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Committee on the Peaceful

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Legal Subcommittee

Thirty-ninth session

Vienna, 27 March-7 April 2000

Draft report of the Legal Subcommittee on the work of its thirty-ninth session, held in Vienna from 27 March to 7 April 2000

Addendum

IV. Information on the activities of international organizations relating to space law

1. At the 624th meeting, on 28 March, the Chairman made an introductory statement on agenda item 5.
2. The Chairman drew attention to the fact that this was a new regular agenda item agreed upon by the Committee on the Peaceful Uses of Outer Space at its forty-second session and subsequently endorsed by the General Assembly in its resolution 54/67 of 6 December 1999.
3. The Legal Subcommittee noted with satisfaction that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law and agreed that a similar invitation should be extended by the Secretariat for the fortieth session of the Subcommittee, in 2001.
4. The Legal Subcommittee had before it two conference room papers (A/AC.105/C.2/2000/CRP.4 and A/AC.105/C.2/2000/CRP.10), which contained compilations of written reports from the following organizations of the United Nations system and other international organizations on their activities relating to space law: International Telecommunication Union (ITU), World Intellectual Property Organization, European Centre for Space Law (ECSL), European Space Agency (ESA), International Institute of Space Law (IISL), International Law Association and International Mobile Satellite Organization (IMSO).

5. In addition, representatives of the following international organizations reported to the Subcommittee on their activities relating to space law: International Institute for the Unification of Private Law (UNIDROIT), IISL, ITU, ECSL, European Organization for the Exploitation of Meteorological Satellites, ESA and IMSO.

6. The Subcommittee noted that the 43rd IISL Colloquium on the Law of Outer Space and the ninth Manfred Lachs Space Law Moot Court Competition would be hosted by Brazil in October 2000.

7. Some delegations expressed the view that the work being carried out under the auspices of UNIDROIT on the development of a new international regime governing security interests in high-value mobile equipment, such as space property, was most valuable and enjoyed considerable support, including within the private sector. The view was expressed that consideration of issues relating to such work should be placed as a single issue/item for discussion on the agenda of the Legal Subcommittee at its fortieth session.

8. The view was expressed that space-related intergovernmental organizations and their member States should consider the requirements for acceptance by those organizations of the rights and obligations under the provisions of certain of the United Nations treaties relating to outer space and the possible steps that might be taken in that regard to encourage wider

adherence of such organizations to international space law.

9. The view was expressed that additional information relating to how the consequences of the privatization of space-related international organizations were being dealt with under the United Nations treaties relating to outer space would be most welcome.

10. The full text of the statements made by delegations during the discussion on agenda item 5 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

VII. Review of the status of the five international legal instruments governing outer space

11. At the 626th meeting, on 29 March, the Chairman made an introductory statement on agenda item 8.

12. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its review of the status of the five international legal instruments governing outer space in accordance with the proposed work plan for the agenda item that had been approved by the Subcommittee at its thirty-sixth session.

13. The Legal Subcommittee noted that 2000 was the final year of its agreed work plan and, accordingly, that this year the Subcommittee should, on the basis of the recommendations of the Working Group, consider and implement as appropriate the measures considered adequate to achieve the widest and fullest adherence to the treaties relating to outer space.

14. The Legal Subcommittee recalled the deliberations and recommendations of its Working Group on this item, convened at its thirty-eighth session under the chairmanship of Vassilios Cassapoglou (Greece). The report of the Working Group appeared in the report of the Subcommittee on its thirty-eighth session (A/AC.105/721, annex II).

15. The Legal Subcommittee 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);

(b) Working papers on the subject submitted to the Subcommittee at its thirty-seventh session:

(i) By Germany, on behalf of the member States of ESA and States having signed cooperation agreements with ESA (A/AC.105/C.2/L.211/Rev.1, paras. 2-9);

(ii) By the Russian Federation (A/AC.105/C.2/L.213).

16. The view was expressed that the structure proposed by the delegation of Mexico for the

report of the Working Group at the thirty-eighth session of the Legal Subcommittee could form the basis for the final report of the Subcommittee on the item.

17. The view was expressed that the recommendations appearing in paragraphs 13 (a) and (c) of the previous report of the Working Group on this item (A/AC.105/721, annex II) were the most important and should be the focus of the Legal Subcommittee's work in the final year of the work plan. That delegation was also of the view that the Subcommittee should make a clear call for States seriously to consider adhering to what it termed "the four core instruments". In addition, States that had accepted those instruments should examine the extent to which they were being effectively implemented at the national level.

18. The view was expressed that while States should consider making a declaration accepting the binding nature of the decisions of the Claims Commission in the event of a dispute under the provisions of the Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", General Assembly resolution 2777 (XXVI), annex), that was not necessarily the best process in view of the wide variety of legal and other mechanisms that might be available for settling space-related disputes.

19. Some delegations expressed the view that the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex) should be examined further with a view to identifying the

reasons for its low level of ratification and signature by Member States. The view was expressed that, in that regard, the Secretariat should invite comments from those Member States which had not ratified the Agreement as to their reasons for not having done so.

20. Some delegations expressed the view that, with the rapid evolution of technology and of the organization of space activities, the Legal Subcommittee needed to maintain its leading role in the development of legal principles and in the identification of improvements to the existing legal principles and instruments governing the peaceful uses of outer space. In that regard, the view was expressed that the Legal Subcommittee should engage in a discussion with a view to formulating detailed interpretations of the existing legal principles and concepts, taking into account the experience acquired through application of the treaties as well as progress in and evolution of technologies and the law.

