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## Committee on the Peaceful

### Uses of Outer Space

Legal Subcommittee

Forty-first session

Vienna, 2-12 April 2002

## Draft report

### Addendum

## VII. Consideration of the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001) and the preliminary draft Protocol on Matters Specific to Space Assets

1. The Legal Subcommittee noted that, pursuant to agreements reached at its fortieth session and at the forty-fourth session of the Committee on the Peaceful Uses of Outer Space, which had been subsequently endorsed by the General Assembly in resolution 56/51, an ad hoc consultative mechanism had been established to review issues relevant to that item. The Subcommittee also noted that, within the framework of the ad hoc consultative mechanism, intersessional meetings had been hosted by the Government of France in Paris on 10 and 11 September 2001 and intersessional meetings had been hosted by the Government of Italy in Rome on 28 and 29 January 2002.

2. The Legal Subcommittee expressed its deep appreciation to the Governments of France and Italy for hosting the intersessional meetings of the ad hoc consultative mechanism and also expressed its thanks to ESA, the International Institute for the Unification of Private Law (Unidroit) and the Secretariat for their assistance in facilitating the holding of those meetings.

3. The Legal Subcommittee had before it the following documents:

(a) Preliminary draft protocol on matters specific to space assets of the Convention on International Interests in Mobile Equipment (A/AC.105/C.2/L.232);



(b) Report of the Secretariat entitled “Results of consultations undertaken through the ad hoc consultative mechanism established to review issues relating to the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property” (A/AC.105/C.2/L.233).

4. The Legal Subcommittee also had before it the following:

(a) The text of the Convention on International Interests in Mobile Equipment (signed at Cape Town on 16 November 2001) (A/AC.105/C.2/2002/CRP.3);

(b) Conference room paper entitled “Responses to the list of questions prepared by the Secretariat on the draft (Unidroit) convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property” (A/AC.105/C.2/2002/CRP.4).

5. The view was expressed that document A/AC.105/C.2/L.233 reflected the Secretariat’s understanding of the deliberations of the ad hoc consultative mechanism and had not been approved by the participating States. In that delegation’s view, the document had not adequately reflected that delegation’s fundamental objection to the possibility of the United Nations being required to serve a commercial function in assuming the role of either Supervisory Authority or Registrar under the provisions of the preliminary draft protocol on matters specific to space assets. That delegation also expressed the view that participation in the deliberations of the ad hoc consultative mechanism had not been as extensive as had been first expected and that, therefore, the conclusions of that mechanism should not be taken to reflect those of the Legal Subcommittee.

6. Other delegations expressed the view that document A/AC.105/C.2/L.233 was an accurate and fully satisfactory reflection of the proceedings of the ad hoc consultative mechanism, noting in particular that the conclusions reflected in section IV of the document had been subject to extensive consideration and approval by consensus by the States participating in the second intersessional meeting.

7. The conclusions of the ad hoc consultative mechanism adopted by the second intersessional meeting on 29 January 2002 are reproduced in annex [...] to the current report.

8. The Legal Subcommittee noted that a Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol had been held under the auspices of the International Civil Aviation Organization (ICAO) and Unidroit at Cape Town from 29 October to 16 November 2001 and that, as a result of the Diplomatic Conference, the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment had been opened for signature in Cape Town on 16 November 2001.

9. The Legal Subcommittee also noted that, pursuant to a decision taken by the Governing Council of Unidroit at its eightieth session, held from 17 to 19 September 2001, the text of the preliminary draft protocol on matters specific to space property had been considered and amended by the Unidroit Steering and Revisions Committee in the light of the deliberations of the Diplomatic Conference

in Cape Town and the ad hoc consultative mechanism. The title had been changed to read “Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001)—Preliminary Draft Protocol on Matters Specific to Space Assets”. The text would be transmitted by Unidroit to Governments with a view to convening the Committee of Governmental Experts in late 2002.

10. The Legal Subcommittee welcomed the decision of the Governing Council of Unidroit to open the sessions of the Committee of Governmental Experts to all Member States and interested observers for the Committee on the Peaceful Uses of Outer Space, as well as representatives of the Office for Outer Space Affairs.

