



General Assembly

Distr.: General
28 April 2005

Original: English

Committee on the Peaceful

Uses of Outer Space

Forty-eighth session

Vienna, 8-17 June 2005

Report of the Legal Subcommittee on its forty-fourth session, held in Vienna from 4 to 15 April 2005

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I. Introduction

A. Opening of the session

1. The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-fourth session at the United Nations Office at Vienna from 4 to 15 April 2005 under the chairmanship of Sergio Marchisio (Italy).
2. At the opening (711th) meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its forty-fourth session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.711).

B. Adoption of the agenda

3. At its opening meeting, the Legal Subcommittee adopted the following agenda:
 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.
 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 for signature at Cape Town, South Africa, on 16 November 2001:
 - (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol;
 - (b) Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space.
 9. Practice of States and international organizations in registering space objects.

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

C. Attendance

4. Representatives of the following States members of the Legal Subcommittee attended the session: Algeria, Argentina, Australia, Austria, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakhstan, Libyan Arab Jamahiriya, Malaysia, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Sweden, Syrian Arab Republic, Thailand, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

5. At the 711th meeting, on 4 April, the Chairman informed the Subcommittee that requests had been received from the permanent representatives of Azerbaijan, Bolivia, Israel, Tunisia and Yemen to attend the session as observers. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, it could take no formal decision on the matter, but that the representatives of those States might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

6. The following organizations of the United Nations system were represented at the session by observers: International Civil Aviation Organization (ICAO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and International Atomic Energy Agency (IAEA).

7. The following international organizations were also represented by observers: European Space Agency (ESA), International Astronautical Federation (IAF), International Law Association (ILA), International Mobile Satellite Organization, International Organization of Space Communications (INTERSPUTNIK) and Space Generation Advisory Council.

8. A list of the representatives of States members and non-members of the Subcommittee, organizations of the United Nations system, intergovernmental organizations and other entities attending the session and of members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF.37.

D. Organization of work

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

(a) The Subcommittee reconvened its Working Group on agenda item 4, entitled "Status and application of the five United Nations treaties on outer space", open to all members of the Subcommittee, pending a decision regarding its chairmanship;

(b) The Subcommittee reconvened its Working Group on agenda item 6 (a), entitled “The definition and delimitation of outer space”, open to all members of the Subcommittee, and agreed that José Monserrat Filho (Brazil) should serve as its Chairman;

(c) The Subcommittee reconvened its Working Group on agenda item 8, entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001”, open to all members of the Subcommittee, and agreed that Vladimír Kopal (Czech Republic) should serve as its Chairman;

(d) The Subcommittee established a Working Group on agenda item 9, entitled “Practice of States and international organizations in registering space objects”, open to all members of the Subcommittee, and agreed that Niklas Hedman (Sweden) should serve as its Chairman;

(e) The Subcommittee began its work each day with a plenary meeting to hear statements from delegations. It subsequently adjourned and, when appropriate, convened a working group.

10. At the opening meeting, the Chairman proposed and the Subcommittee agreed that its work should continue to be organized flexibly with a view to making the best use of the available conference services.

11. The Subcommittee noted with satisfaction that a symposium entitled “Recent developments in remote sensing and the desirability of reviewing the 1986 United Nations Principles Relating to Remote Sensing of the Earth from Outer Space”, sponsored by the International Institute of Space Law (IISL) of IAF in cooperation with the European Centre for Space Law (ECSL) of ESA, had been held during the current session of the Subcommittee, on 4 April. The symposium was coordinated by Tanja Masson-Zwaan of IISL and chaired by Peter Jankowitsch (Austria). Presentations were made by Mahulena Hofmann on the “International legal framework of remote sensing in the year 2005: changed conditions and changed needs?”; Joanne Gabrynowicz on “The 1986 United Nations Principles and current state practice in North America”; Rajeev Lochan on “The 1986 United Nations Principles: on the necessity of a revisit”; and Marco Ferrazzani on “The 1986 United Nations Principles and current state practice in Europe”. The Subcommittee agreed that IISL and ECSL should be invited to hold a further symposium on space law at its forty-fifth session. An account of the proceedings of the symposium was distributed to the Subcommittee in a conference room paper (A/AC.105/C.2/2005/CRP.8 and Add.1).

12. The Legal Subcommittee recommended that its forty-fifth session should be held from 3 to 13 April 2006.

E. Adoption of the report of the Legal Subcommittee

13. The Subcommittee held a total of 20 meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.711-730).

14. At its 730th meeting, on 15 April 2005, the Subcommittee adopted the present report and concluded the work of its forty-fourth session.

II. General exchange of views

15. Statements were made by representatives of the following States members of the Legal Subcommittee during the general exchange of views: Brazil, Burkina Faso, Canada, China, Colombia, France, Germany, India, Indonesia, Italy, Japan, Morocco, Republic of Korea, Romania, Russian Federation, Thailand, Ukraine and United States. The representative of Bolivia made a statement on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States. The observers for IAF and IISL also made statements. The views expressed by those speakers are contained in unedited verbatim transcripts (COPUOS/Legal/T.711-714).

16. At the 711th meeting, on 4 April, the Director of the Office for Outer Space Affairs of the Secretariat made a statement reviewing the role and work of the Office relating to space law. The Subcommittee noted with appreciation the information on the activities of the Office aimed at promoting understanding, acceptance and implementation of international space law.

17. Some delegations expressed the view that the militarization of outer space risked undermining strategic stability and international security and could lead to an arms race. Those delegations were of the view that the Subcommittee should discuss ways to ensure that space technology was used exclusively for peaceful purposes, including by establishing a comprehensive and effective legal mechanism to prevent the militarization and weaponization of, and an arms race in, outer space.

18. The view was expressed that the militarization of outer space also threatened human security.

19. The view was expressed that, while outer space could be used for defensive purposes, on the condition of not stationing weapons in outer space, space defence systems should exist only if they were used for monitoring compliance with non-aggression agreements and to avoid military conflict.

20. The view was expressed that outer space must be protected from the threat posed by weapons in outer space. That delegation was of the view that it was time for the partial space-weapons ban enshrined in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty", General Assembly resolution 2222 (XXI), annex) to be extended to all weapons.

21. The view was expressed that the success of the Subcommittee in its work could be attributed to its avoidance of debating extraneous political issues and its ability to focus on practical problems and to seek to address any such problems by means of a consensus-based and results-oriented process.

22. The Subcommittee noted with satisfaction that the Government of Ecuador, in accordance with General Assembly resolution 59/116 of 10 December 2004, had announced its intention to organize the Fifth Space Conference of the Americas, to be held in Quito in July 2006. The Subcommittee further noted that the Government

of Chile would organize a preparatory meeting for the Conference during the International Air and Space Fair, to be held in Santiago in March 2006.

23. The Subcommittee expressed its appreciation to the Secretariat for the excellent documentation prepared for the Subcommittee at its current session.

III. Status and application of the five United Nations treaties on outer space

24. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider the agenda item on the status and application of the five United Nations treaties on outer space as a regular item, and had noted that the Subcommittee would reconvene its Working Group on the item at its current session and would review the need to extend the mandate of the Working Group beyond that session of the Subcommittee.

25. The Subcommittee noted with satisfaction that the Secretariat had updated and distributed a document containing information, as at 1 January 2005, on States parties and additional signatories to the United Nations treaties and other international agreements relating to activities in outer space (ST/SPACE/11/Add.1/Rev.2).

