



**Committee on the Peaceful
Uses of Outer Space****Thematic priority 2. Legal regime of outer space and global
governance: current and future perspectives****Note by the Secretariat****I. Introduction**

1. The Committee on the Peaceful Uses of Outer Space, at its fifty-ninth session, in 2016, in preparation for the fiftieth anniversary of the first United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE+50), endorsed seven thematic priorities (A/71/20, para. 296), among them thematic priority 2, entitled “Legal regime of outer space and global governance: current and future perspectives”.

2. The Committee, at its sixtieth session, in 2017, welcomed with appreciation the progress made under the UNISPACE+50 thematic priorities, as reflected in conference room paper A/AC.105/2017/CRP.5 (paras. 51–109). The Committee noted that reports on the UNISPACE+50 thematic priorities, a report on the “Space2030” agenda and its implementation plan, and reports from each of the flagship conferences and workshops under the UNISPACE+50 thematic priorities, would be prepared by the Secretariat and issued in the six official languages of the United Nations for submission to the Committee and its subcommittees at their sessions in 2018, in close coordination with the mechanisms working under each of the UNISPACE+50 thematic priorities (A/72/20, para. 328).

3. In accordance with the decision made by the Committee at its fifty-ninth session, the mechanism identified under thematic priority 2 is the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space of the Legal Subcommittee (A/71/20, para. 296). The present note has therefore been prepared by the Chair of that Working Group, in close consultation with the Secretariat, in accordance with the request made by the Committee at its sixtieth session (A/72/20, para. 328).

II. Objectives and mechanism of thematic priority 2

4. The Committee, at its fifty-ninth session, endorsed thematic priority 2, entitled “Legal regime of outer space and global space governance: current and future perspectives”, with the following objectives and mechanism for implementation (A/71/20, para. 296):

Objective: Promote the universality of the five United Nations treaties on outer space. Assess the state of affairs of those treaties and their relationship with other



relevant international instruments, such as principles, resolutions and guidelines governing space activities. Analyse the effectiveness of the legal regime of outer space in the twenty-first century, with a view to identifying areas that may require additional regulation. Conduct an evaluation by:

(a) Developing the questionnaire of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space to encompass an assessment of the legal regime of outer space as a pillar of global space governance. The questionnaire should be used in the period leading up to 2018 to assist the Legal Subcommittee in addressing the status and scope of, and assessing and, as appropriate, addressing possible gaps in, the legal regime of outer space;

(b) Studying potential future legal and institutional initiatives intended to ensure that outer space is explored and used for peaceful purposes and that access to outer space remains open and free for the benefit of all countries, in order to ensure that international space law is a relevant part of global space governance in the twenty-first century in the light of the significant scientific developments and technical advances that have affected space activities;

(c) Studying legal mechanisms to foster an international regime of responsibility and liability to cope with present and future challenges to the safety, security and sustainability of outer space activities and the safety of space operations, perspectives of space traffic management and an enhanced exchange of information on space objects and events. Specific consideration is to be given to current practical concerns of the international community, such as in-orbit collisions and interferences. In particular, there should be an assessment of the need for enhanced registration and notification procedures and their institutional requirements under the registration and notification platform maintained by the Office for Outer Space Affairs;

(d) Identifying, by 2018, approaches and possible criteria for developing, by 2020, a guidance document to be issued by the Committee on the Peaceful Uses of Outer Space with essential information on the state of affairs of the legal regime governing outer space, including relevant instruments applied through national regulatory frameworks and international mechanisms for cooperation. Such a document should serve as valuable guidance for States wishing to become a party to the five United Nations treaties on outer space;

(e) Considering means to strengthen the Legal Subcommittee as the prime multilateral body with a mandate to promote the progressive development of international space law, including procedural and institutional improvements and closer cooperation with the Scientific and Technical Subcommittee.

Mechanism: Existing Working Group on the Status and Application of the Five United Nations Treaties on Outer Space of the Legal Subcommittee, which should coordinate its work with the Working Group on the Long-term Sustainability of Outer Space Activities of the Scientific and Technical Subcommittee.

