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**Committee on the Peaceful
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Legal Subcommittee
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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. In accordance with General Assembly resolution 63/90, the Legal Subcommittee considered agenda item 6, entitled “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”, as a regular item of its agenda.

2. For its consideration of the item, the Subcommittee had before it the following:

(a) Note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States” (A/AC.105/635/Add.17);

(b) Note by the Secretariat entitled “National legislation and practice relating to definition and delimitation of outer space” (A/AC.105/865/Add.4);

(c) Note by the Secretariat entitled “Questions on the definition and delimitation of outer space: replies from Member States” (A/AC.105/889 and Add.2 and 3);

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(d) Conference room paper entitled “Questions on the definition and delimitation of outer space: replies from Qatar and Saudi Arabia” (A/AC.105/C.2/2009/CRP.11);

(e) Conference room paper entitled “National legislation and practice relating to the definition and delimitation of outer space: reply from Mexico” (A/AC.105/C.2/2009/CRP.15).

3. Some delegations expressed concern that little progress had been made on the question of the definition and delimitation of outer space despite the matter having been considered by the Subcommittee for over 40 years. Those delegations reiterated their view that the definition and delimitation of outer space was topical and should therefore continue to be considered by the Subcommittee.

4. 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.

5. Some delegations expressed the view that the lack of a definition or delimitation of outer space created legal uncertainty concerning the applicability of space law and air law and that matters concerning State sovereignty and the boundary between air space and outer space needed to be clarified in order to reduce the possibility of disputes among States.

6. Some delegations expressed the view that the definition and delimitation of outer space was of paramount importance in relation to the issue of the liability of States and other entities engaging in space activities, which became particularly topical in the light of the current intensification and diversification of space activities.

7. Some delegations expressed the view that the definition and delimitation of outer space was a prerequisite to the establishment of an effective safety regime for outer space activities.

8. The view was expressed that the establishment of a definition and delimitation of outer space would create certainty in the sovereignty of States over their air space and would also enable the effective application of the principles of the freedom of use of outer space and of non-appropriation of outer space. That delegation was of the view that the definition and delimitation of outer space was linked to the definition of space objects.

9. Some delegations expressed the view that the definition and delimitation of outer space could lead to unnecessary limitations on the regulation of space activities.

10. Some delegations expressed the view that the lack of a definition and delimitation of outer space had not hindered space exploration nor discouraged States from becoming parties to the United Nations treaties on outer space.

11. Some delegations expressed the view that the absence of some important definitions in other branches of international law, such as aviation law, environmental law and telecommunications law, had not undermined the effectiveness of regulation of the corresponding activities.

12. The view was expressed that there was no need for a definition and delimitation of outer space from a legal perspective and that the delimitation of outer space had already been defined from the perspective of natural sciences.
13. 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 at the present time any attempt to define and delimit outer space would be a theoretical exercise that could complicate existing activities and that might not be able to anticipate future technological developments.
14. The view was expressed that no legal arguments against the need to define and delimit outer space had been put forward in the Subcommittee.
15. Some delegations expressed the view that alternative approaches, such as examination of the terms “space object” and “space activities” or consideration of issues of liability for space activities, could be adopted for the definition and delimitation of outer space.
16. The view was expressed that progress in the definition and delimitation of outer space could be achieved through cooperation with the International Civil Aviation Organization (ICAO).
17. The view was expressed that the definition and delimitation of outer space should not lead to revision or amendment of the United Nations treaties on outer space, which provided a solid and effective basis for the regulation of space activities.
18. The view was expressed that current and foreseeable civil aviation operations would not exceed altitudes of 100 to 130 miles, where there was a potential danger of collision with numerous spacecraft. In this connection, that delegation proposed that the boundary between airspace and outer space be established in that range.
19. The Subcommittee agreed to request the ICAO secretariat to make, at the forty-ninth session of the Subcommittee, a comprehensive presentation on current and foreseeable civil aviation operations, with particular emphasis on the upper limit of those operations.
20. The view was expressed that the Subcommittee should not abstain from the development of legally binding rules relating, among other things, to the definition and delimitation of outer space and the status of the geostationary orbit.
21. The view was expressed that the geostationary orbit, as a limited natural resource clearly in danger of saturation, must be used rationally, efficiently, economically and equitably. That principle was deemed fundamental to safeguarding the interests of developing countries and countries with a certain geographical position, as set out in article 44, paragraph 196.2, of the Constitution of the International Telecommunication Union, as amended by the Plenipotentiary Conference held in Minneapolis, United States, in 1998.
22. 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.

