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Committee on the Peaceful Uses of Outer Space

Legal Subcommittee

Forty-seventh session

Vienna, 31 March-11 April 2008

Draft report

Addendum

III. Status and application of the five United Nations treaties on outer space

1. The Legal Subcommittee recalled that the General Assembly, in its resolution 62/217, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider the agenda item on the status and application of the five United Nations treaties on outer space as a regular item and had noted that the Subcommittee at its forty-seventh session would reconvene its Working Group on the item and would review the need to extend the mandate of the Working Group beyond that session.

2. The Subcommittee noted with appreciation that the Secretariat had distributed a revised version of the *United Nations Treaties and Principles on Outer Space and Related General Assembly Resolutions* (ST/SPACE/11/Rev.2), including the text of Assembly resolution 1721 A (XVI) of 20 December 1961; paragraph 4 of Assembly resolution 55/122 of 8 December 2000, in which the Assembly had noted with satisfaction the agreement reached by the Subcommittee, at its thirty-ninth session, on the question of the character and utilization of the geostationary orbit and a paper entitled "Some aspects concerning the use of the geostationary orbit" (A/AC.105/738, annex III); and the text of Assembly resolution 62/101.

3. The Subcommittee noted with satisfaction that the Secretariat had distributed an updated document containing information, as at 1 January 2008, on States parties and additional signatories to the United Nations treaties and other international agreements relating to activities in outer space (ST/SPACE/11/Rev.2/Add.1).



4. The Subcommittee noted that, as at 1 January 2008, the status of the five United Nations treaties on outer space was as follows:

(a) The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies¹ had 98 States parties and had been signed by 27 additional States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space² had 90 States parties and had been signed by 24 additional States;

(c) The Convention on International Liability for Damage Caused by Space Objects³ had 86 States parties and had been signed by 24 additional States;

(d) The Convention on Registration of Objects Launched into Outer Space⁴ had 51 States parties and had been signed by 4 additional States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies⁵ had 13 States parties and had been signed by 4 additional States.

5. The Subcommittee welcomed the accession by Turkey to the Liability Convention, the ratification by Turkey of the Rescue Agreement and the accession by Algeria to the Registration Convention, as well as reports from Member States regarding their progress towards becoming parties to the five United Nations treaties on outer space.

6. The Subcommittee noted with appreciation that in 2007 a number of States had concluded bilateral and multilateral agreements promoting broad international cooperation with regard to the conduct of space activities.

7. The Subcommittee noted that a number of States were developing national mechanisms for the registration of space objects. In that regard, the Subcommittee noted with satisfaction the positive impact that General Assembly resolution 62/101 was already having on enhancing registration practices.

8. Some delegations expressed the view that the United Nations treaties on outer space constituted a coherent and useful framework for increasingly widespread and complex outer space activities of both governmental and private entities. Those delegations welcomed further adherence to the treaties and hoped that States that had not yet ratified or acceded to those treaties would consider becoming parties to them.

9. Other delegations expressed the view that, although the provisions and principles of the United Nations treaties on outer space constituted the regime to be observed by States and more States should be encouraged to adhere to them, the current legal framework for outer space activities required modification and further development in order to keep pace with advances in space technology, changes in the nature of space activities and the increase in the volume of such activities. Those

¹ United Nations, *Treaty Series*, vol. 610, No. 8843.

² *Ibid.*, vol. 672, No. 9574.

³ *Ibid.*, vol. 961, No. 13810.

⁴ *Ibid.*, vol. 1023, No. 15020.

⁵ *Ibid.*, vol. 1363, No. 23002.

delegations expressed the view that the lacunae resulting from the current legal framework could be addressed by the development of a universal, comprehensive convention on space law without disrupting the fundamental principles contained in the treaties currently in force.

10. Some delegations expressed the view that it was important to continue efforts towards universal acceptance of the international legal regime governing activities in outer space, taking into account the need to identify new areas that might require regulation and that could be addressed by developing complementary instruments.

11. The view was expressed that the development of a comprehensive convention on space law would be based on the principle of the sovereign equality of Member States set out in article 2, paragraph 1, of the Charter of the United Nations and reiterated in General Assembly resolution 1348 (XIII) of 13 December 1958, entitled "Question of the peaceful use of outer space".

12. Some delegations expressed satisfaction with the fact that issues related to the low rate of participation of States in the Moon Agreement had started to be considered, as there was a need for adequate and timely regulation of activities relating to the Moon in view of the extensive exploration of the Moon planned by several space-faring countries. Those delegations were open to a revision of the Moon Agreement, if necessary, and drew the attention of the Subcommittee to the precedent-setting value of the law of the sea and other international legal regimes dealing with areas beyond national jurisdictions.

13. At its 765th meeting, on 31 March, the Subcommittee reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space under the chairmanship of Vassilios Cassapoglou (Greece). The Working Group held [...] meetings. At its [...] meeting, on [...] April, the Subcommittee endorsed the report of the Working Group, contained in annex I to the present report.