III. Workplan of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space under thematic priority 2

5. The Working Group, at the fifty-sixth session of the Legal Subcommittee, in 2016, assessed the thematic priority, its objectives, mechanism, and the manner in which the Working Group could implement its task and carry out its work under thematic priority 2. The Working Group considered the proposal submitted by the Chair of the Working Group contained in [A/AC.105/C.2/2017/CRP.14](#), and assessed that consideration of all the elements under the thematic priority required a clear working method that was easy to apply and had time-bound outputs.

6. Considering the complexities enshrined in the defined objectives of thematic priority 2, under its subparagraphs (a)–(e), as contained in the report of the Committee

on the Peaceful Uses of Outer Space, on its fifty-ninth session (A/71/20, para. 296), including the broad perspective of international space law and policy, as well as issues of concern to the safety, security and sustainability of outer space activities, and that those topics should be considered in a structured manner, the Working Group agreed to the following three clusters:

(a) *Cluster 1.* Using the set of questions established under the Working Group as a basis for assessing the state of affairs of the five United Nations treaties on outer space; analysing the effectiveness of the legal regime of outer space; and addressing the status and scope of, and assessing and, as appropriate, addressing possible gaps in, the legal regime of outer space. This exercise begins already in 2017, for which discussions on the set of questions would be held in the Working Group meetings in combination with continued annual invitations for written responses. The recommendation of the United Nations Workshop on Space Law, held in Vienna in 2016 (A/AC.105/1131, para. 50 (i)), is to be taken into account, for which under thematic priority 2, an assessment of customary law perspectives relating to international space law should be conducted, as well as an in-depth assessment of possible substantive and operational gaps in the legal regime of outer space, focusing in particular on responsibility and liability for national space activities. In parallel, possible gaps in the legal regime of a more conceptual nature should also be studied. This process could also provide elements to be considered in the development of the guidance document and tools under cluster 3, below;

(b) *Cluster 2.* Observing the progress of work under the Working Group of the Scientific and Technical Subcommittee on the Long-term Sustainability of Outer Space Activities, as well as the work to be conducted under UNISPACE+50 thematic priority 3, entitled “Enhanced information exchange on space objects and events” (A/71/20, para. 296), with a view to connecting the results of those processes, as appropriate, to objective (c) of thematic priority 2. Thus, the review of the topics identified under objective (c) would not commence under thematic priority 2 until there has been further progress in the Scientific and Technical Subcommittee, accordingly. In this context, the Working Group could consider the usefulness of developing a matrix addressing interlinkages between the possible outcome of the Working Group on the Long-term Sustainability of Outer Space Activities and the treaties, principles and other instruments under the legal regime of outer space. This cluster would also be important for the consideration of means of strengthening the Legal Subcommittee and procedural and institutional improvements and closer cooperation with the Scientific and Technical Subcommittee (see, under thematic priority 2, objectives (b) and (e)). The perspectives of space traffic management would be an overarching objective for consideration and possible establishment in the long-term perspective and leading towards 2030;

(c) *Cluster 3.* Promoting the universality of the five United Nations treaties on outer space, including by identifying approaches and possible criteria for developing a guidance document as described under thematic priority 2, objective (d). In this regard, the Working Group could explore ways and means of encouraging States members of the Committee on the Peaceful Uses of Outer Space to become parties to the Outer Space Treaty, as well as promoting the increase in membership of the Committee, in order to match the complement of State parties to the Outer Space Treaty with the membership of the Committee. The guidance document should be developed in combination with other tools, including the further development of online tools on the website of the Office for Outer Space Affairs, and the issuance of a report in the six official languages of the United Nations. The progress and outcome of other past working groups of the Legal Subcommittee should be observed, including, inter alia, with respect to the concept of “launching State”, registration practice, national space legislation and international mechanisms for cooperation in the peaceful exploration and use of outer space. Capacity-building and technical assistance carried out by the Office for Outer Space Affairs in the field of international space law and policy should be considered fundamental tools in those efforts, as should be the further development of a model for national space legislation,

as appropriate, and as recommended in the report of the Workshop on Space Law (A/AC.105/1131, subparas. 50 (h) and (i)).

