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OF OUTER SPACE

REPORT OF THE LEGAL SUBCOMMITTEE ON THE WORK OF ITS THIRTY-SECOND SESSION (22 MARCH-8 APRIL 1993)

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INTRODUCTION

Opening of the session

1. The Legal Subcommittee held its thirty-second session at United Nations Headquarters in New York from 22 March to 8 April 1993.

2. At its opening, 562nd meeting, the Subcommittee agreed that Mr. Václav Mikulka (Czech Republic) retain the chairmanship of the Subcommittee. Mr. Mikulka, in his introductory statement, thanked the Subcommittee for the honour it had done to him and his country in re-electing him to the chairmanship, and briefly described the work to be undertaken by the Subcommittee at its current session. A summary of the Chairman's statement is contained in document A/AC.105/C.2/SR.562.

3. The Subcommittee paid tribute to the memory of Judge Manfred Lachs, member and former President of the International Court of Justice, who was the first Chairman of the Legal Subcommittee.

Adoption of the agenda

4. At the opening meeting, the Subcommittee adopted the following agenda (A/AC.105/C.2/L.191):

1. Opening of the session.

2. Statement by the Chairman.

3. Question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

4. 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.

5. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

Attendance

5. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Lebanon, Mexico, Mongolia, Netherlands, Niger, Nigeria, Pakistan, Philippines, Poland, Romania, Russian Federation, Spain, Sweden,

Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Viet Nam.

6. Representatives of the following specialized agencies and international organizations attended the session: International Atomic Energy Agency (IAEA), United Nations Educational, Scientific and Cultural Organization (UNESCO), International Telecommunication Union (ITU), European Space Agency (ESA), International Astronautical Federation (IAF) and International Law Association (ILA).

7. The Chairman informed the Subcommittee at its 562nd, 563rd, 566th and 567th meetings that requests to participate in meetings of the Subcommittee had been received from Bolivia, Cuba, Kazakhstan, the Libyan Arab Jamahiriya, Portugal, the Republic of Korea, Slovakia and Turkey. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, the Subcommittee could take no formal decision on the matter, but that the representatives of Bolivia, Cuba, Kazakhstan, the Libyan Arab Jamahiriya, Portugal, the Republic of Korea, Slovakia and Turkey might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

8. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies and other organizations attending the session, and of the secretariat of the Subcommittee, is contained in document A/AC.105/C.2/INF/25.

Organization of work

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

(a) Pursuant to the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, on a permanent basis, should rotate each year the order of consideration of substantive agenda items, 1/ it considered the three substantive items on its agenda (see para. 4 above) in the following order: item 3, item 4 and item 5;

(b) It re-established its Working Group on agenda item 3, open to all members of the Subcommittee, and agreed that Mr. Helmut Freudenschuss, the representative of Austria, should serve as its Chairman;

(c) It re-established its Working Group on agenda item 4, open to all members of the Subcommittee, and agreed that Mr. Estanislao Zawels, the representative of Argentina, should serve as its Chairman;

(d) It re-established its Working Group on agenda item 5, open to all members of the Subcommittee, and agreed that Mr. Raimundo González, the representative of Chile, should serve as its Chairman;

(e) It began its work with a plenary meeting to hear delegations wishing to address the Subcommittee, and then adjourned and reconvened, when appropriate, as a working group, or began its work as a working group.

10. The following delegations participated in the general exchange of views: Argentina, Brazil, China, Colombia, Cuba, France, Germany, India, Indonesia, Italy, Mexico, Nigeria, Russian Federation, United States of America, Uruguay, as well as ILA. The views expressed by these delegations are summarized in documents A/AC.105/C.2/SR.562-567 and 569.

11. The Working Group on agenda item 3 held five meetings. The Working Group on agenda item 4 held six meetings. The Working Group on agenda item 5 held six meetings.

12. The Chairmen of the working groups reported to the Subcommittee at its 571st meeting, on 8 April (see annexes I, II and III to the present report). The Subcommittee took note with appreciation of the reports and of the work done in the working groups.

13. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies and noted that the percentage of the use of conference services by the Subcommittee had improved lately. In view of this, the Chairman proposed and the Subcommittee agreed that the following measures, similar to those adopted in the past, should also be adopted at the current session of the Subcommittee:

(a) The Subcommittee and its working groups should begin their meetings punctually at the scheduled time, even if there was no quorum (14 members);

(b) The Office of Conference Services should be notified as early as possible whenever it was anticipated that any of the services usually provided were not going to be required. If possible, there should be 24 hours' prior notice;

(c) Informal consultations (i.e., outside the auspices of the Subcommittee and its working groups) should not interrupt the work of the Subcommittee or its working groups;

(d) The general rule for annexing documents to the report of the Subcommittee should be that normally any document would be annexed, if at all, only once - to the report of the session in which it was first submitted, but not to later reports;

(e) The Subcommittee should not have plenary meetings in the afternoons when the agenda items on nuclear power sources, on definition of outer space/geostationary orbit and on outer space benefits were considered. Instead, the working groups on these items should meet;

(f) Delegations wishing to speak at the Subcommittee's next plenary meeting should inform the Chairman of their intention before the adjournment of

the previous plenary meeting. If no such information was received by the Chairman, the next plenary meeting of the Subcommittee should be cancelled, and a working group should meet instead;

(g) The Subcommittee and its working groups should seek to schedule in advance informal consultations at which conference services would not be used. For this purpose, the Subcommittee and its working groups should decide as early as possible whether it is feasible to cancel in advance some of their formal meetings in order to have informal consultations among interested delegations. This measure, if adopted, should not preclude resorting to unscheduled informal consultations following a decision of the Subcommittee or a working group, if such consultations are deemed necessary for attaining progress in deliberations;

(h) The Subcommittee should seek to reduce, by one a week, the number of morning plenary meetings and to allocate the time saved for the meetings of relevant working groups. For this purpose, the Chairman should set a deadline for closing lists of speakers for the general exchange of views and for each of the substantive agenda items;

(i) The Subcommittee and its working groups should begin their morning meetings at 10 a.m., with the understanding that this does not relate to and does not affect the question of the length of the session.

14. As for specific steps to implement measure (g) indicated in paragraph 13 above, the Chairman proposed and the Subcommittee agreed not to schedule six formal afternoon meetings on 23, 24, 29 and 30 March, and on 2 and 5 April so that informal consultations among interested delegations could be held instead.

15. The Subcommittee agreed that a similar organization of work as agreed upon at the current session would again serve as the basis for organizing the work of the Subcommittee's thirty-third session.

16. The Chairman undertook informal consultations for the purpose of further improving the utilization of conference-servicing resources by the Subcommittee.

17. During those consultations, the question of the venue of the future meetings of the Legal Subcommittee was discussed. Differing points of view on the subject-matter of this question were expressed. It was observed that this matter was to be addressed by the Committee on the Peaceful Uses of Outer Space. It was felt that in considering this matter it would be useful for the Committee to have a statement from the Secretariat on the financial implications of different options in the resolution of this matter, those implications being one of the factors to be taken into account.

18. The question of the duration of the session and the allocation of time for consideration of the agenda items was also discussed. It was agreed that at its next session the Subcommittee, when adopting and following the schedule of work, should exercise flexibility in the allocation of time for consideration of items on its agenda. If the time provisionally allocated for the consideration of an item of its agenda is not fully used or is unlikely to be fully used, the Subcommittee should seek, on the basis of consensus, to use the time for the consideration of other items of the agenda, or, as the case may be and on the

assumption that three weeks are scheduled for the Legal Subcommittee session, to consider the possibility of concluding the session ahead of the scheduled date. The adoption of this measure is without prejudice to the position of various delegations concerning the duration of the Subcommittee's sessions.