14. The Subcommittee endorsed the recommendation that the mandate of the Working Group be extended for one additional year. It was agreed that the Subcommittee, at its forty-eighth session, in 2009, would review the need to extend the mandate of the Working Group beyond that period.

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.[...]).

IV. Information on the activities of international intergovernmental and non-governmental organizations relating to space law

16. The Legal Subcommittee recalled that the General Assembly, in its resolution 62/217, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider, as a regular item of its agenda, an item entitled "Information on the activities of international intergovernmental and non-governmental organizations relating to space law". The Subcommittee noted with satisfaction that various international organizations had

been invited by the Secretariat to report to it on their activities relating to space law. The Subcommittee agreed that, for its forty-eighth session, the Secretariat should extend a similar invitation.

17. The Subcommittee had before it a note by the Secretariat (A/AC.105/C.2/L.270 and Add.1) containing information on activities relating to space law received from the following international organizations: ECSL, IISL, ILA and Intersputnik.

18. The Subcommittee was of the view that the activities of international intergovernmental and non-governmental organizations relating to space law were important and had contributed significantly to the development of space law. International intergovernmental organizations had an important role to play in strengthening the legal framework applicable to space activities and should consider taking steps to encourage their members to adhere to the outer space treaties. Several of the treaties contained mechanisms permitting international intergovernmental organizations conducting space activities to declare their acceptance of the rights and obligations under those treaties.

19. The Subcommittee expressed its appreciation to IISL and ECSL for organizing the symposium entitled "Legal Implications of Space Applications for Global Climate Change". It noted the wide range of potential legal implications of the use of space applications to address climate change. The Subcommittee agreed that IISL and ECSL should be invited to hold another symposium on space law at its forty-eighth session.

20. The Subcommittee took note of the report by IAA on its space-related activities, which included information on studies undertaken and conferences held worldwide on a broad range of issues that could be of further relevance to the Subcommittee.

21. The Subcommittee took note of the information submitted by IMSO on its activities relating to space law (A/AC.105/C.2/2008/CRP.13) and noted that most member States of IMSO had ratified both the Outer Space Treaty and the Registration Convention and that the issue of declaring acceptance of the rights and obligations under those treaties could be raised at the next IMSO assembly, in September 2008. The Subcommittee noted with appreciation the contributions that the previous Director of IMSO, Jerzy Vonau, had made to the work of the Subcommittee during the preceding eight years.

22. The Subcommittee took note of the information received from Intersputnik on its activities relating to space law, contained in a note by the Secretariat (A/AC.105/C.2/L.270). According to that information, the phase-by-phase privatization of Intersputnik was continuing, through the establishment of a group of companies that took care of the bulk of the core business of the organization. In November 2007, the Intersputnik Operations Committee had approved amendments to the operating agreement of the organization, which was to be submitted to the Board of Intersputnik for approval at its next session, to be held in April 2008. That process would complete efforts to revise and update the regulatory structure and regulatory documents of Intersputnik.

23. The Subcommittee noted the statement made by the observer for ESA on the activities of that agency relating to space law in 2007, which included lectures by

ESA staff members on legal implications of space activities and the publication of studies on various aspects of space law, such as human spaceflight and space exploration programmes, satellite navigation, launching policies, international space agreements, institutional aspects of space activities, commercial space activities, the legal aspects of space debris and national legislation governing space activities.

24. The Subcommittee took note of the information received from ILA on its most recent contributions relating to space law, contained in a note by the Secretariat (A/AC.105/C.2/L.270). It was noted that, at the 73rd ILA Conference, to be held in Rio de Janeiro, Brazil, in August 2008, the ILA Space Law Committee would report on remote sensing, national space legislation, the legal aspects of space debris and the settlement of disputes related to space activities. Special attention would be drawn to the use of satellite data in national and international litigation and its value as evidence in court proceedings. The ILA Study Group on the Responsibility of International Organizations, which was working closely with the International Law Commission (ILC), would also be meeting in the framework of the 73rd ILA Conference. The Legal Subcommittee would be kept informed of the progress of the work of the Study Group.

25. The Subcommittee took note of information received from ECSL and IISL, contained in a note by the Secretariat (A/AC.105/C.2/L.270 and Add.1), on their most recent contributions to space law, including through the organization of relevant regional and global conferences and workshops.

26. The full text of the statements made by delegations during the discussion on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

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

27. The Legal Subcommittee recalled that the General Assembly, in its resolution 62/217, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-seventh 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/item for discussion.

28. The Legal Subcommittee noted with satisfaction the progress made by the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space at its forty-fifth session in considering the use of nuclear power sources (NPS) in outer space and working to achieve consensus on an international, technically based framework of goals and recommendations for the safety of NPS applications in outer space.