7. Pursuant to the identification of the three clusters in paragraph 6 above, the Working Group agreed to the following working method:

- 2017 Agree on the working method under thematic priority 2; and commence discussions in the Working Group on the set of questions of the Working Group for the purpose of cluster 1;
- 2018 Review the status report of thematic priority 2 for the purpose of UNISPACE+50 in 2018; identify and agree on the key points for the guidance document and the online tool under cluster 3, including on efforts to strengthen capacity-building and assistance, on the basis of a proposed outline to be presented by the Chair in close consultation with the Secretariat; continue the discussion and assessment under cluster 1; and assess the way ahead under this thematic priority on the processes identified under cluster 2;
- 2019 On the basis of a proposal by the Chair, in close consultation with the Secretariat, review the draft guidance document and tools for the universality of the five United Nations treaties on outer space, in particular on the enhancement of accession to the Outer Space Treaty and membership of the Committee, as identified under cluster 3;
- 2020 Finalize the guidance document and tools under cluster 3; decide on any further consideration of topics identified under clusters 1–3, as appropriate, and identify the most suitable mechanism within the Legal Subcommittee for this purpose.

IV. The set of questions of the Working Group on the status and application of the five United Nations treaties on outer space

8. The Working Group, at the fifty-sixth session of the Legal Subcommittee, reviewed the set of questions contained in the report of the Legal Subcommittee on its fifty-fifth session (see A/AC.105/1113, annex I, appendix), as part of its work under cluster 1 for 2017, with a view to determining whether there was a need to make changes to the set of questions to meet the objective of thematic priority 2 under consideration.

9. In the course of the consideration of the set of questions, different views were expressed by delegations on additional topics potentially to be covered by the set of questions, such as issues related to emerging space activities and technologies in relation to the international legal framework for space activities, in particular related to the exploration, exploitation and utilization of space resources, as well as the practice of the development and use of small satellites. In that context, different views were expressed, particularly on the scope of the questions under subheading 2, on the United Nations treaties on outer space and provisions related to the Moon and other celestial bodies, and a number of related potential questions were raised by delegations in the discussion.

10. The Working Group considered this discussion to be an important exchange of views that had, already at the present session, provided the Working Group with a better understanding of the range and complexity of topics relevant to consideration under thematic priority 2. On that basis and as a compromise, the Working Group agreed to retain the set of questions as contained in A/AC.105/1113, annex I, appendix, and agreed that States members of the Committee and international intergovernmental and non-governmental organizations having permanent observer status with the Committee should be invited to continue providing comments and responses to the questionnaire. Any replies received would be made available in a conference room paper.

11. The Working Group noted in that regard that the current set of questions was general enough to provide for a broad range of views, and that continued discussions under thematic priority 2 would benefit from more written contributions from States members and permanent observers of the Committee.

12. The set of questions below reflects the set of questions contained in [A/AC.105/1113](#), annex I, appendix.

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, taking into account the UNISPACE+50 process

1. The legal regime of outer space and global space governance

1.1 What is the main impact on the application and implementation of the five United Nations treaties on outer space of additional principles, resolutions and guidelines governing outer space activities?

1.2 Are such non-legally binding instruments sufficiently complementing the legally binding treaties for the application and implementation of rights and obligations under the legal regime of outer space? Is there a need for additional actions to be taken?

1.3 What are the perspectives for the further development of the five United Nations treaties on outer space?

2. United Nations treaties on outer space and provisions related to the Moon and other celestial bodies

2.1 Do the provisions 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), constitute a sufficient legal framework for the use and exploration of the Moon and other celestial bodies or are there legal gaps in the treaties (the Outer Space Treaty and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement))?

2.2 What are the benefits of being a party to the Moon Agreement?

2.3 Which principles or provisions of the Moon Agreement should be clarified or amended in order to allow for wider adherence to it by States?

3. International responsibility and liability

3.1 Could the notion of “fault”, as featured in articles III and IV of the Convention on International Liability for Damage Caused by Space Objects (Liability Convention), be used for sanctioning non-compliance by a State with the resolutions related to space activities adopted by the General Assembly or its subsidiary bodies, such as Assembly resolution [47/68](#), on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, and the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space? In other words, could non-compliance with resolutions adopted by the General Assembly or with instruments adopted by its subsidiary bodies related to space activities be considered to constitute “fault” within the meaning of articles III and IV of the Liability Convention?

