Draft report

Chapter II

Recommendations and decisions

C. Report of the Legal Subcommittee on its fifty-eighth session

1. The Committee took note with appreciation of the report of the Legal Subcommittee on its fifty-eighth session (A/AC.105/1203), which contained the results of its deliberations on the items considered by the Subcommittee, in accordance with General Assembly resolution 73/91.

2. The representatives of Austria, Belgium, Brazil, China, Germany, Greece, Indonesia, Japan and the Russian Federation made statements under the item. Statements were also made by the representative of Egypt on behalf of the Group of 77 and China, and by the representative of Costa Rica on behalf of Argentina, Bolivia (Plurinational State of), Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Mexico, Uruguay and Venezuela (Bolivarian Republic of). During the general exchange of views, statements relating to the agenda item were also made by other member States.

3. The Committee expressed its appreciation to Andrzej Misztal (Poland) for his able leadership as Chair during the fifty-eighth session of the Subcommittee.

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

4. The Committee took note of the discussion of the Subcommittee under the item entitled “Information on the activities of international intergovernmental and non-governmental organizations relating to space law”, as reflected in the report of the Subcommittee (see A/AC.105/1203, paras. 47–64).

5. The Committee noted the important role of intergovernmental and international non-governmental organizations and their contribution to its endeavours to promote the development, strengthening and furtherance of understanding of international space law.

6. The Committee also noted that it was important to continue to exchange information among the Subcommittee and intergovernmental and international
non-governmental organizations on recent developments in the area of space law. It endorsed the recommendation of the Subcommittee that such organizations should again be invited to report on their activities relating to space law to the Subcommittee at its fifty-ninth session.

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

7. The Committee took note of the discussion of the Subcommittee under the item on the status and application of the five United Nations treaties on outer space, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 65–82).

8. The Committee endorsed the decisions and recommendations of the Subcommittee and its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, which had been reconvened under the chairmanship of Bernhard Schmidt-Tedd (Germany) (see A/AC.105/1203, para. 68, and annex I, paras. 9–13).

9. Some delegations expressed the view that new legal challenges arising from the continuous development of space science and technology, such as those relating to space resources exploitation, large constellations and space debris remediation, as well as the emergence of new space actors, had to be addressed on a multilateral basis.

10. Some delegations expressed the view that, although non-legally binding instruments had been a success in that they had guided States in conducting their activities in outer space in a safe and secure manner, they should not replace treaties and custom as the valuable sources of international law that they are. The delegations expressing this view also expressed the view that the gradual development of international space law through binding treaties should be carried out within the Legal Subcommittee.

11. Some delegations expressed the view that the five United Nations treaties on outer space, together with the relevant principles enshrined therein, endorsed by the General Assembly, were to be considered the multilateral foundation of international space law.

12. The view was expressed that the universality of the five United Nations treaties on outer space should be strongly supported and promoted, and that the treaties provided a sound and basic framework for outer space activities. The delegation expressing this view also expressed the view that new legally binding instruments developed by the Committee should not impose an undue burden on States in the conduct of their space activities.

13. Some delegations expressed the view that the guidance document envisioned under thematic priority 2 of UNISPACE+50 (Legal regime of outer space and global governance: current and future perspectives), to be finalized in 2020, would offer valuable guidance to States wishing to become a party to the five United Nations treaties on outer space and could thus help to promote the universality of those treaties, greater adherence to them and the progressive development of international space law.

14. The view was expressed that the Committee and its Legal Subcommittee were the exclusive and unique forums for addressing potential gaps in the binding legal framework on outer space brought about as a result of the continuous evolution of space technology.

15. The view was expressed that, although the international guidelines and standards on space debris mitigation were not legally binding, they could nevertheless facilitate the practical application of the fault-based liability regime set out in the five United Nations treaties on outer space.
3. 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

16. The Committee took note of the discussion of the Subcommittee under the agenda item on 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 ITU, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 83–111).

17. The Committee endorsed the recommendations of the Subcommittee and its Working Group on the Definition and Delimitation of Outer Space, reconvened under the chairmanship of André Rypl (Brazil) as Acting Chair in the absence of the Chair, José Monserrat Filho (Brazil) (A/AC.105/1203, paras. 85–86, and annex II, para. 9).