29. The Legal Subcommittee noted the progress in, and positive benefits of, the cooperation of the Joint Expert Group of the Scientific and Technical Subcommittee and the International Atomic Energy Agency (IAEA) in the development of an international safety framework for the use of NPS in outer space. Such efforts could set a good example of inter-institutional cooperation to be encouraged in the future.

30. Some delegations expressed the view that a revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was not warranted at that time.
31. Some delegations expressed the view that the Legal Subcommittee should consider revising the Principles.
32. The view was expressed that discussion of the review and possible revision of the Principles was closely dependent on the work of the Scientific and Technical Subcommittee on the use of NPS in outer space, as well as on information to be presented to the Committee by the Joint Expert Group.
33. The view was expressed that the Principles should be reviewed and revised with a view to accommodating new demands. That delegation was of the view that the use of NPS should be limited to deep-space missions, given the real risk of a collision between space debris and space objects with NPS.
34. The view was expressed that it was important to adhere rigorously to safety standards when using NPS in outer space.
35. The Legal Subcommittee agreed that it was necessary to continue examining the issue and that the item should remain on its agenda.
36. The full text of the statements made during the discussions on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

VII. Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment

37. The Legal Subcommittee recalled that the General Assembly, in its resolution 62/217, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee at its forty-seventh session should consider, as a single issue/item for discussion, the examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment.
38. At the 773rd meeting of the Subcommittee, on 4 April 2008, the Chairman of the committee of governmental experts for the preparation of the draft space assets protocol of the International Institute for the Unification of Private Law (Unidroit) read a statement to the Subcommittee on developments concerning that draft protocol.
39. The Subcommittee noted that the following two major developments had taken place since its forty-sixth session: (a) the second meeting on the views of industry and Government on how best to finalize the expansion of the Convention on International Interests in Mobile Equipment to cover space assets, held in New York on 19 and 20 June 2007, had reached the significant conclusion that the substantial intersessional work accomplished on the key outstanding issues constituted a sound basis for an early resumption of the intergovernmental consultation process; and (b) prior to the reconvening of the Unidroit committee of governmental experts, there had been an increase in the awareness that it would be essential to build consensus around the important conclusions reached at the New York meeting.

40. The Subcommittee also noted that the principal conclusion reached at the New York meeting concerned the sphere of application of the draft space assets protocol. In that connection, it was decided that the sphere of application should be limited essentially to the satellite itself.
41. The Subcommittee was informed of the intention of Unidroit to take the process forward, in a timely fashion, on the basis of the provisional conclusions reached at the New York meeting and to establish a new steering committee, comprising representatives of Governments and of the international commercial space, financial and insurance communities that had participated in the intersessional meetings.
42. The Subcommittee was informed that the new steering committee would be launched at a meeting to be held in Berlin from 7 to 9 May 2008. The principal aims of the meeting would be to consider drafting solutions to implement the provisional conclusions reached in New York and to consider the most appropriate means of building the necessary consensus around those conclusions.
43. The Subcommittee thanked Unidroit for the comprehensive report.
44. Some delegations expressed their support for the progress made on the draft space assets protocol and looked forward to the continuation and successful completion of the drafting process.
45. Some delegations expressed the view that the draft space assets protocol offered an opportunity to facilitate the expansion of the commercial space sector by setting up a framework through which States could support a system of asset-based financing. Those delegations were of the view that the draft protocol would allow a broader range of States, in all regions and at all levels of economic development, to benefit from that expansion by providing a better opportunity to acquire interests in space equipment and to acquire services generated from space equipment.
46. Some delegations expressed the view that the future space assets protocol was intended to address only the distinct and important issue of financing for commercial space activities and was not intended to affect the rights and obligations of parties to the United Nations treaties on outer space or the rights and obligations of States members of the International Telecommunication Union (ITU) under its Constitution, Convention and Radio Regulations and that that principle would be explicit in the text of any space assets protocol. Those delegations also expressed the view that while the draft space assets protocol would ultimately be negotiated by States members of Unidroit through the Unidroit process, that process had already included many States members of the Subcommittee and considered requests from States not members of Unidroit who wished to attend.
47. The view was expressed that implementation of the future protocol must not affect the orbital slots and frequency spectrum bands allocated to States in accordance with the established rules of ITU, because it was possible that, in the case of default, the financier taking control of the space asset might seek to make use of those orbital slots and the frequency spectrum band.
48. The view was expressed that the draft space assets protocol was a good example of efforts seeking to find a solution to the deficiencies in the existing United Nations treaties on outer space without compromising the interests

safeguarded in those treaties. That delegation expressed the view that private and commercial space activities should be regulated.

49. The view was expressed that a major unresolved issue concerned the competence of national courts to enforce judicial decisions on matters related to outer space.

50. The Subcommittee expressed its satisfaction with the participation of the Office for Outer Space Affairs as an observer in the negotiating sessions of Unidroit and agreed that the Office should continue participating in those sessions.

51. The Subcommittee agreed that the item should remain on the agenda of its forty-eighth session, in 2009.

52. The full text of statements made by delegations during the discussion on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).