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## Committee on the Peaceful

### Uses of Outer Space

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

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## **I. Introduction**

### **A. Opening of the session**

1. The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-second session at the United Nations Office at Vienna from 24 March to 4 April 2003 under the chairmanship of Vladimír Kopal (Czech Republic).
2. At the opening (674th) meeting, on 24 March, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its forty-second session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.674).

### **B. Adoption of the agenda**

3. At its opening meeting, the Legal Subcommittee adopted the following agenda:
  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.
  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 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. 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.

### **C. Attendance**

4. Representatives of the following States members of the Legal Subcommittee attended the session: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Lebanon, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Peru, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sudan, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Viet Nam.

5. At the 674th and 678th meetings, on 24 and 26 March, the Chairman informed the Subcommittee that requests had been received from the Permanent Representatives of Costa Rica, Finland and Israel to attend the session. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, it could take no formal decision on the matter, but that the representatives of those States might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

6. Representatives of the following organizations of the United Nations system and other international organizations attended the session as observers: United Nations Educational, Scientific and Cultural Organization (UNESCO), International Civil Aviation Organization (ICAO), European Organization for the Exploitation of Meteorological Satellites (EUMETSAT), European Space Agency (ESA), International Astronautical Federation (IAF), International Institute for the Unification of Private Law (Unidroit), International Mobile Satellite Organization, International Organization of Space Communications (Intersputnik) and International Law Association (ILA).

7. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies of the United Nations system and other organizations attending the session and of staff members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF.35.

### **D. Organization of work**

8. In accordance with decisions taken at its opening meeting, the Legal Subcommittee organized its work as follows:

(a) The Subcommittee re-established its Working Group on agenda item 4, "Status and application of the five United Nations treaties on outer space", open to all members of the Subcommittee, and agreed that Vassilios Cassapoglou (Greece) should serve as its Chairperson;

(b) The Subcommittee re-established its Working Group on agenda item 6 (a), open to all members of the Subcommittee, and elected Taous Feroukhi (Algeria) to serve as its Chairperson;

(c) The Subcommittee established a new Working Group on agenda item 8, open to all members of the Subcommittee, and elected Sergio Marchisio (Italy) to serve as its Chairperson;

(d) The Subcommittee began its work each day with a plenary meeting to hear delegations wishing to address it. It subsequently adjourned and, when appropriate, convened a working group;

(e) The Subcommittee agreed that, at the end of each meeting's consideration of an agenda item, delegations would have an opportunity to comment on the statements that had been made.

9. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies. The Chairman also drew attention to the fact that the Legal Subcommittee had been able to achieve real and constant savings in that area, despite the current financial constraints faced by the United Nations. In view of that, the Chairman proposed and the Subcommittee agreed that a flexible organization of work should continue to serve as the basis for organizing the work of the Subcommittee, with a view to making fuller use of the conference services available.

10. The Subcommittee noted with satisfaction that a symposium entitled "Reinforcing the Registration Convention", sponsored by the International Institute of Space Law (IISL) of IAF in cooperation with the European Centre for Space Law (ECSL), had been held during the current session of the Legal Subcommittee, on 24 March 2003. The symposium was coordinated by Tanja Masson-Zwaan of IISL and chaired by Peter Jankowitsch (Austria). Presentations were made by Frans von der Dunk on "Background and historical context", Kay-Uwe Hörl on "Change of ownership, change of registry? Which objects to register, what data to be furnished, when, and until when?", Sylvia Ospina on "Unidroit registration of security interests and the Registration Convention: compatible, complementary or contradictory?", Joanne Gabrynowicz on "Practice of national States: the United States of America" and Gabriel Lafferranderie on "Practice of international organizations: the European Space Agency". The Subcommittee agreed that IISL and ECSL should be invited to hold a further symposium on space law at its forty-third session.

11. The Legal Subcommittee recommended that its forty-third session be held from 29 March to 8 April 2004.

## **E. Adoption of the report of the Legal Subcommittee**

12. The Subcommittee held a total of 19 meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.674-692).

13. At its 692nd meeting, on 4 April 2003, the Subcommittee adopted the present report and concluded the work of its forty-second session.

## **II. General exchange of views**

14. The Subcommittee expressed its sympathy and solidarity with the families and friends of the international crew of the Space Shuttle Columbia, as well as with the international space community, for the recent tragic loss of Columbia and its crew during re-entry on 1 February 2003, which affected all humanity. The Subcommittee expressed its hope that this would not negatively affect international space programmes.

15. The Subcommittee welcomed Algeria as a new member of the Committee and its Subcommittees.

16. The Subcommittee expressed its gratitude to Petr Lála and Mazlan Othman for their exceptional service in the Office for Outer Space Affairs. The Subcommittee also expressed its satisfaction with the appointment of Sergio Camacho as Director of the Office.

17. Statements were made by representatives of the following member States during the general exchange of views: Argentina, Brazil, Chile, China, Colombia, Czech Republic, France, Greece, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Netherlands, Morocco, Peru, Republic of Korea, Russian Federation, Ukraine and United States. The representative of Cuba (on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States) also made a statement. The observers for ESA and IAF also made statements. The views expressed by those representatives are contained in unedited verbatim transcripts (COPUOS/Legal/T.674-678 and 685).

18. At the 674th meeting, on 24 March, the Director of the Office for Outer Space Affairs of the Secretariat made a statement reviewing the role and work of the Office relating to space law. The Subcommittee noted with appreciation the information on the activities of the Office aimed at promoting the understanding, acceptance and implementation of international space law.

19. At the 686th meeting, on 1 April, the Executive Director of the United Nations Office on Drugs and Crime (formerly known as the Office for Drug Control and Crime Prevention) and Director-General of the United Nations Office at Vienna made a statement emphasizing the importance of the Legal Subcommittee's work in the development of space law and the importance of space applications to the work of the United Nations.

20. Some delegations expressed concern at the ongoing absenteeism or lack of active participation of some member States. Those delegations expressed the view that the Subcommittee should consider addressing that issue in future years.

21. Some delegations expressed the view that, while the benefits of space science and technology were well known, those benefits were still not reaching many people in developing countries. Those delegations held the view that efforts towards international, regional and subregional cooperation, in particular in relation to space

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law and education in space law, needed to be increased significantly in order to improve understanding of international space law.