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

19. Some delegations expressed the view that the geostationary orbit, as 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 give States access to the geostationary orbit under equitable conditions, bearing in mind, in particular, the needs and interests of developing countries and the geographical position of certain countries and taking into account the processes of ITU and relevant norms and decisions of the United Nations.

20. Some delegations expressed the view that the exploitation of the geostationary orbit, a limited natural resource with sui generis characteristics that was at risk of saturation and that was of strategic and economic value for the States that used it, should be conducted in a rational, balanced, efficient, economical and equitable manner.

21. The view was expressed that the geostationary orbit should be viewed as a specific area and special part of outer space that needed specific technical and legal governance and thus should be regulated by a sui generis regime.

22. Some delegations expressed the view that the utilization by States of the geostationary orbit on a “first come, first served” basis 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.

4. National legislation relevant to the peaceful exploration and use of outer space

23. The Committee took note of the discussion of the Legal Subcommittee under the item on national legislation relevant to the peaceful exploration and use of outer space, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 112–122).

24. The Committee noted with satisfaction that some States members of the Committee continued to implement, or were considering initiating the implementation of, the recommendations on national legislation relevant to the peaceful exploration and use of outer space contained in General Assembly resolution 68/74, entitled “Recommendations on national legislation relevant to the peaceful exploration and use of outer space”.

25. The Committee noted various activities of member States to review, strengthen, develop or draft national space laws and policies, as well as establish or reform their governance of national space activities.
26. The Committee agreed that the general exchange of information on national legislation relevant to the peaceful exploration and use of outer space enabled States to gain an understanding of existing national regulatory frameworks and to share experiences on national practices, and that the results achieved under the agenda item were highly useful for both developing and developed States when establishing or improving their national regulatory frameworks.

27. Some delegations expressed the view that, in its provision of technical and capacity-building assistance, the Committee should focus on member States that have identified a need for supplementary regulation through the exchange of information on best practices to improve their domestic laws.

5. Capacity-building in space law

28. The Committee took note of the discussion of the Subcommittee under the item on capacity-building in space law, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 123–140).

29. The Committee endorsed the recommendation of the Subcommittee on this agenda item (see A/AC.105/1203, para. 140).

30. The Committee agreed that, to build the national capacity necessary to ensure that the increasing number of participants in space activities complied with international space law, international cooperation in research, training and education in space law was essential.

31. The Committee noted with appreciation that a number of national, regional and international efforts to build capacity in space law were being undertaken by governmental and non-governmental entities.

32. The Committee noted that capacity-building in space law was a fundamental tool that should be enhanced through international cooperation. One delegation was of the view that greater support was needed from the Office for Outer Space Affairs and member States to foster both North-South and South-South cooperation to facilitate the sharing of knowledge and expertise in the field of space law.

33. The Committee welcomed the new project on legal advisory services, entitled “Space law for new space actors”, launched by the Office for Outer Space Affairs. Some delegations expressed interest in supporting the new project.

34. The Committee noted with appreciation the forthcoming United Nations/Turkey/APSCO Conference on Space Law and Policy, which was being organized in collaboration with Turkey and was to be hosted by the Turkish Space Agency and the Space Technologies Research Institute (TÜBİTAK UZAY) in Istanbul, Turkey, from 23 to 26 September 2019.

35. The Committee noted the value of the Office for Outer Space Affairs organizing a basic space law and policy seminar specifically targeting officials of Vienna-based permanent missions and requested the Office to explore the feasibility of holding such an event.

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

36. The Committee took note of the discussion of the Subcommittee under the item on the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 141–150).

37. The Committee endorsed the agreement of the Subcommittee at its fifty-eighth session, in 2019 (A/AC.105/1203, para. 150), to provisionally suspend the consideration by the Legal Subcommittee of the item entitled “Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in
Outer Space”, pending the outcome of the work of the Working Group on the Use of Nuclear Power Sources in Outer Space of the Scientific and Technical Subcommittee.

7. General exchange of information and views on legal mechanisms relating to space debris mitigation and remediation measures, taking into account the work of the Scientific and Technical Subcommittee

38. The Committee took note of the discussion of the Legal Subcommittee under the item on the general exchange of information and views on legal mechanisms relating to space debris mitigation and remediation measures, taking into account the work of the Scientific and Technical Subcommittee, as reflected in the report of the Legal Subcommittee (A/AC.105/1203, paras. 151–185).