19. In the course of a general exchange of views, some delegations expressed their grave concern over the threat of extending the arms race into outer space. They believed that every effort should be made to avert that danger and that the Committee on the Peaceful Uses of Outer Space, as well as its subcommittees, could make important contributions in that regard, playing a supportive role for other international forums dealing with the problem of preventing an arms race in outer space. Those delegations believed that machinery should be established for cooperation between the Committee on the Peaceful Uses of Outer Space and the Ad Hoc Committee on Prevention of the Arms Race in Outer Space of the Conference on Disarmament.

20. Other delegations, in the course of a general exchange of views, expressed the view that disarmament questions did not fall within the competence of either the Committee on the Peaceful Uses of Outer Space or its subsidiary bodies. They pointed out that the question of the prevention of an arms race in outer space was a matter for the Conference on Disarmament. They were of the view that the Committee and its subcommittees should not be distracted from the task of promoting international cooperation in the peaceful uses of outer space by being drawn into areas belonging to the mandate of other forums.

21. In the course of a general exchange of views, some delegations referred to the threat posed by space debris to man's future activities in outer space. Those delegations believed that an international agreement specifically focusing on space debris might be necessary, and that it was advisable for the Committee on the Peaceful Uses of Outer Space and its two subcommittees to begin consideration of all technical, legal and political issues relating to space debris.

22. The Subcommittee held a total of 10 meetings. The views expressed at those meetings are summarized in documents A/AC.105/C.2/SR.562 to 571.

23. At its 571st meeting, on 8 April, the Subcommittee adopted the present report and concluded the work of its thirty-second session.

I. QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (AGENDA ITEM 3)

24. The Chairman made an introductory statement on agenda item 3 at the 562nd meeting, on 22 March. He recalled that the General Assembly, at its forty-seventh session, had adopted the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (resolution 47/68 of 14 December 1992).

25. The Chairman drew attention to the fact that the General Assembly, in its resolution 47/67, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should consider, through its working group, the question of early review and possible

revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

26. The Subcommittee noted that the subject of the use of nuclear power sources in outer space had been under consideration in the Scientific and Technical Subcommittee at its thirtieth session in 1993, and that the relevant parts of the report of that Subcommittee were contained in document A/AC.105/543, chapter IV and annex III.

27. The views expressed by delegations during the debate on agenda item 3 are contained in summary records A/AC.105/C.2/SR.562 to 564.

28. The Subcommittee expressed its satisfaction that, after many years of hard work, the Principles Relevant to the Use of Nuclear Power Sources in Outer Space had been adopted, without a vote, by the General Assembly at its forty-seventh session. Taking this into account, the view was expressed that it was necessary to consider the question of selecting a new topic for the Legal Subcommittee.

29. As mentioned in paragraph 9 (b) above, the Subcommittee, at its 562nd meeting, re-established its Working Group on agenda item 3 under the chairmanship of Mr. H. Freudenschuss, representative of Austria.

30. At the 571st meeting, on 8 April 1993, the Chairman of the working group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex I to the present report.

II. 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 (AGENDA ITEM 4)

31. The Chairman made an introductory statement on agenda item 4 at the 565th meeting, on 26 March. He referred to the work of the Subcommittee at its thirty-first session in 1992.

32. The Chairman drew attention to the fact that the General Assembly, in its resolution 47/67, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, its consideration of 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.

33. The Subcommittee noted that the subject of the geostationary orbit had been under consideration in the Scientific and Technical Subcommittee at its thirtieth session, in 1993, and that the relevant part of the report of that Subcommittee was contained in document A/AC.105/543, paragraphs 67 to 75.

34. The Subcommittee had before it working papers submitted at its previous sessions under this agenda item. The Subcommittee also had before it a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192), submitted at its current session by the delegation of Colombia, which is set out in section A of annex IV to the present report.

35. The views expressed by delegations during the debate on agenda item 4 are contained in summary records A/AC.105/C.2/SR.565 to 568.

36. As mentioned in paragraph 9 (c) above, the Subcommittee, at its 562nd meeting, re-established its Working Group on agenda item 4 under the chairmanship of Mr. E. Zawels, representative of Argentina.

37. At the 571st meeting, on 8 April, the Chairman of the Working Group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex II to the present report.

III. CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (AGENDA ITEM 5)

38. The Chairman made an introductory statement on agenda item 5 at the 569th meeting, on 1 April 1993. He referred to the work of the Subcommittee at its thirty-first session in 1992.

39. The Chairman drew attention to the fact that the General Assembly, in its resolution 47/67, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its Working Group, its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

40. The Subcommittee had before it a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes" (A/AC.105/C.2/L.182/Rev.1), submitted at its current session by the delegations of Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela. The working paper is set out in section B of annex IV to the present report.

41. The views expressed by delegations during the debate on agenda item 5 are contained in summary records A/AC.105/C.2/SR.569 to 570.

42. As mentioned in paragraph 9 (d) above, the Subcommittee, at its 562nd meeting, re-established its Working Group on agenda item 5 under the chairmanship of Mr. Raimundo González, the representative of Chile.

43. At the 571st meeting, on 8 April 1993, the Chairman of the Working Group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex III to the present report.

Notes

1/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 20 (A/45/20), para. 143.

Annex I

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 3 (QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE)

1. On 22 March 1993, the Legal Subcommittee re-established its Working Group on agenda item 3.

2. The Working Group had before it the report of the Scientific and Technical Subcommittee on the work of its thirtieth session in 1993 (A/AC.105/543), which contained in its chapter IV a section on the use of nuclear power sources in outer space. The Working Group also had before it General Assembly resolution 47/68 of 14 December 1992, whereby the Assembly had adopted without a vote the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as well as General Assembly resolution 47/67 of 14 December 1992, which provided in paragraph 4 (a) that the Legal Subcommittee at its current session should consider, through its working group, the question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space.

3. The Working Group expressed its satisfaction that, after many years of hard work, the Principles Relevant to the Use of Nuclear Power Sources in Outer Space had been adopted, without a vote, by the General Assembly at its forty-seventh session.

4. The Chairman suggested that, in accordance with its mandate, the Working Group could proceed at the current stage, with a preliminary exchange of views on possible grounds for revision of the Principles, without undertaking such a revision itself, which principle 11 did not require at the current stage.

5. The Working Group considered that any future revision by it of the substantive scientific and technical provisions of the Principles should be based on developments which might occur in the scientific and technical fields, and that it was therefore advisable to await the input of the Scientific and Technical Subcommittee in that respect.

6. Some delegations expressed the view that the time which had elapsed between the adoption of the Principles and the current session of the Subcommittee had been insufficient for a meaningful assessment of the operation of those Principles in practice and that, therefore, the item under consideration should be deferred until the next session of the Subcommittee. Some delegations also expressed the view that the important role of the Principles, which had been adopted after many years of hard work, would be weakened if a discussion on possible shortcomings and defects of the Principles was undertaken immediately after their adoption. Other delegations expressed the view, however, that the Working Group should at its current session undertake such a discussion, whereby the concerns of various delegations with respect to the Principles, as adopted, could be freely expressed and recorded. Some delegations expressed the view that, in order not to weaken the impact of the Principles, which were already "soft law", an incremental approach to revising them should be considered,

whereby the Working Group would not reopen discussion on the principles already adopted, but would rather attempt to supplement those principles with new provisions if necessary.

