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## Committee on the Peaceful

### Uses of Outer Space

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## Report of the Legal Subcommittee on the work of its forty-third session, held in Vienna from 29 March to 8 April 2004

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## **I. Introduction**

### **A. Opening of the session**

1. The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-third session at the United Nations Office at Vienna from 29 March to 8 April 2004 under the chairmanship of Sergio Marchisio (Italy).
2. At the opening (693rd) meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its forty-third session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.693).

### **B. Election of the Chairman**

3. At the 693rd meeting, on 29 March 2004, Sergio Marchisio (Italy) was elected, by acclamation, Chairman of the Subcommittee for a two-year term of office.

### **C. Adoption of the agenda**

4. At its opening meeting, the Legal Subcommittee adopted the following agenda:
  1. Opening of the session.
  2. Election of the Chairman.
  3. Adoption of the agenda.
  4. Statement by the Chairman.
  5. General exchange of views.
  6. Status and application of the five United Nations treaties on outer space.
  7. Information on the activities of international organizations relating to space law.
  8. 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.
  9. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
  10. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001:

- (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol;
  - (b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space.
- 11. Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III).
  - 12. Practice of States and international organizations in registering space objects.
  - 13. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fourth session.

#### **D. Attendance**

5. Representatives of the following States members of the Legal Subcommittee attended the session: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakhstan, Kenya, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Sweden, Syrian Arab Republic, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Viet Nam.

6. At the 693rd and 696th meetings, on 29 and 30 March, the Chairman informed the Subcommittee that requests had been received from the permanent representatives of the Libyan Arab Jamahiriya, Thailand and Yemen to attend the session as observers. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, it could take no formal decision on the matter, but that the representatives of those States might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

7. Representatives of the following organizations of the United Nations system, intergovernmental organizations and other entities attended the session as observers: United Nations Educational, Scientific and Cultural Organization (UNESCO), European Space Agency (ESA), International Astronautical Federation (IAF), International Institute for the Unification of Private Law (Unidroit), International Law Association (ILA), International Mobile Satellite Organization (IMSO), International Space University and Space Generation Advisory Council.

8. A list of the representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies of the United Nations system, intergovernmental organizations and other entities attending the session and of members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF.36.

## **E. Organization of work**

9. In accordance with decisions taken at its opening meeting, the Legal Subcommittee organized its work as follows:

(a) The Subcommittee reconvened its Working Group on agenda item 6, “Status and application of the five United Nations treaties on outer space”, open to all members of the Subcommittee, and agreed that Vassilios Cassapoglou (Greece) should serve as its Chairperson;

(b) The Subcommittee reconvened its Working Group on agenda item 8 (a), “The definition and delimitation of outer space”, open to all members of the Subcommittee, and agreed that Déborah Salgado Campaña (Ecuador) should serve as its Chairperson;

(c) The Subcommittee reconvened its Working Group on agenda item 10, “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001”, open to all members of the Subcommittee, and agreed that Vladimír Kopal (Czech Republic) should serve as its Chairperson;

(d) The Subcommittee began its work each day with a plenary meeting to hear delegations wishing to address it. It subsequently adjourned and, when appropriate, convened a working group.

10. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies. The Chairman also drew attention to the fact that the Legal Subcommittee had been able to achieve real and constant savings in that area, despite the current financial constraints faced by the United Nations. In view of that, the Chairman proposed and the Subcommittee agreed that a flexible organization of work should continue to serve as the basis for organizing the work of the Subcommittee, with a view to making fuller use of the conference services available.

11. The Subcommittee noted with satisfaction that a symposium entitled “New developments and the legal framework covering the exploitation of the resources of the Moon”, sponsored by the International Institute of Space Law (IISL) of IAF in cooperation with the European Centre for Space Law (ECSL), had been held during the current session of the Subcommittee, on 29 March 2004. The symposium was coordinated by Tanja Masson-Zwaan of IISL and chaired by Peter Jankowitsch (Austria). Presentations were made by Leslie Tennen on “Article II of the Outer Space Treaty, the status of the Moon and resulting issues”, Armel Kerrest de Rozavel on “Exploitation of the resources of the high sea and Antarctica: lessons for

the Moon?”, Stephan Hobe on “ILA resolution 1/2002 with regard to the CHM principle in the Moon Agreement” and Rajeev Lochan on “The Moon treaty: the road ahead”. The Subcommittee agreed that IISL and ECSL should be invited to hold a further symposium on space law at its forty-fourth session.

12. The Subcommittee noted that the Secretariat had scheduled the forty-fourth session of the Subcommittee to be held from 4 to 15 April 2005.

## **F. Adoption of the report of the Legal Subcommittee**

13. The Subcommittee held a total of 18 meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.693-710).

14. At its 710th meeting, on 8 April 2004, the Subcommittee adopted the present report and concluded the work of its forty-third session.

## **II. General exchange of views**

15. The Subcommittee welcomed the election of Sergio Marchisio (Italy) as its new Chairman and expressed its gratitude to Vladimír Kopal (Czech Republic), its former Chairman, for his outstanding achievements during his tenure.

16. Statements were made by representatives of the following member States during the general exchange of views: Brazil, Canada, China, France, Germany, Hungary, India, Indonesia, Italy, Japan, Morocco, Nigeria, Republic of Korea, Romania, Russian Federation, Ukraine and United States. The representative of Colombia made a statement on behalf of States Members of the United Nations that are members of the Group of Latin American and Caribbean States. The observers for IAF and IISL also made statements. The views expressed by those speakers are contained in unedited verbatim transcripts (COPUOS/Legal/T.693-696).

17. The Subcommittee recalled that the General Assembly, in its resolution 58/89 of 9 December 2003, had requested the Committee to consider ways to improve participation in its work by member States and entities with observer status, with a view to agreeing on specific recommendations in that regard at its forty-eighth session.

18. At the 693rd meeting, on 29 March, the Director of the Office for Outer Space Affairs of the Secretariat made a statement reviewing the role and work of the Office relating to space law. The Subcommittee noted with appreciation the information on the activities of the Office aimed at promoting the understanding, acceptance and implementation of international space law.

19. At the 694th meeting, on 29 March, the Executive Director of the United Nations Office on Drugs and Crime and Director-General of the United Nations Office at Vienna made a statement emphasizing the importance of the work of the Legal Subcommittee in the development of space law and the importance of space applications in the global development agenda of the United Nations.

20. The Subcommittee offered its congratulations to China on the success of its first manned space mission. It was noted that China was the third country, and the first developing country, to achieve such a capability.
21. The Subcommittee also congratulated the United States and ESA on the recent success of their missions to Mars.
22. The Subcommittee expressed its solidarity with Brazil and sympathy for the accident that had occurred prior to the launching of the VLS-1 satellite launch vehicle in Alcântara, Brazil.
23. Some delegations expressed the view that the militarization of outer space risked undermining strategic stability and international security and could lead to an arms race.
24. The view was expressed that, while outer space could be used for defensive purposes, such defence systems should only exist if used to support strategic stability and to help in arms reduction. That delegation was of the view that an international agreement should be concluded on the non-stationing of weapons in outer space.
25. The view was expressed that the success of the Subcommittee in its work could be attributed to its avoidance of debating extraneous political issues.

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

26. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider this agenda item as a regular item and had noted that the Subcommittee would reconvene its Working Group with the terms of reference agreed upon by the Subcommittee, to meet for three years, from 2002 to 2004.
27. In accordance with the agreement reached by the Subcommittee at its fortieth session, in 2001, the terms of reference of the Working Group included the status of the treaties, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law, especially through the United Nations Programme on Space Applications (A/AC.105/763 and Corr.1, para. 118). In accordance with the agreement reached by the Legal Subcommittee at its forty-first session, in 2002, the Working Group would also review the application and implementation of the concept of the “launching State”, as reflected in the conclusions of the Subcommittee’s consideration of the three-year work plan on “Review of the concept of the ‘launching State’”, as well as any new, similar issues that might be raised in discussions in the Working Group, provided that those issues fell within the existing mandate of the Working Group (A/AC.105/787, paras. 138 and 140).
28. The Subcommittee noted with satisfaction that the Secretariat had updated and distributed a document containing information, as at 1 January 2004, on States parties and additional signatories to the United Nations treaties and other

international agreements relating to activities in outer space (ST/SPACE/11/Add.1/Rev.1).