39. The Committee endorsed the decisions of the Subcommittee as reflected in its report (A/AC.105/1203, para. 185).

40. The Committee noted with satisfaction that the endorsement by the General Assembly, in its resolution 62/217, of the Space Debris Mitigation Guidelines of the Committee was a crucial step in providing all spacefaring nations with guidance on ways to mitigate the problem of space debris, and urged all Member States of the United Nations to consider voluntary implementation of the Guidelines.

41. The Committee noted with satisfaction that some States had taken measures to enforce the implementation of internationally recognized guidelines and standards relating to space debris through relevant provisions in their national legislation.

42. The view was expressed that the furtherance of a comprehensive, rule-based binding guidance document on space debris at the international level would bring predictability and create the conditions necessary for overcoming uncertainty and fragmentation in the regulation of international space activities.

43. The view was expressed that criteria and procedures for active removal or intentional destruction of space objects, either functioning or non-functioning, needed to be thoroughly deliberated under the auspices of the United Nations to guarantee the effectiveness of the measures and ensure that they were accepted by stakeholders.

44. The view was expressed that the space debris issue should be addressed in a manner that would neither impose undue burden on the space programmes of developing nations nor jeopardize the development of the space capabilities of those nations, and that would ensure that the cost of the debris removal process was not passed on to the countries with emerging space capabilities.

45. The view was expressed that the use of space debris remediation technologies raised several legal questions that should be addressed by the Legal Subcommittee, including questions regarding States’ jurisdiction and control over registered space objects, as well as liability for damage resulting from debris remediation operations.

46. The view was expressed that, as the notion of “fault” was not defined in the United Nations treaties on outer space, space debris mitigation guidelines could play an important role in evaluating whether the conduct of a launching State constituted fault for the purposes of determining the State’s liability for damage, which could encompass either physical damage to spacecraft in orbit or any loss incurred as the result of performing a collision avoidance manoeuvre.

8. General exchange of information on non-legally binding United Nations instruments on outer space

47. The Committee took note of the discussion within the Subcommittee under the item on the general exchange of information on non-legally binding United Nations instruments on outer space, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 186–198).

48. The Committee took note of the compendium on mechanisms adopted by States and international organizations in relation to non-legally binding United Nations
instruments on outer space, which the Office had made available on a dedicated web page, and invited States members of the Committee and international intergovernmental organizations having permanent observer status with the Committee to continue to submit responses to the Secretariat for inclusion in the compendium.

49. Some delegations recalled the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries, and expressed the view that the Declaration was an important instrument for the promotion of international cooperation with a view to maximizing the benefits of space applications for all States.

50. The view was expressed that space governance by means of non-legally binding instruments and the increasing number of national space laws constituted a trend in the development of space law. The delegation expressing this view also stressed the importance for countries to effectively implement relevant non-legally binding instruments in parallel with international processes.

51. The view was expressed that non-legally binding instruments, such as the guidelines for the long-term sustainability of outer space activities, could play an important and normative role in ensuring safety and security in outer space.

9. General exchange of views on the legal aspects of space traffic management

52. The Committee took note of the discussion of the Subcommittee under the item entitled “General exchange of views on the legal aspects of space traffic management”, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 199–221).

53. The Committee endorsed the recommendation by the Legal Subcommittee to continue to consider the item, in particular in view of the increasingly complex and congested space environment resulting from the growing number of objects in outer space, the diversification of actors in outer space and the increase in space activities, which were phenomena that posed a challenge to the safety and sustainability of space activities.

54. The view was expressed that a comprehensive international space traffic management system could enhance the safe and sustainable conduct of space activities and could include the following: improved multilateral sharing of information on space situational awareness; enhanced international registration procedures; international mechanisms for the notification and coordination of launches, in-orbit manoeuvres and re-entry of space objects; and safety and environmental provisions. The delegation expressing this view was also of the view that such a system was all the more relevant in the context of very large satellite constellations, which could pose a heightened risk for the safety and sustainability of space activities, in particular with regard to the mitigation of space debris, and could present challenges for astronomical observation.