11. Some delegations expressed the view that the Convention and the preliminary draft protocol on matters specific to space assets had significant potential to facilitate the development of commercial activities in outer space by enhancing the availability of commercial financing for such activities, thereby bringing benefits to countries at all levels of economic and technological development.

12. The view was expressed that Unidroit should consider developing a commentary on the texts of the Convention and the preliminary draft protocol, explaining the potential benefits that might be derived from the implementation of the legal regime envisaged by those instruments, for distribution to all States.

13. Some delegations expressed the view that the Convention and the preliminary draft protocol should neither undermine nor compromise existing principles of international space law and that, in case of a conflict, the latter principles should prevail.

14. The view was expressed that it would be necessary to include an appropriate safeguard clause within the preambular section of the preliminary draft protocol explicitly indicating full respect for the established principles of space law, as contained in international treaties concluded under the auspices of the United Nations.

15. Other delegations expressed the view that a preambular paragraph would be insufficient to ensure the primacy of existing international space law. More expressed recognition of that primacy within the operative segment of the preliminary draft protocol would be necessary to adequately resolve any potential conflicts.

16. The view was expressed that any new international law instrument relating to activities in outer space, regardless of whether its focus was on private or public law issues, should be based within the established framework of the existing United Nations treaties on outer space. That delegation noted the difficulty of reconciling a text such as the preliminary draft protocol with the existing principles of international space law in an effective and appropriate manner and expressed its concerns about both of the procedures that had been proposed in that regard. That delegation suggested that it might be preferable to consider the development of an entirely new international legal instrument that would comprehensively deal with the many and varied issues relating to commercial space activities.

17. The view was expressed that it would be important to take into account the important role of customary law in reflecting the appropriate relationship of the Convention and the preliminary draft protocol to existing principles of international

space law, particularly considering the fact that numerous States had yet to ratify some or all of the existing outer space treaties.

18. The view was expressed that it would be premature to address the issue of the primacy of existing international space law until a comprehensive conformity examination had been completed on the final text of the protocol. However, that delegation's preliminary view was that there were no incompatibilities or conflicts.

19. Some delegations expressed their satisfaction with the concept of "space assets" as defined and used in the preliminary draft protocol. Other delegations expressed their continued concerns regarding that concept and the need to adequately determine its precise scope.

20. Some delegations expressed the view that the definition of and issues related to the concept of "associated rights" in the preliminary draft protocol should be subjected to further consideration.

21. The view was expressed that the problems that might arise in relation to existing international space law were not specific only to the Convention and the preliminary draft protocol; they concerned similar situations occurring in other areas of international law and also emerged in relations between the existing space treaties and national laws governing space activities adopted by individual States.

22. Some delegations expressed the view that further consideration needed to be given to the implications of transfers contemplated under the Convention and the preliminary draft protocol on States' obligations and rights under the United Nations treaties on outer space and the ITU Constitution, Convention and Radio Regulations, particularly in instances of transfers from a national of one State to a national of another or from the territory of one State to the territory of another.

23. Some delegations expressed the view that it would be desirable to have the more active participation of ITU in the examination of the implications of the Convention and the preliminary draft protocol on States' obligations and rights under the ITU Constitution, Convention and Radio Regulations.

24. The view was expressed that an important consideration was whether it might be possible to address issues relating to transfers in advance of the particular transactions through arrangements between States parties to the future protocol on matters specific to space assets or through language within the text of the protocol itself, or whether it would be necessary to address those issues on a case-by-case basis.

25. The view was expressed that issues relating to domestic regulatory practice would also require further consideration, particularly those relating to the licensing of any transfers of satellite operations and the export control implications of possible transfers contemplated under the Convention and the preliminary draft protocol.

26. Some delegations expressed the view that consideration should be given to amending the preliminary draft protocol to the effect that no transfers could be made to creditors located in a different jurisdiction without the approval of the relevant competent governmental authority.