21. 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 be formally proposed only by the States parties to the instruments in question, in accordance with international law and the actual provisions of the instruments. The Legal Subcommittee could not, even by consensus, make any such proposals for amendment or revision of the instruments, but was limited to simply assisting the States parties with an objective analysis. However, the view was also expressed that this did not conflict with

the tasks currently being undertaken by the Subcommittee under this item.

22. The view was reiterated that the five international legal instruments governing outer space were, by their nature, interdependent and that a holistic approach should therefore be taken in their review and analysis in relation to possible future revision and amendment. In addition, that delegation was of the view that, should such revision or amendment be required, there would be no other choice but to develop a single, comprehensive treaty on outer space.

23. The view was expressed that the achievement of universal acceptance and implementation at the domestic level of the five international legal instruments governing outer space should remain the first priority, before seeking to reach any consensus on the need to improve the space law regime.

24. The view was expressed that some clarification of specific terms within the legal instruments governing outer space was required in order to strengthen their application. That delegation was of the view that such clarification should be made by means of annexes to the existing instruments or by other similar means appropriate under international law.

25. The view was expressed that the growing role and legal status of international organizations in space-related activities should be taken into account in any review of the international legal instruments governing outer space. That delegation was also of the view that

the Secretariat should invite comments from those international organizations in that regard for consideration by the Subcommittee.

26. The view was expressed that, in order to raise awareness and to encourage States to consider ratifying or acceding to the five legal instruments governing outer space, focused and effective symposia and forums should be organized with the participation of representatives of Member States, international organizations and the Office for Outer Space Affairs to provide technical advice concerning the benefits that those States would enjoy from making such ratifications or accessions.

27. The view was expressed that the resulting intergovernmental discussions in the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee were themselves a valuable consequence of the three-year work plan on the item, which had focused attention on the five legal instruments as the core of international space law.

28. The Legal Subcommittee endorsed the recommendations of its Working Group that, 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) of 29 November 1971, thereby 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 Liability Convention;

(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.

29. The full text of the statements made by delegations during the discussion on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.[...]).

VIII. Review of the concept of the “launching State”

30. At the 629th meeting, on 30 March, the Chairman made an introductory statement on agenda item 9.

31. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee consider an

agenda item entitled “Review of the concept of the ‘launching State’”, in accordance with the three-year work plan adopted by the Committee,¹ and that the Subcommittee establish a working group to consider the item.

32. In accordance with the work plan adopted by the Committee, the first year of the work on this item was allocated to “Special presentations on new launch systems and ventures”. The Legal Subcommittee decided that the presentations should be made within the Working Group on agenda item 9.

33. The view was expressed that new launching technology, including mobile launchers, created some uncertainty in application of the concept of the “launching State” under the Liability Convention and the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex, the “Registration Convention”). That delegation was of the view that development of effective national legislation to implement the provisions of the Liability Convention was important to address any future launching accidents.

34. The view was expressed that the reason for including the item on the agenda, the privatization of space activities, was not an entirely new matter. Under article VI 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 (General Assembly resolution 2222 (XXI), annex), States bore international responsibility for all national activities in outer

space, including activities carried out by non-governmental entities. Those activities required authorization and continuing supervision by the appropriate State. Both the Liability Convention and the Registration Convention contained adequate provisions for successfully handling any specific situation involving a private space launch. While it might be generally helpful to have an agreed definition of what "procuring" a space launch meant for the purposes of the above instruments, it should be realized that such an interpretation by the Legal Subcommittee would be a doctrinal one, because only States parties to an international treaty had the authority to provide an authentic interpretation of that treaty. That delegation also recalled that private companies and other non-governmental organizations were not subjects of international law and that the role of States under agreements relating to outer space was not undermined by the increasing activities of private entities in outer space.

35. The view was also expressed that, according to its mandate from the Committee on the Peaceful Uses of Outer Space, the Legal Subcommittee was to review the application, rather than provide interpretation, of the concept of the launching State, following the agreed three-year work plan. That delegation noted that only States parties to treaties, rather than other bodies not necessarily composed of States parties, could establish authoritatively the manner in which those treaties were to be applied and interpreted.

36. The view was expressed that a State authorizing the launch of a space object, for instance through a licence or official registration, was a State “procuring the launch” of a space object under the Liability Convention and the Registration Convention.

37. However, the view was also expressed that authorization was not necessarily synonymous with procurement. That delegation was of the view that the language of the treaties relating to outer space was the most authoritative expression of the meaning of the treaties, supplemented in case of ambiguity by the actual practice of States in implementing the treaties.

38. The view was expressed that the topic for discussion under the second year of the work plan for “Review of the concept of the ‘launching State’” should include consideration not only of the Liability Convention and the Registration Convention, but also of the other main treaties relating to outer space.

39. As mentioned in paragraph [...] above, at its 622nd meeting, the Legal Subcommittee decided to establish a Working Group on agenda item 9. At its 629th meeting, the Legal Subcommittee elected Kai-Uwe Schrogl (Germany) Chairman of the Working Group.

40. The Working Group on agenda item 9 held [...] meetings. At its [...] meeting, on [...], the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex [...] to the present report.

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

Notes

¹ *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20 and corrigendum (A/54/20 and Corr.1), chap. II.C, para. 114.*