55. The view was expressed that a lack of clear understanding of the concept of space traffic management had hampered debates under this agenda item and that consideration should be given to a number of measures and practices that were being undertaken by States with regard to space traffic management, in order to identify matters for discussion and advance the debate under this agenda item.

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

56. The Committee took note of the discussion of the Legal Subcommittee under the item entitled “General exchange of views on the application of international law to small-satellite activities”, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 222–238).
57. The Committee noted with satisfaction that the item continued to be on the agenda of the Subcommittee and agreed that its inclusion helped to address and raise awareness of issues relating to the use of small satellites by various actors.

58. The Committee noted that activities involving small satellites, regardless of the size of those satellites, should be carried out in compliance with the existing international regulatory framework.

59. Some delegations expressed the view that the existing legal regime on outer space ensured the safety, transparency and sustainability of operations involving small-satellite activities and that no ad hoc legal regime, nor any other mechanisms that could impose limitations on the design, building, launch or use of space objects, should be created.

60. Some delegations expressed the view that international cooperation, coordination and information-sharing with regard to all aspects of small-satellite activities and related services were important for ensuring the sustainable and safe use of outer space.

61. Some delegations expressed the view that the Committee should continue to conduct in-depth studies with a view to enabling countries and institutions in need to carry out relevant activities in outer space in an economical and safe manner.

62. The Committee noted that the questionnaire on the application of international law to small-satellite activities (see A/AC.105/1203, annex I, para. 12 and appendix II) had been useful in guiding discussions and deliberations under the agenda item.

11. General exchange of views on potential legal models for activities in the exploration, exploitation and utilization of space resources

63. The Committee took note of the discussion of the Subcommittee under the item entitled “General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources”, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 239–267).

64. The Committee had before it a conference room paper entitled “Proposal by the United Arab Emirates on the work related to space resources utilization of the Committee on the Peaceful Uses of Outer Space” (A/AC.105/2019/CRP.17).

65. Some delegations expressed that they favoured establishing a working group as had been originally proposed by Greece and Belgium at the fifty-eighth session of the Legal Subcommittee, in 2019, and that any assertion that doing so would be premature should be rejected. The delegations expressing this view also expressed the view that the Legal Subcommittee should seize the opportunity to foster a structured discussion on space resources that took into account the needs and rights of all countries, irrespective of their level of development.

66. The view was expressed that, while it might not be technically feasible at present to engage in space resources activities, the enactment of national legislation on the subject required the issue to be addressed multilaterally with a view to developing an international legal framework within which such activities could be undertaken. The delegation expressing this view also expressed the view that space resource-related activities should be based on the principles of sustainable use of natural resources, avoidance of harmful contamination, and efficiency, that appropriate international safety standards should be established and adhered to, and that such activities should be coordinated at the international level in order to avoid competing interests and minimize conflicts.

67. The view was expressed that, with respect to space resources, all stakeholders should collaborate so that future activities could develop in a proper and pragmatic manner and in accordance with international law. The delegation expressing this view also expressed the view that discussions should evolve in a way that reflected current technology, economic realities and the needs of industry.
68. The view was expressed that the interest in and demand for the development of space resources was growing, therefore, there should be no gaps in the legal system and regulations governing emerging development activities. The delegation expressing this view also expressed its support for the establishment of a working group within the Legal Subcommittee that would gradually develop international rules governing all space resource activities in line with the legal framework and principles established under the existing treaties on outer space.

69. The view was expressed that a working group on space resources should be established and that the time frame of that working group’s mandate should be open-ended and its scope should be comprehensive in terms of substance, and also that the working group should begin by carrying out a thorough assessment of the scientific, technological, economic and financial capacities of the international community in the field of research, development and use of space resources, prior to developing any legal framework. The delegation expressing this view also expressed the view that, owing to the interdisciplinary nature of issues related to space resources, the work of the Scientific and Technical Subcommittee and the Legal Subcommittee in that regard should be closely coordinated.

70. The view was expressed that the purpose of holding consultations and negotiations in the format of a working group should be to develop draft articles of an international treaty that would establish a legally binding, comprehensive international legal framework for the exploration, development and use of space resources.

71. The Committee endorsed the nomination by Belgium and Greece of Andrzej Misztal as Moderator and Steven Freeland (Australia) as Vice-Moderator to lead the scheduled informal consultations during the fifty-ninth session of the Legal Subcommittee (A/AC.105/1203, para. 278).