26. The Subcommittee noted that the status of the five United Nations treaties on outer space, as at 1 January 2005, was as follows:

(a) The Outer Space Treaty had 98 States parties and had been signed by 27 additional States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the "Rescue Agreement", Assembly resolution 2345 (XXII), annex) had 88 States parties and had been signed by 25 additional States;

(c) The Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention", Assembly resolution 2777 (XXVI), annex) had 82 States parties and had been signed by 25 additional States;

(d) The Convention on Registration of Objects Launched into Outer Space (the "Registration Convention", Assembly resolution 3235 (XXIX), annex) had 45 States parties and had been signed by 4 additional States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the "Moon Agreement", Assembly resolution 34/68, annex) had 11 States parties and had been signed by 5 additional States.

27. The Subcommittee noted that one international organization had declared its acceptance of the rights and obligations in the Rescue Agreement; two international organizations had declared their acceptance of the rights and obligations in the Liability Convention; and two international organizations had declared their acceptance of the rights and obligations in the Registration Convention.

28. The Subcommittee welcomed the ratification by Belgium in 2004 of the Moon Agreement, as well as reports from Member States regarding their progress towards

becoming party to the five United Nations treaties on outer space, in developing national space laws and in concluding bilateral and multilateral agreements on space cooperation. The Subcommittee noted that the activities of the Office for Outer Space Affairs were contributing to that progress.

29. The Subcommittee agreed that it would be premature for the Working Group on agenda item 4 to meet during the current session, as Member States and international organizations needed time to respond to the letters sent to them concerning the five United Nations treaties on outer space and to the recommendation of the General Assembly, in its resolution 59/115 of 10 December 2004, concerning voluntary submission by Member States of information on their current practices regarding on-orbit transfer of ownership of space objects.

30. The Subcommittee therefore agreed, at its 714th meeting, on 5 April, to suspend the Working Group on agenda item 4 and to reconvene the Working Group at the forty-fifth session of the Subcommittee, in 2006. The Subcommittee agreed that it would also review at its forty-fifth session the need to extend the mandate of the Working Group beyond that session.

31. The Subcommittee agreed that Member States should regularly provide the Office for Outer Space Affairs with information on their national space legislation and policy in order for the Office to maintain an up-to-date database on that subject.

32. Some delegations expressed the view that the United Nations treaties on outer space established a coherent and useful framework for increasingly widespread and complex activities in outer space carried out by both governmental and private entities. Those delegations welcomed further adherence to the treaties and hoped that States that had not yet ratified or acceded to those treaties would consider becoming parties in 2005.

33. Other delegations expressed the view that, although the provisions and principles of the United Nations treaties on outer space constituted the regime to be observed by States and more States should be encouraged to adhere to them, the current legal framework for outer space activities required modification and further development to keep pace with advances in space technology and changes in the nature of space activities. Those delegations expressed the view that the lacunae resulting from the fact that the current legal framework had not kept pace with developments in space activities could be addressed by the development of a universal, comprehensive convention on space law without disrupting the fundamental principles contained in the treaties currently in force.

34. The view was expressed that an informal working group should be convened to consider various questions relating to the possible elaboration of such a comprehensive convention.

35. The view was expressed that it was solely a matter for States parties to the treaties on outer space to interpret and implement those treaties.

36. The view was expressed that Member States should envisage the harmonization of the implementation of the provisions of the United Nations treaties on outer space with a view to increasing consistency of national space legislation with international space law.

37. The view was expressed that the low number of parties to the United Nations treaties on outer space among some African countries and their low level of participation in outer space activities, for instance, in the work of the Committee and its Subcommittees, was because of a lack of financial and human resources in those countries, as well as a perception that the topic of outer space was distant from the daily issues of survival faced by the populations in those countries. That delegation was of the view that a higher visibility for the Office for Outer Space Affairs in those Member States would certainly contribute to a positive change in that perception.

38. The full text of the statements made by delegations during the discussion on agenda item 4 is contained in unedited verbatim transcripts (COPUOS/Legal/T.712-716).

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

39. In accordance with the agreement reached by the Legal Subcommittee in 2004, at its forty-third session, the Subcommittee invited international organizations to report on their activities and recalled that the General Assembly, in its resolution 59/116, had agreed that the Subcommittee should address the level of participation of the intergovernmental and non-governmental organizations having permanent observer status with the Committee on the Peaceful Uses of Outer Space and report to the Committee in June 2005, at its forty-eighth session, on means to enhance their participation in the work of the Subcommittee.

40. The Legal Subcommittee had before it a note by the Secretariat (A/AC.105/C.2/L.254 and Corr.1 and Add.1) and a conference room paper (A/AC.105/C.2/2005/CRP.5) containing information on activities relating to space law received from the following international organizations: ECSL, ESA, ILA, IISL and the International Institute for the Unification of Private Law (Unidroit).

41. In the course of the debate, observers for the following international organizations reported to the Subcommittee on their activities relating to space law: UNESCO, ESA, IAF and ILA.

42. The Subcommittee heard a presentation by the observer for INTERSPUTNIK on that organization's activities.

43. The Subcommittee was also informed on the activities carried out by the International Centre for Space Law, in Kyiv, the University of Perugia, Italy, and the Indian Space Research Organization in relation to space law.

44. The Subcommittee noted the efforts and progress made by UNESCO in addressing the ethical issues of outer space activities, as well as its decision not to elaborate a declaration of ethical principles, but rather to emphasize and promote awareness of moral and ethical issues raised by space activities in the framework of reinforced international cooperation.

45. The view was expressed that ethical principles relating to outer space activities should be well defined and considered as having a moral force but not be of a binding nature. In that regard, a close interaction between space law and space

ethics should be maintained and a close cooperation between UNESCO and the Committee on the Peaceful Uses of Outer Space, particularly its Legal Subcommittee, should be promoted.

46. The Subcommittee noted that, in response to a request by the Committee, the Inter-Agency Meeting on Outer Space Activities, at its twenty-fifth session, held in Vienna from 31 January to 2 February 2005, had considered the matter of enhancing the participation of organizations of the United Nations system in the work of the Committee and its Subcommittees. The Meeting had agreed that, while financial and staff resource limitations sometimes prevented some organizations of the United Nations system from being represented at all meetings of the Committee and its Subcommittees, those organizations could enhance their participation by preparing written reports, when requested, on matters related to specific agenda items and could submit information and reports on their activities related to the work of the Committee and its Subcommittees (see A/AC.105/842).

47. The view was expressed that intergovernmental organizations conducting space activities and their member States should consider possible steps they could take to declare acceptance of the rights and obligations under the Rescue Agreement, the Liability Convention and the Registration Convention.

48. The Subcommittee noted with appreciation the efforts of the Office for Outer Space Affairs to build capacity in space law and commended its work in compiling its document “Education opportunities in space law: a directory” (see A/AC.105/C.2/2005/CRP.4), its electronic publication “Space law update” and the organization of its workshops on space law. The Subcommittee also noted that the Office intended to improve the pages dedicated to space law on its website (www.unoosa.org).

49. The Subcommittee noted with appreciation that the directory of education opportunities in space law had been updated and would be made available on the website of the Office for Outer Space Affairs. The Subcommittee expressed its appreciation to the educational institutions that had provided information on their programmes and encouraged those and other educational institutions to continue providing such information.

