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**Committee on the Peaceful
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Legal Subcommittee
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Draft report

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

1. Pursuant to General Assembly resolution 70/82, the Subcommittee considered agenda item 5, entitled “Information on the activities of international intergovernmental and non-governmental organizations relating to space law”, as a regular item on its agenda.
2. Statements were made by the observers for ECSL, the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation, ILA and Intersputnik under agenda item 5.
3. For its consideration of the item, the Subcommittee had before it the following:
 - (a) Note by the Secretariat containing information on activities relating to space law received from IISL and ILA (A/AC.105/C.2/108);
 - (b) Conference room paper containing information on activities relating to space law received from ECSL (A/AC.105/C.2/2016/CRP.11).
4. The Subcommittee heard a presentation entitled “The Space Generation Advisory Council: a focus on the Space Law and Policy Project Group”, by an observer for SGAC.
5. The Subcommittee noted with satisfaction that the activities of international intergovernmental and non-governmental organizations relating to space law had continued to contribute significantly to the study, clarification and development of space law and that those organizations had continued to organize conferences and symposiums, prepare publications and reports and organize training seminars for



practitioners and students, all of which were intended to broaden and advance knowledge of space law.

6. The Subcommittee noted that international intergovernmental organizations had an important role to play in the development, strengthening and furtherance of understanding of international space law.

7. The Subcommittee welcomed the information provided by the observer for ECSL on its activities relating to space law (see A/AC.105/C.2/2016/CRP.11), including information on the 2015 Practitioners' Forum, held in Paris on 27 March 2015; the 2016 Practitioners' Forum, held in Paris on 18 March; the 2015 European round of the Manfred Lachs Space Law Moot Court Competition, held in Belgrade from 1 to 5 June 2015; the upcoming 2016 European round of the Manfred Lachs Space Law Moot Court Competition, to be held in Glasgow, United Kingdom, from 27 to 29 April; and the outcome of the twenty-fourth ECSL Summer Course on Space Law and Policy, held in Caen, France, from 31 August to 11 September 2015.

8. The Subcommittee welcomed the information provided by the observer for IISL on its activities relating to space law (see A/AC.105/C.2/108), including information on the upcoming twenty-fifth Manfred Lachs Space Law Moot Court Competition, to be held in Guadalajara, Mexico, in 2016; information on the IAA-IISL Conference on Climate Change and Disaster Management, held in Thiruvananthapuram, India, from 26 to 28 February 2015; and information on the fifty-eighth IISL Colloquium, held in Jerusalem from 12 to 16 October 2015.

9. The Subcommittee welcomed the information provided by the observer for ILA on its activities relating to space law (see A/AC.105/C.2/108), including information on preparation for the upcoming seventy-seventh ILA Biennial Conference, to be held in Johannesburg, South Africa, from 7 to 11 August 2016.

10. The Subcommittee welcomed the information provided by the observer for the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation, including information on a seminar on space law held in Madrid from 10 to 12 November 2015 and the Ibero-American Conference on Aeronautic and Space Law and Commercial Aviation held in Asunción from 30 September to 2 October 2015.

11. The Subcommittee welcomed the information provided by the observer for Intersputnik on its activities relating to space law, including information on the professional support that Intersputnik provided to its partners and on celebratory events planned for the upcoming forty-fifth anniversary of the organization, to be held in Moscow in November 2016.

12. The Subcommittee noted that the Preparatory Commission for the Establishment of the International Registry for Space Assets had held its fourth session in Rome on 10 and 11 December 2015, and that the Preparatory Commission had successfully finalized the text of the Registry Regulations.

13. The Subcommittee agreed that it was important to continue the exchange of information on recent developments in the area of space law between the Subcommittee and international intergovernmental and non-governmental organizations and that such organizations should once again be invited to report to the Subcommittee, at its fifty-sixth session, on their activities relating to space law.

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

14. Pursuant to General Assembly resolution 70/82, the Subcommittee considered, as a regular item on its agenda, agenda item 7, entitled:

“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.”

15. The representatives of Algeria, Canada, Chile, France, Indonesia, Iran (Islamic Republic of), Mexico, the Netherlands and the United States made statements under agenda item 7. Statements were also made by the representatives of Chile on behalf of the Group of Latin American and Caribbean States and Namibia on behalf of the Group of 77 and China. The observer for ITU also made a statement. During the general exchange of views, statements relating to the item were made by the representatives of other member States.

16. At its 917th meeting, on 4 April 2016, the Legal Subcommittee reconvened its Working Group on the Definition and Delimitation of Outer Space under the chairmanship of José Monserrat Filho (Brazil). Pursuant to the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee at its forty-third session, both held in 2000, and to General Assembly resolution 70/82, the Working Group was convened to consider only matters relating to the definition and delimitation of outer space.