22. The view was expressed that the Subcommittee should rationalize its resources and adapt its working methods in order to respond adequately to the challenges of the rapid development of space activities.

23. The view was expressed that the Legal Subcommittee and the Committee on the Peaceful Uses of Outer Space, as the United Nations bodies responsible for regulating space activities, should look for solutions to emerging legal issues, especially in view of the rapid commercialization of outer space.

24. The Subcommittee was provided with the following information on ongoing activities of the National Aeronautics and Space Administration (NASA) of the United States with respect to the legal implications of the Columbia tragedy: despite the fact that the accident had occurred over a populated area, damage to third parties appeared to have been extremely limited and, while debris from Columbia fell in Texas, Louisiana and other states, no individuals were hit by any of that debris: the claims reported to NASA had related mostly to property damage, including the death of farm animals, as well as loss of business. There had been no reports of serious injuries to persons and damage reports appeared to have been contained within the borders of the United States; no damage from the Columbia tragedy had been reported by any other nations.

25. The Subcommittee was provided with information on the International Code of Conduct against Ballistic Missile Proliferation, which had been adopted in The Hague in November 2002.

26. Some delegations expressed the view that research being conducted in the development of space weapons could lead to the militarization of outer space and have a negative impact on international peace and security.

27. Some delegations expressed the view that, while outer space could be used for defensive purposes, on the condition of not stationing weapons, space defence systems could only exist if used to preserve international security and to avoid military conflict. That delegation was of the view that an international agreement should be concluded on the non-use of weapons in outer space.

28. Some delegations expressed the view that the Legal Subcommittee should play a more active role in preventing the militarization of outer space, which would include establishment of a comprehensive and effective legal regime.

29. The view was expressed that it was important for the Committee and its Subcommittees to maintain their focus on the international issues that arose in the context of the peaceful uses of outer space, consistent with its mandates, and should not be drawn into politicized discussions about issues that would be better addressed in other multilateral forums.

30. Some delegations expressed the view that the Legal Subcommittee was competent to consider certain political issues, since it would be inappropriate to separate the further development of international space law from politics, especially where other forums mandated to deal with such matters had failed to make progress.

31. Some delegations expressed the view that it was advisable to consider preparing a universal comprehensive United Nations convention on international

space law so as to promote the formulation and gradual development of an outer space law.

32. The view was expressed that the Subcommittee should undertake activities that supported the continued vitality of the existing outer space treaty regime. That delegation noted that to entertain the possibility of the negotiation of a new comprehensive space law instrument could only serve to undermine the existing space law regime.

33. Some delegations considered it important that examination of the topic of remote sensing be included on the agenda of the Legal Subcommittee, taking into account that the Principles Relating to Remote Sensing of the Earth from Outer Space (resolution 41/65, annex) had not been duly updated in the light of current technological progress and the growing participation of the private sector in space activities.

34. The view was expressed that the principles contained in the key space law instruments had established a framework encouraging the exploration of outer space that benefited both space-faring and non-space-faring countries. That delegation was of the view that the Subcommittee should focus on identifying legal issues that arose in the context of civil and commercial space activities and address them through a consensus-based process.

35. Some delegations expressed the view that the space debris mitigation guidelines presented by the Inter-Agency Space Debris Coordination Committee to the Scientific and Technical Subcommittee with a view to their adoption in 2004 should be effectively and universally applied. To that end, the Legal Subcommittee could discuss, as part of a multi-year work plan, the legal issues raised by those guidelines and consider preparing a legal instrument that would ensure their universal and effective application.

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

36. 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 this agenda item as a regular item and had agreed that the Subcommittee should reconvene its Working Group, which would meet for three years, from 2002 to 2004.

37. In accordance with the agreement reached by the Legal Subcommittee at its fortieth session, in 2001, the terms of reference of the Working Group included the status of the treaties, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law, especially through the United Nations Programme on Space Applications (A/AC.105/763 and Corr.1, para. 118). In accordance with the agreement reached by the Legal Subcommittee at its forty-first session, in 2002, the Working Group would also review the application and implementation of the concept of the “launching State”, as reflected in the conclusions of the Subcommittee’s consideration of the three-year work plan on “Review of the concept of the ‘launching State’”, as well as any new, similar issues

that might be raised in discussions in the Working Group, provided that those issues fell within the existing mandate of the Working Group (A/AC.105/787, paras. 138 and 140).

38. The Subcommittee welcomed with satisfaction the publication containing the text of the United Nations treaties and principles on outer space (ST/SPACE/11). The information, as at 1 January 2003, on States parties and additional signatories to the United Nations treaties and other international agreements relating to outer space had been updated and distributed by the Secretariat (ST/SPACE/11/Add.1).

39. The Subcommittee noted that the status of the five United Nations treaties on outer space as at 1 January 2003, 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 Bodies (the "Outer Space Treaty", General Assembly resolution 2222 (XXI), annex) 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 Space (the "Rescue Agreement", Assembly resolution 2345 (XXII), annex) had 88 States parties and had been signed by 25 additional States;

(c) The Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", Assembly resolution 2777 (XXVI), annex) had 82 States parties and had been signed by 25 additional States;

(d) The Convention on Registration of Objects Launched into Outer Space (the "Registration Convention", Assembly resolution 3235 (XXIX), annex) had 44 States parties and had been signed by 4 additional States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the "Moon Agreement", Assembly resolution 34/68, annex) had 10 States parties and had been signed by 5 additional States.

In addition, one international intergovernmental organization had declared its acceptance of the rights and obligations under the Rescue Agreement; two international intergovernmental organizations had declared their acceptance of the rights and obligations under the Liability Convention; and two international intergovernmental organizations had declared their acceptance of the rights and obligations under the Registration Convention.

40. The Legal Subcommittee welcomed the reports concerning recent accessions to or ratifications of the five United Nations treaties on outer space or the progress made towards such accession or ratification by several member States, including Brazil, Greece, Indonesia, Italy, Morocco and Peru. The Subcommittee also welcomed the reports from member States indicating their progress in developing national space laws.

41. The Legal Subcommittee agreed that the merits and substance of the proposed separate General Assembly resolution on the application of the legal concept of the "launching State" (A/AC.105/C.2/L.242) should be further considered by the Committee on the Peaceful Uses of Outer Space at its forty-sixth session (11-20 June 2003).