3.2 Could the notion of “damage”, as featured in article I of the Liability Convention, be used to cover loss resulting from a manoeuvre performed by an operational space object in order to avoid collision with a space object or space debris not complying with the Space Debris Mitigation Guidelines of the Committee?

3.3 Are there specific aspects related to the implementation of international responsibility, as provided for in article VI of the Outer Space Treaty, in connection with General Assembly resolution [41/65](#), on the Principles Relating to Remote Sensing of the Earth from Outer Space?

3.4 Is there a need for traffic rules in outer space as a prerequisite of a fault-based liability regime?

4. Registration of space objects

4.1 Is there a legal basis to be found in the existing international legal framework applicable to space activities and space objects, in particular the provisions of the Outer Space Treaty and the Convention on Registration of Objects Launched into Outer Space (Registration Convention), which would allow the transfer of the registration of a space object from one State to another during its operation in orbit?

4.2 How could a transfer of activities or ownership involving a space object during its operation in orbit from a company of the State of registry to a company of a foreign State be handled in compliance with the existing international legal framework applicable to space activities and space objects?

4.3 What jurisdiction and control are exercised, as provided for in article VIII of the Outer Space Treaty, over a space object registered by an international intergovernmental organization in accordance with the provisions of the Registration Convention?

4.4 Does the concept of megaconstellations raise legal and/or practical questions, and is there a need to react with an adapted form of registration?

4.5 Is there a possibility, in compliance with the existing international legal framework, based on the existing registration practices, of introducing a registration “on behalf” of a State of a launch service customer, based on its prior consent? Would this be an alternative tool to react to megaconstellations and other challenges in registration?

5. International customary law in outer space

5. Are there any provisions of the five United Nations treaties on outer space that could be considered as forming part of international customary law and, if yes, which ones? Could you explain the legal and/or factual elements on which your answer is based?

6. Proposal for other questions

6. Please suggest additional questions that could be inserted into the set of questions above to meet the objective of the UNISPACE+50 thematic priority on the legal regime of outer space and global space governance.

V. Working method under thematic priority 2 for the year 2018

13. In accordance with the working method outlined in paragraph 7 above, in 2018 the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space is mandated to:

(a) Review the status report of thematic priority 2 for the purpose of UNISPACE+50 in 2018;

(b) Identify and agree on the key points for the guidance document and the online tool under cluster 3, including on efforts to strengthen capacity-building and assistance, on the basis of a proposed outline to be presented by the Chair in close consultation with the Secretariat;

(c) Continue the discussion and assessment under cluster 1;

(d) Assess the way ahead under this thematic priority on the processes identified under cluster 2.

14. The Working Group is carrying out its work under the multi-year workplan and working method agreed to in 2017. The status report mandated in paragraph 13 (a)

above is presented in the form of the general note under thematic priority 2 contained in the present document.

15. A proposed outline of the key points for the guidance document and the online tool under cluster 3, including on efforts to strengthen capacity-building and assistance, will be presented in more detail in a conference room paper for consideration by the Working Group at the fifty-seventh session of the Legal Subcommittee in accordance with the multi-year workplan.

16. In view of the importance of promoting the universality of the United Nations treaties on outer space, and the fundamental need for capacity-building in that regard, including for policy- and decision makers, the work carried out under thematic priority 2 of UNISPACE+50 was welcomed by the United Nations/Austria Symposium on the theme “Access to space: holistic capacity-building for the twenty-first century”, held in Graz, Austria, from 3 to 7 September 2017 ([A/AC.105/1162](#), para. 39 (s)).

17. The Symposium recommended that the guidance document envisioned under thematic priority 2 should be developed to serve as a tool for raising awareness among decision makers and regulators of the connections between the various elements of international space law to be taken into consideration in the context of accession to the treaties and in the implementation of the legal regime governing outer space, as well as for the purpose of establishing national space policy, as appropriate ([A/AC.105/1162](#), para. 39 (t)).