27. The view was expressed that, in order to resolve issues relating to the correlation between the liability obligations for a "launching State" under the

Liability Convention and the possible transfers of ownership or possession contemplated under the Convention and the preliminary draft protocol, it might be appropriate to provide for a right of recourse that could be exercised by such “launching States” against those actually in control of the object causing damage.

28. The view was expressed that it would be desirable for the Legal Subcommittee to engage in an examination of the issues associated with the transfer of space assets in a wider context than the current item, as those issues arose in various scenarios in addition to those envisaged under the Convention and the preliminary draft protocol.

29. Some delegations expressed the view that further consideration should be given to the implications of the Convention and the preliminary draft protocol for partially publicly funded space assets and ensuring that the operation of creditors’ remedies would not compromise the continuation of public services provided by particular space assets.

30. Some delegations expressed the view that the role of Supervisory Authority envisaged by the Convention and the preliminary draft protocol should be entrusted to an international intergovernmental organization of high repute and could appropriately be assumed by the United Nations or one of its organs. The view was expressed that, if the United Nations was to assume the role of the Supervisory Authority, it should enjoy the full extent of privileges and immunities provided for by the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)).

31. Some delegations expressed the view that the Secretary-General of the United Nations should be designated as the Supervisory Authority and the performance of its functions should be entrusted to the Office for Outer Space Affairs.

32. Some delegations expressed the view that the Secretariat should be requested to conduct a preliminary examination of the possible legal, financial and other requirements for the operation of the Supervisory Authority under the Convention and the preliminary draft protocol, with a view to providing a report to the Legal Subcommittee at its forty-second session, in 2003.

33. Some delegations expressed the view that the Committee on the Peaceful Uses of Outer Space, as a subsidiary body of the General Assembly, and the Office for Outer Space Affairs, as part of the United Nations Secretariat, could not be appropriately compared with ICAO, a specialized agency of the United Nations system. In the view of those delegations, while the latter type of organization could conceivably assume the commercially oriented role of the Supervisory Authority envisaged by the Convention and the preliminary draft protocol, the assumption of such a role by the Committee on the Peaceful Uses of Outer Space or the Office for Outer Space Affairs would be inappropriate.

34. Some delegations expressed the view that it might be preferable for the role of the Registrar under the Convention and the preliminary draft protocol to be carried out by a private entity. However, other delegations expressed the view that that function might also be carried out by an international organization.

35. Some delegations expressed the view that it might be desirable to establish linkage between the information to be contained in the registry envisaged by the Convention and the preliminary draft protocol and the Register maintained by the

Secretary-General of the United Nations under the Registration Convention, in order to allow adequate access of States to both sets of information. Such access could facilitate the identification of the parties truly responsible in the case of damage caused by space objects.

36. Some delegations expressed the view that the preliminary draft protocol would most appropriately be developed further within the context of the Unidroit inter-governmental meetings, and that the role of the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee in that regard could be limited to monitoring such development and considering only those issues of public international law referred to them for consideration by Unidroit. Other delegations expressed the view that the Committee and its Legal Subcommittee had a continuing role to fulfil in the further development of the preliminary draft protocol on matters specific to space assets.

37. Some delegations expressed the view that this item should be retained on the agenda of the Legal Subcommittee for its forty-second session, in 2003.

38. Some delegations expressed the view that the item should be retained on the agenda of the Legal Subcommittee until the draft protocol on matters specific to space assets had been fully developed and finalized.

39. 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.666- [...]).

## **IX. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-second session**

40. The Legal Subcommittee recalled that the General Assembly, in its resolution 56/51, had noted that the Subcommittee, at its forty-first session, would submit its proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Subcommittee at its forty-second session, in 2003.

