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

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Note by the Secretariat

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I. Introduction

The present document was prepared by the secretariat on the basis of information received from the following international organizations: the International Organization of Space Communications (Intersputnik) and the International Law Association (ILA).

II. Replies received from international intergovernmental and non-governmental organizations

International Organization of Space Communications

[Original: English]
[1 December 2011]

A. General information

Founded on 15 November 1971, the International Organization of Space Communications (Intersputnik) is an international intergovernmental organization headquartered in Moscow. The mission of Intersputnik is to contribute to the consolidation of economic, scientific, technological and cultural relations between the member countries and third countries aimed at procuring, operating and expanding an international satellite telecommunications system. Today, Intersputnik has 25 member countries. Currently, Somalia is considering joining Intersputnik.

B. Orbit and frequency resources

Within the framework of its technological policy and in accordance with its mission, Intersputnik filed with the International Telecommunication Union (ITU) frequency assignments of satellite networks in various geostationary orbital positions. With its own orbit and frequency resources, Intersputnik is able to participate in international and domestic satellite projects, together with its member countries, for the purpose of manufacturing, launching and operating telecommunication satellites.

Under the ITU Radio Regulations, frequency assignments of satellite networks can be filed on behalf of a group of Administrations; one of those Administrations acts as the notifying Administration in the interests of the whole group. This is also applicable to a group of Administrations that are members of an international organization.

C. Replacement of the notifying Administration

Intersputnik reported to the Legal Subcommittee at its fiftieth session that in April 2010, the Intersputnik Board, which is the highest governing body of that intergovernmental organization, resolved to terminate the performance by Intersputnik's initial notifying Administration of its functions and assign such

functions to another Administration from among Intersputnik member countries, as the new notifying Administration.

Intersputnik presented to ITU an official letter endorsed by 24 of 25 of its member States to replace the notifying Administration. The new notifying Administration confirmed the same information. The initial notifying Administration rejected the change, in spite of the decision of Intersputnik's highest governing body, whose decisions are binding on all member countries of Intersputnik, and in defiance of the will of the overwhelming majority of Intersputnik member countries.

However, at that point in time, ITU was unable to modify the database specifying a new notifying Administration because the effective regulatory documents did not contain the required legal foundation. Provisions of the Constitution, Convention and the Radio Regulations of ITU do not rule out that a notifying Administration acting on behalf of other Administrations can be replaced, but do not specify how such a replacement should be handled. In that connection, such changes used to be dealt with by ITU on a case-by-case basis in the past.

According to the established practice, two official notices were required in order to replace the notifying Administration: a notice from the Administration that stops performing the functions of the notifying Administration and a notice from the new Administration confirming its preparedness to perform such functions.

D. Earlier precedent

The issue of the replacement of the notifying Administration acting on behalf of a group of named Administrations in the absence of the agreement of the initial notifying Administration was raised before ITU for the first time in December 2006. At that time, ITU reviewed a submission from the Administration of Colombia related to the change of the notifying Administration for the Association of Andean Satellites (ASA), an international intergovernmental organization with Bolivia (Plurinational State of), Colombia, Ecuador and Peru as its members, and with the Administration of the Bolivarian Republic of Venezuela as the notifying Administration. No formal confirmation of its agreement to the change of the notifying Administration for ASA was received from the Bolivarian Republic of Venezuela, and ITU could not modify the database.

That was the first time that ITU acknowledged that there existed a legal vacuum and discussed a draft rule of procedure to cover the change of the notifying Administration. However, the problem of replacing the notifying Administration for ASA was resolved through a consensus agreement on the part of the Administrations concerned: the Administration of the Bolivarian Republic of Venezuela confirmed its consent to hand over the functions of the notifying Administration, and no new rule was drafted or approved. Nevertheless, similar situations, as the case of Intersputnik shows, could arise in the future.

