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**Committee on the Peaceful  
Uses of Outer Space  
Legal Subcommittee  
Fifty-sixth session  
Vienna, 27 March-7 April 2017****Draft report****IV. Status and application of the five United Nations treaties on outer space**

1. Pursuant to General Assembly resolution 71/90, the Subcommittee considered agenda item 5, entitled “Status and application of the five United Nations treaties on outer space”, as a regular item on its agenda.
2. The representatives of Canada and Germany made statements under agenda item 5. Statements were made by the representative of Costa Rica on behalf of the Group of 77 and China and the representative of the Bolivarian Republic of Venezuela on behalf of the Group of Latin American and Caribbean States. During the general exchange of views, statements relating to the item were also made by representatives of other member States.
3. At its 937th meeting, on 27 March, the Subcommittee reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space under the chairmanship of Bernhard Schmidt-Tedd (Germany).
4. At its [...]th meeting, on [...], the Subcommittee endorsed the report of the Chair of the Working Group, contained in annex I to the present report.
5. The Subcommittee had before it the following:
  - (a) Fiftieth anniversary of the United Nations Conference on the Exploration and Peaceful Uses of Outer Space: the Committee on the Peaceful Uses of Outer Space and global governance of outer space activities ([A/AC.105/1137](#));
  - (b) Draft declaration on the fiftieth anniversary 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 ([A/AC.105/C.2/L.300](#));
  - (c) Conference room paper on the status of international agreements relating to activities in outer space as at 1 January 2017 ([A/AC.105/C.2/2017/CRP.7](#));
  - (d) Note by the Secretariat containing responses to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, received from Austria and Germany ([A/AC.105/C.2/2017/CRP.6](#));



(e) Note by the Secretariat containing responses to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, received from Greece ([A/AC.105/C.2/2017/CRP.17](#));

(f) Proposal submitted by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space on UNISPACE+50 thematic priority 2, entitled “Legal regime of outer space and global space governance: current and future perspectives”: draft working method ([A/AC.105/C.2/2017/CRP.14](#)).

6. The Subcommittee noted that, as at 1 January 2017, the status of the five United Nations treaties on outer space was as follows:

(a) The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), had 105 States parties and had been signed by 25 additional States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement) had 95 States parties and had been signed by 24 additional States; two international intergovernmental organizations had declared their acceptance of the rights and obligations established under the Agreement;

(c) The Convention on International Liability for Damage Caused by Space Objects (Liability Convention) had 94 States parties and had been signed by 2 additional States; three international intergovernmental organizations had declared their acceptance of the rights and obligations established under the Convention;

(d) The Convention on Registration of Objects Launched into Outer Space (Registration Convention) had 63 States parties and had been signed by 4 additional States; three international intergovernmental organizations had declared their acceptance of the rights and obligations established under the Convention;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement) had 17 States parties and had been signed by 4 additional States.

7. The Subcommittee commended the Secretariat for updating, on an annual basis, the status of international agreements relating to activities in outer space; the current update had been made available to the Subcommittee in conference room paper [A/AC.105/C.2/2017/CRP.7](#).

8. The Subcommittee noted that during the upcoming seventy-second session of the General Assembly, the First and Fourth Committees of the Assembly would hold a joint half-day panel discussion on the topic of possible challenges to space security and sustainability, which would also serve to highlight the contribution of those Committees to UNISPACE+50.

9. Some delegations expressed the view that the United Nations treaties on outer space formed the primary legal framework for creating a safe and secure atmosphere for the development of outer space activities and enhancing the effectiveness of the Legal Subcommittee as the main law-making body. Those delegations welcomed the growing adherence to the United Nations treaties on outer space and encouraged those States that had not yet become parties to the treaties to consider doing so.

10. Some delegations expressed the view that the discussions on UNISPACE+50 thematic priority 2, “Legal regime of outer space and global space governance: current and future perspectives”, provided an opportunity to review, update and strengthen the five United Nations treaties on outer space with the aim of increasing the number of States parties to the treaties and thereby strengthening the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee.

11. Some delegations expressed the view that the five United Nations treaties on outer space formed the cornerstone of international space law and that current challenges posed by the diversification of space actors and the increasing privatization and commercialization of activities in outer space should be taken into account during the UNISPACE+50 discussions under thematic priority 2.

12. Some delegations expressed the view that space science and technology applications had evolved considerably and that that continuing trend called for identifying areas to be addressed through instruments to supplement those already in force, thereby ensuring that the core principles already agreed upon remained intact in a binding way.

13. The view was expressed that there was a complementary relationship between the United Nations treaties on outer space, which were the foundation of international space law, and the more flexible, non-legally binding instruments such as resolutions, guidelines and principles, which were more appropriate for prompt reaction to current developments in outer space activities.

