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**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Forty-fourth session
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Draft report

Addendum

V. Matters relating to the definition and delimitation of outer space and 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

1. The Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-fourth session, taking into account the concerns of all countries, in particular those of developing countries, should consider matters relating to the definition and delimitation of outer space and to 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 (ITU).

2. The Subcommittee had before it the following documents:

(a) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Add.1-12);

(b) Note by the Secretariat entitled "Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.249 and Corr.1 and Add.1);

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(c) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects: preferences of member States” (A/AC.105/849);

(d) Compilation of replies received from member States to the questionnaire on possible legal issues with regard to aerospace objects (as contained in documents A/AC.105/635 and Add.1-11), available on the website of the Office for Outer Space Affairs (<http://www.oosa.unvienna.org/aero>).

3. Some delegations expressed the view that the exploitation of the geostationary orbit, which was a limited natural resource, should, in addition to being rational, be made available to all countries, irrespective of their current technical capacities, thereby providing them with the possibility of having access to the orbit under equitable conditions, bearing in mind, in particular, the needs and interests of developing countries, as well as the geographical position of certain countries and taking into account the process of ITU.

4. Some delegations expressed the view that the geostationary orbit was a limited natural resource with sui generis characteristics that risked saturation and that equitable access to it should therefore be guaranteed for all States, taking into account in particular the needs of developing countries and the geographical position of certain countries.

5. Some delegations expressed their satisfaction with the agreement reached by the Subcommittee at its thirty-ninth session (A/AC.105/738, annex III), to the effect that coordination among countries aimed at the utilization of the geostationary orbit should be carried out in a rational and equitable manner and in conformity with the ITU Radio Regulations.

6. Some delegations expressed the view that the geostationary orbit was an integral part of outer space and that its use was governed by the provisions of the United Nations treaties on outer space.

7. The view was expressed that the current Constitution and Convention of ITU¹ and the ITU Radio Regulations, as well as the current procedures set out in the treaties on international cooperation among countries and groups of countries with respect to the geostationary orbit and other orbits, took fully into account the interests of States in the use of the geostationary orbit and the radio-frequency spectrum.

8. The view was expressed that the provisions of articles I and II of the Outer Space Treaty made it clear that a party to the Treaty could not appropriate any part of outer space, such as an orbital location in the geostationary orbit, either by claim of sovereignty or by means of use, or even repeated use.

9. Some delegations expressed the view that scientific and technological progress, the commercialization of outer space, emerging legal questions and the increasing use of outer space in general had made it necessary for the Subcommittee to consider the question of the definition and delimitation of outer space.

10. Some delegations expressed the view that the lack of a definition or delimitation of outer space would bring about legal uncertainty concerning the

¹ United Nations, *Treaty Series*, vol. 1825, No. 31251.

applicability of space law and air law and that matters concerning state sovereignty and the boundary between air and outer space needed to be clarified in order to reduce the possibility of disputes among States.

11. The view was expressed that States should continue to operate under the current framework, which functioned well, until such time as there was a demonstrated need and a practical basis for developing a definition or delimitation of outer space. That delegation was of the view that currently an attempt to define and to delimit outer space would be a theoretical exercise, could lead to complicating existing activities and might not be able to anticipate continuing technological developments.

12. The Subcommittee noted with interest that the Scientific and Technical Subcommittee, at its forty-second session, in 2005, heard a presentation made by the representative of Colombia on behalf of the pro tempore secretariat of the Fourth Space Conference of the Americas, entitled "Geostationary orbit analyser tool", illustrating the non-homogeneous use of the orbit-spectrum resources, which increased the saturation risk for some regions.

13. As mentioned in paragraph [...] above, at its 711th meeting the Legal Subcommittee reconvened its Working Group on agenda item 6 (a). At its 715th meeting the Subcommittee elected José Monserrat Filho (Brazil) as Chairman of the Working Group. In accordance with the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group convened to consider only matters relating to the definition and delimitation of outer space.