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E. New rule of procedure

There is no doubt that the appointment or replacement of the notifying Administration acting on behalf of a group of named Administrations is an internal affair within the group of Administrations belonging to the organization. It was important to lay that rule down in documents of ITU because it could affect an indefinite number of States that were members of international satellite organizations. Because ITU had no appropriate tools to duly take into account the opinion of a large group of Administrations among the group's member countries, ITU unintentionally maintained a situation affecting the lawful interests of a large group of Administrations, which ultimately impeded the efficient use of the orbit and frequency resource by the Administrations on whose behalf this resource was registered. The lack of a regulatory tool made it necessary to update the legal basis of ITU.

In April 2011, an amendment to the rules of procedure concerning replacement of the notifying Administration acting on behalf of a group of named Administrations was drafted by ITU and circulated to all ITU members. The amendment stipulated that, subject to certain conditions, a notifying Administration acting on behalf of an international organization may be replaced in ITU documents with a new notifying Administration without the consent of the previous notifying Administration. To do so, the international organization concerned was required to provide ITU with evidence that the decision to replace the notifying Administration was legitimate and made under the constitutive act of that international organization.

Eight Administrations, namely, Bulgaria, the Czech Republic, Germany, Kyrgyzstan, Montenegro, the Republic of Moldova, Tajikistan and Viet Nam, supported the proposed language of the new rule. Six of those Administrations supporting the amendment are Intersputnik member States. The earlier notifying Administration of Intersputnik presented to ITU its version of the new rule, saying that it was necessary to receive written agreement from both the initial and the newly appointed notifying Administration. Essentially, that repeated the then-existing practice of ITU and did not settle the issue of updating the regulatory basis of ITU. That version of the new rule of procedure was supported by two more Administrations, neither of which were Intersputnik member States.

In June 2011, the new rule of procedure was approved without any modification. Considering that Intersputnik met all the conditions under the new rule, in July 2011, ITU replaced the notifying Administration acting on behalf of Intersputnik.

F. Future prospects

The new rule of procedure enables a group of Administrations to exercise their natural right both to appoint a notifying Administration acting on its behalf and in the interests of that group and to replace the current notifying Administration. The new rule approved by ITU will help secure the lawful rights of groups of Administrations within international intergovernmental organizations and protect

the interests of most Administrations from being infringed upon by denying a single Administration the right of veto over the wishes of other Administrations.

International Law Association

[Original: English] [20 January 2012]

A. Background information

1. Introduction

The International Law Association (ILA) was founded in 1873 in Brussels, and its headquarters are in London. Lord Mance, Justice of the United Kingdom Supreme Court, is the Chair of its Executive Council, and Nico Schrijver, of the Netherlands, is its current President. The Director of Studies of ILA is Christine Chinkin, from the London School of Economics.

The ILA Space Law Committee was established in New York in 1958 and has worked and met without interruption to date. Its present officers are Maureen Williams (headquarters) as Chair and Stephan Hobe (Germany) as General Rapporteur. Since 1990, the Committee has been a permanent observer to the Committee on the Peaceful Uses of Outer Space and its two Subcommittees, to which it reports annually.

2. Objectives

In accordance with its statutes, the objectives of ILA are the study, clarification and development of international law, public and private, and the furtherance of understanding of and respect for international law. The international committees work permanently between the biennial conferences, of which 74 have been held to date and which are the central point of its activities. The 75th ILA Conference is to be held in Sofia in August 2012. On that occasion, the Space Law Committee will submit its fifth and final report on the legal aspects of the privatization and commercialization of space activities and will take up a new mandate given by the Conference relating to other topical space law questions.

In that context, the ILA Space Law Committee works in close cooperation with various other ILA committees and study groups dealing with issues of common interest in the field of public and private international law in the certainty that international law and comparative law are at the very root of the law of outer space. To that end, as a regular practice, ILA takes part in cooperation activities with public and private international organizations such as the International Law Commission (via the ILA Study Group on Responsibility of International Organisations) and the Permanent Court of Arbitration (on the drafting of rules for dispute settlement procedures in international space law), and with a number of national space agencies in both industrialized and developing countries. Within the Committee on the Peaceful Uses of Outer Space, the ILA Space Law Committee participates in United Nations expert meetings on promoting education in space law.