50. The Subcommittee expressed its appreciation to the Associação Brasileira de Direito Aeronáutico e Espacial and the Government of Brazil for co-sponsoring the United Nations/Brazil Workshop on Space Law on the theme “Disseminating and developing international and national space law: the Latin America and Caribbean perspective”, held from 22 to 25 November 2004, in Rio de Janeiro, Brazil (see A/AC.105/847).

51. The Subcommittee noted with appreciation that the Workshop had promoted the understanding, acceptance and implementation of the United Nations treaties and principles on outer space, especially in Latin America and the Caribbean. The Subcommittee also noted with appreciation that the Workshop had made a positive contribution to the dissemination and development of international and national space law and to the promotion of the universality of the five United Nations treaties on outer space.

52. The Subcommittee noted with appreciation that the next United Nations Workshop on Space Law would be hosted by Nigeria from 14 to 17 November 2005, in Abuja.

53. 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.713-718).

V. Matters relating to the definition and delimitation of outer space and 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

54. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-fourth session, taking into account the concerns of all countries, in particular those of developing countries, should consider 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 (ITU).

55. The Subcommittee had before it the following documents:

(a) Note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from member States” (A/AC.105/635 and Add.1-12, Add.7/Corr.1 and Add.11/Corr.1). A compilation of replies received from member States to the questionnaire is available on the website of the Office for Outer Space Affairs (<http://www.oosa.unvienna.org/aero>);

(b) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects” (A/AC.105/C.2/L.249 and Corr.1 and Add.1);

(c) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects: preferences of member States” (A/AC.105/849).

56. Some delegations expressed the view that the exploitation of the geostationary orbit, which was a limited natural resource, should, in addition to being rational, be made available to all countries, irrespective of their current technical capacities, thereby providing them with the possibility of having access to the orbit under equitable conditions, bearing in mind, in particular, the needs and interests of developing countries, as well as the geographical position of certain countries and taking into account the process of ITU.

57. Some delegations expressed the view that the geostationary orbit was a limited natural resource with sui generis characteristics that risked saturation and that

equitable access to it should therefore be guaranteed for all States, taking into account in particular the needs of developing countries and the geographical position of certain countries.

58. Some delegations expressed their satisfaction with the agreement reached by the Subcommittee at its thirty-ninth session (see A/AC.105/738, annex III), to the effect that coordination among countries aimed at the utilization of the geostationary orbit should be carried out in a rational and equitable manner and in conformity with the ITU Radio Regulations.

59. Some delegations referred to the consensus reached at the Scientific and Technical Subcommittee at its forty-second session, and given the special characteristics of the geostationary orbit, the geostationary orbit should be considered as an integral part of outer space. Therefore, in the view of those delegations, the geostationary orbit should be governed by a special regime.

60. The view was expressed that, in order for the agreement of the Legal Subcommittee at its thirty-ninth session to be implemented, the participation of and effective implementation by ITU were necessary. For that purpose, the relationship between ITU and the Committee should become closer and be organized in a manner such that agreements reached by the Committee could be carried out effectively.

61. Some delegations expressed the view that the geostationary orbit was an integral part of outer space and that its use was governed by the provisions of the United Nations treaties on outer space.

62. The view was expressed that the current Constitution and Convention of ITU^a and the ITU Radio Regulations, as well as the current procedures set out in the treaties on international cooperation among countries and groups of countries with respect to the geostationary orbit and other orbits, took fully into account the interests of States in the use of the geostationary orbit and the radio-frequency spectrum.

63. The view was expressed that the provisions of articles I and II of the Outer Space Treaty made it clear that a party to the Treaty could not appropriate any part of outer space, such as an orbital location in the geostationary orbit, either by claim of sovereignty or by means of use, or even repeated use.

64. Some delegations expressed the view that scientific and technological progress, the commercialization of outer space, emerging legal questions and the increasing use of outer space in general had made it necessary for the Legal Subcommittee to consider the question of the definition and delimitation of outer space.

65. Some delegations expressed the view that the lack of a definition or delimitation of outer space brought about legal uncertainty concerning the applicability of space law and air law and that matters concerning state sovereignty and the boundary between air and outer space needed to be clarified in order to reduce the possibility of disputes among States.

^a United Nations, *Treaty Series*, vol. 1825, No. 31251.

66. The view was expressed that States should continue to operate under the current framework, which functioned well, until such time as there was a demonstrated need and a practical basis for developing a definition or delimitation of outer space. That delegation was of the view that currently an attempt to define and to delimit outer space would be a theoretical exercise, could lead to complicating existing activities and might not be able to anticipate continuing technological developments.

67. The Subcommittee noted with interest that the Scientific and Technical Subcommittee, at its forty-second session, in 2005, had heard a presentation made by the representative of Colombia on behalf of the pro tempore secretariat of the Fourth Space Conference of the Americas, entitled “Geostationary orbit analyser tool”, illustrating the non-homogeneous use of the orbit-spectrum resources, which increased the saturation risk for some regions.

68. As mentioned in paragraph 9 (b) above, at its 711th meeting the Legal Subcommittee reconvened its Working Group on agenda item 6 (a). At its 715th meeting, the Subcommittee elected José Monserrat Filho (Brazil) as Chairman of the Working Group. In accordance with the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, the Working Group convened to consider only matters relating to the definition and delimitation of outer space.

69. The Working Group on agenda item 6 (a) held 7 meetings. At its 726th meeting, on 13 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex I to the present report.

70. The full text of the statements made by delegations during the discussion on agenda item 6 is contained in unedited verbatim transcripts (COPUOS/Legal/T.715-720 and 726).

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

71. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its forty-fourth session, taking into account the concerns of all countries, in particular those of developing countries, should consider the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (Assembly resolution 47/68) as a single issue/item for discussion.

72. The Subcommittee noted that, at its forty-second session, the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space had endorsed the recommendation of its Working Group on the Use of Nuclear Power Sources in Outer Space to organize, jointly with IAEA, a technical workshop on the objective, scope and general attributes of a potential technical safety standard for nuclear power sources in outer space, to be held in the framework of the forty-third session of the Scientific and Technical Subcommittee, in 2006.

73. The Subcommittee also noted that, in order to allow for the organization and holding of the joint workshop, the Scientific and Technical Subcommittee had

agreed to amend the multi-year work plan adopted at its fortieth session to allow inclusion of the item on its agenda.

74. Some delegations expressed the view that the work being carried out by the Scientific and Technical Subcommittee was important for the development of an international consensus on a technically based framework for the safe use of nuclear power source applications in outer space.

75. Some delegations expressed the view that it was necessary for the Legal Subcommittee to broaden its discussion under item 7 and to consider the need for a review of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space by compiling as much information as possible on the issue as well as by considering the ongoing work and future results of the Scientific and Technical Subcommittee in developing an international technically based framework for nuclear power sources in outer space.

76. The view was expressed that, at the present time, given the work being conducted by the Scientific and Technical Subcommittee, opening a discussion on revision of the Principles was not warranted.

77. The view was expressed that the Legal Subcommittee could consider the question of a possible revision of the Principles and that if such a review was undertaken, the Subcommittee would benefit from the experience of IAEA and those States that had already developed relevant legislative norms.