7. With respect to principle 4, Safety assessment, some delegations expressed the view that the principle lacked a provision covering the case where a third State does not agree with the results of the safety assessment carried out by a launching State in conformity with paragraph 1, and made publicly available pursuant to paragraph 3. The view was expressed that this issue was closely linked to the question of notification prior to the launching of a space object carrying a nuclear power source on board. The view was expressed that the wording of principle 4 did not require the concurrence of third States with the results of the safety assessment carried out by a launching State and, accordingly, no provision was needed to cover the case where a third State disagreed with such results. The view was also expressed that in case a disagreement with the results of a safety assessment occurred, a dispute thus arose which could be resolved in accordance with principle 10. The view was further expressed that in case a third State was dissatisfied with the results of the safety assessment, such State could have recourse to the 1967 Outer Space Treaty, article IX, last sentence, which provides for holding consultations concerning an activity which may harmfully interfere with activities of other States.

8. The view was expressed that, in paragraph 3 of principle 4, there was a need to specify the time-limit within which the Secretary-General would be informed on how States might obtain the results of the safety assessment prior to each launch, since the current words "as soon as possible" were too vague.

9. Some delegations expressed the view that the Working Group should be allocated sufficient time for its deliberations next year.

10. The Working Group held its final meeting on 30 March 1993, when it considered and approved the present report.

Annex II

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 4 (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)

1. On 22 March 1993, the Legal Subcommittee re-established its Working Group on agenda item 4.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-first session in 1992 (A/AC.105/514), which contained, in annex II, the report of the Chairman of the Working Group at the thirty-first session. It also had before it the report of the Scientific and Technical Subcommittee on the work of its thirtieth session in 1993 (A/AC.105/543), which considered, in chapter VI, inter alia, the subject of the "physical nature and technical attributes of the geostationary orbit".

3. The following documents submitted at previous sessions of the Legal Subcommittee and of the Committee on the Peaceful Uses of Outer Space were referred to in the course of the discussions: "Approach to the delimitation of airspace and outer space", submitted to the Subcommittee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/C.2/L.139); "Draft general principles governing the geostationary orbit", submitted to the Subcommittee at its twenty-third session by the delegations of Colombia, Ecuador, Indonesia and Kenya (A/AC.105/C.2/L.147); "Draft basic provisions of the General Assembly resolution on the delimitation of airspace and outer space and on the legal status of the geostationary satellites' orbital space", submitted to the Committee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.112); "Compromise proposal on the question related to the definition and delimitation of outer space", submitted to the Committee at its thirtieth session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.168); "Questions concerning the legal regime for aerospace objects", submitted to the Subcommittee at its thirty-first session by the delegation of the Russian Federation; a "working non-paper" circulated at the Subcommittee's twenty-eighth session in 1989 (A/AC.105/430, annex II, para. 20); and a "working non-paper" circulated at the Subcommittee's thirtieth session in 1991 (A/AC.105/484, annex II, para. 12).

4. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that each aspect of the agenda item (namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other) should be discussed by the Working Group separately.

5. The views expressed in the discussion within the Working Group are summarized below.

Question of the definition and delimitation of outer space

6. At the request of a number of delegations, the delegation of the Russian Federation which had submitted, at the thirty-first session of the Subcommittee in 1992, a working paper entitled "Questions concerning the legal regime for aerospace objects" (A/AC.105/C.2/L.189), explained that the paper had been submitted as a starting-point and a stimulus for a discussion which might break the impasse in the debate between States which considered that delimitation of airspace and outer space was necessary, and States which considered that it was not. That delegation further explained that the views expressed in the paper were of a purely preliminary character, and that the list of questions contained in it was not exhaustive. In the view of that delegation, the international legal problems which might arise in connection with the future exploitation of aerospace systems would probably be rather complex, and therefore the input of all delegations to the debate on the Russian working paper was most welcome, even if certain comments were to contain criticism or alternative proposals.

7. Some delegations expressed the view that since the questions formulated in working paper A/AC.105/C.2/L.189 were directly relevant to aeronautical activities, it would be advisable to request the International Civil Aviation Organization (ICAO) to provide an opinion on the subject-matter of the paper, which opinion would be pertinent and helpful in the Subcommittee's work.

8. Some delegations expressed the view that, perhaps in addition to the above request addressed to ICAO, a questionnaire should be addressed to States Members of the United Nations requesting their views with regard to the questions contained in working paper A/AC.105/C.2/L.189, and that the information thus received would also be helpful for the debate.

9. The view was expressed that the approach suggested in working paper A/AC.105/C.2/L.189 might help to overcome various obstacles encountered so far in the discussion on the delimitation of airspace and outer space, and the discussion under this agenda item should eventually lead to the preparation of general principles governing the activities of States in the exploitation of aerospace systems.

10. The view was expressed that the approach advocated in working paper A/AC.105/C.2/L.189 would still require that the question of the delimitation of airspace and outer space be resolved, because the definition of "an aerospace object" in the paper was based on the object's potential to fly both in outer space and in airspace. In the view of that delegation, it would hardly be advisable to subject a flying object to different legal regimes merely because it crossed a certain imaginary line in the course of its flight. If such an approach were adopted, numerous legal difficulties would arise, concerning such areas as contractual rights, safety rules, the status of the aircraft commander and other areas which are now regulated under air law. In the view of that delegation, it might therefore be preferable to have, if one were needed at all, a single legal regime for aerospace objects.

11. Some delegations, having referred to relevant provisions of working paper A/AC.105/C.2/L.189, expressed the view that the question of the passage of an object, launched into outer space, through the airspace of foreign States would require further in-depth consideration.

12. The view was expressed that, in theory, an aerospace object may be subjected to a double regime based on the space - airspace or outer space - in which it flies, or to a single regime based on characterizing the object from a technical standpoint as either an aircraft or an outer space object. In the view of that delegation, the choice to be made with regard to this question would require further study.

13. The view was expressed that while there would be evident merits in having a single legal regime for aerospace objects, certain legal problems would continue to exist, in particular, the need to delimit airspace and outer space.

14. Some delegations expressed the view that the establishment of a legal framework for an activity involving the use of outer space should be preceded by the development of a relevant State practice, and that it would, therefore, be beneficial to have information concerning flights of aerospace objects already made, as well as concerning future programmes of such activities.

15. One delegation said that in order to make progress in dealing with the question of the definition and delimitation of outer space and as a follow-up to the ideas contained in the proposal put forward by the Russian Federation, it was necessary to initiate an in-depth discussion on those aspects on which the Legal Subcommittee could make recommendations to the Committee on the Peaceful Uses of Outer Space with a view to the drafting of general principles to govern those specific activities. Such a discussion would be without prejudice to the positions thus far taken by each delegation in dealing with the definition and delimitation of outer space. The same delegation suggested that some specific issues on which the Working Group could focus its discussions in future would be: (a) the launching of space vehicles and space objects and the period they spend in airspace; (b) aerodynamic properties of space vehicles and space objects; (c) questions relating to lift-off and re-entry into earth orbit during flight; (d) flight regime for space vehicles depending on their location; (e) procedures and notifications; and (f) possible revision of the registration of aerospace objects.