42. The Subcommittee urged those delegations having comments on the proposed resolution to consider communicating them in writing to the Secretariat prior to the forty-sixth session of the Committee.

43. The view was expressed that, in the event that the General Assembly took action on the proposed resolution, that delegation would declare that the spirit and the letter of the Outer Space Treaty, the Liability Convention and the Registration Convention would guide its activities in outer space.

44. Some delegations expressed the view that there was an increasing need for technical assistance for States interested in developing national space legislation, in particular legislation implementing provisions in the United Nations treaties on outer space, and that the Subcommittee should give greater attention to that issue.

45. The view was expressed that, despite the fact that the provisions of the United Nations treaties on outer space were flexible and well conceived, they did not always keep pace with the development of space technologies and changes in the character of space activities. That delegation expressed the view that the Subcommittee should identify norms of international law that required immediate development to keep pace with those changes and should promote exchange of information on national space laws and application of laws during international and national space projects. That delegation believed that the Subcommittee, as well as intergovernmental and non-governmental organizations, could study various definitions in the United Nations treaties that lacked clarity, as well as discrepancies between provisions of international space law and some national legislation.

46. The view was expressed that, while more States should be encouraged to accede to the five United Nations treaties on outer space, considerable attention should also be paid to the relevant domestic legislation, as the two aspects were equally important. That delegation made a comprehensive presentation to the Subcommittee on its domestic legislation and implementation of outer space activities.

47. Some delegations expressed the view that issues arising from developments in space activities could be addressed by the preparation of a universal, comprehensive convention on space law, which would give increased legal significance to the agenda item "Status and application of the five United Nations treaties on outer space". Such a universal comprehensive convention might, among other things, transform certain United Nations legal principles on outer space into binding obligations and could develop further the principles contained in the five United Nations treaties on outer space, without reopening discussion on any of the existing principles in those treaties.

48. Other delegations expressed the view that the United Nations treaties had proved over the years to be an effective framework for facilitating increasingly complex activities in outer space. Those delegations expressed the view that emphasis should be placed on encouraging States to give serious consideration to becoming party to those treaties in the coming years.

49. The view was expressed that to entertain the possibility of the negotiation of a new, comprehensive space law convention could only serve to undermine the existing space law regime.

50. However, the view was also expressed that the development of such a universal, comprehensive convention would instead serve to reaffirm those principles.

51. The view was expressed that recent measures taken by the United States to clarify the criteria for the inclusion of space objects on its national registry were welcome and could form an important precedent to implement other measures to encourage the uniform application of the five treaties.

52. The view was expressed that cases were becoming more common of satellites being launched and subsequently abandoned in orbit because of a lack of commercial success. That delegation expressed the view that it was necessary to develop legal measures to address that problem.

53. As mentioned in paragraph 8 (a) above, at its 674th meeting, on 24 March, the Legal Subcommittee established a Working Group on agenda item 4 under the chairmanship of Vassilios Cassapoglou (Greece). The Working Group held eight meetings. At its 692nd meeting, on 4 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex I to the present report.

54. The full text of the statements made by delegations during the discussion on agenda item 4 is contained in unedited verbatim transcripts (COPUOS/Legal/T.675-679 and 685-689).

#### **IV. Information on the activities of international organizations relating to space law**

55. At the 677th meeting, on 25 March, the Chairman made an introductory statement on agenda item 5 and drew the attention of the Subcommittee to the fact that it was a regular agenda item agreed upon by the Subcommittee at its forty-first session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-fifth session.

56. The Legal Subcommittee noted with satisfaction that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law and agreed that a similar invitation should be extended by the Secretariat for the forty-third session of the Subcommittee, in 2004.

57. The Legal Subcommittee had before it a document (A/AC.105/C.2/L.239) and two conference room papers (A/AC.105/C.2/2003/CRP.4 and A/AC.105/C.2/2003/CRP.9) containing reports from the following international organizations on their activities relating to space law: Centre régional de télédétection des états de l'Afrique du nord, EUMETSAT, ECSL, IAF and its IISL, ILA and Intersputnik.

58. In the course of the debate, observers for the following international organizations reported to the Legal Subcommittee on their activities relating to space law: ECSL, EUMETSAT, IAF, IISL, ILA and Intersputnik. The Subcommittee was also informed about the activities of the International Centre for Space Law in Kyiv.

59. The view was expressed that intergovernmental organizations conducting space activities and their member States should consider the possible steps that might be taken to bring the activities of those intergovernmental organizations into

the framework of the Rescue Agreement, the Liability Convention and the Registration Convention.

60. The view was expressed that exchange of information in relation to space law could be improved by inviting educational institutions to provide the Subcommittee with information on their programmes and activities relating to space law.

61. The Legal Subcommittee expressed its appreciation to the Government of the Netherlands and the International Institute of Air and Space Law of the University of Leiden for co-sponsoring the first United Nations/International Institute of Air and Space Law Workshop on Capacity-Building in Space Law, held from 18 to 21 November 2002 in The Hague.

62. The Legal Subcommittee welcomed the presentation made by the representative of the Netherlands on the programme and recommendations of the Workshop on Capacity-Building in Space Law and agreed that the Workshop had made a positive contribution to achieving a full understanding and acceptance of the five United Nations treaties on outer space, including providing an impetus to some Member States to consider ratification of those treaties.

63. The Legal Subcommittee noted with appreciation that the Workshop had promoted the further development of space law at the national level and had raised awareness of the need for educational programmes on space law, in particular in developing countries.

64. The Legal Subcommittee noted with appreciation that the next United Nations Workshop on Space Law would be hosted by the Republic of Korea in Daejeon from 3 to 6 November 2003.

65. The view was expressed that the promotion of education in space law and the related recommendations of the Workshop on Capacity-Building in Space Law (see A/AC.105/802) were of great importance and could serve as a basis for further deliberation with a view to taking practical steps in that regard.

66. The Legal Subcommittee noted that the Committee on the Peaceful Uses of Outer Space, at its forty-fourth session, in 2001, had agreed to invite interested member States to designate experts to identify which aspects of the report of the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) of UNESCO might need to be studied by the Committee and to draft a report in consultation with other international organizations and in close liaison with COMEST. That was to be done with a view to making a presentation to the Subcommittee at its forty-second session, in 2003, under the item entitled "Information on the activities of international organizations relating to space law".

