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**Committee on the Peaceful
Uses of Outer Space**

Legal Subcommittee
Thirty-eighth session
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**Draft report of the Legal Subcommittee on the work of its
thirty-eighth session**

**Report of the Chairman of the Working Group on agenda item 5,
entitled “Review of the status of the five international legal instruments
governing outer space”**

1. On 1 March 1999, the Legal Subcommittee established a working group on agenda item 5, “Review of the status of the five international legal instruments governing outer space”, under the chairmanship of Vassilios Cassapoglou (Greece).
2. The Working Group on agenda item 5 had before it the report of the Legal Subcommittee on the work of its thirty-seventh session, held in Vienna from 23 to 31 March 1998 (A/AC.105/698). The Working Group also had before it a note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1) and working papers on the same subject submitted to the Subcommittee at its thirty-seventh session by Germany on behalf of the States members of the European Space Agency and States having signed cooperation agreements with the Agency (A/AC.105/C.2/L.211 and Rev.1, chaps. I and II) and by the Russian Federation (A/AC.105/C.2/L.213).
3. At the first meeting of the Working Group, on 2 March 1999, its Chairman recalled the tasks before the Group and the work plan of its deliberations as approved by the Legal Subcommittee and set out in the report of the Subcommittee on the work of its thirty-sixth session, held in Vienna from 1 to 8 April 1997 (A/AC.105/674, annex II, sect. B).
4. The views expressed in the discussions of the Working Group are summarized below.
5. Some delegations reported on the current status of and further intended action concerning accession to the five international legal instruments governing outer space.

6. Some delegations expressed the view that the note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1) contained valuable analyses of and concrete proposals on the elimination of obstacles preventing the universal acceptance of the five international legal instruments governing outer space that warranted further consideration.

7. Some delegations expressed the view that the five international legal instruments governing outer space were, by their nature, interdependent and that an overall approach should therefore be taken in their review and analysis in relation to possible future revision and amendment. The view was also expressed that the methodological approach to that review as proposed in the working paper submitted by the Russian Federation (A/AC.105/C.2/L.213) should be utilized.

8. Some delegations made suggestions concerning the structure of the report of the Working Group. In the view of one of those delegations, the report should consist of the following four sections: (a) current status of the five legal instruments and of space law; (b) main results of the analysis of the information submitted by States on that subject; (c) short-term recommendations to promote and strengthen the space law regime and its main principles; and (d) alternatives to and mechanisms for strengthening the space law regime. Another delegation expressed the view that the last two of the above categories could be merged. Still another delegation expressed the view that the report should be presented in a matrix format. The work of the Working Group could then be reflected within that format under the following categories of activities: (a) review of existing treaties; (b) possible new treaties; (c) amending existing treaties; (d) interpretation of treaties; (e) implementation of treaties; and, possibly, (f) the question of conferences of States parties to revise existing treaties, indicating the current extent of progress for particular activities within each category.

9. However, the view was also expressed that it was premature to consider the structure of the report of the Working Group at that stage of its deliberations, since many other issues existed that might first have to be considered. Examples of such issues included whether changes of historic realities had caused some existing legal provisions to become irrelevant, whether some instruments and/or mechanisms provided for within the instruments were too cumbersome or confusing and should therefore be improved, and whether some provisions within the instruments were being interpreted and implemented differently by various States parties.

10. Some delegations expressed the view that more attention should be paid to the issue of improving compliance with the provisions of the five international legal instruments governing outer space. One of those delegations noted that many Member States of the United Nations, and even member States of the Committee on the Peaceful Uses of Outer Space, had not yet become parties to the five instruments, while other States might not be in full compliance with some of the provisions of the five international legal instruments or state practice that had developed on the basis of those instruments. That delegation was also of the opinion that certain intergovernmental organizations could also be prevented from acceding to some of the international legal instruments as a result of the failure of sufficient numbers of their own member States to become parties to the same instruments.

11. The view was expressed that if it was decided that any of the five international legal instruments governing outer space required amendment, such amendment could only be formally proposed by the States parties to the instruments in question. However, the view was also expressed that while it might be true that only States parties to the instruments could formally propose their amendment, the Legal Subcommittee should not be precluded from conducting a discussion on the subject within the terms of its mandate. In the view of that

delegation, such a discussion, bearing in mind that the five international legal instruments governing outer space were closely linked, would be useful for the possible future improvement of the outer space law regime. That delegation was also of the view that one way to commence such deliberations would be to discuss the concept of “launching State”, as proposed by some delegations.

12. The view was expressed that it would be preferable not to limit discussions to the concept of “launching State”, but rather to compile a list of terms contained in the international legal instruments governing outer space that might require clarification. The discussions in the Working Group would then concern all those terms in their inter-relationship and not only the term “launching State”.

13. The Working Group agreed on the following recommendations on measures to be adopted in order to achieve the fullest adherence to the five international instruments governing outer space:

(a) States that have not yet become parties to the five international treaties governing outer space should be invited to consider ratifying or acceding to those treaties in order to achieve the widest applicability of the principles and to enhance the effectiveness of international space law;

(b) States should be invited to consider making a declaration in accordance with paragraph 3 of General Assembly resolution 2777 (XXVI), binding themselves on a reciprocal basis to the decisions of the Claims Commission established in the event of a dispute in terms of the provisions of the Convention on International Liability for Damage Caused by Space Objects;

(c) The issue of the strict compliance by States with the provisions of the international legal instruments governing outer space to which they were currently parties should be examined further with a view to identifying measures to encourage full compliance, taking into account the interrelated nature of the principles and rules governing outer space.

14. The Working Group also recommended that the Legal Subcommittee continue to examine agenda item 5 during its thirty-ninth session, in 2000.