29. The Subcommittee noted that the status of the five United Nations treaties on outer space, as at 1 January 2004, 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 (the “Outer Space Treaty”, General Assembly resolution 2222 (XXI), annex) had 98 States parties and had been signed by 27 additional States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the “Rescue Agreement”, Assembly resolution 2345 (XXII), annex) had 88 States parties and had been signed by 25 additional States;

(c) The Convention on International Liability for Damage Caused by Space Objects (the “Liability Convention”, Assembly resolution 2777 (XXVI), annex) had 82 States parties and had been signed by 25 additional States;

(d) The Convention on Registration of Objects Launched into Outer Space (the “Registration Convention”, Assembly resolution 3235 (XXIX), annex) had 45 States parties and had been signed by 4 additional States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the “Moon Agreement”, Assembly resolution 34/68, annex) had 10 States parties and had been signed by 5 additional States;

(f) In addition, one international intergovernmental organization had declared its acceptance of the rights and obligations under the Rescue Agreement; two international intergovernmental organizations had declared their acceptance of the rights and obligations under the Liability Convention; and two international intergovernmental organizations had declared their acceptance of the rights and obligations under the Registration Convention.

30. The Subcommittee welcomed ratification by Greece of the Registration Convention in 2003. The Subcommittee also welcomed the reports from member States indicating their progress in developing national space laws.

31. The view was expressed that the United Nations treaties on outer space established a coherent and useful framework for increasingly widespread and complex activities in outer space carried out by both governmental and private entities. That delegation welcomed further adherence to the treaties and hoped that States that had not yet accepted those treaties would consider becoming parties in 2004.

32. Some delegations expressed the view that, although the provisions and principles of the United Nations treaties on outer space constituted the regime to be observed by States and more States should be encouraged to adhere to them, the current legal framework for outer space activities required modification and further development to keep pace with advances in space technology and changes in the nature of space activities. Those delegations expressed the view that the lacunae resulting from the current legal framework not keeping pace with developments in space activities could be addressed by the development of a universal,

comprehensive convention on space law without disrupting the fundamental principles contained in the treaties currently in force.

33. The view was expressed that a questionnaire should be devised to gather opinions on the process by which international space law should be developed.

34. As mentioned in paragraph 9 (a) above, at its 693rd meeting, on 29 March, the Legal Subcommittee reconvened its Working Group on agenda item 6 under the chairmanship of Vassilios Cassapoglou (Greece). The Working Group held nine meetings. At its 710th meeting, on 8 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex I to the present report. At the 703rd meeting of the Subcommittee, on 5 April, the Chairman of the Working Group reported to the Subcommittee that agreement had been reached on a draft resolution on the application of the concept of the “launching State”, for consideration by the General Assembly. The Subcommittee noted with great appreciation the agreement reached on the draft resolution, as set out in appendix II to the report of the Working Group.

35. The Legal Subcommittee endorsed the recommendation that the mandate of the Working Group be extended for one additional year. It was agreed that the Subcommittee, at its forty-fourth session, in 2005, would review the need to extend the mandate of the Working Group beyond that period.

36. The full text of the statements made by delegations during the discussion on agenda item 6 is contained in unedited verbatim transcripts (COPUOS/Legal/T.695-699, 703 and 709).

#### **IV. Information on the activities of international organizations relating to space law**

37. At the 695th meeting, on 30 March, the Chairman made an introductory statement on agenda item 7 and drew the attention of the Subcommittee to the fact that it was a regular agenda item agreed upon by the Subcommittee at its forty-first session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-fifth session.

38. The Legal Subcommittee noted with satisfaction that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law and agreed that a similar invitation should be extended by the Secretariat for the forty-fourth session of the Subcommittee, in 2005.

39. The Subcommittee had before it a document (A/AC.105/C.2/L.248) and a conference room paper (A/AC.105/C.2/2004/CRP.15) containing reports from the following international organizations on their activities relating to space law: ECSL, ESA, IISL, ILA and the International Organization of Space Communications (Intersputnik).

40. In the course of the debate, observers for the following international organizations reported to the Subcommittee on their activities relating to space law: UNESCO, ESA and ILA.

41. The Subcommittee agreed that the specialized agencies of the United Nations system and other international organizations having permanent observer status with the Committee on the Peaceful Uses of Outer Space had an important role to play in strengthening the work of the Subcommittee and should be encouraged to participate actively in that work.
42. The Subcommittee agreed that international intergovernmental organizations conducting space activities could enhance the legal framework applicable to space activities by encouraging their member States, if they had not yet become parties to the international treaties governing outer space, to give consideration to ratifying or acceding to the treaties in order to enable those international organizations to declare their acceptance of the rights and obligations under those treaties.
43. The Subcommittee was informed that the recommendations of the World Commission on the Ethics of Scientific Knowledge and Technology of UNESCO on the ethics of outer space would be revised in order to develop more specific and concrete proposals. To that end, a working group had been established at UNESCO to consider the feasibility of implementing those recommendations and exploring the potential for international action in the area of space ethics.
44. The Subcommittee noted with appreciation that the Secretariat had made available, in conference room paper A/AC.105/C.2/2004/CRP.4, a directory of institutions teaching space law, containing information on courses and educational opportunities in space law offered worldwide.
45. The Subcommittee expressed its appreciation to the Government of the Republic of Korea and the Korean Aerospace Research Institute for co-sponsoring the second United Nations/Republic of Korea Workshop on Space Law, entitled "United Nations treaties on outer space: actions at the national level", held from 3 to 6 November 2003 in Daejeon, Republic of Korea. The Subcommittee agreed that the Workshop had contributed to clarifying important issues regarding the outer space treaties and had increased awareness among government and public officials, especially those from countries in Asia and the Pacific, of the importance of adherence to and implementation of those treaties, as well as of incorporating them in their national legislation.
46. The Subcommittee noted with appreciation that the next United Nations Workshop on Space Law would be hosted by Brazil in November 2004.
47. The full text of the statements made by delegations during the discussion on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.695-698 and 700).

**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**

48. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-third session, taking into account the concerns of all countries, in particular those of developing countries, consider matters relating to the definition and delimitation of outer space and to 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 (ITU).

49. The Legal Subcommittee had before it the following documents:

(a) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States" (A/AC.105/635/Add.10);

(b) Note by the Secretariat entitled "Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.249 and Corr.1).

50. The view was expressed that States should continue to operate under 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.

51. The view was expressed that the definition and delimitation of outer space remained an important issue in view of new technological developments and the different legal regimes, namely, state sovereignty and freedom, that applied to airspace and outer space respectively.

52. Some delegations expressed the view that the lack of a definition or delimitation of outer space would bring about legal uncertainty concerning space law and air law and that matters concerning state sovereignty and the boundary between the two legal regimes needed to be clarified in order to reduce the possibility of disputes among States.

53. Some delegations expressed the view that the exploitation of the geostationary orbit, which was a limited natural resource, should, in addition to being rational, be made available to all countries, irrespective of their current technical capacities, thereby providing them with the possibility of having access to the 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 process of ITU. Within that framework, those delegations expressed their satisfaction with the agreement reached by the Subcommittee at its thirty-ninth session (A/AC.105/738, annex III), in the sense that coordination among

countries aimed at the utilization of the geostationary orbit should be carried out in an equitable manner and in conformity with the Radio Regulations of ITU.