16. At the third meeting of the Working Group, on 30 March, the Chairman circulated an informal paper entitled "Draft questionnaire concerning aerospace objects" (A/AC.105/C.2/1993/CRP.1). The paper is appended to the report of the Working Group. The Chairman explained that the paper had been prepared by him in consultation with a number of delegations and should be considered as a starting-point for preparing a questionnaire to be sent to Member States.

17. Some delegations, while welcoming the Chairman's initiative, expressed the view that the paper could be restructured to better serve its purpose. Those delegations suggested that the questions currently contained in the paper should be divided into two groups: legal questions and technical questions. They further suggested that the legal questions should be divided into two subgroups: one dealing with de lege lata problems, the other, with de lege ferenda problems.

18. Some delegations expressed the view that question 1 of the Chairman's working paper should be reformulated to deal first with the State practice with regard to passage of space objects through foreign airspace, then with

opinio juris in this regard and finally with the existence of international customary law in this field.

19. Some delegations expressed the view that the eventual objective of the questionnaire was not quite clear and that more refinement of the document was needed. Those delegations believed that if any progress was to be achieved by following the suggested approach based on a questionnaire, extreme caution and care was needed.

20. The view was expressed that in questions 1 and 4 of the questionnaire, the term "space objects" should be replaced by "aerospace objects".

21. The view was expressed that there were two types of vehicles which could fall within the category of aerospace objects. The first category would include vehicles which passed through foreign airspace during launch or landing and which entered airspace from the outer space orbit and after that returned back to the orbit. The second category would include vehicles the main objective of which would be to provide transportation between two points on Earth while passing briefly through outer space. In the view of that delegation, the definition of an aerospace object suggested in working paper A/AC.105/C.2/L.189 was applicable to the first of the above two categories, and all vehicles belonging to that category were in fact universally considered space objects, although there was currently no agreed definition of the term "space object". That delegation believed that if the aerospace object under discussion fell within the first category, the various questions in the Chairman's draft questionnaire could be answered by regarding it as a space object, and it might become possible to determine whether there was a need to legally delimit airspace and outer space.

22. The view was expressed that while there existed a need to delimit and define outer space, the proposal to study aerospace systems had offered a way out of the stalemate reached on the delimitation question. The basic legal essence of aerospace systems is whether an object is identical with the medium of its transit. If so, what is the nature of the relationship of aerospace objects with outer space on the one hand and airspace on the other? Accordingly, a single legal regime approach based on the nature of objects does not seem to take satisfactorily into account the differences in the legal nature of airspace, which is subject to the sovereignty of the territorial State on the one hand, and the legal nature of outer space, which is open to the common use of all States on the other. Further, it was felt that the data required on aerospace systems relate to basic information which the sponsors and other States that launch such aerospace objects could provide. It was therefore stated that the idea of seeking the views of all States through the device of a questionnaire may not be useful at the current stage.

23. In summing up the discussion on the question of the definition and delimitation of outer space, the Chairman expressed the view that the debate had been characterized by a constructive and positive atmosphere which was conducive to achieving progress in the future.

Question of the geostationary orbit

24. At the commencement of the debate, the delegation of Colombia circulated a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192), which is set out in section A of annex IV to the report of the Subcommittee. The sponsor of the paper explained that the document had been formulated in such a way as to take into account the suggestions of various delegations with regard to a "working non-paper" concerning the geostationary orbit. These suggestions had been expressed with regard to that "non-paper" at previous sessions of the Subcommittee and of the Working Group. The same delegation said that the document sought to develop legal principles, such as equity and efficacy, which were already norms of positive law in the treaties of the International Telecommunication Union (ITU) regulating the natural resource of the geostationary satellite orbit. It was also explained that the issue was to find a legal solution to situations in which two or more countries claimed the same orbital position or neighbouring orbital positions, the location of which gave rise to significant radio incompatibilities or operating restrictions, placing a country which did not have access to the orbit or a developing country at a disadvantage compared with a country which already did have access or a developed country. It was further explained that such a regime would apply especially to services (orbit-frequency) which had not been planned a priori.

25. The Working Group expressed its appreciation at the submission of working paper A/AC.105/C.2/L.192. Some delegations, while noting that they would need time to study the paper thoroughly, expressed the view that a debate on the basis of the document would be useful and might result in achieving progress in the work.

26. Some delegations believed that the views of ITU would be very pertinent and useful in connection with the consideration of the current item. In the view of those delegations, working contacts with ITU were needed to ensure that the efforts of the Legal Subcommittee in the area under review would be consistent with the work of ITU with regard to the geostationary orbit.

27. In connection with working paper A/AC.105/C.2/L.192, the representative of ITU briefly described the legislative and treaty-making role of ITU with regard to the use of the geostationary orbit. He emphasized that the efforts of ITU in this field were aimed at guaranteeing efficient and equitable use of the geostationary orbit in accordance, in particular, with article 33 of the ITU Convention. He further expressed the hope that the work of the Legal Subcommittee concerning various aspects of the use of the geostationary orbit would be complementary to that of ITU and that there would be no prejudice to the role of ITU in this field.

28. Some delegations, while commending the submission of working paper A/AC.105/C.2/L.192, expressed the view that the Legal Subcommittee had no mandate to develop new legal principles which would lead to the establishment of a special legal regime referred to in paragraph 7 of the paper. Those delegations believed that ITU was quite successful in dealing with various aspects of the rational and equitable use of the geostationary orbit and that it was necessary to avoid any possible conflict of activities between ITU and other international bodies.

29. Other delegations expressed the view that the Legal Subcommittee had a mandate to deal with all aspects related to agenda item 4, without prejudice to the technical role of ITU; in this context, those delegations said that there was a need to establish a sui generis legal regime for regulating access to and the use of the geostationary orbit which took its special characteristics into account. Such a regime would have to guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries, including equatorial countries.

30. The view was expressed that the basic task of the Legal Subcommittee was to find new ways and means to ensure the rational and equitable use of the geostationary orbit, which, as was correctly noted in paragraph 5 of working paper A/AC.105/C.2/L.192, was a part of outer space. In the view of that delegation, it may be advisable to add to the existing provisions of the paper certain new elements concerning the need for exclusively peaceful uses of the orbit and the applicability of the law of outer space to it. That delegation believed that it was necessary to determine what legal gaps with regard to the geostationary orbit existed in the ITU legal regime, so that the Legal Subcommittee could fill those gaps without prejudice to the role of ITU. The same delegation further believed that, while paragraph 9 of the Colombian working paper dealt mainly with the resolution of potential conflicts which might arise in the use of the geostationary orbit, other aspects of the problem might be also addressed in this regard. For instance, there had to be an equitable relationship between the needs and interests of a developing country concerned and its share of utilization of the geostationary orbit. It was noted in this connection that a third category of States existed, apart from those that did not have access to the geostationary orbit on the one hand and those that had a crowded geostationary orbit on the other. Those were the States that had access to the geostationary orbit but in such a limited manner as to be insignificant compared to the needs and interests of such countries and the people. Those claims also merited to be duly reflected.

31. The view was expressed that there existed a close link between the use of the geostationary orbit as such and the use of radio-frequencies by the objects placed in the orbit. In the view of that delegation, the questions concerning the use of the geostationary orbit should be addressed in the context of the 1967 Outer Space Treaty, and the Legal Subcommittee should exercise extreme caution in its work so as not to affect adversely the role of ITU.

