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**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Forty-third session
Vienna, 29 March-8 April 2004

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

Addendum

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

1. The Legal Subcommittee recalled that the General Assembly, in its resolution 58/89 of 9 December 2003, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the 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).

2. 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).

3. 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.

4. 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 air space and outer space respectively.

5. 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.

6. 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.

7. 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 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) and the treaties of ITU.

8. 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.

9. 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.

10. As mentioned in paragraph [...] above, at its 693rd meeting, on 29 March, the Legal Subcommittee re-established 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.

11. The Working Group on agenda item 8 (a) held [...] meetings. At its [...] meeting, on [...] April, the Subcommittee endorsed the report of the Working Group, which is contained in annex [...] to the present report.

12. 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. [...]).

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

13. The Legal Subcommittee noted that the General Assembly, in its resolution 58/89 of 9 December 2003, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the 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.

14. The Subcommittee noted that, at its fortieth session, the Scientific and Technical Subcommittee 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.

15. 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.

16. The view was expressed that it was necessary for the 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.

17. 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 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.

18. 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.

19. The full text of the statements made during the discussions on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

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)

20. 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).

21. 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.

22. 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 the 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 the International Institute for the Unification of Private Law (Unidroit) on International Interests in Mobile Equipment (opened for signature in Cape Town on 16 November 2001) 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”.

23. 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.

24. 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). [...] meetings of the informal consultations had been held between 31 March and [...] April 2004.

25. During the informal consultations, a detailed 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 rapid review of the draft text for chapters V and VI (A/AC.105/C.2/2004/CRP.[...]) was also conducted in order to obtain general comments.

26. 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.....).