67. The Legal Subcommittee had before it the report of the Group of Experts on the Ethics of Outer Space (A/AC.105/C.2/L.240). The Subcommittee also had before it conference room papers containing contributions from individual members of the Group of Experts to the report (A/AC.105/C.2/2003/CRP.3 and Add.1) and amendments to the report of the Group of Experts on the Ethics of Outer Space (A/AC.105/C.2/2003/CRP.8). The Subcommittee noted that the report of the Group of Experts as contained in documents A/AC.105/C.2/L.240 and A/AC.105/C.2/2003/CRP.8 would be consolidated and issued as A/AC.105/C.2/L.240/Rev.1.

68. The Legal Subcommittee noted that it was the primary international forum for the development of international space law and that the entire body of space law developed by the Subcommittee was founded on ethical principles.

69. The Subcommittee thanked the experts who had contributed to the report of the Group of Experts on the Ethics of Outer Space, as amended, took note of the report and its annex and noted that the Committee on the Peaceful Uses of Outer Space might wish to consider it at its forty-sixth session, in June 2003.

70. The Subcommittee also agreed that the Committee might consider sending the report and its annex to the Director-General of UNESCO with the request that UNESCO keep the Committee and its subcommittees informed about the activities of UNESCO relating to outer space, in the framework of their cooperation, taking into due account their respective competencies.

71. Some delegations expressed the view that the proposal by COMEST offered a good opportunity to analyse questions that had been left off the international agenda and that it was desirable to seek adequate mechanisms allowing a balance between the interest of States exploring outer space and the benefits that such exploration should generate for humanity.

72. The view was expressed that a formal mechanism should be established for mutual cooperation between the Committee and UNESCO.

73. Finally, the Subcommittee agreed that the issue of ethics of activities in outer space could continue to be considered by it under agenda item 5.

74. The full text of the statements made by delegations during the discussion on agenda item 5 is contained in unedited verbatim transcripts (COPUOS/Legal/T.677-683).

## **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**

75. The Legal Subcommittee recalled that the General Assembly, in its resolution 57/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-second session, taking into account the concerns of all countries, in particular those of developing countries, 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).

76. The Legal 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.1-8);

(b) Report of the Legal Subcommittee on its forty-first session (A/AC.105/787);

(c) Report of the Scientific and Technical Subcommittee on its fortieth session (A/AC.105/804).

77. Some delegations expressed the view that the lack of a definition and delimitation of outer space would bring about legal uncertainty with regard to space law, which provided that outer space was free for exploration and use by all States, and air law, which provided for sovereignty over national airspace.

78. 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.

79. The view was expressed that, before a definition and delimitation of outer space could be developed, it would be necessary to analyse the technical aspects of air and outer space transport systems and the means of delivery of objects into outer space, prospects for the development of aerospace objects capable of missions in air and outer space, as well as data on the use of the only existing prototype of such an aerospace object, namely, the Space Shuttle. That delegation was also of the view that States should examine the practical experience accumulated by States relating to the use of airspace and outer space and the activities of international organizations relating to the definition and delimitation of outer space.

80. The view was expressed that the Subcommittee should cooperate with ITU and ICAO to define special zones in airspace that could be used by aerospace objects capable of manoeuvring in air and outer space for that part of their mission which passed through airspace.

81. Some delegations expressed the view that it was not necessary to develop any definition or delimitation of outer space as the absence of such a definition had not resulted in any legal or practical problems.

82. 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.

83. The Subcommittee welcomed the replies received from member States to the revised questionnaire on possible legal issues with regard to aerospace objects.

84. Some delegations expressed the view that the replies to the questionnaire on possible legal issues with regard to aerospace objects should be examined carefully by the Legal Subcommittee as they could constitute a good basis for discussions with a view to adopting standards on the matter.

85. The view was expressed that the questionnaire, in its current form, should be considered final and that all replies received from member States should be summarized by the Subcommittee in a report to the Committee on the Peaceful Uses

of Outer Space. That delegation was of the view that the issue should then be suspended until new events merited the consideration of the status of aerospace objects.

86. 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, thus 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. Within that framework, those delegations expressed their satisfaction with the agreement reached by the Subcommittee at its thirty-ninth session (A/AC.105/738, annex III), in the sense that every coordination among countries aimed at the utilization of the orbit should be carried out in an equitable manner and in conformity with the Radio Regulations<sup>1</sup> of ITU.

87. Some delegations expressed the view that the agreement reached by the Subcommittee at its thirty-ninth session on the question of the character and utilization of the geostationary orbit was an important basis for promoting international cooperation to ensure that the principle of equity would be applied and that all States would have access to the geostationary orbit.

88. The view was expressed that, while ITU was undertaking work relating to the utilization of the geostationary orbit, the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee continued to be the competent bodies to discuss the legal and political aspects of the geostationary orbit.

89. The view was expressed that the current Constitution and Convention<sup>2</sup> and Radio Regulations of ITU, as well as the current procedures under those treaties for 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.

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

91. 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 Outer Space Treaty and the treaties of ITU.

92. 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.

93. The view was expressed that the division of agenda item 6 into sub-items 6 (a) and 6 (b) was practical from a thematic point of view and that it also drew attention to the continued importance of each of the two issues considered under that agenda item.

94. As mentioned in paragraph 8 (b) above, at its 674th meeting, on 24 March, the Legal Subcommittee re-established its Working Group on agenda item 6 (a) and elected Taous Feroukhi (Algeria) Chairperson 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.

95. The Working Group on agenda item 6 (a) held three meetings. At its 692nd meeting, on 4 April, the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex II to the present report.

96. 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.679-681, 683 and 684).

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

97. The Legal Subcommittee noted that the General Assembly, in its resolution 57/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (Assembly resolution 47/68 of 14 December 1992) as a single issue and item for discussion.

98. The Legal Subcommittee noted that, at its fortieth session, the Scientific and Technical Subcommittee had concluded a four-year work plan on the use of nuclear power sources in outer space. Under that work plan, the Working Group on the Use of Nuclear Power Sources in Outer Space of the Scientific and Technical Subcommittee had finalized, in 2002, a report entitled "A review of international documents and national processes potentially relevant to the peaceful uses of nuclear power sources in outer space" (A/AC.105/781).