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In the private field, the ILA Committee takes active part in the work of the International Institute of Space Law, the International Academy of Astronautics, the European Centre for Space Law (ECSL) and the Ibero-American Institute of Air and Space Law, among other entities. ECSL membership includes many specialists from the ILA Space Law Committee, and ECSL activities for 2011 proved of great importance, particularly in the field of teaching and moot courts.

B. Activities of the ILA Space Law Committee during 2011

1. Second United Nations/Argentina International Conference on the Use of Space Technology for Water Management (Buenos Aires, 14-18 March 2011)

The International Law Association participated in the Second United Nations/Argentina International Conference on the Use of Space Technology for Water Management, held in Buenos Aires on 14-18 March 2011. The event was hosted by the National Commission on Space Activities (CONAE), on behalf of the Government of Argentina, in cooperation with the European Space Agency and the General Secretariat of the Prince Sultan bin Abdulaziz International Prize for Water. The Chair of the ILA Space Law Committee participated in the Conference, which consisted of six technical sessions dealing with various aspects of the use of space technology for water management.

The Conference was opened by the Secretary General of CONAE, together with the Under-Secretary for Water Resources of Argentina and the Expert on Space Applications of the United Nations Office for Outer Space Affairs of the Secretariat. The opening session included a presentation on upcoming satellite missions of the national space programme of Argentina, with an emphasis on Mission Aquarius, made by a representative of CONAE.¹

The Aquarius/SAC-D satellite, a scientific space vehicle designed and built in Argentina, was launched from Vandenberg, California, United States of America, on 10 June 2011. It is positioned in low Earth orbit and takes an hour and a half to orbit the Earth. It is an observatory in the sky equipped with advanced technology to measure the sea surface temperature and salinity. It has the capacity to detect, inter alia, the effects of cosmic radiation on electronic equipment and the position of microparticles and space debris.

Mission Aquarius is the outcome of a prodigious effort of international cooperation between Argentina and the United States (National Aeronautics and Space Administration) in which the national space agencies of Canada (Canadian Space Agency), Italy (Italian Space Agency) and France (Centre national d'études spatiales) participated by providing the instruments on board, while Brazil (National Institute for Space Research (INPE)) put its facilities for testing vibration and environmental resistance at the disposal of the mission (see www.nasa.gov/aquarius and www.conae.gov.ar/eng/principal.html).

The Conference included discussions on initiatives and strategies for the use of satellite data for water resources management, namely, surface water studies, management and distribution of water resources, space technology applications for

Presentation made by Sandra Torrusio, Aquarius/SAC-D Project of CONAE, Argentina, at the opening session of the Conference.

water management in mountains and arid areas, management of ground water resources and water-related emergencies. Two working groups prepared the observations and recommendations of the Conference and developed proposals for follow-up projects.

A poster session was also held, with presentations that served as a useful illustration to the ILA Space Law Committee of its work under way within the legal area.²

2. Fiftieth session of the Legal Subcommittee

ILA was represented at the fiftieth session of the Legal Subcommittee by the Chair of the Space Law Committee, the General Rapporteur, the ILA conference session reporter for space law and a member of the French Branch of the Committee, Armel Kerrest, among other ILA members. The Chair of the ILA Space Law Committee made an oral presentation on the main activities carried out by the Space Law Committee in 2010, with special reference to the 74th ILA Conference, held in The Hague, the Netherlands, on 15-20 August 2010 (see A/AC.105/C.2/L.281/Add.1).

ILA members attended several events on the occasion of the fiftieth anniversary of the first orbital flight, held in conjunction with the fiftieth session of the Legal Subcommittee, which were organized by the Russian delegation, the European Space Policy Institute and the University of Vienna, among other entities. Those activities were as follows:

European Space Policy Institute

ILA participated, on 4 April 2011, in a panel to discuss perspectives for space law. The panel, moderated by the Director of the European Space Policy Institute (ESPI), addressed the consistency of current international space legislation in the light of new developments in space technologies. The discussion ranged from the commercialization and privatization of outer space — the general subject under study by the ILA Space Law Committee — to legal uncertainties raised by suborbital flights and the need to ensure the sustainable use of outer space. The prevailing opinion was that the United Nations treaties on outer space were an important basis on which further, more detailed regulations could be developed in order to give a more precise legal meaning to the provisions embodied in those United Nations instruments.