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

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

(a) Note by the Secretariat on national legislation and practice relating to the definition and delimitation of outer space (A/AC.105/865/Add.16 and 17);

(b) Note by the Secretariat on questions on suborbital flights for scientific missions and/or for human transportation (A/AC.105/1039/Add.6);

(c) Note by the Secretariat entitled “Definition and delimitation of outer space: views of States members and permanent observers of the Committee” (A/AC.105/1112 and Add.1);

(d) A conference room paper entitled “Replies from the Chair of the Space Law Committee of the International Law Association to the Committee on the

Peaceful Uses of Outer Space on certain legal aspects of suborbital flights” (A/AC.105/C.2/2016/CRP.10).

19. The Subcommittee heard the following presentations:

(a) “Emerging Space Activities and Civil Aviation”, by the representative of Mexico;

(b) “The need to elaborate a sui generis regime concerning geostationary orbit”, by the representative of Indonesia;

(c) “The definition and delimitation of outer space and the safety of aerospace operations”, by the observer for IAASS;

(d) “WRC-15 outcome: some decisions related to space services”, by the observer for ITU.

20. The Subcommittee noted with satisfaction the successful conclusion of the second International Civil Aviation Organization and United Nations Office for Outer Space Affairs Aerospace Symposium, held in Abu Dhabi from 15 to 17 March 2016. Co-organized with the Government of the United Arab Emirates, the Symposium had been attended by nearly 200 participants representing international intergovernmental organizations, government agencies, non-governmental organizations and commercial entities. The Subcommittee also noted that the Symposium had succeeded in strengthening the dialogue among stakeholders in the air and space transportation communities and between the relevant legal and regulatory actors, and that it represented a unique and continuing bilateral inter-agency coordination effort by two central United Nations entities. The Subcommittee further noted that the third Symposium, to be held in Vienna in the first half of 2017, would complete the series.

21. Some delegations expressed the view that scientific and technological progress, the commercialization of outer space, the participation of the private sector, 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. The delegations expressing that view were also of the view that the definition and delimitation of outer space would help to establish a single legal regime regulating the movement of an aerospace object and to bring about legal clarity in the implementation of space law and air law, as well as clarify the issues of the sovereignty and international responsibility of States and the boundary between airspace and outer space.

22. The view was expressed that the definition and delimitation of outer space were important for ensuring the safety of aerospace operations, while effectively addressing issues of liability.

23. Some delegations expressed the view that State sovereignty over airspace was at odds with the prohibition on the appropriation of outer space or any part thereof by any means, including by claim of sovereignty. The delegations expressing that view were also of the view that the delimitation of outer space would make it possible to ensure the practical application of the principle of freedom of exploration and use of outer space for peaceful purposes on the basis of non-discrimination and equality between States.

24. The view was expressed that in the absence of the definition and delimitation of outer space, a common approach could be followed according to which confirmation of the launch of an object into outer space and the period of time during which it remained there would serve to define space activity.
25. The view was expressed that the existing practice of operating spacecraft and satellites in orbit at a minimum perigee altitude of 100 to 150 km seemed to be acceptable to all States, and that the divergent interests of States on the matter of the definition and delimitation of outer space could be satisfied by the agreement to regulate the minimum orbital flight level between 100 and 150 km, while recognizing that operations at less than that flight level should be subject to agreements among States whose space objects overfly the territory of other States.
26. The view was expressed that an altitude of 110 km above sea level might be considered as the delimitation of outer space.
27. The view was expressed that the matter of the definition and delimitation of outer space was based not on the criterion of altitude or the place of an object, but rather on the functional approach, when space law would apply to any activity aimed at putting a space object in Earth orbit or beyond in outer space. The delegation expressing that view was also of the view that that approach was fully consistent with the Registration Convention, in particular its article IV, and with the Outer Space Treaty and Liability Convention, whose provisions did not deal with the criterion of altitude. That delegation was also of the view that the functional approach to the application of space law had been employed by many major spacefaring States, including in their national legislation.
28. Some delegations expressed the view that States should continue to operate in 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. The delegations expressing that view were also of the view that the current framework had presented no practical difficulties and therefore at present any attempt to define and delimit outer space would be a theoretical exercise that could unintentionally complicate existing activities and might not be adaptable to continuing technological developments.
29. Some delegations expressed the view that there was no evidence to suggest that the lack of a definition or delimitation of outer space had hindered or restricted the growth of aviation or outer space exploration, and that no specific cases of a practical nature had been reported to the Subcommittee that could confirm that the lack of a definition of airspace or outer space had compromised aviation safety.
30. Some delegations expressed the view that progress in the definition and delimitation of outer space could be achieved through cooperation with ICAO.
31. The view was expressed that by establishing a definition of outer space, the Subcommittee might indirectly provide a definition of airspace, which would lie outside the scope of its mandate.
32. Some delegations expressed the view that the Subcommittee should reinvigorate its efforts to reach consensus on the issue of the definition and delimitation of outer space, and called upon States to make every effort necessary to reach a positive and legally sound solution.

