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Other matters

Comments on the working paper submitted by the Chairman on the future role and activities of the Committee on the Peaceful Uses of Outer Space (A/AC.105/L.268 and Corr.1)

Working paper submitted by the Czech Republic**

1. The Czech Republic has supported from the beginning the idea of holding discussions on the future role and activities of the Committee on the Peaceful Uses of Outer Space and of asking its Chairman to draft a working paper on the subject. The Czech Republic considers the working paper prepared by the Chairman (A/AC.105/L.268 and Corr.1) a thoughtful basis for discussion, because it not only presents an evaluation of the work of the Committee and its Subcommittees, but also describes a number of initiatives that could lead to further useful outcomes from the work of the Committee. The Czech Republic feels, however, that there remains in the document a certain lack of balance between the thrust devoted to scientific and technological matters, on the one hand, and the interest in legal issues, on the other. Therefore, our comments relate mostly to legal issues covered in the document and to increasing the possible input of the Legal Subcommittee to the activities of the Committee.

2. The working paper deals with the work of the Legal Subcommittee mainly in paragraph 9 and, in principle, the Czech Republic agrees with the evaluation of the Chairman. Indeed, the consideration of the concept of the “launching State”, which led to the adoption of General Assembly resolution 59/115 of 10 December 2004, and the review of practice of States and international organizations in registering space objects, which resulted in Assembly resolution 62/101 of 17 December 2007,

* A/AC.105/L.270.

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represent substantive outcomes of the efforts of the Legal Subcommittee to clarify and develop certain aspects related to the implementation of the legal regime on outer space. These items were considered by special working groups on the basis of multi-year workplans and the discussions thereon were part of the most fruitful debates in the Legal Subcommittee in recent years. The Czech Republic is also able to welcome the agreement to include on the agenda of the Legal Subcommittee a new item under this category, namely, “General exchange of information on national legislation relevant to the peaceful exploration and use of outer space”.

3. At the same time, it should not be overlooked that, unlike the Scientific and Technical Subcommittee (which now has on its agenda three items to be considered under workplans and in the previous year had even more such items), the Legal Subcommittee for several years has had but one such item before it. Moreover, the subjects related to that item did not lead to further development of space law, but rather to facilitating the application of existing rules and to some improvements of practice in limited areas of space law. However, there are a number of issues that deserve consideration by the Legal Subcommittee for development of possible regulations, some of which have been suggested, even repeatedly, by members of the Subcommittee for years. This is a problem that should not be left out of the debate on the future activities of the Committee and the contribution of the Legal Subcommittee to the Committee’s aims.

4. Possible roles of the Legal Subcommittee are also mentioned in some other paragraphs of the working paper. Thus, for example, the idea, presented in paragraph 20, of inviting the Chairman of the International Committee on Global Navigation Satellite Systems to report not only to the Scientific and Technical Subcommittee, but also to the Legal Subcommittee on legal aspects of the delivery of global satellite navigation services addressed within the International Committee, should be welcomed. The Legal Subcommittee should be encouraged to develop recommendations for the Committee on the Peaceful Uses of Outer Space related to further action in that direction. For this purpose, in the opinion of the Czech Republic, an appropriate item might be included in the agenda of the Legal Subcommittee as a single issue for one-year consideration.

5. On the other hand, some other parts of the working paper would need further elaboration, with due regard to the possible participation of the Legal Subcommittee and, eventually, also of non-governmental organizations engaged in the field of space law.

6. Firstly, paragraphs 26 to 29 of the working paper deal with the topic of “rules of the road”. Although the aim of this topic should not be oriented towards modifications of the present treaty regime, the development of recommendations to deal with the new realities of space operations could lead to the adoption of appropriate rules. And who else would qualify to help in this effort other than lawyers: delegates to the Legal Subcommittee and members of relevant non-governmental organizations? Therefore, if a working group is established to analyse the concept of rules of the road for future space operations, not only should the International Telecommunication Union and the International Civil Aviation Organization be encouraged to participate actively in such a working group, but cooperation with the Legal Subcommittee and relevant non-governmental organizations should also be sought, in order to explore various avenues and possibilities in the development of appropriate rules.

7. Another issue that would require cooperation among relevant legal entities is the protection and conservation of designated areas of the Moon and other bodies of the solar system or of certain parts of outer space itself, as suggested in paragraphs 33 to 35 of the working paper. The necessary steps would consist not only of the selection of the sites but also of the measures for achieving their effective protection. In this respect, participation should be encouraged not only of the Committee on Space Research and the International Academy of Astronautics (IAA), but also of the International Institute of Space Law (IISL), the European Centre for Space Law and the International Law Association Space Law Committee. This is particularly important given that one of the United Nations space treaties, the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex), in its article 7, paragraph 3, has already envisaged the possibility of designating some areas of the Moon, and consequently also of other celestial bodies of our solar system, as “international scientific preserves for which special protection arrangements are to be agreed”. In addition, the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Assembly resolution 2222 (XXI), annex) as a whole, which is the main space law instrument of our times, must be duly taken into account when dealing with this issue.

8. Finally, the consideration of the development of “passenger space transport” envisioned in paragraphs 36-38 of the working paper would need a thorough analysis of related legal aspects. The Czech Republic agrees, as suggested in paragraph 38 of the working paper, that IISL and IAA, with the support of the International Astronautical Federation, should be invited “to consider the non-technical aspects of future commercial space transport systems”. However, an important role in such consideration, which should lead to proposing a long-term view of such developments and to reporting back to the Committee, also belongs to the Legal Subcommittee. As a preparatory step to a more detailed consideration of the issue, at least a single issue/item for discussion should be included in the agenda of the Legal Subcommittee in due time.

9. Certainly, there are also some major topics that should be discussed in greater detail in the Committee and its Legal Subcommittee. One of them is the legal regime of exploration and use of the Moon and other celestial bodies, including the future exploitation of their resources. Its basis has been enshrined in the 1967 Outer Space Treaty and it was further developed in the 1979 Moon Agreement, which, however, has so far gained a limited number of adhesions. Nevertheless, the Moon Agreement, as one of the United Nations treaties on outer space that is in force, should be considered as such and might eventually be reviewed in the light of progress in the exploration of celestial bodies of our solar system in order to make it attractive for more States. The examination of the legal issues involved has already been the subject of several recent non-governmental discussions. This point was also raised in the Legal Subcommittee, and discussions on the issue are now within the mandate of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space. In the opinion of the Czech Republic, this topic should appear, sooner or later, as a separate item on the agenda of the Committee and both its Subcommittees.