99. The Legal Subcommittee also noted that, at its fortieth session, in 2003, the Scientific and Technical Subcommittee had agreed to follow another multi-year work plan, for the period 2003-2006, to establish the objectives, scope and attributes for an international technically based framework of goals and recommendations for the safety of planned and currently foreseeable applications of nuclear power sources in outer space.

100. In view of the work being conducted by the Scientific and Technical Subcommittee, the Legal Subcommittee agreed that, at the present time, opening a discussion on revision of the Principles was not warranted.

101. The view was expressed that the report of the Working Group on the Use of Nuclear Power Sources in Outer Space (A/AC.105/804, annex IV), which reviewed international documents and national processes potentially relevant to the peaceful uses of nuclear power sources in outer space, provided a solid basis for future consideration of ways to maximize the efficiency and safety of the use of nuclear power sources in outer space. That delegation was of the view that the continued work being undertaken by the Scientific and Technical Subcommittee was important

for developing an international consensus on a technically based framework for applications of nuclear power sources in outer space.

102. The view was expressed that the safe use of nuclear power sources required both appropriate design and adequate operational measures to protect lives and the environment of the Earth. That delegation noted that the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as adopted by the General Assembly, provided the guidelines and criteria necessary for ensuring the safe use of nuclear power sources in outer space.

103. Some delegations expressed the view that it was necessary to continue discussing the issue and that it should remain on the agenda of the Legal Subcommittee.

104. The full text of the statements made during the discussion on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.683-685).

## **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)**

105. The Legal Subcommittee recalled that the General Assembly, in its resolution 57/116, 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 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”.

106. The Legal Subcommittee had before it the report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>3</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).

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

112. 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.

113. 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 that 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 Unidroit should consider other options for the establishment of a supervisory authority under the protocol, including a mechanism for the appointment of a supervisory authority consisting of States parties to it.

114. 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.

115. Some delegations expressed the view that, as had been the case for 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>4</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.

116. 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.

117. 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.

118. Some delegations expressed the view that the functions of supervisory authority fell outside the main purpose and objectives of the United Nations and especially the General Assembly, as set out in the Charter of the United Nations. Those delegations expressed concern that by assuming the functions of supervisory authority, the United Nations would be used to provide a direct service to private,

profit-making entities, which would be inconsistent with the mandate of the Organization.

119. Some delegations expressed the view that the Committee should recommend to the General Assembly that it seek an advisory opinion of the International Court of Justice on possible implications of the United Nations assuming the function of supervisory authority under the space assets protocol.

120. The view was expressed that the functions of supervisory authority might be undertaken more appropriately by a specialized agency of the United Nations system such as ITU or the World Bank or by an organization such as the World Trade Organization.

121. 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.

122. 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.

123. 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.

124. 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.

125. 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>5</sup> under which the later treaty prevailed to the extent of any incompatibility, as between the States parties of both treaties in question.

126. 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 such 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 and Radio Regulations of ITU.

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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 Registration Convention. 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 the two registration systems.

133. As mentioned in paragraph 8 (c) 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 seven meetings. At its 692nd meeting, on 4 April, having heard some reservations from some delegations relating to paragraph 32 of the Working Group report, the Subcommittee took note of the report of the Working Group, which is contained in annex III to the present report.

134. The full text of statements made by delegations during the discussions on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.685-690).

### **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**

135. The Legal Subcommittee recalled that the General Assembly, in its resolution 57/116, 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.

136. On the basis of the working paper submitted by Australia, Austria, Canada, the Czech Republic, France, Germany, Greece, India, Japan, the Netherlands, Sweden, Ukraine, the United Kingdom and the United States (A/AC.105/C.2/L.241 and Add.1), the Legal Subcommittee 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 Presentation by Member States and international organizations of 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.

137. 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).<sup>6</sup> 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. On the basis of 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 Subcommittee to the report of the Committee to the General Assembly, in consultation with the Chairman of the Subcommittee and the Chairman of the

working group, on the basis of inputs to be provided with regard to the elements listed in the proposal by Sweden.

138. Some delegations expressed the view that discussion on the development of an international convention on remote sensing was necessary in order to update the Principles Relating to Remote Sensing of the Earth from Outer Space 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.

139. 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.

140. 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 subjected to remote sensing should benefit from the sale of the resulting data and images and should be compensated for the sensing of their territories from outer space.

141. The view was expressed that it would be impractical for States subjected to remote sensing to be compensated by satellite operators as this would lead to additional costs and make remote sensing uneconomical. 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 data obtained by and information derived from remote sensing, which needed to remain reasonable in order for operators to continue providing those services.

142. Some delegations expressed the view that, given the current problems faced by the global satellite industry, it would create a negative impact to begin discussions on an international regulatory regime that had not been demonstrated as needed.

143. 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.

144. 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 evaluate the possibility of considering the proposal taking into account comments from other delegations and make it available for consideration by the Legal Subcommittee at its forty-third session.

145. 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.

146. 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 of the existing space law regime.

147. 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 ESA (A/AC.105/C.2/L.246).

148. 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.

149. The view was expressed that it would be useful to have an indicative list of possible legal issues regarding space debris.

150. 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 the agenda item.

151. 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 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 Presentation by Member States and international organizations of 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.
152. The Legal Subcommittee agreed that the Working Groups on agenda items 4 and 6 (a) should be reconvened at its forty-third session. The Legal Subcommittee

also agreed that the Working Group on agenda item 8 should be reconvened at its forty-third session to consider sub-items 8 (a) and (b) separately.

153. 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, which might be revised according to the wishes of the sponsors, for possible discussion at subsequent sessions of the Subcommittee:

(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.

154. 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 691).

#### Notes

<sup>1</sup> United Nations publication, Sales No. 92.I.30.

<sup>2</sup> Ibid., vol. 1825, No. 31251.

<sup>3</sup> DCME Doc. No. 74 (ICAO).

<sup>4</sup> DCME Doc. No. 75 (ICAO).

<sup>5</sup> United Nations, *Treaty Series*, vol. 1155, No. 18232.

<sup>6</sup> *Report of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 19-30 July 1999* (United Nations publication, Sales No. E.00.I.3).

## Annex I

### **Report of the Chairman of the Working Group on agenda item 4, entitled “Status and application of the five United Nations treaties on outer space”**

1. In accordance with paragraph 7 of General Assembly resolution 57/116 of 11 December 2002, the Legal Subcommittee, at its 674th meeting, on 24 March 2003, reconvened its Working Group on agenda item 4, “Status and application of the five United Nations treaties on outer space”, under the chairmanship of Vassilios Cassapoglou (Greece).

