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Draft report

Annex II

Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space

1. At its 917th meeting, on 4 April 2016, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space reconvened its Working Group on the Definition and Delimitation of Outer Space under the chairmanship of José Monserrat Filho (Brazil).
2. The Chair drew the attention of the Working Group to the fact that, pursuant to the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee at its forty-third session, both in 2000, and pursuant to General Assembly resolution 70/82, the Working Group was convened to consider only matters relating to the definition and delimitation of outer space.
3. The Working Group had before it the following:
 - (a) Note by the Secretariat on national legislation and practice relating to the definition and delimitation of outer space (A/AC.105/865/Add.16 and 17);
 - (b) Note by the Secretariat on questions on suborbital flights for scientific missions and/or for human transportation (A/AC.105/1039/Add.6);
 - (c) Note by the Secretariat on definition and delimitation of outer space: views of States members and permanent observers of the Committee (A/AC.105/1112 and addendum);
 - (d) A conference room paper entitled “Replies from the Chair of the Space Law Committee of the International Law Association to the Committee on the



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

4. The Working Group discussed a number of replies contained in the documents referred to in paragraph 3 above.
5. The Working Group noted the proposal of the Chair to begin to take a flexible and pragmatic approach to the definition and delimitation of outer space; considering that States have different views on the definition and delimitation of outer space, it was important to find a common vision and to attempt to arrive at a commonly agreed standpoint, taking into account all positions and views.
6. Some delegations expressed the view that scientific and technological progress, the commercialization of outer space, the participation of the private sector, emerging legal questions and the increasing use of outer space in general had made it necessary for the Subcommittee to consider the definition and delimitation of outer space.
7. Some delegations expressed the view that there was no need to seek a legal definition or delimitation of outer space and that States should continue to operate under the current framework, which presented no practical difficulties, until such time as there was a demonstrated need and a practical basis for developing a definition or delimitation of outer space.
8. Some delegations expressed the view that the definition and delimitation of outer space would help to establish a single legal regime regulating the movement of an aerospace object and to bring about legal clarity in the implementation of space law and air law, as well as clarify the sovereignty and international responsibility of States and the boundary between airspace and outer space.
9. Some delegations expressed the view that by defining outer space, the Working Group would also define airspace, even if indirectly. This would raise the question whether the Working Group had been mandated to do so, and would also raise practical questions such as what instruments would be needed to implement the new definitions and how those instruments would be enforced.
10. Some delegations expressed the view that there had never been any practical case that convincingly demonstrated a need to define and delimit outer space. The same delegations were also of the view that specific cases brought up by various actors conducting space activities could revitalize the discussion in the Working Group.
11. The view was expressed that, in order to progress in its work, the Working Group could continue to consider national legislation or any national practices that might exist or were being developed that related directly or indirectly to the definition and/or delimitation of outer space and airspace.
12. Some delegations expressed the view that, in relation to the definition and/or delimitation of outer space, it would be preferable to focus on the function and purpose of an object rather than on its location to determine if and when space law should govern its operation.
13. Some delegations expressed the view that the delimitation of outer space was closely connected with the management of space activities and that the Subcommittee and its Working Group should first concentrate on relevant matters

that needed practical solutions, such as suborbital flights, the operation of drones and launches from flying objects.

14. The view was expressed that outer space might be delimited at an altitude of 110 km above sea level.

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

16. Some delegations expressed the view that the Working Group should continue to find consensus on the definition and delimitation of outer space and called upon States to make every effort necessary to reach a positive and legally sound solution.

17. Some delegations expressed the view that alternative approaches to the definition and delimitation of outer space should be given serious consideration.

18. The view was expressed that it became more important to find a practical solution for the definition and delimitation of outer space in view of the increasing involvement of the private sector in space activities. The delegation expressing that view was also of the view that the limits of airspace and outer space could be considered in a broader perspective, without linking the issue to criteria that had been under discussion for a long time.

19. The Working Group noted that paragraphs 3 and 4 of article II of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets established that the Protocol “does not apply to objects falling within the definition of ‘aircraft objects’ under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment except where such objects are primarily designed for use in space, in which case this Protocol applies even while such objects are not in space” and that the Protocol “does not apply to an aircraft object merely because it is designed to be temporarily in space”.

20. On the basis of its discussions, the Working Group agreed:

(a) To continue to invite States members of the Committee to submit information on national legislation or any national practices that might exist or were being developed that related directly or indirectly to the definition and/or delimitation of outer space and airspace;

(b) To continue to invite States members and permanent observers of the Committee to submit concrete and detailed proposals regarding the need to define and delimit outer space, or justifying the absence of such a need, or to provide the Working Group with specific cases of a practical nature relating to the definition and delimitation of outer space and the safety of aerospace operations. Such structured, consistent and grounded contributions would be considered by the Working Group at its future meetings;

(c) To continue to invite States Members of the United Nations and permanent observers of the Committee to provide their replies to the following questions:

(i) Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?

- (ii) Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?
 - (iii) How could suborbital flights for scientific missions and/or for human transportation be defined?
 - (iv) Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?
 - (v) How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?
 - (vi) Please propose other questions to be considered in the framework of the legal definition of suborbital flights for scientific missions and/or for human transportation;
- (d) To invite, through the Secretariat, taking into account the proposal made by the Chair as reflected in paragraph 5 above, States members and permanent observers of the Committee to provide their replies to the following questions:
- (i) Does your Government or organization agree with the following statement? “Considering that States have different views on the definition and delimitation of outer space, it is important to find a common vision and to attempt to arrive at a commonly agreed standpoint, in a flexible manner, taking into account all positions and views of States”;
 - (ii) If so, how could the work to achieve the aims referred to in that statement be envisioned, in concrete and pragmatic terms? Please submit a concrete and detailed proposal;
- (e) To invite, through the Secretariat, representatives of the World Meteorological Organization to present their position and view on the definition and delimitation of outer space, as contained in document A/AC.105/1112, at the meetings of the Working Group to be held during the fifty-sixth session of the Legal Subcommittee, in 2017.