54. Some delegations expressed the view that the geostationary orbit was an integral part of outer space and that its use was governed by the provisions of the Outer Space Treaty and the treaties of ITU.

55. The view was expressed that the current Constitution, Convention and Radio Regulations of ITU, as well as the current procedures set out in the treaties on international cooperation among countries and groups of countries with respect to the geostationary orbit and other orbits, fully took into account the interest of States in the use of the geostationary orbit and the radio frequency spectrum.

56. Some delegations expressed 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, or even repeated use.

57. As mentioned in paragraph 9 (b) above, at its 693rd meeting, on 29 March, the Legal Subcommittee reconvened its Working Group on agenda item 8 (a). At its 696th meeting, on 30 March, the Subcommittee elected Déborah Salgado Campaña (Ecuador) Chairperson of the Working Group. In accordance with the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group convened to consider only matters relating to the definition and delimitation of outer space.

58. The Working Group on agenda item 8 (a) held five meetings. At its 710th meeting, on 8 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex II to the present report.

59. The full text of the statements made by delegations during the discussion on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.697-702 and 708).

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

60. The Legal Subcommittee noted that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee consider the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (Assembly resolution 47/68) as a single issue and item for discussion.

61. The Legal Subcommittee noted that, at its fortieth session, the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space had begun work on a new multi-year work plan for the period 2003-2006, to establish the objectives, scope and attributes of an international technically based framework of goals and recommendations for the safety of planned and currently foreseeable nuclear power source applications in outer space.

62. The view was expressed that the work on the above matter being carried out by the Scientific and Technical Subcommittee was important for the development of

an international consensus on a technically based framework for the safe use of nuclear power source applications in outer space.

63. The view was expressed that it was necessary for the Legal Subcommittee to broaden its discussion under this item and to consider the need for a review of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space by compiling as much information as possible on the issue.

64. The view was expressed that, in certain cases, in particular with regard to deep space missions, the use of nuclear power sources would be expedient. That delegation also believed that the Legal Subcommittee could consider the question of a possible revision of the Principles. That delegation was of the view that the ultimate aim of such a revision would be the elevation of the Principles to the level of international legal norms. In that connection, the same delegation expressed the view that, if such a review were undertaken, the Subcommittee would benefit from the experience of the International Atomic Energy Agency (IAEA), as well as those States that had already developed relevant legislative norms.

65. Some delegations considered that, at the present time, in view of the work being conducted by the Scientific and Technical Subcommittee, opening a discussion on revision of the Principles was not warranted.

66. The full text of the statements made during the discussions on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.698-700).

## **VII. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)**

67. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider an agenda item entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)” as a single issue/item for discussion. In accordance with resolution 58/89, the Subcommittee considered two sub-items under that agenda item:

“(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol;

“(b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space.”

68. The Subcommittee had before it the following document and conference room paper:

(a) Report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>1</sup> (opened for signature at Cape Town on 16 November 2001) and its preliminary draft protocol on matters specific to space assets: considerations

relating to the possibility of the United Nations serving as supervisory authority under the protocol (A/AC.105/C.2/L.238);

(b) Preliminary draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets, as amended by the Unidroit committee of governmental experts (A/AC.105/C.2/2004/CRP.5).

69. The Subcommittee noted that the member States of the Committee on the Peaceful Uses of Outer Space had been invited to the first session of the committee of governmental experts convened in Rome by Unidroit from 15 to 19 December 2003, to prepare a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets. The Subcommittee also noted that, at its first session, the Unidroit committee of governmental experts had revised the text of the preliminary draft protocol.

70. The Subcommittee noted that a colloquium on the preliminary draft protocol on space assets had been held in Paris on 5 September 2003 and that a further colloquium on the same topic would be held in Kuala Lumpur from 22 to 23 April 2004.

71. The Subcommittee noted that the Unidroit committee of governmental experts would hold its second session in Rome from 25 to 29 October 2004 and that member States of the Committee would be invited to attend that session as well.

72. The Subcommittee also noted that the Unidroit secretariat had approached ITU, ESA and IMSO with a view to ascertaining their interest in being considered for the role of supervisory authority of the future protocol.

73. Some delegations expressed the view that the Convention on International Interests in Mobile Equipment and the future protocol to the Convention would contribute to the expansion of the space activities of developing countries, as well as developed countries, by reducing the financial risks and burdens arising from such an increase in space activities.

74. Some delegations expressed the view that the responsibilities of the supervisory authority should be entrusted to the Secretary-General.

75. Some delegations expressed the view that, if the United Nations were to assume the functions of supervisory authority, that would enhance the primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space.

76. The view was expressed that the United Nations was, in principle, the most appropriate organization to exercise the functions of supervisory authority and that, by exercising those functions, the United Nations would contribute to international cooperation in solving international problems of an economic, social, cultural or humanitarian character, in accordance with the Charter of the United Nations. That delegation was also of the view that, if the United Nations assumed the functions of supervisory authority, that would further the aim of UNISPACE III.

77. The view was expressed that, while the possibility of the United Nations serving as supervisory authority could be considered, other options should be explored, such as the establishment by the conference of States parties to the Convention and to the future space assets protocol of a mechanism for appointing a

supervisory authority consisting of States parties to the Convention, once it entered into force.

78. Some delegations expressed the view that the functions of supervisory authority could be undertaken by a specialized agency of the United Nations system, such as ITU.

79. The view was expressed that the international registry could be maintained by Unidroit itself, another intergovernmental organization or a body especially created for the purpose.

80. The view was expressed that it was important that the functions of supervisory authority be entrusted to an existing international organization.

81. Some delegations expressed the view that it would be inappropriate for the United Nations to serve as supervisory authority, as those functions fell outside the goals and objectives of the United Nations, as set out in the Charter of the United Nations.

82. The view was expressed that the functions of supervisory authority were not merely administrative in nature but also legislative and quasi-judicial.

83. The view was expressed that, as the Convention and the preliminary draft protocol had been developed under the auspices of Unidroit, it would be more appropriate for Unidroit to assume the functions of supervisory authority. That delegation believed that, if the United Nations accepted the functions of supervisory authority, it would be setting an undesirable precedent for similar initiatives.

84. The view was expressed that, at the current stage, it was unnecessary to name the supervisory authority in the preliminary draft protocol and that the United Nations should be invited to assume the functions of supervisory authority during the diplomatic conference to be held to adopt the draft protocol or even during the first conference of States parties to the Convention, to be held after the Convention entered into force. That delegation was of the view that that procedure would give the United Nations additional time to fully consider the issues arising from the assumption of such obligations.

85. The view was expressed that a decision as to the willingness of the United Nations to accept such a role would need to be made prior to the diplomatic conference.

86. Some delegations expressed the view that the Subcommittee should begin preparing a draft resolution, for adoption by the General Assembly, on the assumption by the United Nations of the functions of supervisory authority under the future protocol. Those delegations proposed that member States should set up an intersessional electronic drafting group to prepare such a draft resolution for consideration by the Subcommittee at its forty-fourth session, in 2005.

87. Some delegations expressed the view that the issues identified in the report of the Secretariat (A/AC.105/C.2/L.238) would need to be adequately considered before a decision could be taken on whether the United Nations could assume the functions of supervisory authority under the future protocol.

88. Some delegations expressed the view that it was important to continue to consider carefully the possibility of the United Nations serving as supervisory

authority, taking into account the present mandate and current activities of the United Nations, the need to avoid any risk of the United Nations incurring liability for damages, the need to avoid placing any additional financial burden on the United Nations and the lack of practical experience on the part of the United Nations in fulfilling such functions.

89. The view was expressed that, if the United Nations assumed the functions of the supervisory authority, the costs associated with those functions should be met through extrabudgetary funds and not through funds from the regular budget of the United Nations and there should be no liability.

