that the preliminary draft protocol and the Convention on International Interests in Mobile Equipment should be studied further to determine the compatibility between the Registration Convention and provisions on the security interest and to clarify issues relating to the transfer of space assets.

29. Some delegations expressed the view that it was vital to underscore in the future protocol the public nature of the services that satellites carried, particularly in developing countries, and that safeguards should be put in place to protect the vital national interests of those States in the case of default on a loan or transfer of ownership of a satellite.

30. The view was expressed that the transfer of ownership of some satellites could raise issues of national security and that prospective signatories of the future protocol should give that question appropriate attention.

31. The view was expressed that, as orbital slots and frequency spectrum bands were granted to States in accordance with the established rules of ITU, the question arose whether, in the case of default and the financier taking over control of the space asset, it would be possible for the financier to make use of those orbital slots and the frequency spectrum band since they would remain the property of the State to which the defaulter belonged.

32. As mentioned in paragraph [...] above, at its 693rd meeting, on 29 March, the Subcommittee re-established its Working Group on agenda item 10 (a) and (b) and elected Vladimir Kopal (Czech Republic) Chairman of the Working Group. 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.

33. The full text of statements made by delegations during the discussions on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T -...).

IX. Practice of States and international organizations in registering space objects

34. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider the practice of States and international organizations in registering space objects, in accordance with the work plan adopted by the Committee.²

35. The Subcommittee took note with satisfaction of the reports submitted by member States on their practices in registering space objects (A/AC.105/C.2/L.250 and Corr.1 and Add.1, A/AC.105/C.2/2004/CRP.3 and A/AC.105/C.2/2004/CRP.7).

36. At the 703rd meeting of the Subcommittee, on 5 April, the Office for Outer Space Affairs made a presentation on the Register of Objects Launched into Outer Space maintained by the Secretary-General under the Convention on Registration of Objects Launched into Outer Space (the "Registration Convention", General Assembly resolution 3235 (XXIX), annex). The Subcommittee expressed its appreciation to the Office for Outer Space Affairs for that presentation and requested the Secretariat to prepare a background document based on the

² *Official Records of the General Assembly, Fifty-eighth session, Supplement No. 20 (A/58/20), para. 199.*

presentation to facilitate the work of the working group to be established by the Subcommittee at its forty-fourth session, in 2005, in accordance with the work plan.

37. The representatives of Argentina, China, the Czech Republic, France, Greece, India, Italy, Japan, Kazakhstan, the Republic of Korea, South Africa, Spain, Sweden, Ukraine and the United States made statements under this agenda item. The observers for ESA and IAF also made statements.

38. The Subcommittee noted with satisfaction the initiation of the debate under this agenda item, which could contribute to enhancing the capacity and effectiveness of international space law.

39. The view was expressed that the work of the Subcommittee under the four-year work plan would assist in enhancing the effectiveness of the Registration Convention and in developing and strengthening national legislative norms relating to the registration of objects launched into outer space.

40. The Subcommittee was informed of the practices followed by States in registering space objects and implementing the Registration Convention. In particular, the Subcommittee was informed about ways of maintaining national registries of objects launched into outer space; criteria for including objects on national registries; procedures applied in cases where there was more than one party involved in the launch or where private entities or international organizations were involved; the activities of authorities responsible for maintaining national registries and the legal regulations applicable to registering space objects.

41. The view was expressed that consideration could be given to examining the issue of developing a mechanism to identify unregistered space objects.

42. The view was expressed that States should pay greater attention to complying with article IV, paragraph 3, of the Registration Convention.

43. The view was expressed that consideration of this agenda item could include the analysis and possible revision of the Registration Convention or the improvement of some of its provisions by, for example, clarifying the definition of "space objects".

44. The view was expressed that consideration of this agenda item could include cases involving the transfer of ownership of space objects from one party to another after such objects had been launched and registered.