23. Some delegations expressed the view that access to the geostationary orbit should be provided to States on equitable conditions, taking into account, in particular, the needs and interests of developing countries.

24. The view was expressed that the geostationary orbit was an integral part of outer space and that, therefore, its use should be governed by the provisions of the United Nations treaties on outer space and the ITU regulations.

25. Some delegations expressed the view that the current Constitution, Convention and Radio Regulations of ITU, 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, fully took into account the interest of States in the use of the geostationary orbit and the radio frequency spectrum.

26. 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, including repeated use.

27. The Subcommittee noted the information provided by the United States on its actions to further the use of the geostationary orbit and other uniquely situated orbits, such as the free provision of the signal from the Global Positioning System (GPS), information from the polar meteorological satellites of the National Oceanic and Atmospheric Administration (NOAA) of the United States and data from the Geostationary Operational Environmental Satellites (GOES). The Subcommittee also noted the cooperation of the Governments of Canada, France, the Russian Federation and the United States in the International Satellite System for Search and Rescue (COSPAS-SARSAT).

28. The view was expressed that a balance should be established in the use of the geostationary orbit among States, intergovernmental organizations and private entities. That delegation was of the view that that goal could be achieved through cooperation between the Subcommittee and ITU.

29. The view was expressed that, in view of the rapid development of satellite technologies, the Subcommittee could also consider the use of other Earth orbits and that the question of the legal regime governing the geostationary orbit should be considered together with that issue.

30. The view was expressed that an effective regime for the geostationary orbit, including a mechanism to monitor it, could be addressed through the establishment of an international specialized entity.

31. At its 783rd meeting, the Subcommittee reconvened its Working Group on the Definition and Delimitation of Outer Space under the chairmanship of José Monserrat Filho (Brazil). 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 was convened to consider only matters relating to the definition and delimitation of outer space.

32. The Working Group held four meetings. The Subcommittee, at its [...] meeting, on [...] April, endorsed the report of the Working Group, contained in annex II to the present report.

33. The full text of the statements made during the discussion on this agenda item is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...-...] and [...]).

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

34. In accordance with General Assembly resolution 63/90, the Legal Subcommittee considered agenda item 7, entitled “Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space”, as a single issue/item for discussion.

35. The Subcommittee noted with satisfaction the adoption by the Scientific and Technical Subcommittee, at its forty-sixth session, of the Safety Framework for Nuclear Power Source Applications in Outer Space (A/AC.105/C.1/L.292/Rev.4).

36. The Subcommittee also noted with satisfaction the successful cooperation in the development of the Safety Framework between the Scientific and Technical Subcommittee and the International Atomic Energy Agency through the work of the Joint Expert Group of the Scientific and Technical Subcommittee and the International Atomic Energy Agency.

37. The view was expressed that the development of the Safety Framework was a good example of inter-institutional cooperation, which should be encouraged.

38. Some delegations expressed the view that the Safety Framework promoted the safe use of nuclear power sources (NPS) in outer space and complemented both existing national and international safety guidelines and standards and those under development.

39. The view was expressed that consideration could be given to submitting the Safety Framework to the General Assembly for endorsement by way of a specific resolution.

40. With regard to the Safety Framework, the Subcommittee noted the following reservations expressed by the representative of the Bolivarian Republic of Venezuela:

(a) The inadmissibility of the use of NPS in Earth orbits, based on the premise that any activity conducted in outer space should be governed by the principles of preservation of life and maintenance of peace;

(b) The responsibility of States for national activities carried out by Government agencies or non-governmental organizations using NPS in outer space; States should ensure the regulation, authorization and monitoring of such activities and that authority may not be delegated in any way.

41. Some delegations expressed the view that the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was closely dependent on further progress being made by the Scientific and Technical Subcommittee in its consideration of the issue of the use of NPS in outer space and

on consideration of the Safety Framework by the Committee on the Peaceful Uses of Outer Space and the Commission on Safety Standards of IAEA.

42. Some delegations were of the view that a revision of the Principles was not warranted.

43. Some delegations expressed the view that the Legal Subcommittee should consider revising the current legal regime governing the use of NPS in outer space by developing, on the basis of the Safety Framework, a binding instrument to regulate the use of NPS in outer space.

44. The view was expressed that the Principles should be reviewed and revised in a pragmatic manner 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.

45. Some delegations were of the view that serious consideration should be given to the possible impact that missions carrying NPS on board could have on human life and the environment.

46. The view was expressed that it was important to adhere rigorously to safety standards when using NPS in outer space.

47. The Subcommittee agreed that it was necessary to continue examining the issue and that the item should remain on its agenda.

48. The full text of the statements made during the discussion on this agenda item is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]-[...]).