90. Some delegations expressed the view that the Convention and the future protocol should neither undermine nor compromise existing principles and norms of international space law and that, in case of conflict, the existing principles and norms should prevail.

91. The view was expressed that the preliminary draft protocol was not intended to affect the rights and obligations of States parties to the United Nations treaties on outer space or the rights and obligations of States parties to the ITU Constitution, Convention and Regulations.

92. The view was expressed that provisions regarding the primacy of the outer space treaties should be included both in the preamble and the operative part of the preliminary draft protocol in order to ensure its compatibility with the United Nations treaties on outer space.

93. The view was expressed that the relationship between treaties was governed by the Vienna Convention on the Law of Treaties<sup>2</sup> and that there would be no legal reason to address the relationship between the United Nations treaties on outer space and the preliminary draft protocol if that protocol did not affect the rights and obligations of States parties to the United Nations treaties on outer space.

94. Some delegations expressed the view that the provisions of the third preambular paragraph and the inclusion of article XXI (bis) of the preliminary draft protocol by the first session of the Unidroit committee of governmental experts adequately addressed the relationship between the United Nations treaties on outer space and the preliminary draft protocol.

95. The view was expressed that some provisions of the preliminary draft protocol needed to be brought in line with United Nations treaties on outer space in order to avoid any possible conflict between the protocol and the provisions of the treaties on outer space. While the preliminary draft protocol addressed in detail the rights and interests of the financier in case of any default on the part of the debtor, it did not adequately address the issues relating to the obligations of the creditor and the State to which the financier belonged, particularly as regards the obligations of States under articles VI and VII of the Outer Space Treaty and article II, paragraph 1, of the Registration Convention.

96. The view was expressed that the preliminary draft protocol and the Convention on International Interests in Mobile Equipment should be studied further to determine the compatibility between the Registration Convention and provisions on security interests and to clarify issues relating to the transfer of space assets.

97. Some delegations expressed the view that it was vital to emphasize in the future protocol the public nature of the services that satellites carried, particularly in developing countries, and that safeguards should be put in place to protect the vital national interests of those States in the case of default on a loan or transfer of ownership of a satellite.

98. The view was expressed that the transfer of ownership of some satellites could raise issues of national security and that prospective signatories of the future protocol should give that question appropriate attention.

99. The view was expressed that, as orbital slots and frequency spectrum bands were granted to States in accordance with the established rules of ITU, the question arose whether, in the case of default and the financier taking over control of the space asset, it would be possible for the financier to make use of those orbital slots and the frequency spectrum band since they would remain the property of the State to which the defaulter belonged.

100. As mentioned in paragraph 9 (c) above, at its 693rd meeting, on 29 March, the Subcommittee reconvened its Working Group on agenda item 10 (a) and (b) and elected Vladimír Kopal (Czech Republic) Chairman of the Working Group. The Working Group held six meetings. At its 710th meeting, on 8 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex III to the present report.

101. The full text of statements made by delegations during the discussions on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.703-706 and 709).

## **VIII. Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)**

102. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider as a single issue and item for discussion the contributions by the Subcommittee to the Committee for the preparation of its report to the Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III).

103. The Legal Subcommittee had before it a compilation of comments received from member States and organizations having permanent observer status with the Committee on the Peaceful Uses of Outer Space, to be taken into consideration in the preparation of the contribution of the Subcommittee to the report of the Committee to the General Assembly on the progress made in the implementation of the recommendations of UNISPACE III, as well as a working paper prepared by the

Czech Republic and Italy on increasing the level of participation of United Nations specialized agencies and other international organizations having permanent observer status with the Committee in the work of the Legal Subcommittee and encouraging intergovernmental organizations conducting space activities to declare their acceptance of the rights and obligations under the United Nations treaties on outer space.

104. The Subcommittee reached agreement that the following elements should be included in section III of the report of the Committee to the General Assembly on the progress made in the implementation of the recommendations of UNISPACE III, under the heading “Achievements of the Committee and its subsidiary bodies in the consideration of agenda items”: the agreement reached in 2000 on matters relating to 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; the implementation of the recommendations of UNISPACE III on the status and application of the five United Nations treaties on outer space; the achievements of the Working Group on Review of the Concept of the “Launching State”; the ad hoc consultative mechanism established to review issues relating to the Convention of Unidroit on International Interests in Mobile Equipment and the preliminary draft protocol on matters specific to space assets; and consideration of a new agenda item entitled “Practice of States and international organizations in registering space objects”.

105. The Subcommittee agreed that section VI, entitled “The way ahead”, should include a subsection on strengthening the role of the Committee on the Peaceful Uses of Outer Space, its subcommittees and its secretariat in promoting the exploration and peaceful uses of outer space. The Subcommittee agreed that the additional subsection should reflect the following elements: gaining maximum benefit from the mechanism of the revised agenda structure of the Legal Subcommittee; encouraging the active participation of member States of the Committee; and promoting the participation of entities of the United Nation system.

106. The Subcommittee noted that, in accordance with General Assembly resolution 58/89, the Working Group established by the Committee to prepare a report for submission to the General Assembly at its fifty-ninth session for the review of the progress made in the implementation of the recommendations of UNISPACE III had held informal consultations during the forty-third session of the Subcommittee, under the chairmanship of Niklas Hedman (Sweden). Ten meetings of the informal consultations had been held between 31 March and 7 April 2004.

107. During the informal consultations, a paragraph by paragraph review of the draft text for chapters I-IV and annexes I-V (A/AC.105/C.1/L.272 and Add.1-5, and A/AC.105/C.2/2004/CRP.10) was conducted. A review of the draft text for chapters V and VI was also conducted in order to obtain general comments.

108. The full text of the statements made by delegations during the discussion on agenda item 11 is contained in unedited verbatim transcripts (COPUOS/Legal/T.698-704).

## **IX. Practice of States and international organizations in registering space objects**

109. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee consider the practice of States and international organizations in registering space objects, in accordance with the work plan adopted by the Committee.<sup>3</sup>

110. The Subcommittee took note with satisfaction of the reports submitted by member States on their practices in registering space objects (A/AC.105/C.2/L.250 and Corr.1 and Add.1, A/AC.105/C.2/2004/CRP.3 and A/AC.105/C.2/2004/CRP.7).

111. At the 703rd meeting of the Subcommittee, on 5 April, the Office for Outer Space Affairs made a presentation on the Register of Objects Launched into Outer Space maintained by the Secretary-General under the Registration Convention. The Subcommittee expressed its appreciation to the Office for that presentation and requested the Secretariat to prepare a background document based on the presentation to facilitate the work of the working group to be established by the Subcommittee at its forty-fourth session, in 2005, in accordance with the work plan.

112. The representatives of Argentina, China, the Czech Republic, France, Greece, India, Italy, Japan, Kazakhstan, the Republic of Korea, South Africa, Spain, Sweden, Ukraine and the United States made statements under this agenda item. The observers for ESA and IAF also made statements.

113. The Subcommittee noted with satisfaction the initiation of the debate under this agenda item, which could contribute to enhancing the capacity and effectiveness of international space law.

114. The view was expressed that the work of the Subcommittee under the four-year work plan would assist in enhancing the effectiveness of the Registration Convention and in developing and strengthening national legislative norms relating to the registration of objects launched into outer space.

115. The Subcommittee was informed of the practices followed by States in registering space objects and implementing the Registration Convention. In particular, the Subcommittee was informed about ways of maintaining national registries of objects launched into outer space; criteria for including objects in national registries; the procedures applied in cases where more than one party was involved in the launch or where private entities or international organizations were involved; the activities of authorities responsible for maintaining national registries and the legal regulations applicable to registering space objects.

116. The view was expressed that consideration could be given to examining the issue of developing a mechanism to identify unregistered space objects.