14. The Working Group on agenda item 6 (a) 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.

15. The full text of the statements made by delegations during the discussion on agenda item 6 is contained in unedited verbatim transcripts (COPUOS/Legal/T.715-720 and [...]).

VI. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space

16. The Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-fourth session, taking into account the concerns of all countries, in particular those of developing countries, should consider the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (Assembly resolution 47/68) as a single issue and item for discussion.

17. The Subcommittee noted that, at its forty-second session, the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space had endorsed the recommendation of its Working Group on the Use of Nuclear Power Sources in Outer Space to organize, jointly with the International Atomic Energy Agency (IAEA), a technical workshop on the objective, scope and general attributes

of a potential technical safety standard for nuclear power sources in outer space, to be held in the framework of the forty-third session of the Scientific and Technical Subcommittee, in 2006.

18. The Subcommittee also noted that, in order to allow for the organization and holding of the joint workshop, the Scientific and Technical Subcommittee had agreed to amend the multi-year work plan adopted at its fortieth session to allow inclusion of the item on its agenda.

19. Some delegations expressed the view that the work being carried out by the Scientific and Technical Subcommittee was important for the development of an international consensus on a technically based framework for the safe use of nuclear power source applications in outer space.

20. Some delegations expressed the view that it was necessary for the Subcommittee to broaden its discussion under item 7 and to consider the need for a review of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space by compiling as much information as possible on the issue as well as by considering the ongoing work and future results of the Scientific and Technical Subcommittee in developing an international technically based framework for nuclear power sources in outer space.

21. The view was expressed that, at the present time, given the work being conducted by the Scientific and Technical Subcommittee, opening a discussion on revision of the Principles was not warranted.

22. The view was expressed that the Subcommittee could consider the question of a possible revision of the Principles and that if such a review was undertaken, the Subcommittee would benefit from the experience of IAEA and those States that had already developed relevant legislative norms.

23. The view was expressed that cooperation with IAEA was important for bringing together the technical competence and effective procedures developed by IAEA with regard to nuclear safety on the Earth and the expertise of the Committee in the area of matters relating to exploration and use of outer space. In that connection, that delegation called for coordination between the Working Group on the Use of Nuclear Power Sources in Outer Space and the Working Group on Space Debris of the Scientific and Technical Subcommittee with regard to matters relating to possible collision between space objects carrying nuclear power sources on board and space debris.

24. The view was expressed that nuclear power sources could constitute an important tool for certain future programmes for the exploration of the solar system.

25. The Subcommittee agreed that it was necessary to continue discussing the issue and that it should remain on the agenda of the Subcommittee.

26. The full text of the statements made during the discussions on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.717-720).

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 at Cape Town, South Africa, on 16 November 2001

27. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should 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 at Cape Town, South Africa, on 16 November 2001” as a single issue/item for discussion. In accordance with that resolution, the Subcommittee considered two sub-items under agenda item 8:

“(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 future protocol and the rights and obligations of States under the legal regime applicable to outer space.”

28. The Subcommittee had before it the following documents:

(a) Report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets, submitted by the Netherlands as coordinator of the working group (A/AC.105/C.2/L.256);

(b) Note by the Secretariat: report of the Unidroit secretariat on the second session of the Unidroit committee of governmental experts for the preparation of a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets (A/AC.105/C.2/2005/CRP.3);

(c) Results of the preliminary exchange of views on the report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets, submitted by the Netherlands as coordinator of the working group (A/AC.105/C.2/2005/CRP.7);

(d) Report on the question of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets (A/AC.105/C.2/2005/CRP.7/Rev.1);

(e) Statement submitted by the secretariat of Unidroit (A/AC.105/C.2/2005/CRP.9).

29. The Subcommittee noted that the States members of the Committee on the Peaceful Uses of Outer Space had been invited to the second session of the committee of governmental experts, convened in Rome by Unidroit from 26 to 28 October 2004, which had focused on fundamental policy issues for the practical viability of the space assets protocol rather than proceeding to a second reading of the text of the draft protocol.