72. The Committee noted that the Moderator and Vice-Moderator would present to States members of the Committee, in the intersessional period, a draft plan for the scheduled informal consultations containing proposed substantive topics for discussion and their rationale. States members of the Committee would be invited to provide comments accordingly. The Secretariat would send out the note by the Moderator and Vice-Moderator containing the draft plan, and any responses from States members should be sent directly by electronic means to the Moderator and Vice-Moderator for their consideration.

12. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fifty-ninth session

73. The Committee took note of the discussion of the Subcommittee under the item on proposals to the Committee for new items to be considered by the Legal Subcommittee at its fifty-ninth session, as reflected in the report of the Subcommittee (A/AC.105/1203, paras. 268–283).

74. On the basis of the deliberations of the Legal Subcommittee at its fifty-eighth session, the Committee agreed that the following substantive items should be considered by the Subcommittee at its fifty-ninth session:

Regular items

1. Adoption of the agenda.
2. Election of the Chair.
3. Statement by the Chair.
4. General exchange of views.
5. Information on the activities of international intergovernmental and non-governmental organizations relating to space law.
6. Status and application of the five United Nations treaties on outer space.
7. 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.
8. National legislation relevant to the peaceful exploration and use of outer space.
10. Future role and method of work of the Committee.

Single issues/items for discussion

11. General exchange of information and views on legal mechanisms relating to space debris mitigation and remediation measures, taking into account the work of the Scientific and Technical Subcommittee.
12. General exchange of information on non-legally binding United Nations instruments on outer space.
13. General exchange of views on the legal aspects of space traffic management.
14. General exchange of views on the application of international law to small-satellite activities.
15. General exchange of views on potential legal models for activities in the exploration, exploitation and utilization of space resources.

New items

16. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its sixtieth session.

75. The Committee agreed that the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space and the Working Group on the Definition and Delimitation of Outer Space should be reconvened at the fifty-ninth session of the Legal Subcommittee.

76. The Committee endorsed the agreement reached by the Subcommittee that the International Institute of Space Law and the European Centre for Space Law should again be invited to organize a symposium, to be held during the fifty-ninth session of the Subcommittee (see A/AC.105/1203, para. 282).

J. Space exploration and innovation

77. The Committee considered the agenda item entitled “Space exploration and innovation”, in accordance with General Assembly resolution 73/91.

78. The representatives of China, Colombia, India, Japan and the United States made statements under the item. During the general exchange of views, other statements relating to the agenda item were also made by other member States.

79. The Committee heard the following presentations under the item:
   (a) “Extending human presence into the solar system”, by the representative of the United States;
   (b) “ISAS/JAXA deep space fleet cut into the solar system”, by the representative of Japan;
   (c) “ActInSpace 2020”, by the representative of France;
The Committee noted the increasing role that industry and the private sector, including start-up companies, were playing in space exploration and innovation activities, including through public-private partnerships.
83. The Committee noted how space exploration inspired and engaged the general public, and youth in particular, thereby contributing to increased participation in science, technology, engineering and mathematics.

84. The Committee noted the desirability of integrating developing countries into space exploration efforts to ensure that space exploration activities would become open and inclusive on a global scale.

85. The Committee noted with appreciation the second International Space Exploration Forum, hosted by Japan in March 2018, at which ministers and heads of space agencies from more than 40 States and international intergovernmental organizations had discussed the future of international space exploration and had agreed on three outcome documents, including the Tokyo Principles for International Space Exploration, that highlighted the importance of space exploration and the significance of international cooperation.

86. The Committee also noted with appreciation the United Nations/Jordan Workshop on Global Partnership in Space Exploration and Innovation, held in Amman in March 2019 (see A/AC.105/1208), which had been the first workshop co-organized by the Office for Outer Space Affairs to be devoted to the topic and had included cross-sectoral, capacity-building and strategic components.

87. In the context of this agenda item, the Committee noted the event that had been held on the first day of the present session, which had commemorated the Apollo 11 mission, a major milestone in the history of space exploration, and had included discussions on the future of space exploration.

88. The Committee also noted the exhibitions that had taken place in the rotunda of the Vienna International Centre during the present session of the Committee, which had included both historical and forward-looking displays on space exploration and innovation.