117. The view was expressed that States should pay greater attention to complying with article IV, paragraph 3, of the Registration Convention.

118. The view was expressed that consideration of agenda item 12 could include the analysis and possible revision of the Registration Convention or the improvement of some of its provisions by, for example, clarifying the definition of "space objects".

119. The view was expressed that consideration of agenda item 12 could include cases involving the transfer of ownership of space objects from one party to another after such objects had been launched and registered.

120. The full text of the statements made during the discussions on agenda item 12 is contained in unedited verbatim transcripts (COPUOS/Legal/T.703-706).

## **X. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fourth session**

121. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89, had noted that the Subcommittee, at its forty-third session, would submit its proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Subcommittee at its forty-fourth session, in 2005.

122. The Chairman recalled that the following proposals for new items to be included in the agenda of the Subcommittee had been considered by the Subcommittee at its forty-second session and retained by their sponsors with a view to discussing those proposals at subsequent sessions of the Subcommittee (A/AC.105/805, para. 153):

(a) The appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine;

(b) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, with a view to possibly transforming the text into a treaty in the future, proposed by Greece;

(c) Review of existing norms of international law applicable to space debris, proposed by the Czech Republic and Greece;

(d) Discussion on the development of an international convention on remote sensing, proposed by Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Greece, Mexico and Peru;

(e) Space debris, proposed by France and supported by member and cooperating States of ESA.

123. The Subcommittee noted that Greece had agreed to defer the discussion on its proposal for a new item entitled "Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, with a view to possibly transforming the text into a treaty in the future" to the forty-fourth session of the Subcommittee, in 2005.

124. The view was expressed that, although some member States needed more time to adopt the space debris mitigation guidelines, presented to the Scientific and Technical Subcommittee by the Inter-Agency Space Debris Coordination Committee, the Legal Subcommittee should include in its agenda a new item on space debris. That delegation was of the opinion that the Legal Subcommittee could consider the inclusion of that item in the agenda of its forty-fourth session, in 2005.

125. The view was expressed that the space debris mitigation guidelines were preliminary in nature and that further work would be needed before those proposals could be reviewed and finalized by that Subcommittee. That delegation was of the view that it was therefore premature for the Subcommittee to consider the legal aspects of space debris.

126. Some delegations expressed the view that a United Nations comprehensive convention on international space law should be developed by the Legal Subcommittee. The development of such a convention would strengthen the role of the Subcommittee as one of the more active bodies of the General Assembly and would contribute to the progressive development of international law and its codification, in accordance with Article 13 of the Charter of the United Nations. Those delegations expressed the view that the discussion of such a convention would enable the Subcommittee to find a universally acceptable settlement for outstanding issues relating to space activities.

127. Some delegations expressed the view that the current legal framework established by the United Nations treaties on outer space had adequately met the needs of the international community in matters relating to outer space. Those delegations were of the opinion that space activities had flourished within that legal framework and that its fundamental principles did not need to be questioned. Those delegations were also of the view that, if necessary, outstanding issues under particular treaties could be addressed in accordance with mechanisms established by those treaties.

128. Some delegations expressed the view that a single issue/item for discussion, entitled “Analysis of current remote sensing practices within the framework of the Principles Relating to Remote Sensing of the Earth from Outer Space”, should be included in the agenda of the Subcommittee at its forty-fourth session, in 2005. Those delegations noted that the discussion on that issue/item would not constitute a review of the Principles, but rather would enable member States and international organizations to share information on the current practices of States in the field of remote sensing.

129. Some delegations expressed the view that it was not necessary to update the Principles, as they were operating well. Those delegations held the view that the increasing number of developing countries with their own remote sensing satellites, the fact that direct access was available to other States and the spread of remote sensing technology to all countries demonstrated that international cooperation had developed well under the Principles. The view was expressed that, if the Subcommittee were to take up consideration of the Principles, it would be indicating that the Principles were not operating well.

130. The Legal Subcommittee agreed on the following items to be proposed to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the Subcommittee for its forty-fourth session:

*Regular items*

1. Opening of the session and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.

4. Status and application of the five United Nations treaties on outer space.
5. Information on the activities of international organizations relating to space law.
6. 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.

*Single issues/items for discussion*

7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
8. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town, South Africa, on 16 November 2001):
  - (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol;
  - (b) Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space.

*Items considered under work plans*

9. Practice of States and international organizations in registering space objects.  
2005 Examination by a working group of the reports submitted by Member States and international organizations in 2004.

*New items*

10. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-fifth session.

131. The Legal Subcommittee agreed that the working groups on agenda items 6 (a), 8 (a) and 8 (b) should be reconvened at its forty-fourth session.

132. The Subcommittee agreed that a working group on agenda item 9 should be established in accordance with the agreement reached at its forty-second session.

133. The Subcommittee agreed that the Working Group on agenda item 4 should be reconvened with the same mandate for one additional year and that the Subcommittee, at its forty-fourth session, in 2005, would review the need to extend the mandate of the Working Group beyond that period.

134. The Subcommittee noted that the sponsors of the following proposals for new items to be included in its agenda intended to retain their proposals for possible discussion at its subsequent sessions:

(a) The appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine;

(b) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, with a view to possibly transforming the text into a treaty in the future, proposed by Greece;

(c) Review of existing norms of international law applicable to space debris, proposed by the Czech Republic and Greece;

(d) Analysis of current remote sensing practices within the framework of the Principles Relating to Remote Sensing of the Earth from Outer Space, proposed by Brazil;

(e) Space debris, proposed by France and supported by member and cooperating States of ESA.

135. The full text of the statements made during the discussions on agenda item 13 is contained in unedited verbatim transcripts (COPUOS/Legal/T.704-709).

#### *Notes*

<sup>1</sup> DCME Doc. No. 74 International Civil Aviation Organization (ICAO).

<sup>2</sup> United Nations, *Treaty Series*, vol. 1155, No. 18232.

<sup>3</sup> *Official Records of the General Assembly, Fifty-eighth session, Supplement No. 20 (A/58/20)*, para. 199.

## Annex I

### **Report of the Chairman of the Working Group on agenda item 6, entitled “Status and application of the five United Nations treaties on outer space”**

1. In accordance with paragraph 6 of General Assembly resolution 58/89 of 9 December 2003, the Legal Subcommittee, at its 693rd meeting on 29 March 2004, reconvened its Working Group on agenda item 6, “Status and application of the five United Nations treaties on outer space” under the chairmanship of Vassilios Cassapoglou (Greece).

2. The Working Group held nine meetings, from 30 March to 6 April 2004. At the first meeting of the Working Group, on 30 March, the Chairman recalled that, at its fortieth session, in 2001, the Legal Subcommittee had agreed that the discussions of the Working Group would include the status of the United Nations treaties on outer space, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law, especially through the United Nations Programme on Space Applications (A/AC.105/763 and Corr.1, para. 118). The Chairman also recalled that, at its forty-first session, the Legal Subcommittee had agreed that the Working Group would also review the application and implementation of the concept of the “launching State”, as reflected in the conclusions of the Subcommittee’s consideration of the three-year work plan on “Review of the concept of the ‘launching State’” (A/AC.105/787, annex IV, appendix), as well as any new, similar issues that might be raised in discussions in the Working Group, provided that those issues fell within the existing mandate of the Working Group (A/AC.105/787, paras. 138 and 140).

3. The Working Group had before it the following document and conference room papers:

(a) Proposal for a draft resolution on the application of the legal concept of the “launching State”, for consideration by the General Assembly (A/AC.105/L.249 and A/AC.105/C.2/L.251);

(b) Education opportunities in space law (A/AC.105/C.2/2004/CRP.4);

(c) Background papers on specific issues falling within the mandate of the Working Group on status and application of the five United Nations treaties on outer space (A/AC.105/C.2/2004/CRP.6);

(d) Model letter of the Secretary-General to the ministers for foreign affairs of States that have not yet become parties to the United Nations treaties on outer space (A/AC.105/C.2/2004/CRP.12);

(e) Questionnaire on possible options for future development of international space law (A/AC.105/C.2/2004/CRP.14).