41. Some delegations expressed the view that the appropriateness and desirability of drafting a universal comprehensive convention on international space law should be considered by the Legal Subcommittee under a sub-item of the agenda item entitled "Status and application of the five United Nations treaties on outer space", as proposed in a working paper submitted by China, Greece and the Russian Federation (A/AC.105/C.2/L.236). Those delegations expressed the view that new developments in space activities, including dramatic transformations in space activities and applications, and increasing participation by private companies and non-governmental entities, had created lacunae in the international space law system and needed to be addressed. Those delegations also expressed the view that the Subcommittee, under the proposed sub-item, should only discuss the appropriateness and desirability of drafting a universal comprehensive convention and should not actually start drafting a convention and that the development of the convention should not should not reopen the debate on existing principles of international space law contained in the United Nations treaties on outer space.

42. However, the view was expressed that a single, comprehensive treaty on outer space was neither necessary, desirable nor feasible, since the United Nations treaties and principles on outer space were continuing to meet the need for a broad and flexible structure to accommodate rapidly changing technology. That delegation also expressed the view that even initial consideration of the desirability of such a treaty would be destabilizing and would cause widespread confusion concerning the validity of the existing legal regime.

43. Some delegations expressed the view that a new item on discussion on an international convention based on the Principles Relating to Remote Sensing of the Earth from Outer Space (General Assembly resolution 41/65, annex) should be included in the agenda for the forty-second session of the Legal Subcommittee. Those delegations expressed the view that the development of such a convention was necessary to update the Principles and to develop rules for new situations resulting from technological innovations and commercial applications of remote sensing.

44. Some delegations expressed the view that the Legal Subcommittee should consider an agenda item on the review of existing norms of international law applicable to space debris.

45. The Legal Subcommittee conducted informal consultations coordinated by Niklas Hedman (Sweden) with a view to reaching agreement on the various proposals before it for consideration under this agenda item.

46. The Legal Subcommittee agreed on the following items to be proposed to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the Subcommittee for its forty-second session:

*Regular items*

1. Opening of the session and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.
4. Status and application of the five United Nations treaties on outer space.
5. Information on the activities of international organizations relating to space law.
6. Matters relating to:
  - (a) The definition and delimitation of outer space;
  - (b) 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.

*Single issues/items for discussion*

7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

8. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened to signature in Cape Town on 16 November 2001):
  - (a) Considerations relating to the possibility of the United Nations serving as a Supervisory Authority under the preliminary draft protocol;
  - (b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space.

A new working group should be established to consider sub-items 8 (a) and 8 (b) separately. The Subcommittee requested the Secretariat to prepare a report on sub-item 8 (a) in consultation with the United Nations Legal Counsel for consideration by the working group.

*Items considered under work plans*

[none]

*New items*

9. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-third session.
47. The Legal Subcommittee agreed that, as part of the consideration of the Working Group on agenda item 4, entitled “Status and application of the five United Nations treaties on outer space”, the Working Group would review the application and implementation of the concept of the “launching State”, as reflected in the conclusions of the Subcommittee’s consideration of agenda item 9, including the report of the Secretariat (A/AC.105/768).
48. The view was expressed that the consideration of the application and implementation of the concept of the “launching State” in the Working Group on agenda item 4 should be without prejudice to the consideration in the Working Group of any issue related to the implementation of the five United Nations treaties on outer space.
49. The Legal Subcommittee agreed that the Working Group to be established under agenda item 4 could consider any new issues—similar to the issue of the application and implementation of the concept of the “launching State”—that might be raised in discussions in the Working Group, provided that those issues fell within the existing mandate of the Working Group.
50. The Legal Subcommittee noted that the sponsors of the following proposals for new items to be included in the agenda for the Subcommittee intended to retain their proposals for possible discussion at subsequent sessions of the Subcommittee:
- (a) Sub-item under the item entitled “Status and application of the five United Nations treaties on outer space”, to discuss the issue of appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece and the Russian Federation (A/AC.105/C.2/L.236);



(b) Discussion on an international convention based on the Principles Relating to Remote Sensing of the Earth from Outer Space, proposed by Brazil and Greece;

(c) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting, with a view to possibly transforming the text into a treaty in the future, proposed by Greece;

(d) Review of existing norms of international law applicable to space debris, proposed by the Czech Republic and Greece.

51. The full text of the statements made by delegations during the discussion on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.667-[...]).