78. The view was expressed that cooperation with IAEA was important for bringing together the technical competence and effective procedures developed by IAEA with regard to nuclear safety on the Earth and the expertise of the Committee in the area of matters relating to exploration and use of outer space. In that connection, that delegation called for coordination between the Working Group on the Use of Nuclear Power Sources in Outer Space and the Working Group on Space Debris of the Scientific and Technical Subcommittee with regard to matters relating to possible collision between space objects carrying nuclear power sources on board and space debris.

79. The view was expressed that nuclear power sources could constitute an important tool for certain future programmes for the exploration of the solar system.

80. The Subcommittee agreed that it was necessary to continue discussing the issue and that it should remain on the agenda of the Legal Subcommittee.

81. The full text of the statements made during the discussions on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.717-720).

VII. Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001

82. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider an agenda item entitled

“Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001” as a single issue/item for discussion. In accordance with that resolution, the Subcommittee considered two sub-items under agenda item 8:

“(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol;

“(b) Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space.”

83. The Subcommittee had before it the following documents:

(a) Report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets, submitted by the Netherlands as coordinator of the working group (A/AC.105/C.2/L.256);

(b) Note by the Secretariat: report of the Unidroit secretariat on the second session of the Unidroit committee of governmental experts for the preparation of a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets (A/AC.105/C.2/2005/CRP.3);

(c) Results of the preliminary exchange of views on the report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets, submitted by the Netherlands as coordinator of the working group (A/AC.105/C.2/2005/CRP.7);

(d) Report on the question of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets (A/AC.105/C.2/2005/CRP.7/Rev.1 and 2);

(e) Statement submitted by the secretariat of Unidroit (A/AC.105/C.2/2005/CRP.9).

84. The Subcommittee noted that the States members of the Committee on the Peaceful Uses of Outer Space had been invited to the second session of the committee of governmental experts, convened in Rome by Unidroit from 26 to 28 October 2004, which had focused on fundamental policy issues for the practical viability of the space assets protocol rather than proceeding to a second reading of the text of the draft protocol.

85. The Subcommittee noted that the Unidroit committee of governmental experts would hold its third session in Rome in October 2005, and that States members of the Committee would be invited to attend that session also.

86. The Subcommittee welcomed the establishment of the open-ended ad hoc working group, which had carried out its work intersessionally under the coordination of the delegation of the Netherlands, and considered the appropriateness of the United Nations serving as supervisory authority under the future protocol. It further took note with appreciation of the draft report prepared by

the coordinator, René Lefeber, and the progress made following the preliminary exchange of views on that report.

87. Some delegations supported the assumption by the United Nations of the function of supervisory authority and hoped that the Subcommittee would decide at its current session to recommend to the General Assembly to agree, in principle, to the assumption of that role. Those delegations expressed the view that, if agreement could not be reached on such an approach, then the Subcommittee should at least agree on a procedure to carry the matter forward, as it was important for the Assembly to have the opportunity to consider the fundamental and practical issues relating to the assumption by the United Nations of this function, including the securing of appropriate privileges and immunities, coverage of all costs that would be incurred in the performance of the function of supervisory authority and the requirement for the registrar to obtain sufficient insurance.

88. Other delegations expressed the view that it was premature to discuss any formal proposal to the General Assembly before all practical issues relating to the assumption by the United Nations of the role of supervisory authority had been adequately addressed by the Subcommittee.

89. Some delegations expressed the view that there was no legal impediment to the United Nations assuming the role of supervisory authority and that such a role was consistent with all the purposes of the United Nations set out in its Charter.

90. Some delegations expressed the view that the issues identified by the Secretariat in its report prepared in consultation with the Legal Counsel of the United Nations (A/AC.105/C.2/L.238) would need to be adequately considered before a decision could be taken on whether the United Nations could assume the functions of supervisory authority under the future protocol. Those delegations identified parts of the report by the Secretariat that, in their view, emphasized the incompatibility between the functions of the United Nations and the role of supervisory authority, and the recommendation contained in paragraph 52 that consideration should be given to other options, as well as continuing to study the practical experience of ICAO in carrying out the functions of supervisory authority under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment before taking a final decision concerning the United Nations serving as supervisory authority under the future space assets protocol.

91. Some delegations expressed their support for the efforts of Unidroit to establish a legal instrument to facilitate private financing of space activities to the benefit of commercial, as well as public, space applications. Those delegations expressed the view that the private financing of space activities would be beneficial to both developed and developing countries.

92. Some delegations expressed the view that the future protocol not only opened up possibilities of conflict with the outer space treaties but could also lead to the compromise of national interests. Those delegations expressed the view that the assumption of the role of supervisory authority by the United Nations was inappropriate and in conflict with its fundamental mandate. Those delegations also expressed the view that the future protocol might require the Secretary-General to seek or receive instructions from external authorities and thus would conflict with Article 100 of the Charter of the United Nations.

93. Some delegations expressed the view that the future protocol was intended to address only the distinct and important issue of financing for commercial space activities and not to affect the rights and obligations of parties to the outer space treaties or the rights and obligations of States members of ITU under its Constitution and Convention and its Regulations. Those delegations also expressed the view that the Subcommittee and its members had expertise that might be valuable in the development of the future protocol, but that the protocol would ultimately be negotiated by the States members of Unidroit through the Unidroit process.

94. Some delegations noted that a number of options for the supervisory authority, such as ITU, were under consideration by delegations participating in the group of governmental experts convened by Unidroit to review the future protocol, as well as the possibility of creating a committee of States parties.

95. The view was expressed that although proposals were made during the course of discussions regarding alternatives to the United Nations assuming the role of supervisory authority, those proposals were not the subject of a detailed analysis. That delegation was of the view that until such a detailed analysis had been undertaken, there would be no obstacles to the United Nations assuming the role.

96. The view was expressed that the final decision regarding the identity of the supervisory authority remained with the diplomatic conference that would be convened to adopt the future protocol. That delegation also expressed the view that only reasonable costs incurred in the performance of the function of the supervisory authority would need to be covered.

97. The view was expressed that the report of the ad hoc working group did not provide any clear answers relating to the legal and financial implications of the United Nations assuming the role of supervisory authority, nor to the implications arising from proposed reforms to the structure of the United Nations Secretariat.

98. Some delegations expressed the view that, if the United Nations assumed the role of supervisory authority under the future protocol, then it would be crucial to ensure that start-up funds were provided from voluntary funds assigned in advance and not from the regular budget of the United Nations. Those delegations also expressed the view that there remained a risk that the United Nations might have to pay compensatory damages should it decide to assume the role of supervisory authority.

99. The view was expressed that, in order to avoid any legal implications, consideration might be given to establishing a specialized space agency under the aegis of the United Nations that could take on the role of the supervisory authority as well as other functions, such as the consideration of space debris and other issues of a global character.

100. The view was expressed that the matter of establishing a specialized outer space agency required an in-depth study. In any case, the establishment of such an agency would take time and the question of an appropriate supervisory authority was more pressing.

101. Some delegations expressed the view that given the complex institutional nature of the question of the United Nations assuming the role of supervisory

authority, the matter should be referred to the Sixth Committee of the General Assembly before being referred to its Fourth Committee.

102. The view was expressed that referring the matter to the Sixth Committee was not necessary and could in fact have negative implications for the work of the Legal Subcommittee.

103. The view was expressed that, as there was no consensus on the United Nations assuming the role of supervisory authority, serious consideration should be given to alternative solutions. Concerning the question of the supervisory authority and also the possibility of establishing an international entity responsible for coordinating natural disaster management, the status of the Committee on the Peaceful Uses of Outer Space should be carefully considered in the context of the reform of the United Nations.