4. The Chairman, in his introductory remarks, reminded the Working Group of the following:

(a) During the forty-second session of the Legal Subcommittee, in 2003, the Working Group had considered a proposal, submitted by Germany on behalf of a

group of countries, containing a draft resolution on the application of the legal concept of the “launching State”, for consideration by the General Assembly. The Subcommittee had agreed that the merits and substance of the proposed draft resolution should be further considered by the Committee on the Peaceful Uses of Outer Space at its forty-sixth session (A/AC.105/805, para. 41). In accordance with the agreement reached by the Committee at its forty-sixth session, the Legal Subcommittee would consider the revised text of the proposal for a draft resolution on the application of the legal concept of the “launching State”, for consideration by the General Assembly, as contained in document A/AC.105/L.249.<sup>4</sup> The proposal for the draft resolution, contained in document A/AC.105/C.2/L.251, was submitted to the Legal Subcommittee at its forty-third session by a group of States that are member States of the European Space Agency and States that have concluded cooperation agreements with it;

(b) During the forty-second session of the Subcommittee, in 2003, the Working Group had suggested that the Secretary-General might send letters to the ministers for foreign affairs of States that had not yet become parties to the United Nations treaties on outer space. Each letter should be accompanied by a copy of the United Nations treaties and principles on outer space and a table of the status of those treaties, as well as informational material summarizing the important benefits and responsibilities of participation in those treaties, in particular for non-space-faring and developing countries. The Working Group suggested that the Secretary-General might also send a similar letter to international organizations that had not yet declared their acceptance of the rights and obligations under the treaties (A/AC.105/805, annex, para. 11). The model for such a letter would be developed by the Working Group on agenda item 6 during the forty-third session of the Legal Subcommittee, in 2004.

5. Accordingly, the Working Group focused on finalizing the text of the proposed draft resolution on the application of the concept of the “launching State”, for consideration by the General Assembly, and the text of the model letter from the Secretary-General to the ministers for foreign affairs of States that had not yet become parties to the United Nations treaties on outer space.

6. At its 6th meeting, on 1 April 2004, the Working Group approved the text of the model letter, together with the informational material to be attached thereto, that the Secretary-General might wish to send to the ministers for foreign affairs of States that had not yet become parties to the United Nations treaties on outer space. The agreed text of the letter and its attachment are contained in appendix I to the report of the Working Group. The Working Group also agreed that a similar letter should be sent to intergovernmental organizations that had not yet declared their acceptance of the rights and obligations under those treaties.

7. At its 8th meeting, on 2 April 2004, the Working Group agreed on the text of a draft resolution on the application of the concept of the “launching State”, for consideration by the General Assembly. The text of the draft resolution agreed upon by the Working Group (A/AC.105/C.2/2004/CRP.16) is contained in appendix II to the report of the Working Group.

8. The Working Group took note of a working paper submitted by Ukraine and co-sponsored by Kazakhstan and the Russian Federation, entitled “Questionnaire on possible options for future development of international space law”

(A/AC.105/C.2/2004/CRP.14) and noted that the working paper could be considered by the Legal Subcommittee at its forty-fourth session.

9. The view was expressed that one of the tasks of the Working Group should be to develop model guidelines that could be made available to States seeking to develop national space legislation. Such guidelines could be similar to those developed by the International Telecommunication Union in the context of the telecommunications development programme in order to assist Member States to introduce national legislation to re-regulate telecommunications markets.

*Notes*

<sup>a</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 20 (A/58/20), para. 153.*

## Appendix I

### **Model letter from the Secretary-General to the Ministers for Foreign Affairs of States that have not yet become parties to the United Nations treaties on outer space**

Excellency,

I have the honour to refer to resolution 58/89 of 9 December 2003, by which the General Assembly reaffirmed the importance of international cooperation in developing the rule of law, including the relevant norms of space law and their important role in international cooperation for the exploration and use of outer space for peaceful purposes, and urged States that had not yet become parties to the five United Nations treaties on outer space to give consideration to ratifying or acceding to those treaties as well as incorporating them in their national legislation.

There has been a significant rise in the importance to States of space science and space applications, which enable greater understanding of the universe and contribute to advances in education, health, environmental monitoring, the management of natural resources, disaster management, meteorological forecasting, climate modelling, information technology, satellite navigation and communications, and generally to the well-being of humanity through economic, social and cultural development.

Over the past decade, significant changes have occurred in the structure, substance and intensity of space activities, as reflected in the growing number of participants in such activities. States are noting the benefits of the application of space technologies to meet the unprecedented challenges of sustainable development. The benefits derived from the exploration of outer space and from the use of space technologies now play a major role in everyday life.

In view of the above, the development of and support for a corresponding international legal regime should be considered by States as a matter of priority. Such a regime underpins international space cooperation and enables all States to have equal access to benefits deriving from the exploration and uses of outer space.

In its resolution entitled “The Space Millennium: Vienna Declaration on Space and Human Development”, endorsed by the General Assembly in its resolution 54/68 of 6 December 1999, the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) recognized that the orderly conduct of space activities was beneficial to all countries, whether or not they had already become active in space research or had started to utilize space applications, and that active support for space activities was expressed in the observance by States and by international organizations of the provisions of the outer space treaties.

The United Nations treaties on outer space work for the benefit and in the interests of all States parties to those treaties. The benefits arising from adherence to the treaties are truly evident to all States, irrespective of the degree of their economic or scientific development. Wide acceptance by States of the responsibilities contained in the treaties would guarantee broad international

cooperation in the scientific, as well as the legal, aspects of the exploration and uses of outer space for peaceful purposes.

I would greatly appreciate, Excellency, your support in encouraging your country to consider adherence to the United Nations treaties on outer space. For your convenience, an explanatory document has been attached to the present letter; the document includes a list of the benefits that may be derived by States that have decided to become parties to the United Nations treaties on outer space.

I look forward to welcoming your State as a party to the United Nations treaties on outer space.

Please accept, Excellency, the assurances of my highest consideration.

## **Document to be attached to the letter from the Secretary-General**

### **United Nations treaties on outer space**

#### **Introduction**

In its resolutions each year on international cooperation in the peaceful uses of outer space, the General Assembly has reaffirmed the importance of international cooperation in developing the rule of law, including relevant norms of space law and their important role in international cooperation for the exploration and use of outer space for peaceful purposes, and has urged States that have not yet become parties to the treaties governing the use of outer space to give consideration to ratifying or acceding to them, as well as incorporating them into their national legislation. Each treaty contains a mechanism for adherence and States may adhere to selected or to all treaties.

In its resolution entitled “The Space Millennium: Vienna Declaration on Space and Human Development”, endorsed by the General Assembly in its resolution 54/68 of 6 December 1999, the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) called for action to be taken to promote the efforts of the Committee on the Peaceful Uses of Outer Space in the development of space law by inviting States to ratify or accede to the United Nations treaties on outer space.