32. Some delegations expressed the view that both the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee had a mandate to consider questions relating to the use of the geostationary orbit with a view to elaborating general legal principles on this question. This work should be complementary to the activities of ITU, should be closely linked to them and should be without prejudice to the role of ITU. In the view of those delegations, the reference to the 1967 Outer Space Treaty contained in paragraph 3 of working paper A/AC.105/C.2/L.192 was very important, since the use of the geostationary orbit should definitely be for the benefit of all mankind.

33. In reply to a number of statements made during the debate, the delegation of Colombia explained that the objective of the Subcommittee's work with regard to the geostationary orbit should be the elaboration of legal principles, which

objective was fully consistent with the mandate of the Subcommittee. That objective was also entirely compatible with the activities of ITU, the role of which was several times emphasized in various provisions of working paper A/AC.105/C.2/L.192. Similarly, the significance of the 1967 Outer Space Treaty was also emphasized in the document. In the view of that delegation, the question concerning positions on the geostationary orbit and the question of the use of radio-frequencies were closely linked and should be dealt with together in order to find a legal solution for achieving effective, rational and equitable use of the orbit taking into account the needs of developing countries and the necessity to establish certain preferential rights for dealing with specific situations arising from the practical use of the geostationary orbit.

34. The view was expressed that the suggestions put forward in working paper A/AC.105/C.2/L.192 were closely linked with the ideas expressed in a "working non-paper" circulated at the Subcommittee's twenty-eighth session, in 1989, by a number of countries from the Group of 77. In the view of that delegation, the approach suggested by the delegation of Colombia constituted a good basis for future discussion and for reaching, in the future, a consensus solution of the problem of the geostationary orbit.

35. Some delegations expressed the view that, in considering various questions concerning the use of the geostationary orbit, the question of the removal of space debris from the orbit should be addressed.

36. In this connection, a number of delegations drew attention to the threat posed by space debris in the geostationary orbit. It was therefore suggested that consideration be given to the desirability of an international agreement dealing specifically with the question of space debris. That would require resolving a number of legal issues such as, inter alia, the definition of space debris, jurisdiction and control over such debris and responsibility for damage caused by space debris.

37. The view was expressed that certain provisions contained in working paper A/AC.105/C.2/L.192 reflected a number of general understandings of perhaps all delegations to the effect, in particular, that the geostationary orbit formed an integral part of outer space and was subject to all provisions of the 1967 Outer Space Treaty, that the placing of objects in the geostationary orbit did not create any property rights to the positions occupied by those objects, and that claims of preferential rights with regard to certain segments of the geostationary orbit would contradict the principle of effectiveness in the use of the geostationary orbit established by ITU. In the view of that delegation, it might be useful to compare relevant documents of ITU with the corresponding provisions of working paper A/AC.105/C.2/L.192. That delegation believed that a step-by-step approach in dealing with the question of the geostationary orbit would be a most appropriate procedure, and that, therefore, a general discussion in this regard would be quite appropriate. The same delegation further believed that it might be premature at the current stage of the debate to discuss the form of the future document dealing with the geostationary orbit.

38. In summing up the discussion on the question of the geostationary orbit, the Chairman expressed the view that the preliminary exchange of views which had taken place on the basis of working paper A/AC.105/C.2/L.192 was very interesting, and provided a good basis for future work.

Appendix

Informal paper by the Chairman of the Working Group
(A/AC.105/C.2/1993/CRP.1 of 29 March 1993)

Draft questionnaire concerning aerospace objects

Question 1: Does international customary law exist with respect to the passage of space objects during their descent trajectory after re-entry into the Earth's atmosphere over foreign territory under normal (i.e. non-accidental) conditions? If the answer is in the affirmative which are the precedents (name of space object, date of passage over foreign territory and name of countries or region overflown) for such international custom?

Question 2: Which are the typical descent trajectories of existing space shuttle systems after their re-entry into the Earth atmosphere?

Question 3: Which is the distance needed by existing space shuttle systems to come down from the point of re-entry into the Earth's atmosphere to their designated point of landing?

Question 4: If international customary law does not exist with respect to the passage of space objects after re-entry into the Earth's atmosphere, which are the national and international regulations for such passage? Are these regulations satisfactory or should new regulations be elaborated and by what international body?

Question 5: Can an aerospace object be defined as an object which is launched into outer space and which is capable at some stage in its flight of using its aerodynamics properties to remain in airspace for a relatively long period?

Question 6: Should the regime applicable to the flight of aerospace objects differ according to whether it is located in airspace or outer space?

Question 7: Can a single or unified regime be developed for all aerospace objects, notwithstanding the diversity of their functional characteristics, the aerodynamic properties and space technologies used, and their design features?

Question 8: Can aerospace objects while in airspace be considered as aircraft with all the legal consequences that follow therefrom?

Question 9: Should the take-off and landing phases be specially distinguished in the regime for an aerospace object as involving a different degree of regulation from entry into airspace from outer soace orbit and subsequent return to that orbit?

Question 10: Should the norms of national and international air law be applicable to an aerospace object of one State while it is in the airspace of another State or is it necessary to develop special legal norms, to be confirmed in a separate international agreement, for such cases?

Question 11: Will the use of aerospace objects require the introduction in practice of a special procedure for prior notification of launch and return to Earth?

Question 12: Should the passage of an aerospace object through the airspace of a foreign State be conditional upon receiving prior authorization?

Question 13: Do the rules concerning the registration of objects launched into outer space need to be changed with respect to aerospace objects?

Question 14: Does the concept "launching State" need to be changed or defined more precisely with respect to aerospace objects?

Annex III

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 5 (CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES)

1. On 22 March 1993, the Legal Subcommittee re-established its Working Group on agenda item 5.

2. The Working Group had before it a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes", submitted at its current session by the delegations of Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela (A/AC.105/C.2/L.182/Rev.1). This working paper is set out in section B of annex IV to the report of the Subcommittee.

3. In his introductory statement the Chairman referred to the work of the Working Group during its last session in 1992, outlining the extensive exchange of views then undertaken.

4. A statement was made on behalf of the co-sponsors of working paper A/AC.105/C.2/L.182/Rev.1. The Working Group was informed of changes and additions made to working paper A/AC.105/C.2/L.182 taking into account suggestions and comments expressed during the discussions at the Working Group's session in 1992. Some delegations expressed the view that working paper A/AC.105/C.2/L.182/Rev.1 provided a good basis for fruitful discussions and achieving progress by the Working Group.

5. Upon a suggestion by the Chairman, the Working Group agreed to conduct a preliminary exchange of ideas on the provisions of working paper A/AC.105/C.2/L.182/Rev.1, which took the form of a draft General Assembly resolution, with an annex.

6. As a general comment, the view was expressed that, at a later stage, the Working Group should consider the appropriate form of an eventual document to be elaborated on the basis of the working paper in order to decide whether it should be a General Assembly resolution, or any other document.

Preambular paragraphs

7. With regard to the first preambular paragraph, the view was expressed that the words "bearing in mind", in relation with provisions of the Charter of the United Nations, should be replaced with the words "acting in accordance with".

8. The view was expressed that the words "bearing also in mind" in the second preambular paragraph in connection with the 1967 Outer Space Treaty should be replaced with the word "confirming".

9. With regard to the third preambular paragraph, the view was expressed that, for the sake of clarity, the titles of the General Assembly resolutions referred to in that paragraph should be mentioned in addition to their respective numbers. The view was also expressed that the paragraph should refer only to General Assembly resolutions adopted by consensus.

10. The view was expressed that the ideas reflected in the fifth and eighth preambular paragraphs were clearly linked and, therefore, should be harmonized. In reply, the view was expressed that the fifth and the eighth preambular paragraphs, while related, dealt with different subject-matters.