30. The Subcommittee noted that the Unidroit committee of governmental experts would hold its third session in Rome in October 2005, and that States members of the Committee would be invited to attend that session as well.

31. The Subcommittee welcomed the establishment of the open-ended ad hoc working group, which had carried out its work intersessionally under the coordination of the delegation of the Netherlands, and considered the appropriateness of the United Nations serving as supervisory authority under the future protocol. It further took note with appreciation of the draft report prepared by the coordinator, René Lefeber, and the progress made following the preliminary exchange of views on that report.

32. Some delegations supported the assumption by the United Nations of the function of supervisory authority and hoped that the Subcommittee would decide at its current session to recommend to the General Assembly to agree, in principle, to the assumption of that role. Those delegations expressed the view that, if agreement could not be reached on such an approach, then the Subcommittee should at least agree on a procedure to carry the matter forward, as it was important for the Assembly to have the opportunity to consider the fundamental and practical issues relating to the assumption by the United Nations of this function, including the securing of appropriate privileges and immunities, coverage of all costs that would be incurred in the performance of the function of supervisory authority and the requirement for the registrar to obtain sufficient insurance.

33. Other delegations expressed the view that it was premature to discuss any formal proposal to the General Assembly before all practical issues relating to the assumption by the United Nations of the role of supervisory authority had been adequately addressed by the Subcommittee.

34. Some delegations expressed the view that there was no legal impediment to the United Nations assuming the role of supervisory authority, and that such a role was consistent with all the purposes of the United Nations detailed in its Charter.

35. Some delegations expressed the view that the issues identified by the Secretariat in its report (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 supervisory authority under the future protocol. Those delegations identified parts of the report by the Secretariat that in their view emphasized the incompatibility between the functions of the United Nations and the role of supervisory authority, and the recommendation contained in paragraph 52 that consideration should be given to other options, as well as continuing to study the practical experience of the International Civil Aviation Authority (ICAO) in carrying out the functions of supervisory authority under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment before taking a final decision concerning the United Nations serving as supervisory authority under the future space assets protocol.

36. Some delegations expressed their support for the efforts of Unidroit to establish a legal instrument to facilitate private financial space activities to the benefit of commercial, as well as public, space applications. Those delegations expressed the view that the financing of commercial space activities would be beneficial to both developed and developing countries.

37. The view was expressed that the future protocol not only opened up possibilities of conflict with the outer space treaties but could also lead to the compromise of national interests. That delegation expressed the view that the assumption of the role of supervisory authority by the United Nations was totally inappropriate and in conflict with its fundamental mandate. That delegation also expressed the view that the future protocol might require the Secretary-General to seek or receive instructions from external authorities and thus would conflict with Article 100 of the Charter of the United Nations.

38. The view was expressed that the future protocol was intended to address only the distinct and important issue of financing for commercial space activities and not to affect the rights and obligations of parties to the outer space treaties or the rights and obligations of member States of the International Telecommunication Union (ITU) under its Constitution and Convention and its Regulations.

39. The view was expressed that the Subcommittee and its members had expertise that might be valuable in the development of the future protocol, but that the protocol would ultimately be negotiated by the States members of Unidroit through the Unidroit process.

40. Some delegations noted that a number of options for the supervisory authority, such as ITU, were under consideration by delegations participating in the group of governmental experts convened by Unidroit to review the future protocol, as well as the possibility of creating a committee of States parties.

41. The view was expressed that although proposals were made during the course of discussions regarding alternatives to the United Nations assuming the role of supervisory authority, those proposals were not the subject of a detailed analysis. That delegation was of the view that until such a detailed analysis had been undertaken, there would be no obstacles to the United Nations assuming the role.

42. The view was expressed that the final decision regarding the identity of the supervisory authority remained with the diplomatic conference that would be convened to adopt the future protocol. That delegation also expressed the view that only reasonable costs incurred in the performance of the function of the supervisory authority would need to be covered.