33. Some delegations expressed the view that the geostationary orbit — a limited natural resource clearly in danger of saturation — needed to be used rationally and should be made available to all States, irrespective of their current technical capacities. That would provide States with the possibility of gaining access to the geostationary 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 processes of ITU and relevant norms and decisions of the United Nations.

34. Some delegations expressed the view that the geostationary orbit was a limited natural resource with great potential for the implementation of a wide array of programmes for the benefit of all States, and that it was at risk of becoming saturated, thereby threatening the sustainability of space activities in that environment; that its exploitation should be rationalized; and that it should be made available to all States, under equitable conditions, taking into account in particular the needs of developing countries. Those delegations were also of the view that it was important to use the geostationary orbit in compliance with international law, in accordance with the decisions of ITU and within the legal framework established in the relevant United Nations treaties, while giving consideration to the contributions of space activities to sustainable development and the achievement of the Millennium Development Goals.

35. The view was expressed that the geostationary orbit was a limited natural resource with sui generis characteristics that risked saturation and that equitable access to it should therefore be guaranteed for all States, taking into account in particular the needs and interests of developing countries and the geographical position of certain countries. The delegations expressing that view was also of the view that the recommendation made by the Subcommittee at its thirty-ninth session on some aspects concerning the use of the geostationary orbit (A/AC.105/738, annex III) should be further developed by the Subcommittee for the purpose of promoting international cooperation that ensured the application of the principle of equitable access for all States, taking into account the needs of developing countries, and the geographical position of certain countries.

36. The view was expressed that the Subcommittee should be requested to further develop some aspects concerning the use of the geostationary orbit for the purpose of promoting international cooperation, including in defining the special needs of developing countries and the geographical situation of particular countries, which should also cover equatorial countries.

37. Some delegations expressed the view that the geostationary orbit was part of outer space, that it was not subject to national appropriation by claim of sovereignty, by means of use, repeated use or occupation, or by any other means, and that its utilization was governed by the Outer Space Treaty and ITU treaties. The delegations expressing that view were also of the view that the provisions of articles I and II of the Outer Space Treaty made it clear that a party to the Treaty could not appropriate any part of outer space, such as an orbital location in the geostationary orbit, either by claim of sovereignty or by means of use, including repeated use, or by any other means.

38. The view was expressed that the geostationary orbit, as a limited natural resource clearly in danger of saturation, must be used rationally, efficiently,

economically and equitably. That principle was deemed fundamental for safeguarding the interests of developing countries and countries in certain geographical positions, as set out in article 44, paragraph 196.2, of the Constitution of ITU, as amended by the plenipotentiary conference held in 1998.

39. Some delegations expressed the view that the utilization by States of the geostationary orbit on the basis of “first come, first served” was unacceptable and that the Subcommittee should therefore develop a legal regime guaranteeing equitable access to orbital positions for States, in accordance with the principles of the peaceful use and non-appropriation of outer space.

40. Some delegations expressed the view that special attention should be given to equitable access for all States to orbit-spectrum resources in geostationary orbit while recognizing their potential with respect to social programmes that benefited the most underserved communities, making educational and medical projects possible, guaranteeing access to information and communications technology and improving links to necessary sources of information in order to strengthen social organization, as well as promoting knowledge and the exchange thereof.

41. Some delegations expressed the view that, in order to ensure the sustainability of the geostationary orbit, it was necessary to keep that issue on the agenda of the Subcommittee and to explore it further, through the creation of appropriate working groups and legal and technical intergovernmental panels, as necessary. Those delegations were of the view that working groups or intergovernmental panels with technical and legal expertise should be established to promote equal access to the geostationary orbit, and called for the greater participation of ITU in the work of the Subcommittee under those matters.

XII. General exchange of views on the application of international law to small satellite activities

42. Pursuant to General Assembly resolution 70/82, the Subcommittee considered agenda item 14, entitled “General exchange of views on the application of international law to small satellite activities”, as a new single issue/item for discussion on its agenda.

