

AUSTRIA, Item 15

**Sixty-first Session
of the Legal Subcommittee
of the Committee on the Peaceful Uses of Outer Space
Statement by Mr. Thomas Loidl, Austria
28 March 2022**

Agenda item 15

**General Exchange of Views on potential legal Models for Activities
in the Exploration, Exploitation and Utilization of Space Resources**

Madame Chair,

At the outset of this meeting let me express Austria's full solidarity with Ukraine and the Ukrainian people. Austria condemns in the strongest possible terms Russia's unprovoked and unjustified act of aggression against Ukraine, which grossly violates international law and the UN Charter.

This act of aggression is a serious violation of Article 2 Paragraph 4 of the UN Charter, which prohibits the threat of use of force against the territorial integrity or political independence of any State. This prohibition is a peremptory norm of international law that all States must abide by.

Madame Chair,

Let me now warmly welcome you as the Chair of the Legal Subcommittee. We congratulate you on your election and can assure you of Austria's full support and cooperation.

I also would like to express our thanks and appreciation to Ms. Aoki Setsuko for having guided the Legal Subcommittee so successfully during a difficult period.

Austria also expresses its gratitude to Ms. Simonetta di Pippo for her competent leadership as the Director of the UN Office for Outer Space Affairs and we wish her all the best for her next position.

Madame Chair

We witness an increased interest by space-faring nations in activities on celestial bodies in general and activities involving space resources in particular. In previous sessions of the Legal Subcommittee, we had rich discussions on a broad range of issues relating to the interpretation of applicable international space law on the issue of exploration, exploitation and utilization of space resources.

Austria once again welcomes the establishment of the Working Group on potential legal models for activities in the exploration, exploitation and utilization of space resources at the 60th Session of the Legal Subcommittee, which we consider one of the primary achievements of the last Session of the Committee.

Under the able Co-Chairmanship of Ambassador Misztal from Poland and Prof. Freeland from Australia, we are convinced that the discussions in the newly established Working Group will be guided towards increased legal certainty and predictability for all private and public actors intending to explore, exploit and utilize space resources.

I have already mentioned the growing interest in new projects and missions aimed at space resources activities. While it may still take time until such activities will be carried out on a commercial basis and be profitable, national legislation has been enacted recently, which makes it all the more pertinent to address the international law framework in which such activities may be undertaken.

The 1967 Outer Space Treaty, currently ratified by 111 States and signed by a further 23 States, provides the basic framework of international space law, including the principles

- that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind;
- That outer space shall be free for exploration and use by all States;
- and that outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

We see the need in the course of the discussions in the Working Group on Space Resources to develop our common understanding of the principles set out in the Outer Space Treaty in more detail.

While it is uncontended that the appropriation of outer space, including the moon and other celestial bodies, is prohibited under international law, it is still to be discussed if

non-renewable space resources, such as minerals and water, can be subjected to an ownership regime.

Comparable legal regimes of areas beyond the limits of national jurisdiction of the Law of the Sea and in particular regimes developed and implemented under UNCLOS, could be taken as a reference point and as a source of inspiration for solutions on the legal status of space resources.

In addition to the regime of the High Seas contained in Chapter VII of UNCLOS and in particular the principle of the freedom of the High Seas as set out in Art. 87ff. of the Convention, which allows for the free use of the High Seas including its resources, such as fishing, also the legal regime of the “Area” contained in Chapter XI of UNCLOS should be taken into consideration in the discussions of the Working Group on Space Resources.

Chapter XI UNCLOS establishes an international legal regime for the exploration and exploitation of the non-living resources of the “Area” – which is “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” as defined in Art. 1 UNCLOS. This regime addresses issues, which are also pertinent to the exploration and exploitation of space resources, such as the possibility of conflicting claims, the non-renewable character of the resources and environmental concerns.

Even if one answers the question of appropriation of space resources in the affirmative, it has to be established how the principles enshrined in the UN space treaties can be ensured in the exploration, exploitation and utilization of space resources.

The Working Group is tasked to elaborate and develop potential legal models for space resources activities and in this regard, Austria proposes to tackle a number of questions, in particular:

- How it can be ensured that space resources activities are carried out for the benefit and in the interests of all countries (Art. I OST)?

- How can it be ensured that outer space remains free for exploration and use by all States without discrimination of any kind (Art. I OST)?
- How can free access to all areas of celestial bodies be ensured (Art. I OST)?
- How can it be ensured that space resource mining does not amount to national appropriation of certain territories in outer space (Art. II OST)? This question is important in view of the fact that Art. II OST does not only prohibit “claims of sovereignty”, which allegedly require an “intention” to extend national sovereignty to celestial bodies, but it also prohibits national appropriation “by means of use or occupation, or by any other means”.
- We would also like to tackle the question in the Working Group how it can be ensured that due regard is given to the corresponding interests of all other States Parties (Art. IX OST)?
- And finally, how can it be ensured that all stations, installations, equipment and space vehicles will be open to representatives of other states based on reciprocity (Art. XII OST)?

Madame Chair,

Austria is of the view that, in order to implement these and other principles enshrined in the UN space treaties and affirmed by UN General Assembly resolutions, a multilateral approach is necessary. Such a multilateral approach should facilitate to the greatest extent possible the exploration, exploitation and use of the natural resources of the moon and other celestial bodies, while respecting international law.

In our view, activities should be coordinated at the international level in order to avoid competing interests and conflicts. Furthermore, appropriate international standards of safety for those activities need to be set.

Any space resource activity should be based on the principles of sustainable use of natural resources, avoidance of harmful contamination, and efficiency. Space resource activities should be implemented in a coherent, sustainable and equitable manner. Such a multilateral approach would give legal certainty to states as well as commercial actors and investors in space resources activities.

Madame Chair,

Austria is a Party to the “Agreement Governing the Activities of States on the Moon and Other Celestial Bodies” – the “Moon Treaty” - and we would like to encourage States, which have not done so, to become Parties to the Moon Treaty. We remain convinced that participation in the Moon Treaty offers substantial benefits and guarantees in addition to participation in the other four UN treaties on outer space.

Art. 11 of the Moon Treaty envisages an “international regime” for the exploitation of resources on celestial bodies, but this regime is not yet defined. Art. 11 provides that such a regime should be developed by the State Parties as the exploitation of space resources is about to become feasible. We are now facing this situation and should therefore make use of the general framework laid out in the Moon Treaty.

States not Parties to the Moon Treaty can find ample leads to multilateralism also in the Outer Space Treaty. The benefit and the interest of all States, as aimed at by the Outer Space Treaty, the necessary consultations foreseen, and the quest for international cooperation, in our view, also call for a multilateral approach on the issue of space resources.

Madame Chair,

In concluding, let me underline that Austria believes that the Legal Subcommittee of COPUOS as the prime multilateral body with the mandate to promote the development of international space law is the forum in which the potential legal models for activities in exploration, exploitation and utilization of space resources should be discussed and developed.