14. The view was expressed that the universal adherence to the Outer Space Treaty, the Rescue Agreement, Liability Convention and Registration Convention and their underlying principles was important at the present time when the international community was developing new norms of behaviour to govern space activities. That delegation was of the view that universal adherence to those treaties would allow States to move forward together with a common legal foundation.

### **XIII. General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources**

15. Pursuant to General Assembly resolution 71/90, the Subcommittee considered agenda item 14, entitled “General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources” as a single issue/item for discussion.

16. The representatives of Australia, Austria, Belgium, Brazil, Canada, Chile, China, Costa Rica, Cuba, France, Germany, India, Indonesia, Italy, Japan, Luxembourg, Morocco, the Netherlands, the Russian Federation and the United States made statements. Statements were also made by the representative of Costa Rica on behalf of the Group of 77 and China and the representative of the Bolivarian Republic of Venezuela on behalf of the Group of Latin American and Caribbean States. During the general exchange of views, statements relating to the item were also made by representatives of other member States.

17. The Subcommittee had before it a conference room paper containing the contribution from Belgium to the discussion of the Legal Subcommittee on the item entitled “General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources” ([A/AC.105/C.2/2017/CRP.19](#)).

18. The Subcommittee noted that the Hague Space Resources Governance Working Group, established to assess the need for a regulatory framework for space resource activities, had held two face-to-face meetings in 2016 and would hold a further two meetings in 2017 before completing its work and making its recommendations. In that regard, the Subcommittee noted that the Working Group had identified 18 “building blocks”, which were the topic areas that such a regulatory framework could include.

19. Some delegations expressed the view that taking a broad multilateral approach to space resources within the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee was the only way to ensure that the concerns of all States were taken into account, thereby promoting peace and security among nations.

20. The view was expressed that the Legal Subcommittee needed to engage in a deep substantive analysis of the principle found in the Outer Space Treaty that outer space was the province of all mankind, and the principle found in the Moon Agreement that the Moon and its natural resources were the common heritage of mankind, in order to determine the rights of all States in outer space law with respect to the utilization of space resources.

21. The view was expressed that the term “common heritage of mankind” was not found in the Outer Space Treaty and that such references to the Moon Agreement were likely to be more distracting than helpful because the Moon Agreement was not widely ratified and its concepts could not be taken to form part of customary international law.

22. Some delegations expressed the view that in the light of the increasing participation of the private sector in space activities, an international legal framework developed in a multilateral forum that clearly defined and guided commercial activities in outer space could play an important role in expanding the use of outer space, and stimulate space activities and that such a framework was required to provide legal security.

23. Some delegations expressed the view that a broad debate about the implications of space resource activities was needed, that developing countries were not to be excluded from the benefits of space exploration and that their rights were to be considered in the discussion.

24. The view was expressed that a greater understanding among States of the principles set out in the Outer Space Treaty was needed, as was a multilateral approach to addressing issues relating to the extraction of resources from the Moon and other celestial bodies, in order to ensure that States adhered to the principles of equality of access to space and that the benefits of the exploration and the use of outer space were enjoyed by all humanity.

25. The view was expressed that the Legal Subcommittee should undertake detailed discussions on the exploitation and utilization of space resources by private entities, specifically addressing whether the legal status of a celestial body was the same as the legal status of the resources on it, whether the exploitation and utilization of space resources by a private entity could be for the benefit of all mankind, whether a private entity’s claim of ownership of space resources violated the principle of non-appropriation in the Outer Space Treaty, and how an international mechanism for coordination and the sharing of space resources could be built.

26. The view was expressed that, under the provisions on freedom of exploration and use of outer space contained in the Outer Space Treaty, States and appropriately authorized and supervised private entities had the right to explore and utilize space resources. Nevertheless, that right should be exercised in accordance with the existing legal framework and relevant principles governing outer space activities and for the benefit and in the interests of all States, in an effort to safeguard peace and security, and to protect the space environment for current and future generations.

27. Some delegations expressed the view that unilateral domestic initiatives aimed at regulating commercial activities in outer space could lead to the development of multiple incompatible national frameworks, which would pose a risk of conflicts among States and potentially impact the sustainability of outer space.

28. The view was expressed that thematic priority 2 of UNISPACE+50 provided the Legal Subcommittee with a unique opportunity to advance discussions on the diverging views of delegations on the subject of space resources, which would allow such views to be taken from different stakeholders having interests in the commercial use of space resources.

29. Some delegations expressed the view that questions under this agenda item, relating to space resources, could be included in the questionnaire before the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (see [A/AC.105/1113](#), annex I, appendix), as part of thematic priority 2 of UNISPACE+50.