43. The representatives of Australia, Austria, Belgium, Brazil, Costa Rica, Germany, Indonesia, Iran (Islamic Republic of), Japan, Mexico, the Netherlands, Slovakia, the United Kingdom and the United States made statements under agenda item 14. The representative of Argentina also made a statement on behalf of the Group of 77 and China. The observers for ESA and ITU also made statements under the agenda item. During the general exchange of views, statements relating to the item were made by the representatives of other member States.

44. For its consideration of the item, the Subcommittee had before it a conference room paper entitled “The European Space Agency and small satellite activities” (A/AC.105/C.2/2016/CRP.19).

45. The Subcommittee noted with satisfaction the inclusion of the new item on its agenda and agreed that it would provide valuable opportunities for addressing a number of topical issues relating to international and national policy and regulation measures regarding the use of small satellites by various actors.

46. The Subcommittee recognized that small satellites had often served as a nation's first step into outer space, had the potential to meet the increasing demands for space activities for the benefit of many regions and States and were becoming important instruments enabling many developing States and their governmental and non-governmental organizations, including universities, education and research institutes and private industry with limited funds to join in the exploration and the peaceful uses of outer space and to become developers of space technology.

47. The Subcommittee also recognized that technological progress had made the development, launch and operation of small satellites increasingly affordable and that those satellites could greatly assist in various areas, such as education, telecommunications and disaster mitigation, as well as in testing and demonstrating new technologies, thus playing an important role in fostering technological progress in the area of space activities.

48. The Subcommittee noted that the growing number of small satellites raised concerns regarding the long-term sustainability of activities in outer space. In this regard, the Subcommittee noted concerns in relation to control and manoeuvrability, as well as debris production, involved in such space activities, and the need to take into account specific provisions regarding lifespan, interference, registration and end-of-life strategies. The Subcommittee further noted that new space actors operating small satellites were often not aware of the international regulations governing the use of outer space.

49. The Subcommittee noted a number of legal challenges, as well as existing and emerging practices and regulatory frameworks with regard to small satellite activities. The Subcommittee also noted the programmes of States and international organizations in the field of the development and use of small satellites.

50. The Subcommittee agreed that in order to ensure the safe and responsible use of outer space in future, it was important to include small satellite missions appropriately in the scope of application of international and national regulatory frameworks.

51. Some delegations expressed the view that all international rights and obligations of States with respect to large satellites were equally relevant for the conduct of space activities with the use of small satellites, and thus the United Nations treaties and principles on outer space, the ITU Constitution and Convention and Radio Regulations, as well as certain non-binding instruments, such as the Space Debris Mitigation Guidelines, were providing for the legal framework to be applicable to various space objects, including small satellites.

52. Some delegations expressed the view that it was important to ensure the safety and transparency of the operation of small satellites without hampering access to space and new technologies.

53. The Subcommittee was informed about the ITU Symposium and Workshop on small satellite regulation and communication systems, held in Prague from 2 to 4 March 2015. The event had resulted in the adoption of the Prague Declaration on Small Satellite Regulation and Communication Systems, in which participants recognized the urgent need for the small satellite community to adhere to international law, regulations and procedures, in particular those established by the General Assembly, the Committee on the Peaceful Uses of Outer Space and ITU

with respect to the registration of objects launched into outer space, radiofrequency coordination and registration of satellite network frequency assignments, and compliance with the space debris mitigation guidelines, and the importance for the small satellite community to be prepared to implement existing and newly developing recommendations and practices supporting the long-term sustainability of outer space activities.

54. The Subcommittee noted with satisfaction that the Office for Outer Space Affairs continued to implement its Basic Space Technology Initiative, the aim of which was to promote education and capacity-building in space technology development and to raise awareness of the need to comply with national and international laws and standards relating to small satellites.

55. The Subcommittee recalled with satisfaction that the handout prepared by the Office for Outer Space Affairs and ITU in 2015 entitled “Guidance on space object registration and frequency management for small and very small satellites” had been made available on the website of the Office. The Subcommittee noted that the document had set out the main regulatory requirements for very small satellites, such as authorization, registration, frequency management and debris mitigation, and agreed that its practical value would provide for continuous awareness of the small satellite community concerning the legal framework of space activities. The Subcommittee agreed that the Office and ITU should continue their cooperation in that field.

56. The Subcommittee requested the Secretariat to prepare a questionnaire, to be addressed to member States and permanent observers of the Committee, containing a set of questions addressing the practice of the development and use of small satellites, as well as policy and legal aspects of their use. The Subcommittee noted that the Secretariat would present the draft questionnaire to the Committee in a conference room paper at its fifty-ninth session, in June 2016.