104. The view was expressed that it was vital to emphasize in the future protocol the public nature of the services that satellites carried, in particular in developing countries, and that safeguards should be put in place to protect the vital national interests of those States in the case of default on a loan or transfer of ownership of a satellite.

105. The view was expressed that implementation of the future protocol must not affect the orbital slots and frequency spectrum bands granted to States in accordance with the established rules of ITU, as it was possible that in the case of default, the financier taking over control of the space asset would seek to make use of those orbital slots and the frequency spectrum band.

106. The view was expressed that the future protocol should take into account the domestic legislation of States, as some of the default remedies provided in the future protocol could not be implemented domestically. That delegation also expressed the view that the question of intellectual property and the definition of "space asset" required serious consideration.

107. Some delegations expressed the view that provisions regarding the primacy of the outer space treaties should be asserted more forcefully in the operative paragraphs of the future protocol in order to ensure its compatibility with the United Nations treaties on outer space and that in case of any conflict with the treaties on outer space, the provisions of those treaties would prevail.

108. The view was expressed that the third preambular paragraph of the preliminary draft protocol, and the inclusion of article XXI (bis) in that draft during the first session of the Unidroit committee of governmental experts, adequately addressed the relationship between the United Nations treaties on outer space and the preliminary draft protocol, although the precise formulation of article XXI (bis) was still under negotiation.

109. The view was expressed that while the preliminary draft protocol addressed in detail the rights and interests of the financier in case of any default on the part of the debtor, it did not adequately address the issues relating to the obligations of the creditor and the State to which the financier belonged, particularly as regards the obligations of States under articles VI and VII of the Outer Space Treaty and article II, paragraph 1, of the Registration Convention.

110. Some delegations expressed the view that the default provisions, which envisaged the transfer of space assets under the future protocol, could result in the erosion of rights and obligations under the outer space treaties.

111. The view was expressed that as agreement had not yet been reached on aerospace transportation systems, that issue could potentially create a conflict between the United Nations and ICAO, if each organization were to assume the role of supervisory authority under the relevant protocols.

112. The view was expressed that if the United Nations did not assume the role of supervisory authority, it should still have unlimited access to all information in the registry to be set up under the future protocol.

113. The view was expressed that the decision of the Subcommittee should be delayed until the Unidroit subcommittee formed to develop proposals for the international registration system had completed its consideration of the role of the supervisory authority.

114. Consensus regarding the principal question of the appropriateness of the United Nations serving as the supervisory authority could not be reached.

115. The Subcommittee agreed that agenda item 8 should be reformulated to read "Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment", and should remain on the agenda of the Subcommittee, in this modified form, at its forty-fifth session.

116. As mentioned in paragraph 9 (c) above, at its 711th meeting, on 4 April, the Subcommittee reconvened its Working Group on agenda item 8 and elected Vladimír Kopal (Czech Republic) as Chairman of the Working Group. The Working Group held 8 meetings. At its 729th meeting, on 15 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex II to the present report.

117. The full text of statements made by delegations during the discussions on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.721-727 and 729).

VIII. Practice of States and international organizations in registering space objects

118. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider the practice of States and international organizations in registering space objects, in accordance with the work plan adopted by the Committee.

119. The Subcommittee had before it a background paper prepared by the Secretariat entitled "Practice of States and international organizations in registering space objects" (A/AC.105/C.2/L.255 and Corr.1 and 2).

120. The Subcommittee noted with satisfaction that its work under agenda item 9 would encourage States to adhere to the Registration Convention, improve the

application and enhance the effectiveness of the Convention and assist in developing and strengthening national legislative norms relating to the registration of objects launched into outer space.

121. The Subcommittee was informed on the practices of States regarding national legislation for implementing the Registration Convention; the establishment and maintenance of national registries of objects launched into outer space; and the transmission of information from those registries to the Register of Objects Launched into Outer Space maintained by the United Nations. The Subcommittee was also informed on bilateral agreements between States that took into account provisions of the Registration Convention.

122. The Subcommittee was informed on progress being made by States towards becoming party to the Registration Convention.

123. The Subcommittee noted that the Institute of Air and Space Law of the University of Cologne and the German Aerospace Center had organized as part of their "Project 2001 Plus: Global and European Challenges for Air and Space Law at the Edge of the 21st Century" a workshop on "Current issues in the registration of space objects" in Berlin, on 20 and 21 January 2005.

124. Some delegations expressed the view that the Subcommittee should identify practical ways and means to improve the application of the Registration Convention, ensuring that the registration process functioned well in the future and facilitating productive and beneficial use of outer space.

125. The view was expressed that in recent years there had been a marked decrease in the registration of objects launched into outer space and that the failure to register those objects undermined the outer space treaties.

126. The view was expressed that a uniform and complete application of the Registration Convention was important for governmental as well as commercial space activities.

127. The view was expressed that the implementation and application of the Registration Convention would be enhanced if the form and content of the information transmitted to the United Nations by States was standardized; if States ensured that all objects launched were registered; if a reasonable deadline was set for registering space objects; if national registries were made more accessible, for example through the Internet; if information on the existence of the United Nations Register was widely disseminated to national entities; if additional information, such as change of orbital position, was provided; and if, once the international registry under the future space assets protocol to the Convention on International Interests in Mobile Equipment was established, the name of the company or legal person having registered rights to a space object was entered into the United Nations Register.

128. The view was expressed that the Subcommittee should consider questions relating to the uniformity of information transmitted for inclusion in the United Nations Register; to international adjustments being made when more than one State participated in the launch of a space object; and to registration of space objects within a reasonable period of time following their launch.

129. The view was expressed that General Assembly resolution 59/115, which was the result of the work conducted by the Working Group on the review of the concept of the “launching State”, was a good example of how to reach positive results on such questions.

130. As mentioned in paragraph 9 (d) above, at its 711th meeting, on 4 April, the Subcommittee reconvened its Working Group on agenda item 9 and elected Niklas Hedman (Sweden) as Chairman of the Working Group. The Working Group held 5 meetings. At its 729th meeting, on 15 April, the Subcommittee endorsed the report of the Working Group, which is contained in annex III to the present report.

131. The full text of the statements made during the discussions on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.721-729).

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-fifth session

132. The Legal Subcommittee recalled that the General Assembly, in its resolution 59/116, had noted that the Subcommittee, at its forty-fourth 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-fifth session, in 2006.

133. The Chairman recalled that the following proposals for new items to be included in the agenda of the Legal Subcommittee had been considered by the Subcommittee at its forty-third session and had been retained by their sponsors with a view to discussing them at subsequent sessions of the Subcommittee (see A/AC.105/826, para. 134):

(a) The appropriateness and desirability of drafting a universal comprehensive convention on international space law, proposed by China, Greece, the Russian Federation and Ukraine;

(b) 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;

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

(d) Analysis of current remote sensing practices within the framework of the Principles Relating to Remote Sensing of the Earth from Outer Space, proposed by Brazil;

(e) Space debris, proposed by France and supported by member and cooperating States of ESA.

134. Some delegations stressed the importance of including new items on the agenda of the Legal Subcommittee. The view was expressed that it was necessary to support the continuous development of international space law.