The five United Nations treaties on outer space are:

(a) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the “Outer Space Treaty”, General Assembly resolution 2222 (XXI), annex): opened for signature on 27 January 1967; entered into force on 10 October 1967; 98 ratifications and 27 signatures as at 1 January 2004;

(b) Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the “Rescue Agreement”, General Assembly resolution 2345 (XXII), annex): opened for signature on 22 April 1968; entered into force on 3 December 1968; 88 ratifications, 25 signatures and 1 acceptance of rights and obligations as at 1 January 2004;

(c) Convention on International Liability for Damage Caused by Space Objects (the “Liability Convention”, General Assembly resolution 2777 (XXVI), annex): opened for signature on 29 March 1972; entered into force on 1 September 1972; 82 ratifications, 25 signatures and 2 acceptances of rights and obligations as at 1 January 2004;

(d) Convention on Registration of Objects Launched into Outer Space (the “Registration Convention”, General Assembly resolution 3235 (XXIX), annex): opened for signature on 14 January 1975; entered into force on 15 September 1976; 45 ratifications, 4 signatures and 2 acceptances of rights and obligations as at 1 January 2004;

(e) Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the “Moon Agreement”, General Assembly resolution 34/68, annex): opened for signature on 18 December 1979; entered into force on 11 July 1984; 10 ratifications and 5 signatures as at 1 January 2004.

### **Indicative list of benefits to, and rights and obligations of, parties to the United Nations treaties on outer space**

1. The exploration and use of outer space is carried out for the benefit and in the interests of all mankind.
2. Outer space and celestial bodies are free for exploration and use by all States on the basis of equality and in accordance with international law.
3. In the exploration and use of outer space, States are guided by the principle of cooperation and mutual assistance and conduct all their activities in outer space with due regard for the corresponding interests of other States.
4. States parties can participate in further law-making to develop the existing regime.
5. Adherence of a State to the United Nations treaties on outer space could increase its attractiveness to potential foreign partners seeking international cooperation in the exploration and use of outer space.
6. Adherence of a State to the United Nations treaties on outer space could increase its involvement in international cooperation mechanisms and, as a consequence, improve its access to scientific, meteorological and other space-related data.
7. Adherence to the United Nations treaties on outer space provides international rules and procedures for the peaceful settlement of disputes and for claiming compensation and guarantees the protection of the interests of States and their nationals who fall victim to damage caused by space objects.
8. Adherence of a State to the United Nations treaties on outer space can increase its confidence in the safety of space activities as the treaties require States to bear international responsibility for national activities in outer space and to provide the necessary authorization and supervision of such activities in line with the principles set forth in the treaties.

9. The activities of States in the exploration and use of outer space should be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.
10. Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation or by any other means.
11. States bear international responsibility for national activities in outer space, whether they are carried out by government agencies or by non-governmental entities, and for ensuring that national activities are carried out in conformity with the principles set forth in the United Nations treaties on outer space.
12. A State party in whose registry an object launched into outer space is recorded shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body.
13. Each State that launches or procures the launching of an object into outer space, and each State from whose territory or facility an object is launched, is internationally liable for damage to a foreign State or to its natural or juridical persons by such object or its component parts on the Earth, in airspace, or in outer space.
14. States parties to the treaties are encouraged to pursue studies of outer space, including the Moon and other celestial bodies, and when exploring outer space, they are required to avoid its harmful contamination, as well as to avoid precipitating adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter.
15. States parties to the treaties undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kind of weapon of mass destruction, install such weapons on celestial bodies or station such weapons in outer space in any other manner. The Moon and other celestial bodies shall be used by all States parties exclusively for peaceful purposes.

## Appendix II

### **Draft resolution on the application of the concept of the “launching State”, for consideration by the General Assembly**

#### **Application of the concept of the “launching State”**

*The General Assembly,*

*Recalling* the Convention on International Liability for Damage Caused by Space Objects<sup>a</sup> and the Convention on Registration of Objects Launched into Outer Space,<sup>b</sup>

*Bearing in mind* that the term “launching State” as used in the Liability Convention and the Registration Convention is important in space law, that a launching State shall register a space object in accordance with the Registration Convention and that the Liability Convention identifies those States which may be liable for damage caused by a space object and which would have to pay compensation in such a case,

*Taking note* of the report of the Committee on the Peaceful Uses of Outer Space on its forty-second session<sup>c</sup> and the report of the Legal Subcommittee on its forty-first session, in particular the conclusions of the Working Group on the agenda item entitled “Review of the concept of the ‘launching State’”, annexed to the report of the Legal Subcommittee,<sup>d</sup>

*Noting* that nothing in the conclusions of the Working Group or in the present resolution constitutes an authoritative interpretation of or a proposed amendment to the Registration Convention or the Liability Convention,

*Noting also* that changes in space activities since the Liability Convention and the Registration Convention entered into force include the continuous development of new technologies, an increase in the number of States carrying out space activities, an increase in international cooperation in the peaceful uses of outer space and an increase in space activities carried out by non-governmental entities, including activities carried out jointly by government agencies and non-governmental entities, as well as partnerships formed by non-governmental entities from one or more countries,

*Desirous* of facilitating adherence to and the application of the provisions of the United Nations treaties on outer space, in particular the Liability Convention and the Registration Convention,

1. *Recommends* that States conducting space activities, in fulfilling their international obligations under the United Nations treaties on outer space, in particular the Treaty on Principles Governing the Activities of States in the

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<sup>a</sup> General Assembly resolution 2777 (XXVI), annex.

<sup>b</sup> General Assembly resolution 3235 (XXIX), annex.

<sup>c</sup> *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* and corrigendum (A/54/20 and Corr.1).

<sup>d</sup> A/AC.105/787, annex IV, appendix.

Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,<sup>e</sup> the Convention on International Liability for Damage Caused by Space Objects and the Convention on Registration of Objects Launched into Outer Space, as well as other relevant international agreements, consider enacting and implementing national laws authorizing and providing for continuing supervision of the activities in outer space of non-governmental entities under their jurisdiction;

2. *Also recommends* that States consider the conclusion of agreements in accordance with the Liability Convention with respect to joint launches or cooperation programmes;

3. *Further recommends* that the Committee on the Peaceful Uses of Outer Space should invite Member States to submit information on a voluntary basis on their current practices regarding on-orbit transfer of ownership of space objects;

4. *Recommends* that States consider, on the basis of that information, the possibility of harmonizing such practices as appropriate with a view to increasing the consistency of national space legislation with international law;

5. *Requests* the Committee on the Peaceful Uses of Outer Space, in making full use of the functions and resources of the Secretariat, to continue to provide States, at their request, with relevant information and assistance in developing national space laws based on the relevant treaties.

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<sup>e</sup> General Assembly resolution 2222 (XXI), annex.

## Annex II

### **Report of the Chairperson of the Working Group on agenda item 8 (a), entitled “Matters relating to the definition and delimitation of outer space”**

1. At its 693rd meeting, on 29 March 2004, the Legal Subcommittee reconvened its Working Group on agenda item 8 (a), “Matters relating to the definition and delimitation of outer space”. At its 696th meeting, on 30 March, the Subcommittee elected Déborah Salgado Campaña (Ecuador) Chairperson of the Working Group.
2. The Chairperson drew the attention of the Working Group to the fact that, in accordance with the agreement reached at the thirty-ninth session of the Legal Subcommittee and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group would convene to consider only matters relating to the definition and delimitation of outer space.
3. The Working Group had before it the following documents:
  - (a) Note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States” (A/AC.105/635/Add.10);
  - (b) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects” (A/AC.105/C.2/L.249 and Corr.1).
4. The Chairperson recalled that the purpose of the document entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States” was to seek the preliminary views of Member States on various issues relating to aerospace objects.
5. The Chairperson also recalled the agreement of the Working Group, during the fortieth session of the Subcommittee, that the questionnaire on aerospace objects and the comprehensive analysis of replies received could serve as a basis for future consideration of the subject.
6. The Working Group noted with satisfaction that, since it had begun considering the questionnaire on aerospace objects, in 1996, more than 30 States had submitted replies to the questionnaire and that, in the past year, 7 States had submitted replies, which showed that there was interest in the item. The replies were contained in documents A/AC.105/635 and Add.1-7 and Corr.1 and Add.8-10. The Working Group also noted that the resulting compilation of information was a substantial achievement and had yielded useful information that had significantly facilitated its work and had been pivotal in the consideration of the definition and delimitation of outer space.
7. In accordance with the agreement reached by the Working Group at the forty-second session of the Legal Subcommittee, the Working Group considered the document entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects” (A/AC.105/C.2/L.249 and Corr.1), with a view to taking a decision on the need to continue consideration in the Working Group of the questionnaire on aerospace objects. In view of the progress

made and in the light of its deliberations, the Working Group concluded that consideration of the questionnaire should not be suspended.