11. Regarding the fifth preambular paragraph, some delegations expressed the view that it combined two different ideas and that it might be interpreted as an attempt to alter the principle enshrined in the first paragraph of article I of the 1967 Outer Space Treaty. In the view of those delegations, the words "taking into particular account the special needs of the developing countries" should be deleted from that paragraph or made the subject of a separate paragraph since they were not contained in the above-mentioned provision of the Treaty. Other delegations expressed the view that the wording of the fifth preambular paragraph correctly reflected the title of item 5 of the Subcommittee's agenda, as agreed upon by consensus, which originated from article I, paragraph 1, of the Treaty, with the addition of the words "taking into particular account the needs of the developing countries". The view was also expressed that the use of the words "particular" and "special" in the same clause both here and elsewhere in the text was tautological and that one word was enough and in accord with precedent.

12. With regard to the eighth preambular paragraph, the view was expressed that the word "facilitate" was too general and that, instead, that preambular paragraph should express an appeal to countries possessing outer space technology and knowledge to cooperate with developing countries.

13. The view was expressed that the ninth preambular paragraph, which stressed the need for maintaining the exploration and utilization of outer space for peaceful purposes, and the tenth preambular paragraph, which conveyed the determination to maintain outer space for peaceful purposes through the promotion of international cooperation in its exploration and utilization, essentially expressed the same idea and could be merged.

14. Regarding the manner for utilization of outer space referred to in the eleventh preambular paragraph, the view was expressed that this provision would seem to extend to the utilization of outer space the criterion of rationality and effectiveness applicable only to the geostationary orbit, as provided for in article 33 of the International Telecommunication Convention. The view was also expressed that the words "rational" and "equitable" required further clarification. The view was expressed that the word "equitable" in the eleventh preambular paragraph should not be mixed up with the word "equality" in the sixth preambular paragraph. Other delegations expressed the view that the word "rational", which had a more practical and technical connotation, was included in that paragraph as a balance to the word "equitable", which had a rather moral connotation. The view was also expressed that several international agreements, General Assembly resolutions and the Statute of the International Court of

Justice used the word "equitable" or "equity" and that there was a general understanding of the meanings of these words.

Text set forth in the annex

15. With regard to the text set forth in the annex to the working paper, some delegations expressed the view that its denomination as a set of principles would have to be further considered. In this connection, the view was expressed that the choice of the appropriate title was an important decision and that, while the word "principles" may be eventually acceptable, other options should also be considered, for example, "general approaches", or "guidelines".

16. Some delegations expressed the view that the discussion on the appropriate title for the document set forth in the annex should not impede the consideration of the text itself, which should be analysed in the light of the Subcommittee's role in the progressive development of outer space law. Some delegations expressed the view that any decision on the appropriate title for the document should follow the conclusion of its consideration.

Principle I

17. With regard to paragraph 1, the view was expressed that the word "special" in connection with the needs of developing countries lacked clarity. The view was also expressed that, if it was concluded that developing countries did have special needs, then the word "special" should not be removed from the provision. The view was also expressed that the word "special" had been added in paragraph 1 to make this provision consistent with the fifth and eighth preambular paragraphs, in which the same wording was used. The view was also expressed that developing countries clearly had special needs to achieve economic development, and that the use of the word "special" in the paragraph was appropriate.

18. Regarding paragraph 2, the view was expressed that the word "relevant" in connection with space capabilities was not clear. In response, the view was expressed that this word should be understood as an attempt not to limit the obligation to promote cooperation only to developed countries, but, on the contrary, to extend this general duty also to developing countries when such countries also possessed some "relevant" space capabilities.

19. Some delegations expressed the view that the word "solidarity" was not clear in the context of paragraph 3. In reply, the view was expressed that the word "solidarity" had been included in the working paper to reflect comments made by delegations last year and that the word "solidarity" in that context was intended to underscore the idea that the exploration and utilization of outer space should be conducted in a manner that respects its nature as a province of all mankind.

20. Some delegations expressed the view that the word "sovereignty" was not appropriate in the context of paragraph 3. The view was also expressed that the last clause of that paragraph was not logically connected to the preceding clause, and that the paragraph should be redrafted as follows:

"When deciding the modalities of their cooperation, States should take into account, particularly in the framework of multilateral cooperation, the solidarity and equity that should prevail in the exploration and utilization of outer space for peaceful purposes, as a province of all mankind."

21. In connection with paragraph 3, the view was also expressed that the meaning of the word "modalities" was not clear, and that paragraph 3 could be interpreted as limiting State sovereignty in determining the modalities of international cooperation. Therefore, it was proposed to replace the words "modalities of their cooperation" with the words "all aspects of their cooperation", or "conduct of their cooperation". In reply, the view was expressed that the provision clearly implied that States had the right to determine the content and specific forms of cooperation, including its manner, conditions and the treatment granted to the recipient country of such cooperation.

Principle II

22. With regard to paragraph 1, some delegations expressed the view that terms and expressions such as "equitable" and "non-discriminatory", which had been used in the more specific context of the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space, should not be used with the same meaning in the paragraph. However, the view was expressed that, while it would be possible to find alternative terms, it would not be advisable to use the same terms and expressions with different meanings in different texts.

23. With regard to paragraph 3, it was asked what the exact meaning was of the expression "as appropriate" as it appeared in that paragraph. In reply, the view was expressed that conditions under which some cooperation programmes operated were not suitable for extension to other cooperation programmes and that the words "as appropriate" were intended to reflect this reality.

24. With regard to paragraph 3, the question was raised whether the intent of this provision was to impose an obligation on, or to make a recommendation to, a State offering cooperation to another State to extend the benefits of the cooperation to other States, or whether such extension would remain subject to the discretion of the State offering cooperation. In reply, the view was expressed that the purpose of the working paper was to help find general guidelines for international cooperation in this field, rather than to impose any compulsory form of cooperation. In the view of that delegation, international cooperation was conducted by sovereign States, and sovereignty was one of the foundations for such cooperation. However, given the different levels of development of States, it was important to identify the forms for a more effective, useful and beneficial cooperation. In the view of that delegation, paragraphs 3 and 4 intended to address this need without affecting State sovereignty, which was expressly referred to in principle I, paragraph 3. Some delegations expressed the view that the words "as appropriate" in paragraph 3 limited any generalized extension of cooperation programmes, so that no inconsistency with principle I, paragraph 3, would arise.

25. Regarding the treatment to be granted to developing countries under paragraph 4, the view was expressed that the notion of "treatment" should be

further clarified. In particular, it was asked whether States should set a different form of cooperation according to the stage of development of the recipient country. The view was expressed that the wording of paragraph 4 had been revised so as to avoid the impression of implying any automaticity or standardization of the cooperation. The view was expressed that the special treatment to be accorded to developing countries by countries extending cooperation, as envisaged by principle II, paragraph 3, consisted in providing developing countries with the necessary means in order to fully enable their participation in cooperation programmes. The view was expressed that the notion of special treatment related to other principles, such as the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space, and was intended to reaffirm the desirable way of cooperation in outer space matters.

26. Some delegations expressed the view that paragraph 4, which touched upon substantial aspects of the cooperation, stood in contradiction with principle I, paragraph 3, which provided for States' sovereignty in conducting cooperation. The view was also expressed that the word "should" in paragraph 4, as well as in the preceding paragraph 3, would seem to impose an obligation upon the State offering cooperation. In response, the view was expressed that paragraph 4 should be read in conjunction with paragraph 3, and that the words "as appropriate" in the latter provision envisaged the necessary flexibility.