135. The view was expressed that, in order to enhance the work of the Subcommittee, the Secretariat could prepare, together with the permanent observers

of the Committee on the Peaceful Uses of Outer Space, a list of new and emerging legal issues related to outer space that could be considered for inclusion on the agenda of the Subcommittee at future sessions.

136. Some delegations expressed the view that the present legal regime governing the activities of States in the exploration and use of outer space was not keeping pace with existing scientific and technological developments. Those delegations expressed the view that a universal comprehensive convention should be developed in a balanced manner with the aim of finding solutions for existing issues, giving legal binding status to the principles on outer space and supplementing provisions of the existing United Nations treaties on outer space.

137. The view was expressed that the development of a universal comprehensive convention on outer space should include provisions to prevent the weaponization and militarization of outer space.

138. Some delegations expressed the view that the current legal framework established by the United Nations treaties on outer space adequately met the needs of the international community in matters relating to outer space. Those delegations were of the view that the legal framework governing global space activities would be strengthened through increased participation in and adherence to the existing United Nations treaties and principles on outer space and that the preparation of a comprehensive convention was not desirable.

139. The view was expressed that the consideration of a universal comprehensive convention with regard to outer space would hinder the work of the Legal Subcommittee and would create uncertainty on the status and validity of the existing outer space treaties and principles.

140. The Subcommittee noted that the sponsors of the proposal to include an item entitled "Appropriateness and desirability of drafting a universal comprehensive convention on international space law" on the agenda of the Subcommittee had agreed to temporarily suspend consideration of their proposal in view of the fact that the Subcommittee would not be in a position to reach consensus at the current session on the inclusion of that item on its agenda. Those delegations informed the Subcommittee that a proposal for the Working Group on agenda item 4 to consider a questionnaire on possible options for future development of international space law would be submitted in the form of a working paper.

141. Some delegations expressed the view that the Legal Subcommittee should examine the legal aspects of space debris mitigation. Some delegations expressed the view that, taking into account the progress made by the Scientific and Technical Subcommittee with regard to space debris mitigation, it had become appropriate to include that matter on the agenda of the Legal Subcommittee.

142. Some delegations were of the view that given the work still to be conducted by the Scientific and Technical Subcommittee in relation to space debris, it would be premature for the Legal Subcommittee to include an item relating to space debris on its agenda.

143. The Legal Subcommittee noted that the sponsor of the proposal to include an item entitled "Analysis of current remote sensing practices within the framework of the Principles Relating to Remote Sensing of the Earth from Outer Space" had withdrawn its proposal in view of the fact that the Subcommittee would not be in a

position to reach consensus on the inclusion of that item on its agenda. That delegation further noted that the question of providing better access to the benefits associated with the use of remote sensing technologies enjoyed broad interest and that appropriate legal frameworks could play an important role in the development and dissemination of remote sensing applications.

144. 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 at its forty-fifth session:

Regular items

1. Opening of the session, election of the Chairman 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 and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment.

Items considered under work plans

9. Practice of States and international organizations in registering space objects.

2006: Identification by the working group of common practices and drafting of recommendations for enhancing adherence to the Convention on Registration of Objects Launched into Outer Space.

New items

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

145. The Legal Subcommittee agreed that the working groups on agenda items 4, 6 (a) and 9 should be reconvened at its forty-fifth session.

146. The Subcommittee took note of the working paper submitted by Kazakhstan, the Russian Federation and Ukraine, entitled "Questionnaire on possible options for future development of international space law" (A/AC.105/C.2/L.259) and agreed that the working paper could be discussed by the Working Group on agenda item 4, entitled "Status and application of the five United Nations treaties on outer space". The Subcommittee noted that Chile, Greece and Thailand had joined as co-sponsors of the working paper.

147. The Subcommittee agreed to review, at its forty-fifth session, the need to extend the mandate of the Working Group on agenda item 4 beyond that session of the Subcommittee.

148. The Subcommittee noted that the sponsors of the following proposals for new items to be included in its agenda intended to retain their proposals for possible discussion at its subsequent sessions:

(a) 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;

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

(c) Discussion on matters relating to the Principles on Remote Sensing, proposed by Chile and Colombia;

(d) Space debris, proposed by France and supported by member and cooperating States of ESA;

(e) Review of the Principles on Remote Sensing, with a view to transforming them into a treaty in the future, proposed by Greece.

149. The full text of the statements made during the discussions on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.725-728).

Annex I

Report of the Chairman of the Working Group on agenda item 6 (a), entitled “Matters relating to the definition and delimitation of outer space”

1. At its 711th meeting, on 4 April 2005, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space reconvened its Working Group on agenda item 6 (a), entitled “Matters relating to the definition and delimitation of outer space”. At its 715th meeting, on 6 April, the Subcommittee elected José Monserrat Filho (Brazil) as Chairman of the Working Group.
2. The Chairman drew the attention of the Working Group to the fact that, in accordance with the agreement reached at the thirty-ninth session of the Legal Subcommittee and endorsed by the Committee on the Peaceful Uses of Outer Space at its forty-third session, and subsequently endorsed by the General Assembly in its resolution 59/116 of 10 December 2004, the Working Group convened to consider only matters relating to the definition and delimitation of outer space.
3. The Working Group had before it the following documents:
 - (a) Note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from member States” (A/AC.105/635 and Add.1-12, Add.7/Corr.1 and Add.11/Corr.1). A compilation of replies received from member States to the questionnaire is available on the website of the Office for Outer Space Affairs (<http://www.oosa.unvienna.org/aero>);
 - (b) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects” (A/AC.105/C.2/L.249 and Corr.1 and Add.1);
 - (c) Note by the Secretariat entitled “Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects: preferences of member States” (A/AC.105/849).
4. The Working Group considered, in an informal ad hoc group, the necessity of clarifying the questions contained in the questionnaire on aerospace objects and concluded that there was no need to clarify those questions.
5. On the basis of its discussions, the Working Group agreed:
 - (a) To continue inviting member States to reply to the questionnaire on aerospace objects;
 - (b) To continue inviting member States to submit their preferences with regard to the replies of member States to the questionnaire on aerospace objects, summarized in document A/AC.105/C.2/L.249 and Corr.1 and Add.1;
 - (c) To invite member States to submit proposals concerning a methodology for reviewing the replies to the questionnaire on aerospace objects, with a view to developing an acceptable common understanding regarding the definition and delimitation of outer space;

(d) To recommend that the Committee on the Peaceful Uses of Outer Space invite the Scientific and Technical Subcommittee to consider the possibility of preparing a report on the technical characteristics of aerospace objects in the light of the current level of technological advancement and possible developments in the foreseeable future;

(e) To invite member States to submit information on national legislation or any national practices that may exist or are being developed, relating directly or indirectly to the definition and/or delimitation of outer space.

6. Some delegations expressed the view that it was necessary to delimit outer space in view of the fundamental differences between the legal regimes that applied respectively to airspace and outer space.

7. Some delegations expressed the view that the definition and delimitation of outer space remained a topical and important issue that should continue to be considered by the Working Group.