2. The Working Group held eight meetings, from 25 to 27 March and on 2 and 4 April 2003. At the 1st meeting of the Working Group, on 25 March, the Chairman recalled that, pursuant to an agreement of the Legal Subcommittee at its fortieth session, the Working Group’s terms of reference included the status of the United Nations treaties on outer space, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law, especially through the United Nations Programme on Space Applications (A/AC.105/763 and Corr.1, para. 118). The Chairman also recalled that, pursuant to an agreement of the Legal Subcommittee at its forty-first session, the Working Group would review the application and implementation of the concept of the “launching State”, as reflected in the conclusions of the Subcommittee’s consideration of the three-year work plan on “Review of the concept of the ‘launching State’” (A/AC.105/787, annex IV, appendix), as well as any new, similar issues that might be raised in discussions in the Working Group, provided that those issues fell within the existing mandate of the Working Group (A/AC.105/787, paras. 138 and 140).

3. The Chairman, in his introductory remarks, also pointed out that the Working Group could examine, inter alia:

(a) The status of acceptance of each of the five United Nations treaties on outer space;

(b) Problems related to the fact that a number of States were parties to some of the later, more specific, United Nations treaties on outer space (such as the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex, the “Liability Convention”), but were not parties to the main treaty, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Assembly resolution 2222 (XXI), annex, the “Outer Space Treaty”);

(c) Arguments in favour of the participation of States in the United Nations treaties on outer space, not only in view of the many immediate practical benefits for States (such as closer international cooperation, access to space facilities, including the use of data), but also in view of the possibility that States might become victims of damage caused by space objects or parties in an international dispute concerning such damage, in which specific rules applied that were different from the rules of international law applied in other fields such as air law, maritime law and nuclear law;

(d) The use of the United Nations treaties on outer space as the basis for national space legislation, especially in regulating the involvement of the private sector in outer space activities;

(e) The legal value of a declaration of acceptance of the rights and obligations provided for in the United Nations treaties on outer space by an international intergovernmental operational organization following its privatization;

(f) The promotion of closer ties among the Committee on the Peaceful Uses of Outer Space and specialized agencies of the United Nations dealing with outer space matters (such as the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization and the World Intellectual Property Organization);

(g) Mechanisms for the worldwide promotion of space law through education and the provision of technical assistance to Governments for the development of national space legislation.

4. The Chairman also informed the Working Group that three proposals on matters relating to its mandate had been announced informally: a proposal by the United States for a new agenda item on registration practice; a proposal by France for a new agenda item on space debris; and a draft resolution proposed by Germany concerning the concept of the “launching State”. The Chairman requested delegations to consider those proposals.

5. The delegation of Germany, on behalf of the delegations of Austria, the Czech Republic, France, Germany, Hungary, Japan, Morocco, the Netherlands, Sweden and Ukraine, submitted directly to the Legal Subcommittee a proposal containing a draft resolution for adoption by the General Assembly on the application of the legal concept of the “launching State” (A/AC.105/C.2/L.242), which was based on the main conclusions for the three-year work plan on the review of the concept of the “launching State”. The three-year work plan had been adopted in 2002 by the Legal Subcommittee’s Working Group on agenda item 9, entitled “Review of the concept of the ‘launching State’”, endorsed by the Legal Subcommittee at its forty-first session (A/AC.105/787, para. 122, and annex IV, appendix) and taken note of by both the Committee on the Peaceful Uses of Outer Space at its forty-fifth session<sup>a</sup> and the General Assembly at its fifty-seventh session (resolution 57/116, para. 4).

6. Those delegations, in order to highlight the fact that the conclusions were adopted by consensus by the Legal Subcommittee, were of the view that the current Working Group should, through the Legal Subcommittee, make a recommendation, to be endorsed by the Committee on the Peaceful Uses of Outer Space for adoption by the General Assembly, on the approval of that draft resolution.

7. On the basis of informal consultations, the Working Group recommended that the merits and substance of the draft resolution be further considered by the Committee on the Peaceful Uses of Outer Space at its forty-sixth session, to be held from 11 to 20 June 2003. The view was expressed that the Committee should also consider the appropriateness of such draft resolution.

8. The Working Group agreed that the Office for Outer Space Affairs should compile a directory of institutions teaching space law, based on information provided by institutions such as the National Remote Sensing and Space Law Center

of the University of Mississippi, United States of America, the European Centre for Space Law and the International Centre for Space Law at Kyiv.

9. The Working Group recommended that the institutions included in the directory participate in an electronic network of institutions teaching international and national space law, which should take advantage of the institutional framework of the regional centres for space science and technology education affiliated to the United Nations, and which should be coordinated by Vassilios Cassapoglou of Greece. The network could be organized with regional, subregional and national focal points. Institutions in the network could exchange information on activities to promote capacity-building in international and national space law, especially in developing countries. Those activities might include participation in joint research with institutions in developing countries, the establishment of exchange programmes with such institutions or the provision of information and materials on international and national space law to such institutions.

10. The Working Group also recommended that the regional centres for space science and technology education affiliated to the United Nations include a basic course on space law in their curricula.

11. The Working Group suggested that the Secretary-General of the United Nations might write letters to the ministers of foreign affairs of States that had not yet become parties to the United Nations treaties on outer space. Each letter should be accompanied by a copy of the United Nations treaties and principles on outer space and a table of the status of those treaties, as well as information material summarizing the important benefits and responsibilities of participation in those treaties, in particular for non-space-faring and developing countries. The Working Group suggested that the Secretary-General might also send a similar letter to international organizations that had not declared their acceptance of the rights and obligations under the treaties.

12. The Working Group agreed that a model for such a letter to ministers of foreign affairs, as well as the information material to accompany it, would be developed by the Working Group on agenda item 4 during the forty-third session of the Legal Subcommittee, in 2004.

13. The Working Group suggested that the efforts by the Subcommittee to increase the level of participation in the United Nations treaties on outer space could include other future initiatives such as regional and global meetings to raise public awareness about the treaties.

14. The view was expressed that ministers of foreign affairs should be invited to participate in a session of the Committee on the Peaceful Uses of Outer Space with a view to calling on States that had not yet become parties to the United Nations treaties on outer space to do so.