27. With regard to the special treatment to be accorded to developing countries under paragraph 4, the view was expressed that it might not be advisable to provide for a special treatment only on the basis of the economic development of the countries, since some developed countries did not have particular kinds of space capabilities, while some developing countries did possess certain space capabilities.

28. The view was also expressed that international cooperation on mutually beneficial terms should form the basis in this context. The essence of this legal cooperation is equity. Equity here should focus on according favourable treatment of the developing countries within the overall framework of equal and non-discriminatory access to outer space. It might seem self-contradictory to a non-legal mind when we speak of equal access to all States with preferential treatment to developing countries. But this is not contradictory in law, and in fact this is the crux of due process or favourable reservations found in most of the legal systems and constitutions of our States.

Principle III

29. With regard to paragraph 1, the view was expressed that there were other relevant objectives that should be referred to, such as the non-duplication of efforts, the efficient allocation of resources and the coordination of policies. However, the view was expressed that it would not be possible to consider all the objectives that might be pursued by international cooperation. In the view of that delegation, in order for the developing countries to benefit from space technology and space activities (for instance, with regard to economic management, weather forecast, mitigation of natural disasters), those countries should have access to space technology. In this connection, without precluding any other objectives that might have appeared important, the mention of the development of indigenous capabilities as the main objective of international

cooperation in paragraph 1 seemed to take into account a particular need of the developing countries.

30. Some delegations questioned whether the reference to the development of indigenous capabilities of all States as the main objective of international cooperation meant that international cooperation should be conducted to allow all States to achieve the same stage of development in space matters. In the view of other delegations, the development of national capabilities in all fields of science and technology was a generally accepted goal. In this regard, the purpose of paragraph 1 was not to enable all countries to have full space programmes or to achieve equality in all aspects of space activities, but rather to enable developing countries to be in a position to develop space capabilities and fully participate in international cooperation. The view was also expressed that the scope of international cooperation as envisaged by principle III, paragraph 1, was to allow those countries lacking ability or resources for developing indigenous capabilities to realize that goal, without imposing any binding obligation upon developed countries. In this regard, the development of indigenous capabilities was in accordance with the general framework within which the Working Group had its mandate, namely to consider aspects related to the exploration and utilization of outer space for the benefit and in the interest of all States, taking into particular account the needs of the developing countries.

31. In connection with the question of the development of indigenous capabilities, the view was expressed that this matter should not be considered from a narrow perspective. In the view of that delegation, some States had been able to further develop their capabilities by international cooperation at the bilateral or multilateral level, rather than through exclusive national programmes. However, the view was expressed that the conditions of international cooperation might vary according to the level of development and that a minimum level of indigenous capability must be achieved in order for a country to benefit from such cooperation.

32. Some delegations expressed the view that, in outer space matters, developing countries might have different needs according to their stage of development. In this regard, some developing countries might need to improve their capacity to absorb technology of other countries; other developing countries might need to develop their scientific knowledge and some developing countries might need to enhance their indigenous capability. According to those delegations, paragraph 1, in its current wording, did not address all of the broad range of needs that the developing countries might have. In the view of some delegations, this problem could be solved by adding the words "to make cooperation more viable in all its aspects" at the end of the paragraph.

33. With regard to the promotion and facilitation of the exchange of expertise and technology under paragraph 2, the view was expressed that, in order to enable developing countries without space capabilities to have access to the benefits of space science and technology, the following sentence should be added to paragraph 2, or be set forth as a separate paragraph:

"The trade barriers obstructing such exchange or affecting the transfer of the technology necessary for the development of indigenous capabilities should be gradually removed, in particular with regard to the developing countries."

34. The view was also expressed that the objectives of international cooperation should be viewed from the vantage point of the needs and interests of the developing countries as a whole. The main objective of the developing countries is to participate in outer space activities. However, should any developing country choose any other method, it may be encouraged to do so. In any case, transfer of technology including material, equipment and scientific know-how, necessary training of personnel, and availability of funds and required capital are the basic requirements. Any legal arrangements of cooperation should be positively oriented and should not be aimed at hindering the transfer of technology. In fact, such a cooperation should be so developed as to facilitate removal of such barriers, if any, in existence.

Principle VI

35. With regard to paragraph 3, the view was expressed that the provision should also take into account the uses of outer space technologies and applications for educational purposes. In this connection, it was suggested to add a new subparagraph, immediately after subparagraph (e), to read as follows:

"Applications of space technologies for implementing educational programmes to eliminate illiteracy, enhance educational levels and set up training centres for teachers and technicians, particularly in the rural and remote areas of developing countries;"

36. As a general comment, the view was expressed that working paper A/AC.105/C.2/L.182/Rev.1 addressed essentially two different aspects of international cooperation in outer space matters: the terms under which and the manner in which cooperation was established and the way in which cooperation should be conducted. In the view of that delegation, future revision of the working paper should focus on the second aspect, and for that purpose consideration should be given to the possible elaboration of model contracts covering various aspects of international cooperation.

37. With regard to the future consideration of the next revision of working paper A/AC.105/C.2/L.182, the view was expressed that particular attention should be given to two specific provisions of the paper, namely, principle I, paragraph 3, which dealt with the sovereign right of States to determine and conduct their multilateral cooperation policy, and principle III, paragraph 1, which dealt with the objectives to be pursued by such cooperation. In view of the current economic and social constraints, which in the developed countries themselves heavily influenced governmental action in the field of international cooperation, care must be taken to determine the precise implications of the provisions submitted to the Subcommittee for consideration, so that each party involved could make its decision with full knowledge of the facts, and so that the international climate, which continued to be conducive to cooperation, would not deteriorate.

38. On behalf of the co-sponsors, the view was expressed that the working paper represented a significant effort to incorporate suggestions made by other delegations during the discussions at the previous session of the Working Group on working paper A/AC.105/C.2/L.182 in 1992, as well as to clarify doubts and accommodate hesitations then expressed. It was further stated that the co-sponsors would submit a new revision of the working paper in the future, addressing issues raised and incorporating suggestions made during the current session of the Working Group.

39. Some delegations expressed the view that the overall discussion of working paper A/AC.105/C.2/L.182/Rev.1 had been constructive and positive, and that the suggestions made during the session would be taken into account in future discussions of the paper.

40. In summing up the discussion, the Chairman of the Working Group expressed the view that the debate on the basis of working paper A/AC.105/C.2/L.182/Rev.1 had been very interesting, useful and constructive.