8. The view was expressed that in order to facilitate the discussions on matters relating to the definition and delimitation of outer space, the following issues should be addressed:

(a) The definition of the notion of “space activities” should be developed in view of the fact that the replies received from member States to the questionnaire on aerospace objects, as well as the deliberations in the Subcommittee on the agenda item, had indicated that two approaches to the problem were predominant: namely, spatial and functional. In that connection, that delegation proposed that the title of the agenda item should be amended to read as follows: “Matters relating to definition and delimitation of outer space and the definition of the notion of ‘space activities’”;

(b) The number of replies to the questionnaire on aerospace objects or the number of States indicating their preferences to those replies was not significant, since the decisions of the Committee on the Peaceful Uses of Outer Space and its subsidiary bodies were taken on the basis of consensus, not on the basis of majority of votes;

(c) In considering matters relating to aerospace objects, a significant issue was the question of whether member States wanted to preserve the principle of absolute sovereignty over their national airspace as a peremptory norm of international law.

Annex II

Report of the Chairman of the Working Group on agenda item 8, entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001”

1. In accordance with paragraph 9 of General Assembly resolution 59/116 of 10 December 2004, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, at its 711th meeting, on 4 April 2005, established a Working Group on agenda item 8, entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001”. The Working Group was chaired by Vladimír Kopal (Czech Republic).
2. Also in accordance with paragraph 9 of General Assembly resolution 59/116, the Working Group considered separately the questions reflected in sub-item 8 (a), entitled “Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol”, and sub-item 8 (b), entitled “Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space”.
3. The Working Group held eight meetings.
4. At its forty-third session, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space endorsed the recommendation of this Working Group, that an open-ended ad hoc working group be established, made up of at least two representatives from each of the regional groups, to continue between the forty-third and forty-fourth sessions of the Subcommittee, by electronic means, the consideration of the question of the appropriateness of the United Nations acting as the supervisory authority under the future protocol on matters specific to space assets, with a view to preparing a report, including the text of a draft resolution, to be submitted to the Subcommittee for consideration at its forty-fourth session. The Legal Subcommittee also endorsed the agreement of the Working Group to appoint the Netherlands coordinator of the open-ended ad hoc working group.
5. Representatives from the following member States participated in the work of the open-ended ad hoc working group: Algeria, Argentina, Brazil, Canada, China, Colombia, Czech Republic, France, Germany, Greece, India, Indonesia, Italy, Japan, Kazakhstan, Mexico, Netherlands, Republic of Korea, Russian Federation, Spain, United States of America and Uruguay.
6. The open-ended ad hoc working group continued consideration of the agenda item by electronic means and prepared a draft report, as contained in document A/AC.105/C.2/L.256. The open-ended ad hoc working group invited the Legal Subcommittee to consider the draft report with a view to submitting it to the Committee on the Peaceful Uses of Outer Space for further consideration.

7. It emerged from the discussions in the ad hoc working group that further consideration should be given to whether it was opportune to submit a draft resolution on the matter together with the draft report.
8. Following extensive consideration in the Working Group of the draft report of the open-ended ad hoc working group, a final text entitled "Report of the Working Group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets" was adopted and is reproduced in appendix I to the present report.
9. On 14 April, the delegations of Canada, the Czech Republic, France, Germany, Hungary, Italy, the Netherlands, Spain, Sweden and the United States submitted a working paper containing a proposed draft resolution for possible future consideration with the view to facilitating the consideration and eventual adoption of such a resolution by the General Assembly (A/AC.105/C.2/L.258). That working paper was not discussed and is reproduced in appendix II to the present report.
10. The view was expressed that progress made at the last session of the International Institute for the Unification of Private Law (Unidroit) committee of governmental experts indicated that the future protocol would not be incompatible with the legal regime applicable to outer space. That delegation expressed the view that article II, paragraph 2, of the future protocol adequately addressed the concerns surrounding unexpected transfers of governmental licences and article XVI provided limitations on remedies, so that public law and services may be protected. That delegation also expressed the view that the future protocol would not conflict with the regulations of the International Telecommunication Union (ITU), taking note of the replies by ITU to the Legal Subcommittee.
11. Consensus regarding the principal question of the appropriateness of the United Nations serving as the supervisory authority could not be reached.
12. On 12 April, a statement submitted by the secretariat of Unidroit was distributed in a conference room paper (A/AC.105/C.2/2005/CRP.9) and summarized by the Chairman of the Working Group.
13. The Working Group agreed that, in view of the absence of the Unidroit representative at the current session of the Legal Subcommittee, any issues that delegations wished to bring to the attention of Unidroit could be submitted to it through the Director of the Office for Outer Space Affairs.
14. It was further agreed that, in corresponding with Unidroit, the Director of the Office for Outer Space Affairs should make reference to the proposed third session of the committee of governmental experts, to be held in October 2005, and to the possible scheduling conflict that meeting might pose with other meetings of relevance to the States members of the Committee on the Peaceful Uses of Outer Space at that time.

Appendix I

Report of the Working Group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets

I. Introduction

1. In its resolution 55/122 of 8 December 2000, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should consider as a single issue/item for discussion the item entitled “The draft convention of the International Institute for the Unification of Private Law on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property”. Following the adoption of the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001, the Assembly, in its resolution 56/51 of 10 December 2001, again endorsed the consideration of this matter by the Subcommittee as a single issue/item for discussion. In its resolutions 57/116 of 11 December 2002, 58/89 of 9 December 2003 and 59/116 of 10 December 2004, the Assembly renewed its endorsement, while identifying two specific issues for discussion, including considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol.

2. From its fortieth to forty-fourth sessions, the Legal Subcommittee considered the possibility of the United Nations serving as supervisory authority under the future protocol to the Cape Town Convention on matters specific to space assets. Between its fortieth and forty-first sessions, consideration was given to the issue within the framework of an ad hoc consultative mechanism, at meetings held in Paris in September 2001 and in Rome in January 2002. At its forty-second session, the Legal Subcommittee had before it a report of the Secretariat prepared in consultation with the Legal Counsel of the United Nations (A/AC.105/C.2/L.238). The present report was prepared by the open-ended ad hoc working group and subsequently adopted by the Legal Subcommittee at its forty-fourth session.

3. The space assets protocol is currently being negotiated under the auspices of the International Institute for the Unification of Private Law (Unidroit). A committee of governmental experts has been established and has held two sessions in Rome, in December 2003 and October 2004, to which all member States of the Committee on the Peaceful Uses of Outer Space were invited. The supervisory authority under the space assets protocol is expected to be invited to assume that function by the diplomatic conference for the adoption of the space assets protocol. Unidroit has approached the United Nations as a possible supervisory authority under the space assets protocol for reasons that include the following:

(a) The desirability of conferring the function on a credible and already existing international organization;

(b) The primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space;

(c) The existing role of the Office for Outer Space Affairs of the Secretariat as secretariat of the Committee on the Peaceful Uses of Outer Space and its Subcommittees;

(d) The maintenance by the Office for Outer Space Affairs, on behalf of the Secretary-General, of the Register of Objects Launched into Outer Space, in accordance with the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex).

Although Unidroit has approached only the United Nations to consider the assumption of the function of supervisory authority, other candidates may also make a bid for it. The above-mentioned committee of governmental experts is considering potential bids of other candidates. The selection of the best candidate or the establishment of a procedure for the selection of the best candidate will be the prerogative of the diplomatic conference for the adoption of the draft space assets protocol.

4. The assumption of the function of supervisory authority by the United Nations would require the adoption by the General Assembly of a resolution to that end. The present report is intended to facilitate consideration of the question of the assumption of such a function by the United Nations.