15. The Working Group noted that arguments in favour of the participation of States in the United Nations treaties on outer space had been considered by the United Nations/International Institute of Air and Space Law of the University of Leiden Workshop on Capacity-Building in Space Law, held in The Hague from 18 to 21 November 2002 (see A/AC.105/802 and Corr.1, paras. 18 and 19).

16. The Working Group welcomed the contribution that intergovernmental and non-governmental organizations were making to the development and promotion of

space law. In that respect, the Subcommittee was provided with information on activities carried out by the National Remote Sensing and Space Law Center of the University of Mississippi, United States and the International Centre for Space Law in Kyiv.

17. The Working Group agreed to invite institutions in member States, as well as organizations with observer status with the Committee, to submit on a voluntary basis short background papers on specific issues falling within the mandate of the Working Group, in order to support discussions in the Working Group at the forty-third session of the Legal Subcommittee, in 2004. Those papers would be considered unofficial, informal documents aimed at promoting discussion and would not be regarded as representing the official position of any member State or organization.

18. The view was expressed that an additional benefit of increasing participation in the five United Nations treaties on outer space was that wider participation would engage additional States in the process of developing international space law and broaden global participation when work was started on a unified comprehensive convention on space law.

19. Some delegations expressed the view that consideration could be given to the reasons for the low level of ratification of the later United Nations treaties on outer space, including the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Assembly resolution 34/68, annex).

20. The view was expressed that it was difficult for legal experts in States that had not yet ratified the Liability Convention and the Convention on Registration of Objects Launched into Outer Space (Assembly resolution 3235 (XXIX), annex) to make a recommendation that their States become parties to those treaties, since those experts would be aware that the concept of the “launching State” might still be reformulated.

*Notes*

<sup>a</sup> *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 20 (A/57/20), para. 169.*

## Annex II

### **Report of the Chairperson of the Working Group on agenda item 6 (a), entitled “Matters relating to the definition and delimitation of outer space”**

1. At its 674th meeting, on 24 March 2003, the Legal Subcommittee re-established its Working Group on agenda item 6 (a), “Matters relating to the definition and delimitation of outer space”, and elected Taous Feroukhi (Algeria) Chairperson of the Working Group.
2. The Chairperson drew the attention of the Working Group to the fact that, in accordance with the agreement reached at the thirty-ninth session of the Legal Subcommittee, endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group would convene to consider only matters relating to the definition and delimitation of outer space.
3. The Working Group had before it 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.1-7 and Corr.1 and Add.8).
4. Some delegations expressed the view that the definition and delimitation of outer space remained a topical and important issue that should continue to be considered by the Working Group.
5. The view was expressed that the functional approach should be taken in relation to the exploration and use of outer space.
6. The view was also expressed that the application of the functional approach would have a negative impact on the sovereignty of States over their national airspace.
7. The view was expressed that, as had been proposed by the former Union of Soviet Socialist Republics several years before, a delimitation of outer space could be established at an altitude of 100-110 kilometres above mean sea level and that space objects might enjoy the right of innocent passage through foreign airspace during launching and return to the Earth.
8. The Working Group agreed to request the Secretariat to prepare, to the extent possible, an analytical summary of the replies received from Member States to the questionnaire on possible legal issues with regard to aerospace objects. The Working Group agreed that the summary should be considered by the Working Group at the next session of the Legal Subcommittee, with a view to taking a decision on the need to continue consideration in the Working Group of the questionnaire on aerospace objects.
9. The Working Group recommended that those delegations still wishing to reply to the questionnaire on possible legal issues with regard to aerospace objects, as amended by the Working Group at the forty-first session of the Legal Subcommittee, should submit those replies to the Office for Outer Space Affairs before 31 August 2003, in order to ensure that their replies were included in the summary to be prepared by the Secretariat.

## Annex III

### **Report of the Chairman of the Working Group on agenda item 8, 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)”**

1. In accordance with paragraph 11 of General Assembly resolution 57/116 of 11 December 2002, the Legal Subcommittee, at its 674th meeting, on 24 March 2003, established a Working Group on agenda item 8, 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)”. The Working Group was chaired by Sergio Marchisio (Italy).
2. Also in accordance with paragraph 11 of resolution 57/116, the Working Group considered separately the questions reflected in sub-item 8 (a), entitled “Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol”, and sub-item 8 (b), entitled “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”.
3. The Working Group held seven meetings.
4. The Working Group had before it the report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>a</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). The Secretariat had prepared the report in consultation with the United Nations Legal Counsel, in response to a request by the Legal Subcommittee at its forty-first session (A/AC.105/787, para. 137).
5. The Working Group noted that, under article 17 of the preliminary draft protocol on matters specific to space assets, the supervisory authority would be designated at a diplomatic conference to adopt a space assets protocol to the Convention, provided that such supervisory authority was able and willing to act in such capacity. The Working Group also noted that the International Institute for the Unification of Private Law (Unidroit) had approached the United Nations as a possible supervisory authority under the space assets protocol.
6. The Working Group noted that a decision on whether the United Nations would assume the functions of supervisory authority under the space assets protocol would be taken by the General Assembly, taking into account the mandate and existing activities of the United Nations. Such a decision of the Assembly would also address which organs of the United Nations should assume the day-to-day functions of supervisory authority.
7. The Working Group recommended that any assumption by the United Nations of the functions of supervisory authority should be on the understanding that all

costs incurred would be recovered by start-up funding and user fees and that the Organization would keep full immunity with respect to the performance of those functions, as provided for in the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)) and other applicable agreements, and would not accept any liability for the performance of those functions.

8. The Working Group also recommended that, if the United Nations assumed the functions of supervisory authority, no funds from the regular budget of the Organization should be used for that purpose.

9. Some delegations expressed the view that the functions of supervisory authority were administrative and could be assumed by the Secretary-General of the United Nations rather than the General Assembly.

10. Some delegations expressed the view that, prior to making a decision on whether the United Nations could act as supervisory authority under the space assets protocol, a General Assembly resolution would be required and the draft of such a resolution should be considered by both the Fourth Committee and the Sixth Committee of the General Assembly.

11. Some delegations expressed the view that the United Nations could, in principle, assume the functions of supervisory authority.