41. The Working Group held its final meeting on 7 April, when it considered and approved the present report.

Annex IV

DOCUMENTS ANNEXED TO THE REPORT

A. 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

Colombia: working paper (A/AC.105/C.2/L.192 of 30 March 1993)

Geostationary satellite orbit

The General Assembly

1. Recognizing that the geostationary satellite orbit is a limited natural resource and, therefore, must be used in a rational and equitable manner and for the benefit for all mankind, taking into account the special needs of the developing countries, in accordance with the relevant international telecommunication treaties (Malaga-Torremolinos, 1973; the World Administrative Radiocommunication Conference, Geneva, 1979; Nairobi, 1982; Nice, 1989);

2. Recalling that the development of space science and technology applied in the utilization of the geostationary satellite orbit is of fundamental importance for the economic, social and cultural development of the peoples of all States;

3. Taking into account the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, of 27 January 1967, which enshrines the peaceful use of outer space for the benefit of all mankind through promoting international cooperation and understanding;

4. Agreeing with the fact that the geostationary satellite orbit is a geometric locus in outer space where, inter alia, an object in orbit behaves differently with respect to the Earth from the way in which it would behave in any other locus in outer space, that is, it revolves at the same speed as the Earth, for which reason, viewed from the Earth, it seems to be fixed;

5. Agreeing also that the geostationary satellite orbit is part of outer space;

6. Reaffirming the need to guarantee to all States in practice equitable access to the geostationary satellite orbit, in accordance with article 33 of the Nairobi International Telecommunication Union Convention;

7. Considers that there should be a special and complementary legal regime with respect to the geostationary satellite orbit to ensure that that resource is used, in accordance with the treaties, in a rational, effective, economical and equitable manner;

8. Affirms that in practice, equity would be achieved through the establishment of a concrete and specific preferential right;

9. Recommends the application of the following criteria:

(a) Where a developed country and a developing country have equal claims to access to the same orbital position or neighbouring positions, or where a country which has already had access and another country which has not yet had access have equal claims, preference would be given to the developing country or to the country which has not yet had access when the access of those satellites to the same locus makes their operation incompatible radio-electronically or renders their operation difficult or too restrictive. In any case, the preferential right to access physically to the orbital position shall be exercised within the time slots provided for under the radiocommunication regulations of the International Telecommunication Union;

(b) When there are equal claims by two or more developing countries, or by two or more developed countries, the principle of "first-come, first-served" shall be applied;

(c) There is a need for reserving suitable orbital positions/frequencies to meet the requirements of the developing countries. Such reservations should be kept available for as long as legitimate efforts are made to utilize the position(s) reserved for them;

(d) Notwithstanding the above provision, if a claim was raised for a position in the geostationary satellite orbit by a developing country which has no adequate capability to launch the satellite in the immediate future, while at the same time that claim was raised by another State which has the capability to do so immediately, then the substantiated claim in the latter case shall prevail, in accordance with the principle of effectiveness as enunciated in the International Telecommunication Union Convention.

B. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela: working paper (A/AC.105/C.2/L.182/Rev.1 of 31 March 1993)

Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes

The General Assembly,

Bearing in mind the provisions of the Charter of the United Nations, in particular Articles 1, 13, 55 and 56 thereof,

Bearing also in mind 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,

Recalling all relevant General Assembly resolutions, in particular resolutions 2625 (XXV) of 24 October 1970, 3362 (S-VII) of 16 September 1975, 41/65 of 3 December 1986, and 47/68 of 14 December 1992,

Recalling also the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other relevant international conferences on this subject,

Desirous of strengthening and further developing the principle that "the exploration and use of Outer Space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interest of all States, irrespective of their degree of economic or scientific development, and shall be the province of all mankind", and also taking into particular account the special needs of the developing countries,

Further recalling that Outer Space, including the Moon and other celestial bodies, shall be free for exploration and utilization by all States without discrimination of any kind, on a basis of equality and in accordance with international law,

Welcoming that significant international cooperation in the exploration and utilization of Outer Space for peaceful purposes has already been undertaken and continues to be pursued among States and international organizations,

Stressing the need to further facilitate and encourage international cooperation in the exploration and utilization of Outer Space, taking into particular account the special needs of the developing countries,

Stressing also that the exploration and utilization of Outer Space shall be maintained for peaceful purposes,

Determined to maintain Outer Space for peaceful purposes through the promotion of international cooperation in its exploration and utilization,

Conscious of the need to utilize Outer Space in a rational and equitable manner as well as to preserve it for future generations,

Adopts the Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes set forth in the annex to the present resolution.

Annex

Principles Regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes

I

1. The exploration and utilization of Outer Space should be carried out for the benefit and in the interest of all States, taking into particular account the special needs of developing countries.

2. States with relevant space capabilities and with programmes for the exploration and utilization of Outer Space should contribute to promoting and fostering international cooperation in outer space science and technology and in their applications.

3. States are sovereign in deciding the modalities of their cooperation, taking into account the solidarity and equity that should prevail in the exploration and utilization of Outer Space for peaceful purposes, as a province of all mankind, particularly in the framework of multilateral cooperation.

II

1. All States should have access to the knowledge and applications derived from the exploration and utilization of Outer Space for peaceful purposes on an equitable, non-discriminatory and timely basis.

2. States pursuing programmes of exploration and utilization of Outer Space should facilitate access to the knowledge and applications derived therefrom to other States, particularly developing countries, through programmes of international cooperation designed for that purpose.

3. Conditions offered to one State in a specific programme of cooperation in Outer Space should, as appropriate, be extended to other countries with which a similar programme of international cooperation is established.

4. In pursuing international cooperation in the exploration and utilization of Outer Space for peaceful purposes, developing countries should benefit from a

treatment which will enable them to fully benefit from such cooperation. This treatment is especially relevant in programmes oriented to the dissemination of scientific and technological knowledge, and should take into account the level of development of the countries involved in such cooperation.

III

1. The main objective to be pursued by international cooperation in Outer Space should be the development by all States of indigenous capability in space science and technology and their applications.

2. States with relevant space capabilities and with programmes of exploration and utilization of Outer Space should promote and facilitate the exchange of expertise and technology to all States, particularly the developing countries.

3. States should promote the exchange of material and equipment for, and the transfer of technology on, the exploration and utilization of Outer Space within just and equitable parameters of price and payment.

IV

1. International cooperation in the exploration and utilization of Outer Space should be for peaceful purposes.

2. States providing or benefiting from international cooperation in Outer Space science and technology and its applications should ensure that they are used for peaceful purposes.

3. No arbitrary or discriminatory conditions should be applied to exchanges of knowledge and applications destined for the peaceful exploration and utilization of Outer Space. To this end, negotiated international guidelines so established would facilitate the objective settling of the needs for equipment and technological transfers.

V

1. All States should pursue their activities in Outer Space with due regard to the need to preserve the outer space environment, in such a way as not to hinder its continued exploration and utilization.

2. States should pay attention to and coordinate their efforts in all aspects related to the protection and preservation of the outer space environment, especially those potentially affecting the Earth's environment.

3. States with relevant space capabilities and with programmes for the exploration and utilization of Outer Space should share on an equitable basis with other States, in particular developing countries, the scientific and technological knowledge necessary for the proper development of programmes oriented to the more rational exploration and utilization of Outer Space, with a view to preserving the outer space environment for future generations.

VI

1. The role of the United Nations and the scope of its activities in international cooperation in the exploration and utilization of Outer Space should be strengthened and enlarged, particularly through the Programme on Space Applications of the United Nations.

2. All States should contribute to the Programme on Space Applications in accordance with their space capabilities and their participation in the exploration and utilization of Outer Space.

3. In order to give concrete meaning to these Principles regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes, States should concentrate their efforts in the following areas:

(a) Promotion of the development of indigenous capability in space science and technology, particularly in developing countries;

(b) Continued exchange of information, data, materials and equipment on space science and technology;

(c) Promotion of joint partnerships or ventures in the spheres of space science and technology;

(d) Promotion of easy and low-cost accessibility and availability of remote-sensing data, the ground receiving stations and the digital image processing system;

(e) Technical cooperation to promote and facilitate the transfer of technology and expertise in space science and technology, particularly with developing countries;

(f) Equitable redistribution of the spin-off benefits of space science and technology, in particular taking into account the special needs of the developing countries.