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

Report of the Chairman of the Working Group on agenda item 9, “Review of the concept of the ‘launching State’”

1. At its 622nd meeting, on 27 March 2000, the Legal Subcommittee established a Working Group on agenda item 9, “Review of the concept of the ‘launching State’”. At its 629th meeting, on 30 March, the Subcommittee elected Kai-Uwe

Schrogl (Germany) Chairman of the Working Group.

2. For purposes of information, the Working Group had before it a conference room paper entitled “Presentations on new launch systems and ventures at the thirty-seventh session of the Scientific and Technical Subcommittee, Vienna, 7 - 18 February 2000” (A/AC.105/C.2/2000/CRP.8).

3. At the first meeting of the Working Group, on 31 March 2000, the Chairman recalled the tasks before the Working Group and the work plan of its deliberations as set out in the report of the Committee on its forty-second session.¹ Referring to the trends towards international launches and towards increased privatization of space transportation since the adoption of the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex, the “Liability Convention”) and the Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex, the “Registration Convention”), the Chairman stated that the Working Group should consider two questions over the course of the three-year work plan. Firstly, it should consider whether the definition of the “launching State” in the Liability Convention and the Registration Convention still covered all existing activities. Secondly, it should consider what steps could be taken to improve application of the concept in the context of new developments in space transportation. The Chairman noted that the end product of the Working Group’s deliberations

could take a number of forms, but that the Group should not propose to change existing treaties.

4. The Working Group heard a presentation entitled "Launch activities in Japan" by a member of the delegation of Japan. Launches in Japan were carried out only by two government-related entities, the National Space Development Agency (NASDA), a public corporation established and supervised under the NASDA Law, and the Institute of Space and Astronautical Science, a government research institute. Future launches planned by a private company would be consigned to NASDA, which would carry out the launches. The presentation also stated that NASDA was required to purchase third-party liability insurance for each launch under the NASDA Law. For those reasons, the presentation concluded that the responsibilities of the Government of Japan under the outer space treaties were being fully performed.

5. The Working Group heard a presentation entitled "The notion of launching State in the light of current evolution of space activities" by a member of the delegation of France. The opinion was expressed that, although the concept of the launching State worked adequately in nearly all cases, problems might occur in a few situations resulting from new launching techniques and increasing commercialization of space activities. In particular, problems might arise from the possibility of launching from international territory, with private parties being able to adopt jurisdictions of convenience, from reusable launch vehicles, from launches from

international air space and from the sale of satellites in orbit.

6. The Working Group heard a presentation entitled “New launch systems and ventures” by a member of the delegation of the United States of America. The presentation included a review of the United States launch licensing system administered by the Federal Aviation Administration. It was stated that national measures to implement existing obligations of launching States were central to any discussion of new launch ventures in the Legal Subcommittee and that national launch licensing systems should include a thorough safety review and approval process and should consider establishing levels of foreseeable risk and imposing reasonable insurance requirements or other evidence of financial responsibility. It was stated that, in the light of the above considerations, the work plan of the Subcommittee concentrated on the application of the concept of the launching State by States and international organizations and upon measures to increase adherence to the conventions relating to outer space.

7. The Working Group heard a presentation entitled “Eurokot, a new German/Russian commercial launch service provider” by a member of the delegation of Germany. Eurokot was a joint venture between Khrunichev State Research and Production Space Center, a Russian state-owned company, and DaimlerChrysler Aerospace, a private German aerospace company. Registration, insurance,

launch safety and liability were covered by the Launch Services Agreement, national and international laws and consultations with the governments of Germany and the Russian Federation to ensure fulfilment of international obligations.

8. The Working Group heard a presentation by a member of the delegation of the Russian Federation. It was stated that existing international space law might not contain comprehensive norms that would adequately govern various private activities in outer space. Since the five treaties relating to outer space were closely interrelated, any changes that might be necessary in view of recent increases in private space activity should be instituted through the development of a single, comprehensive convention on the law of outer space. Meanwhile, possible interpretation of certain concepts in the agreements relating to outer space, including “launching State”, “procures the launching” and “from whose territory or facility a space object is launched”, could be considered. Although authoritative interpretations could be made only by States parties, the Legal Subcommittee could play a supportive role. It was stated that priority issues to be considered in the Legal Subcommittee under the agenda item included launches from international territory, construction of space objects in outer space and transfer of ownership of a space object after launch.

9. A compilation of the presentations made to the Working Group was distributed in a

c o n f e r e n c e r o o m p a p e r
(A/AC.105/C.2/2000/CRP.12).

10. The view was expressed that the review of the concept of the “launching State” should be based not only on the Liability Convention and the Registration Convention, but also on relevant 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 (General Assembly resolution 2222 (XXI), annex), and other agreements relating to outer space.

11. The view was expressed that, in addition to the treaties and national legislation relating to outer space, bilateral agreements were also making an important contribution to the development of international law governing responsibility and liability for launch activities.

12. Some delegations expressed the view that the Working Group could not formulate an authoritative interpretation of the concept of the “launching State”, as contained in the agreements relating to outer space, since that would be the task of a conference of States parties to the relevant treaties. However, the view was also expressed that the Working Group should attempt to reach a joint understanding on the concept of the launching State. Some other delegations expressed the view that the results of the work of the Legal Subcommittee on the concept of the launching State would have considerable normative value.

13. The view was expressed that the Working Group could develop a draft interpretation of the concept of the launching State, which could be submitted to a conference of States parties to the relevant treaties, if convened.

14. The view was expressed that the Working Group should not focus exclusively on development of national legislation, but should also review other aspects of the concept of the launching State and national liability.

15. The Working Group requested the Secretariat to prepare a compilation of documents relevant to the agenda item, with the assistance, where necessary, of Member States and international organizations.

16. The Working Group noted that the delegation of Sweden would present its national space law during consideration of the matter by the Working Group in 2001 under the second year of the work plan and encouraged other delegations to do the same.

17. The Working Group recommended that discussion by the Working Group under the second year of the work plan of the topic "Review of the concept of the 'launching State' as contained in the Liability Convention and the Registration Convention as applied by States and international organizations" should include consideration in greater detail of the observations made during the first year of the work plan and should hear presentations on the practice of space law, including presentations on

national space legislation and other relevant texts.

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.*