A second panel in which a member of the Space Law Committee, Anatoly Kapustin, an ILA Space Law Committee member from the Russian branch, participated addressed the role of the Committee on the Peaceful Uses of Outer Space in the procedure of making space law. The panel recommended that the basic

² The poster session included contributions on the following and other topics: "Hydrological and geomorphological studies in non-irrigated areas of Lavalle (Mendoza, Argentina) — an example of the application of techniques of digital image processing and GIS", "Maps of water surface temperature from various satellite sensors in the Río Tercero Reservoir (Córdoba, Argentina)", "Analysis of spatial temporal changes of the lagoon habitat of *Atelognathus patagonicus* (Anura, Neobatrachia) using satellite imagery", "Hydrological monitoring stations network - use of satellites to monitor water resources in Iraq", "Hydrogeological geographic information system of Thailand" and "Water resources of Azerbaijan and their long-term use".

principles be kept intact, albeit refined in certain cases, by further provisions to keep pace with technological advances (see www.espi.or.at).

Conference at the Faculty of Law of the University of Vienna

Members of the ILA Space Law Committee participated in a conference on "soft law" in outer space, organized by the Austrian National Point of Contact for Space Law, with the support of the Austrian Research Promotion Agency (FFG) and the Federal Ministry of Transportation, Innovation and Technology (BMVIT). The Conference was held at the University of Vienna on 2 April 2011 under the auspices of the European Centre for Space Law. Speakers analysed the functions of non-binding rules in international space law from a diversity of angles. The meeting was marked by a strong interdisciplinary approach including general considerations as well as special issues and consisting of an analysis of several international instruments and their effect on the practice of States and private actors in outer space.

3. 54th International Institute of Space Law Colloquium on the Law of Outer Space (Cape Town, South Africa, 3-7 October 2011)

The 54th International Institute of Space Law (IISL) Colloquium on the Law of Outer Space, held in Cape Town, South Africa from 3 to 7 October, was attended by the Chair of the ILA Space Law Committee, its General Rapporteur and other Committee members, some of whom are IISL Board members. Representatives of ILA made presentations at various sessions of the Colloquium, in particular the session on space debris. ILA members also participated in the judging of the Manfred Lachs Moot Court Competition.

4. XXXIX Ibero-American Conference on Air and Space Law (Asunción, 19-21 October 2011)

The Ibero-American Institute of Air and Space Law (headquarters in Madrid) brings together, every year and at different venues, specialists on air and space law from Spain and Latin American countries. The space law session was dedicated to space technologies at the service of telecommunications, Earth observation and related areas, and the Chair of the ILA Space Law Committee submitted a discussion paper on this subject. The Conference was hosted by the Faculty of Law of the National University of Paraguay. One of the recommendations of the Conference was that topics currently on the agenda of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space should be carefully followed, with a view to cooperating with the work of the Legal Subcommittee.

C. Permanent Court of Arbitration: adoption of the Optional Rules for Arbitration of Disputes relating to Outer Space Activities

On 6 December 2011 the Administrative Council of the Permanent Court of Arbitration adopted the Optional Rules for Arbitration of Disputes relating to Outer Space Activities. The final text is available in English and French on the Court's website (www.pca-cpa.org).

1. Background

This project was set in motion in 2009 by the Secretary-General of the Permanent Court of Arbitration, in response to a perceived need for specialized dispute resolution mechanisms in the rapidly evolving field of outer space activities. The text was developed by the International Bureau of the Court, in conjunction with an Advisory Group consisting of leading experts in air and space law.

The Advisory Group was chaired by Fausto Pocar, judge of the International Criminal Tribunal for the former Yugoslavia. The other members of the Advisory Group were Tare Brisibe, Frans von der Dunk, Joanne Gabrynowicz, Stephan Hobe, Ram Jakhu, Armel Kerrest, Justine Limpitlaw, Francis Lyall, V. S. Mani, José Montserrat Filho, Maureen Williams and Haifeng Zhao. More than half of those members of the Advisory Group are also members of the ILA Space Law Committee.