12. Some delegations expressed the view that assuming the functions of supervisory authority might contribute to the purpose of the United Nations in promoting international cooperation in solving international problems of an economic, social, cultural or humanitarian character, as enshrined in Article 1, paragraph 3, of the Charter of the United Nations.

13. The view was expressed that, if there were any inconsistency between the United Nations assuming the functions of supervisory authority and the Charter of the United Nations, that inconsistency would have been highlighted in the report of the Secretariat (A/AC.105/C.2/L.238). That delegation expressed the view that the United Nations assuming the function of supervisory authority would further the aim of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)<sup>b</sup> to increase the involvement of the private sector in the work of the Organization.

14. The view was expressed that the United Nations assuming the role of supervisory authority would help to avoid conflict between the international registry under the space assets protocol and the International Register of Objects Launched into Outer Space under the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex). It would also emphasize the importance of public law obligations under the United Nations treaties on outer space to private entities involved with asset-based financing of space assets.

15. Other delegations expressed the view that the functions of supervisory authority fell outside the main purpose and objectives of the United Nations and especially the General Assembly, as set out in the Charter of the United Nations. Those delegations expressed concern that by assuming the functions of supervisory authority, the United Nations would be used to provide a direct service to private,

profit-making entities, which would be inconsistent with the mandate of the Organization.

16. Some delegations expressed the view that the Committee should recommend to the General Assembly that it seek an advisory opinion of the International Court of Justice on possible implications of the United Nations assuming the functions of supervisory authority under the space assets protocol.

17. The view was expressed that the functions of supervisory authority might be undertaken more appropriately by a specialized agency of the United Nations system such as the International Telecommunication Union (ITU) or the World Bank or by an organization such as the World Trade Organization.

18. The view was expressed that the United Nations carrying out the functions of supervisory authority under the space assets protocol might constitute instructions to the Secretary-General from authorities external to the Organization, in contravention of Article 100, paragraph 1, of the Charter of the United Nations.

19. Some delegations expressed the view that, if the United Nations assumed the functions of supervisory authority under the space assets protocol, the functions and costs of the supervisory authority should be strictly limited. Those delegations also expressed the view that, although it was clear that the costs of the supervisory authority should be reimbursed, it was unclear from what sources any initial payments would be made.

20. The view was expressed that the costs of the supervisory authority would be limited, bearing in mind the expected traffic under the International Registry of only 12 to 18 satellites per year (see A/AC.105/C.2/L.238, para. 45) and the fact that information on the International Registry would not be verified or entered manually by the staff of the Registry.

21. Some delegations expressed the opinion that, in view of the concerns expressed in the report of the Secretariat (A/AC.105/C.2/L.238), further study was required before a decision could be taken on the appropriateness of the United Nations acting as supervisory authority under the space assets protocol.

22. The Working Group noted that the current text of the preliminary draft protocol on matters specific to space assets contained the following preambular paragraph:

*“Mindful of the established principles of space law, including those contained in the international space treaties under the auspices of the United Nations”.*

23. Some delegations expressed the view that the norms of public international law contained in the United Nations treaties on outer space should prevail over norms in the space assets protocol. The view was expressed that a statement to that effect should be included in the body of the space assets protocol and not merely in the preamble.

24. The view was expressed that States should concentrate on avoiding any inconsistency between the space assets protocol and the United Nations treaties on outer space, through participation in Unidroit’s process of drafting the space assets protocol.

25. Some delegations expressed the view that a transfer of space assets under the space assets protocol might involve the transfer of ownership of a space object from an entity in one State to a non-governmental entity in another State. If such a transfer resulted in the non-governmental entity receiving the space asset carrying out activities in outer space, the receiving State's national laws should ensure that such activities were authorized and continuously supervised. Transfer of space assets under the space assets protocol might also result in a situation where the "launching State" no longer had jurisdiction and control over a space object, even though it would be liable for damage caused by that space object under the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex). Those delegations also noted that those issues relating to transfer of ownership between States did not constitute a new issue created by transfers of space assets under the space assets protocol.

26. In that context, the Working Group also noted that "associated rights" were defined under article 1, paragraph 2, of the preliminary draft protocol to include permits, licences, authorizations or equivalent instruments to use or operate space assets granted or issued by a national or intergovernmental authority, which might be transferred or assigned only to the extent permissible and assignable under the laws concerned.

27. The view was expressed that natural resources such as radio frequencies should be excluded from the scope of the space assets protocol.

28. The view was expressed that the space assets protocol should fully take into account the public service nature of satellite services and the need to protect the users of such services.

29. The view was expressed that it was vital to have the opinion of ITU on the relationship between the space assets protocol and the ITU legal instruments and that greater involvement by ITU was required in development of the space assets protocol.

30. Some delegations expressed the view that it was not the function of the Committee on the Peaceful Uses of Outer Space to endorse the text of the space assets protocol at any stage.

31. The view was expressed that all comments of the Committee and the Legal Subcommittee should be conveyed to Unidroit for the consideration of States during the diplomatic conference to adopt the space assets protocol.

32. In summarizing the discussions of the Working Group, the Chairman expressed his views as follows:

(a) The discussions in the Working Group had permitted considerable progress to be made on the question of the United Nations suitability to act as supervisory authority under the space assets protocol;

(b) Those discussions had revealed the tendency to recognize the United Nations as being, in principle, the most appropriate organization to exercise the functions of supervisory authority under the space assets protocol;

(c) It had, however, become clear that further information would be needed by the Legal Subcommittee before it would be able to take a more definite stance on the issue, concerning, firstly, the acceptability of such a mandate under the terms of

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the Charter of the United Nations; and, secondly, the liability implications. As regarded funding, particular importance would need to be attached to clarification of the manner in which the start-up funding of the future international registration system should be dealt with;

(d) It was recognized that particular attention should be paid to the situation as it developed within the International Civil Aviation Organization (ICAO) regarding the implementation of the supervisory authority functions under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment.<sup>c</sup>

(e) In those circumstances, the next appropriate occasion for further consideration of the above issues would be the forthcoming first meeting of governmental experts in Rome, to which all member States of the Committee on the Peaceful Uses of Outer Space and the Office for Outer Space Affairs would be invited. It would accordingly be most helpful if the additional information requested above could be prepared by Unidroit in time for that meeting.

*Notes*

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

<sup>b</sup> *Report of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 19-30 July 1999* (United Nations publication, Sales No. E.00.I.3).

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