43. The view was expressed that the report of the ad hoc working group did not provide any clear answers relating to the legal and financial implications of the United Nations assuming the role of supervisory authority, nor to the implications arising from proposed reforms to the structure of the United Nations Secretariat.

44. Some delegations expressed the view that, if the United Nations assumed the role of supervisory authority under the future protocol, then it would be crucial to ensure that start-up funds were provided from voluntary funds assigned in advance and not from the regular budget. Those delegations also expressed the view that there remained a risk that the United Nations might have to pay compensatory damages should it decide to assume the role of supervisory authority.

45. Some delegations expressed the view that, in order to avoid any legal implications, consideration might be given to establishing a specialized space agency under the aegis of the United Nations that could take on the role of the supervisory authority as well as other functions, such as the consideration of space debris and other issues of a global character. Those delegations noted, however, that

the establishment of such an agency would take time and that the question of an appropriate supervisory authority was more pressing.

46. The view was expressed that given the complex institutional nature of the question of the United Nations assuming the role of supervisory authority, the matter should be referred to the Sixth Committee of the General Assembly before being referred to its Fourth Committee.

47. Another view was expressed that referring the matter to the Sixth Committee was not necessary and could in fact have negative implications for the work of the Legal Subcommittee.

48. The view was expressed that, as there was no consensus on the United Nations assuming the role of supervisory authority, serious consideration should be given to alternative solutions. In that regard, the status of the Committee on the Peaceful Uses of Outer Space should be carefully considered in the context of the reforms taking place within the United Nations and its specialized agencies, in relation to assuming functions such as those of the supervisory authority and in the management of natural disasters.

49. The view was expressed that it was vital to emphasize in the future protocol the public nature of the services that satellites carried, in particular 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.

50. The view was expressed that implementation of the future protocol must not effect the orbital slots and frequency spectrum bands granted to States in accordance with the established rules of ITU, as it was possible that in the case of default, the financier taking over control of the space asset would seek to make use of those orbital slots and the frequency spectrum band.

51. The view was expressed that the future protocol should take into account the domestic legislation of States, as some of the default remedies provided in the future protocol could not be implemented domestically. That delegation also expressed the view that the question of intellectual property and the definition of "space asset" required serious consideration.

52. Some delegations expressed the view that provisions regarding the primacy of the outer space treaties should be asserted more forcefully in the operative paragraphs of the future protocol in order to ensure its compatibility with the United Nations treaties on outer space and that in case of any conflict with the treaties on outer space, the provisions of those treaties would prevail.

53. The view was expressed that the third preambular paragraph of the preliminary draft protocol, and the inclusion of article XXI (bis) into that draft during 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, although the precise formulation of article XXI (bis) was still under negotiation.

54. The view was expressed that 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 II, paragraph 1, of the Registration Convention.

55. Some delegations expressed the view that the default provisions, which envisaged the transfer of space assets under the future protocol, could result in the erosion of rights and obligations under the outer space treaties.

56. The view was expressed that as agreement had not yet been reached on aerospace transportation systems, that issue could potentially create a conflict between the United Nations and ICAO, if each organization were to assume the role of supervisory authority under the relevant protocols.

57. The view was expressed that if the United Nations did not assume the role of supervisory authority, it should still have unlimited access to all information in the registry to be set up under the future protocol.

58. The view was expressed that the decision of the Subcommittee should be delayed until the Unidroit subcommittee formed to develop proposals for the international registration system had completed its consideration of the role of the supervisory authority.

59. The Subcommittee agreed that the item should remain on the agenda of the Subcommittee at its next session [but that its title should be reworded as follows: ...].

60. As mentioned in paragraph [...] above, at its 711th meeting, on 4 April, the Subcommittee reconvened its Working Group on agenda item 8 and elected Vladimír Kopal (Czech Republic) as 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.

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