Work on this project developed without interruption during the period 2010-2011. On 25 and 26 May 2011, a first meeting of the Group of Experts was convened at the Peace Palace in The Hague to discuss and evaluate the progress reached at that point in the drafting of the rules. Those rules took as their basis the Court's Environmental Rules and the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as revised in 2010 but departed from them in certain cases to make the draft rules more specific and consistent with the new international situation faced by the Advisory Group and the distinctive features of the law of outer space. At a second and final meeting of the Advisory Group held on 5 and 6 December 2011, the 184th Administrative Council of the Permanent Court of Arbitration adopted the Rules, which came into effect on 6 December 2011.

2. Comments and perceptions on the structure and substance of the Rules

The Optional Rules stand out for their flexibility concerning the applicable law and show a realistic equilibrium among the different elements and interests involved. The need to have the Rules and their objectives appeared very clearly from the outset. The Rules go a long way in avoiding the frustration of arbitration procedures being interfered with by claims of sovereign immunity. That objective was, by and large, a priority in the view of the Permanent Court of Arbitration's Advisory Group.

The Rules are procedural in nature and clearly apply to disputes other than those between sovereign States. It is essential to highlight this point and have in mind that the Rules are to be used for ad hoc arbitration. This approach eases the way to dispute settlement procedures and minimizes the risk of a sovereign immunity exception being brought up at some stage, thus upsetting the normal course of dispute settlement proceedings.

The Rules, which took inspiration from the UNCITRAL Arbitration Rules as revised in 2010, were slightly adjusted by the Advisory Group in order to accomplish the following:

(a) Reflect the particular characteristics of disputes having an outer space component involving the use of outer space by States, international organizations and private entities;

- (b) Reflect the public international law element that pertains to disputes that may involve States and the use of outer space, and international practice appropriate to such disputes;
- (c) Indicate the role of the Secretary-General and the International Bureau of the Permanent Court of Arbitration at The Hague;
- (d) Provide freedom for the parties to choose an arbitral tribunal of one, three or five persons;
- (e) Provide for establishment of a specialized list of arbitrators referred to in article 10 and a list of scientific and technical experts referred to in article 29 of the Rules;
- (f) Provide suggestions for establishing procedures aimed at ensuring confidentiality.

Examples given in the Hague Conventions of 1899 and 1907, for the peaceful settlement of disputes, which extend the application of the Conventions to private parties, reflect the direction that opinion was already moving in those days. The approach of the Permanent Court of Arbitration Rules recalls that taken by ILA both in the text of its first draft Convention on the Settlement of Disputes related to Space Activities adopted at the 61st ILA Conference, held in Paris in 1984, and in the Final Text of a Revised Convention on the Settlement of Disputes related to Space Activities,³ adopted at its 68th Conference in 1998.

Article 10 (b) of both ILA Conventions states, in no uncertain terms, that the dispute settlement procedures specified in that instrument shall be open to entities other than States and international intergovernmental organizations unless the matter is submitted to the International Court of Justice in accordance with article 6 of the Conventions (choice of procedure). These provisions should be read together with article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), concerning the international responsibility of States for national activities in outer space, the moon and other celestial bodies, which entails the obligation to authorize and supervise the activities of non-governmental entities in those areas.

The comments made by the members of the Permanent Court of Arbitration were valuable, both in essence and form, and worthy of the deep consideration given to them by the Advisory Group and its leader. As experience has often shown, flexibility and general principles are usually less brittle and more likely to survive the times than are detailed regulations. Hence, the idea of the Advisory Group to begin at a low level of compulsion and, at a later stage, gradually move forward by means of international standards or guidelines aimed at giving a more precise meaning to the provisions of the Court's Outer Space Rules.

³ The idea of revising the text of the 1984 ILA Convention was that the use of outer space for commercial purposes had grown considerably in previous years and there was a clear need to have a realistic framework for disputes arising from activities in that area. See "Dispute settlement related to space activities: revised draft convention-final text", Space Law Committee, in *Report of the Sixty-Eighth Conference, Taipei* (International Law Association, 1998), pp. 239-277.