18. Against this background the following observations and suggestions are made to serve as a general introduction to the guidance document, with a view to it becoming a reference tool for decision makers at the national level in assessing the accession to the treaties on outer space, in determining the development of national regulatory frameworks, and in considering cooperation in space activities. With this objective in mind, the guidance document is proposed to:

(a) Provide a concerted presentation of the benefits of becoming a party to the five United Nations treaties on outer space, building upon the previous work by the Legal Subcommittee;

(b) Relate to the interlinkages between the United Nations instruments on space law, including the United Nations treaties and principles on outer space, related General Assembly resolutions and other documents;

(c) Address the outcomes of the working groups of the Legal Subcommittee, including on the concept of the launching State, registration practice, national space legislation and international frameworks for cooperation, including by listing relevant background documents in a systematic manner;

(d) Contain a schematic overview of indicative elements for consideration, in accordance with national law and taking into account country-specific needs and requirements, in acceding to the space law treaties, enacting national regulatory frameworks and entering into bilateral cooperation agreements, as appropriate. This analysis could target, in particular, elements related to jurisdiction and control over national space activities, international responsibility, international liability, continuous supervision, registration of objects launched into outer space, as well as indicative elements for international mechanisms for cooperation in the peaceful exploration and use of outer space, as appropriate;

(e) Present an overview of existing documentation of relevance to the objectives of the guidance document, including on contributions of Member States to the work of the Legal Subcommittee through the related working groups under multi-year workplans to support further consideration at the national level, as appropriate.

19. The following elements to strengthen capacity-building and technical legal assistance in space law and policy were addressed in the report on the United Nations Workshop on Space Law on the theme “Contribution of space law and policy to space

governance and space security in the twenty-first century”, held in Vienna from 5 to 8 September 2016 ([A/AC.105/1131](#)), and the report of the United Nations/Austria Symposium on the theme “Access to space: holistic capacity-building for the twenty-first century”, held in Graz, Austria, from 3 to 7 September 2017 ([A/AC.105/1162](#)):

(a) The role of the Office for Outer Space Affairs as a focal point for information exchange and a forum for discussing the progressive development of international space law should be strengthened, especially at the administrative and implementing levels ([A/AC.105/1131](#), para. 50 (k));

(b) In further evaluating capacity-building objectives, the Office for Outer Space Affairs should be officially encouraged to conduct targeted capacity-building, education and training in space law and policy, building upon the United Nations Platform for Space-based Information for Disaster Management and Emergency Response programme, with the objective of establishing a capacity-building platform on the basis of the following criteria: (a) the need to determine the capacity within the Office to provide targeted technical legal assistance and conduct a comprehensive assessment of the needs of requesting States, taking into account judicial, administrative and technical requirements, and on that basis determine the assistance required; and (b) the delivery of the required capacity-building, assistance, training and education activities to meet the needs of States ([A/AC.105/1131](#), para. 50 (h));

(c) In the context of the guidance document, it was considered important that the Office for Outer Space Affairs be given the necessary mandate to develop, in close cooperation with States and regional organizations and mechanisms, as appropriate, the prerequisites for targeted technical legal assistance aimed at governmental and regulatory authorities, and to take action to foster holistic cross-sectoral capacity-building efforts that address the broader space community, in order to be able to tailor such efforts to the particular needs of developing countries. In that regard, the Office should also be mandated to develop a model for national space legislation ([A/AC.105/1162](#), para. 39 (u)).

20. On the issue of strengthening the Legal Subcommittee and procedural and institutional improvements and closer cooperation with the Scientific and Technical Subcommittee, addressed under cluster 2, it was noted at the United Nations Workshop on Space Law, held in Vienna from 5 to 8 September 2016, that the relationship between the work of the Scientific and Technical Subcommittee and the Legal Subcommittee should be improved and the UNISPACE+50 process should be an opportunity to keep the momentum and make concrete decisions on enhancing cooperation and coordination between the Subcommittees. It was further noted that consideration should be given to the establishment of an item on the agenda of the Committee on the Peaceful Uses of Outer Space on the coordination of work of the Committee and its subsidiary bodies, which could examine the agendas of the subcommittees and the reporting procedures of the Committee and its subcommittees ([A/AC.105/1131](#), para. 50 (j)).