8. The Working Group agreed that the Secretariat should be requested to compile in a single document all the replies to the questionnaire on aerospace objects that had been received from Member States and that the document should be made available to the members of the Committee on the Peaceful Uses of Outer Space and to others. The Working Group also agreed that, depending on the future decisions of the Legal Subcommittee and the Committee concerning the agenda item on the definition and delimitation of outer space, the compilation of replies might be regarded as a working document for establishing a technical or legal basis for the consideration of possible legal issues with regard to aerospace objects and matters relating to the definition and delimitation of outer space.

9. The Working Group agreed that the Legal Subcommittee could continue its consideration of the analytical summary at its forty-fourth session, in 2005, and that, in order to enhance its contents, Member States that had not yet replied to the questionnaire on aerospace objects should be invited to do so. That would ensure that the summary contained information from a larger and more representative number of States.

10. The Working Group agreed to invite member States of the Committee on the Peaceful Uses of Outer Space to indicate their preferences with regard to the views contained in the analytical summary and to submit them to the Secretariat for consideration by the Working Group as the next step towards reaching agreement on the item.

11. The view was expressed that the analytical summary provided evidence that legal issues with regard to aerospace objects did not necessarily need to be linked to the question of the definition and delimitation of outer space.

12. The view was expressed that the questionnaire, in its current form, should be considered final and that all replies received from Member States should be transmitted to the Committee on the Peaceful Uses of Outer Space, which might take note of them. That delegation was of the view that the issue should then be suspended until new events merited the consideration of the status of aerospace objects.

13. Some delegations expressed the view that it was necessary to delimit outer space in view of the fundamental differences between the legal regimes that applied respectively to airspace and outer space.

14. Some delegations expressed the view that the definition and delimitation of outer space remained a topical and important issue that should continue to be considered by the Working Group.

## Annex III

### **Report of the Chairman of the Working Group on agenda item 10, entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town, South Africa, on 16 November 2001)”**

1. In accordance with paragraph 9 of General Assembly resolution 58/89 of 9 December 2003, the Subcommittee, at its 693rd meeting, on 29 March 2004, established a Working Group on agenda item 10, entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town, South Africa, on 16 November 2001)”. The Working Group was chaired by Vladimír Kopal (Czech Republic).
2. Also in accordance with paragraph 9 of Assembly resolution 58/89, the Working Group considered separately the questions reflected in sub-item 10 (a), entitled “Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol”, and sub-item 10 (b), entitled “Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space”.
3. The Working Group held six meetings.
4. The Working Group had before it the report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>a</sup> (opened for signature at Cape Town, South Africa, on 16 November 2001) and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as supervisory authority under the protocol (A/AC.105/C.2/L.238).
5. Some delegations expressed the view that the United Nations could, in principle, assume the functions of supervisory authority under the future protocol.
6. Some delegations expressed the view that, if the United Nations were to assume the functions of supervisory authority, that would enhance the primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space.
7. Some delegations expressed the view that the functions of supervisory authority could, in principle, be entrusted to the United Nations and that there were no legal problems that would prevent the United Nations from assuming such a role. Those delegations noted that the questions raised with regard to liability and funding would, however, need to be further addressed.
8. Some delegations were of the view that the functions of supervisory authority fell outside the main objectives of the United Nations and expressed concern that, by assuming those functions, the United Nations would be used to provide a direct

service to private, commercial entities, which would be inconsistent with the mandate of the Organization.

9. The view was expressed that there was serious doubt as to whether, under the terms of its Charter, the United Nations or any of its organs could serve as supervisory authority under the future protocol, as to whether it would be advisable for it or them to do so and as to whether it would be appropriate for the United Nations to consider the question of other organizations outside the United Nations system serving in that capacity.

10. The view was expressed that, on a practical level, a decision needed to be taken on the possibility of the United Nations serving as supervisory authority under the future protocol so that the process could move forward and be completed in time for the adoption of the draft protocol. The view was also expressed that consideration of the matter needed to be concluded in time to permit further action by other competent bodies of the United Nations system prior to the convening of the diplomatic conference.

11. The view was expressed that paragraphs 37, 41, 45, 46, 47 and 52 of the report of the Secretariat contained in document A/AC.105/C.2/L.238 represented serious legal obstacles to the assumption by the United Nations of the role of supervisory authority.

12. In response to a question, the Secretariat confirmed that the report of the Secretariat (A/AC.105/C.2/L.238), including its conclusions and recommendations, had not been superseded and continued to be valid.

13. Some delegations expressed the view that, in view of the issues identified in the report of the Secretariat (A/AC.105/C.2/L.238), further study was required before a decision could be taken on the appropriateness of the United Nations acting as supervisory authority under the future protocol.

14. The view was expressed that it would be useful to continue to study the practical experiences of the International Civil Aviation Organization (ICAO) in its role as supervisory authority under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment<sup>b</sup> before taking a final decision concerning the role of the United Nations under the future protocol on space assets. That delegation believed that the Working Group should also consider other possibilities, including the establishment by the Conference of the Parties to the Convention and to the future space assets protocol of a mechanism to appoint a supervisory authority consisting of States parties to the Convention once the Convention entered into force.

15. The view was expressed that it would not be appropriate for the Legal Subcommittee to consider the question of other entities assuming the functions of supervisory authority under the future protocol.

16. The observer for the International Institute for the Unification of Private Law (Unidroit) expressed the view that it was desirable to identify the supervisory authority as early as possible so that all the issues regarding the start-up funding for the registration system and, in particular, the apportionment of that funding could be agreed upon in advance of the diplomatic conference to adopt the future protocol. The observer for Unidroit was also of the view that the functions of supervisory authority were administrative rather than quasi-legislative or quasi-judicial. He

explained that the regulations would be developed by Governments and that the role of the supervisory authority would merely be to promulgate them. He also explained that, with regard to the review of the fee structure of the international registry, those functions should not be regarded as quasi-legislative or quasi-judicial. He further explained that the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held at Cape Town, South Africa, from 29 October to 16 November 2001, had assigned those functions to the supervisory authority in order to ensure that the fees charged were the minimum necessary to cover the costs of operating the registry.

17. The Working Group agreed that a number of both practical and fundamental issues remained to be resolved before the Subcommittee could decide on whether it would be appropriate for the United Nations to act as supervisory authority under the future protocol.

18. The Working Group agreed to establish an open-ended ad hoc working group, made up of at least two representatives from each of the regional groups, to continue by electronic means, between the forty-third and forty-fourth sessions of the Subcommittee, the consideration of the question of the appropriateness of the United Nations acting as supervisory authority, with a view to preparing a report, including the text of a draft resolution, to be submitted to the Subcommittee for consideration at its forty-fourth session, in 2005. The Working Group agreed to appoint the Netherlands as coordinator of the open-ended ad hoc working group.

19. The view was expressed that the norms of public international law contained in the United Nations treaties on outer space should prevail over the norms contained in the future protocol.

20. Some delegations expressed the view that the wording of article XXI (bis), which currently appeared in square brackets in the revised text of the preliminary draft protocol, and which had been agreed upon by the first session of the Unidroit committee of governmental experts adequately addressed the relationship between the draft protocol and the United Nations treaties on outer space.

#### *Notes*

<sup>a</sup> DCME Doc. No. 74 (ICAO).

<sup>b</sup> DCME Doc. No. 75 (ICAO).