45. The full text of the statements made during the discussions on agenda item 12 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

X. 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

46. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had noted that the Subcommittee, at its forty-third 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-fourth session, in 2005.

47. The Chairman recalled that the following proposals for new items to be included in the agenda of the Subcommittee had been considered by the Subcommittee at its forty-second session and retained by their sponsors with a view to discussing those proposals at subsequent sessions of the Subcommittee (A/AC.105/805 and Corr.1, para. 153):

(a) The appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine;

(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 ESA.

48. The Subcommittee noted that Greece had agreed to defer the discussion on its proposal, on a new item entitled "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" to the forty-fourth session of the Subcommittee, in 2005.

49. The view was expressed that, although some member States needed more time to adopt the space debris mitigation guidelines, presented to the Scientific and Technical Subcommittee by the Inter-Agency Space Debris Coordination Committee, the Legal Subcommittee should include on its agenda a new item on space debris. That delegation was of the opinion that the Legal Subcommittee could consider the inclusion of that item on the agenda of its forty-fourth session, in 2005.

50. The view was expressed that the space debris mitigation guidelines were preliminary in nature and that further work would be needed before those proposals could be reviewed and finalized by that Subcommittee. That delegation was of the view that it was therefore premature for the Legal Subcommittee to consider the legal aspects of space debris.

51. Some delegations expressed the view that a United Nations comprehensive convention on international space law should be developed by the Legal Subcommittee. The development of such a convention would strengthen the role of the Subcommittee as one of the more active bodies of the General Assembly and would contribute to the progressive development of international law and its codification, in accordance with Article 13 of the Charter of the United Nations. Those delegations expressed the view that the discussion of such a convention would enable the Subcommittee to find a universally acceptable settlement for outstanding issues relating to space activities.

52. Some delegations expressed the view that the current legal framework established by the United Nations treaties on outer space had adequately met the needs of the international community in matters relating to outer space. Those delegations were of the opinion that space activities had flourished within that legal

framework and that its fundamental principles did not need to be questioned. Those delegations were also of the view that, if necessary, outstanding issues under particular treaties could be addressed in accordance with mechanisms established by those treaties.

53. Some delegations expressed the view that a single issue/item for discussion, entitled “Analysis of current remote sensing practices in view of the Principles Relating to Remote Sensing of the Earth from Outer Space”, should be included on the agenda of the Subcommittee at its forty-fourth session, in 2005. Those delegations noted that the discussion on that issue/item would not constitute a review of the Principles, but rather would enable member States to share information on the current practices of States in the field of remote sensing.

54. 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 developed well under the Principles. The view was expressed that, if the Subcommittee were to take up consideration of the Principles, it would be indicating that the Principles were not operating well.

55. 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-fourth session:

Regular items

1. Opening of the session 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 at Cape Town, South Africa, on 16 November 2001):

- (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future 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.

Items considered under work plans

- 9. Practice of States and international organizations in registering space objects: examination by a working group of the reports submitted by Member States and international organizations in 2004.

New items

- 10. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fifth session.
- 56. The Legal Subcommittee agreed that the working groups on agenda items 6 (a), 8 (a) and 8 (b) should be reconvened at its forty-fourth session.
- 57. The Subcommittee agreed that a Working Group on agenda item 9 should be established in accordance with the agreement reached at its forty-second session.
- 58. The Subcommittee agreed that the mandate of the Working Group on agenda item 4 should be extended for one additional year and that the Subcommittee, at its forty-fourth session, in 2005, would review the need to extend the mandate of the Working Group beyond that period.
- 59. The Subcommittee noted that the sponsors of the following proposals for new items to be included in its agenda intended to retain their proposals for possible discussion at its subsequent sessions:
 - (a) The appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine;
 - (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) Analysis of current remote sensing practices within the framework of the Principles Relating to Remote Sensing of the Earth from Outer Space, proposed by Brazil;
 - (e) Space debris, proposed by France and supported by member and cooperating States of ESA.