The Court's Outer Space Rules provide an interesting example of progressive development of the law by going further than the Court's Environmental Rules. Moreover, the language of the Outer Space Rules seems clearer than that of the UNCITRAL Arbitration Rules as revised in 2010. In fact, leaving out the words "intentional wrongdoing" in article 16 of the Court's Outer Space Rules, a formula which appears in the 2010 UNCITRAL Arbitration Rules, is a realistic step forward. The inclusion of that term seemed likely to prompt a string of accusations, in the sense that the wrongdoing was "intentional", possibly opening the door for a myriad of accusations of the kind. The Advisory Group considered that any words to that effect were unnecessary and could lead to unwanted complications hindering the development of an otherwise agile dispute settlement procedure.

Finally, it is considered that, rather than weakening the force of the dispute settlement clauses underlying the United Nations treaties on outer space, the Rules of the Permanent Court of Arbitration will make them come to life.

D. The 75th ILA Conference (26-30 August 2012, Sofia)

The ILA Space Law Committee will be submitting a fifth and final report to the 75th ILA Conference, to be held in Sofia from 26 to 30 August 2012. Under the heading "Legal aspects of the privatization and commercialization of space activities", two main topics are addressed as follows.

Remote sensing: ranging from an evaluation of the 1986 United Nations Principles Relating to Remote Sensing of the Earth from Outer Space and their validity today in the light of State practice and technological developments, and the use of this technology to monitor the compliance with international agreements, to the specific problems arising from the use of satellite imagery as evidence in court with special reference to recent case law and suggestions from the doctrine.

National space legislation: the final text of a draft model law will be submitted for adoption at the 75th ILA Conference. The unedited version of the draft model law will be made available as a conference room paper at the fifty-first session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. Following the session of the Legal Subcommittee, the draft model law, as part of the full ILA report, will be circulated to ILA Space Law Committee members for final suggestions, and the fifth report of the ILA Space Law Committee is expected to be posted on the ILA website by next June.

Other matters addressed: space debris continues under the permanent review of the Space Law Committee, and the report will address the latest developments on the basis of the information on domestic measures for space debris mitigation provided to the Legal Subcommittee by member States. The advisability of introducing minor changes to the ILA Instrument on the Protection of the Environment from Damage Caused by Space Debris is being considered as well. The report will also focus on the Permanent Court of Arbitration's Optional Rules for Arbitration of Disputes relating to Outer Space Activities of 2011, described above. The topic of space debris and collisions, discussed at the 74th ILA Conference (The Hague, 2010), is also a matter for further attention.

With respect to the work of the ILA Space Law Committee following the 75th ILA Conference, the predominant opinion favours engaging in a review of the

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Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement), with emphasis on the environmental aspects and the legal regime applicable to the exploration and use of its natural resources. This topic was already addressed by the ILA Space Law Committee more than a decade ago, and conclusions thereon are part of a resolution adopted at the 70th Conference (New Delhi, 2002). However, a further revision in new light seems opportune. It is now time to closely follow the latest developments in the exploration of Mars, given that the Moon Agreement is also intended to apply to "other celestial bodies". Finally, the idea is to take a hard look at the long-standing controversy over rights of ownership on the Moon, triggered by article II of the 1967 Outer Space Treaty, and which the Moon Agreement fails to solve.

Another topic to be included in the terms of reference for future work is an analysis of the legal aspects of near-Earth natural objects (NEOs) as that issue is strongly related to space security. The discussion currently taking place in the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space will prove useful to that end.

Finally, space debris will continue under study, with an emphasis on the risks of collisions and their legal consequences.

Some initial thoughts on those questions will be included in the final report for the 75th Conference to be held in Sofia.

The ILA Space Law Committee would be honoured to include on its agenda any other question that the Legal Subcommittee may wish to indicate, and looks forward to welcoming Subcommittee members in Sofia next August for the 75th ILA Conference.

For further information please contact the officers of the ILA Space Law Committee (see www.ila-hq.org).⁴

⁴ Full contact information for the Space Law Committee is provided in document A/AC.105/C.2/L.281/Add.1.