30. The view was expressed that as a high-level event, UNISPACE+50 was not an appropriate forum to undertake discussions on the issue of exploration, exploitation and utilization of space resources, because it was an apparently contested idea in space law.

31. Some delegations expressed the view that the numerous challenges and questions posed by the utilization of space resources, and the determination of whether such activity conformed with the international legal regime and the principles governing all outer space activities, could not be resolved through unilateral action, but rather could be addressed only through an inclusive multilateral process such as could be undertaken by the Legal Subcommittee.

32. The view was expressed that given the wide-ranging benefits that might be derived from the utilization of new technologies, such as furthering deep space missions, or through the financing of new multilateral initiatives to promote terrestrial development activities, it was incumbent on the international community to adequately address the issue of space resources so that such benefits could be enjoyed by all States and peoples.

33. The view was expressed that national legislation regarding the extraction and utilization of space resources by a private entity was in conformity with that State's international obligations under the United Nations treaties on outer space when such legislation included provisions that demonstrated the absence of a will or intention by the State to claim sovereignty over all or part of any celestial body, provided that the activities of the private entity were carried out under an authorization and a supervision regime of that State and that authorized use of the space resources would be purely for peaceful purposes.

34. The view was expressed that article I of the Outer Space Treaty not only prohibited appropriation of the Moon or a celestial body by a claim of sovereignty, which would necessarily require the intention to do so, but it also prohibited national appropriation by means of use or occupation or any other means.

35. Some delegations expressed the concern that some countries had unilaterally enacted national legislation to protect private property rights in resources extracted from the Moon or any other celestial body and that such provisions might amount to either a claim of sovereignty or a national appropriation of those bodies and could thus constitute a violation of the Outer Space Treaty.

36. The view was expressed that, as long as activities were undertaken in an orderly manner, avoiding abuse, recklessness or risk-taking, and undertaken with the purpose of exploration of space, such activities should be considered for the benefit and in the general interest of all countries because of the technological progress and scientific advancements flowing from such activities.

37. The view was expressed that an international framework consistent with the goals of the Outer Space Treaty should be developed and address, in particular, how rights relating to natural resources of celestial bodies could be granted to a national entity without allowing that entity to claim exclusive access to an area on and below the surface of the celestial body, and how such rights would necessarily be limited in terms of the size of the area to be exploited and the duration, in a manner that respected the freedoms of others, as stipulated in the Outer Space Treaty.

38. The view was expressed that a pragmatic approach should be pursued, given that activities to utilize space resources would not reasonably be implemented in the very near term, thereby giving the international community time to develop a multilateral approach to addressing the use of space resources. That delegation was

of the view that, at a minimum, States should work together in the Legal Subcommittee to define and characterize, as appropriate, commonly accepted principles, guidelines or good practices that would enable States to adopt, to the greatest extent possible, a harmonized approach to their national legislation on space resources.

39. The view was expressed that the regulation of private sector actors in outer space was consistent with a State's international obligations under the Outer Space Treaty and with half a century of practice under the Treaty.

40. The view was expressed that the removal of resources from the Moon or a celestial body was a use within the meaning of and permitted by article I of the Outer Space Treaty, which provides that "outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States".

41. The view was expressed that exploitation of space resources went beyond what was generally understood as exploration and utilization and would therefore not be covered by the concept of freedom of exploration and utilization of outer space in the Outer Space Treaty. That delegation was also of the view that recognition by States of ownership rights that were not at their national disposal would be in conflict with the non-appropriation principle in article II of the Treaty.

42. The view was expressed that the principle of non-appropriation found in the Outer Space Treaty applied to the natural resources of the Moon and other celestial bodies only when such resources were "in place", and that once such resources were removed from their "place", the prohibition on national appropriation no longer applied, and that ownership rights over those extracted natural resources could thereafter be exercised by States or private entities.

43. The view was expressed that article VIII of the Outer Space Treaty provided that launching an object into outer space did not affect that object's ownership. By extension, entities engaging in space resource utilization activities would therefore retain ownership interests in their equipment, whether landed or constructed on a celestial body, including whatever non-interference rights that flowed from those ownership interests, even though they would not acquire ownership or exclusive access interest in the ground beneath their equipment, as prohibited by article II of that treaty.

44. The view was expressed that the Legal Subcommittee should develop a single approach to outer space law that called on States to take a pragmatic and reasonable approach to developing an appropriate and legal framework to govern the issue of space resources. It was further expressed that the unilateral action of individual States to promote their national private commercial interests, or to allow a "flag of convenience" approach for corporate structures to exploit outer space resources, was unacceptable.