II. Functions of the supervisory authority

5. The Convention on International Interests in Mobile Equipment was opened for signature at Cape Town, South Africa, on 16 November 2001 and entered into force on 1 April 2004, but only as regards a specific category of objects to which a protocol applies. The Convention seeks to facilitate the financing of the acquisition and use of mobile equipment of high value or particular economic significance, such as aircraft equipment, railway rolling stock and space assets. For the Convention to apply to a certain category of mobile equipment, that category must first be designated in a protocol. With respect to aircraft equipment, a protocol to the Convention was opened for signature on 16 November 2001 (the Protocol on Matters Specific to Aircraft Equipment); the Convention as applied to aircraft objects has not yet entered into force. The International Civil Aviation Organization (ICAO) has been invited, upon entry into force of the Convention as applied to aircraft objects, to act as Supervisory Authority of the International Registry under the Aircraft Equipment Protocol. The ICAO Council had already decided to accept, in principle, to assume that function before the Diplomatic Conference was convened that extended the invitation, and this body is now guiding and supervising the Preparatory Commission established by the Diplomatic Conference to act as Provisional Supervisory Authority pending the entry into force of the Convention as applied to aircraft objects. With respect to space assets, application of the Convention is envisaged by the draft space assets protocol. The expected traffic under the space assets protocol is initially estimated at 12-18 satellites per year, but the number of filings anticipated in any year could be higher. The number of filings may reasonably be expected to rise, as enhanced legal certainty is likely to promote the supply of asset-based financing of space assets on financial markets.

6. The Cape Town Convention provides for the establishment of an international registry for the purpose of establishing priorities among competing valid claims with respect to interests in mobile equipment. In the context of the space assets protocol, this will require the establishment of an international registry for space assets. Priority among competing valid claims will depend on the time when an interest is searchable in the international registry, but the act of registration neither presupposes nor is an aspect of the validity of competing claims. Disputes on the validity of a claim will be decided by the competent court. The registration of information in the international registry will merely put all searching parties on notice of the asserted or possible existence of interests in a space asset. The registration information is likely to include: (a) the names of parties; (b) contact details of those parties; (c) type of registration and duration; and (d) description of the space asset. The information submitted for registration will be processed by the registrar, who will not assess the accuracy of the information submitted for registration nor the authority of the registering party to act. The system will be designed with a view to: (a) minimizing the risk of unauthorized registrations; and (b) preventing registrations that are manifestly implausible or that otherwise do not contain the required information.

7. The Cape Town Convention also provides for the designation of a body to supervise the registrar and the operation of the international registry. According to the Cape Town Convention, the supervisory authority of the space assets protocol shall:

- (a) Establish or provide for the establishment of the international registry;
- (b) Except as otherwise provided by the space assets protocol, appoint and dismiss the registrar;
- (c) Ensure that any rights required for the continued effective operation of the international registry in the event of a change of registrar will vest in or be assignable to the new registrar;
- (d) After consultation with the contracting States, make or approve and ensure the publication of regulations pursuant to the space assets protocol dealing with the operation of the international registry;
- (e) Establish administrative procedures through which complaints concerning the operation of the international registry can be made to the supervisory authority;
- (f) Supervise the registrar and the operation of the international registry;
- (g) At the request of the registrar, provide such guidance to the registrar as the supervisory authority thinks fit;
- (h) Set and periodically review the structure of fees to be charged for the services and facilities of the international registry;
- (i) Do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of the Convention and the space assets protocol;
- (j) Report periodically to contracting States concerning the discharge of its obligations under the Convention and the protocol.

8. To the extent of any inconsistency between the Cape Town Convention and the future space assets protocol, the protocol shall prevail. This provision allows modification of the functions of the supervisory authority in the draft space assets protocol to accommodate any concerns of candidates that are considering the assumption of the role of supervisory authority.

III. Fundamental issues relating to the assumption of the function of supervisory authority

9. The future space assets protocol has a significant potential to facilitate the development of 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. It is for the United Nations to decide whether it could and should contribute to that end. In particular, it needs to be assessed whether the United Nations has the legal capacity to perform the function of supervisory authority under the future space assets protocol and whether it is politically desirable for the United Nations to assume such a function.

10. Various points of view have been expressed as to whether the function of the supervisory authority is of a commercial nature. Some delegations argued that it is of a commercial nature because it involves monitoring the provision of services by the registrar to profit-making entities. Other delegations considered the function of the supervisory authority not to be of a commercial nature, but of an exclusively public nature. It must therefore be assessed whether this is consistent with the objectives of the United Nations, and especially the powers and functions of the General Assembly, as set out in the Charter of the United Nations. In that respect, consideration may be given to whether 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 Secretariat, can be appropriately compared with ICAO, a specialized agency in the United Nations system. ICAO has, in principle, accepted the function of Supervisory Authority under the Aircraft Equipment Protocol (see para. 5). On the one hand, reference has been made to the special position of ICAO in relation to the objectives of the Aircraft Protocol. On the other hand, it has been noted that, within the United Nations system, responsibility for international cooperation in the peaceful uses of outer space has not been vested in a specialized agency but in the United Nations itself.

11. Different views have been expressed on the legal capacity of the United Nations to assume the function of supervisory authority under the future space assets protocol. The view has been expressed that the assumption of any commercially oriented function is inconsistent with the Charter of the United Nations. Another view has been expressed that, on the contrary, the assumption of such a function might contribute to the objectives of the United Nations in promoting international cooperation in solving international problems of an economic, social, cultural or humanitarian character, as enshrined in Article 1, paragraph 3, of the Charter. Some delegations expressed the view that until all issues of an organizational and administrative nature concerning the possibility of the United Nations serving as supervisory authority under the space assets protocol, as well as their financial implications, have been assessed and possible satisfactory

solutions have been found, no recommendation to this effect may be made by the Legal Subcommittee.

12. Different views have also been expressed on the political desirability of assumption by the United Nations of the function of supervisory authority under the future space assets protocol. The view has been expressed that, even if the United Nations had the legal capacity to assume such a function, it would not be desirable for it to be implicated in activities that would provide a service to private, profit-making entities. Another view has been expressed that the assumption of such a function could contribute to international cooperation in the peaceful uses of outer space and, hence, to the objectives of the United Nations through, inter alia:

(a) The promotion of international cooperation in solving international problems of an economic, social, cultural or humanitarian character;

(b) The consolidation and enhancement of the primary responsibility of the United Nations for international cooperation in the peaceful uses of outer space;

(c) The aim of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) to increase the involvement of the private sector in the work of the United Nations;

(d) Raising awareness of the importance of public law obligations under the United Nations treaties on outer space among private entities involved with asset-based financing of space assets;

(e) The avoidance of conflict between the international registry, to be maintained pursuant to the space assets protocol, and the Register of Objects Launched into Outer Space, maintained pursuant to the Registration Convention.

13. There is a need to preserve the primacy of the space treaties. Moreover, the United Nations Secretary-General also performs the role of depositary of the space treaties and maintains the Register of Objects Launched into Outer Space pursuant to the Registration Convention. Some delegations expressed the view that in certain circumstances, there could be contradictions between the legal regime established by the space treaties and the present text of the space assets protocol and in such circumstances, the assumption of the role of supervisory authority by the Secretary-General in the space assets protocol could create a wrong impression that there is an absence of any contradiction between the two regimes. Thus, in the view of those delegations, assumption of the role of supervisory authority in the space protocol by the Secretary-General could be inappropriate. Some other delegations were of the view that there is no contradiction between the legal regime established by the outer space treaties and the proposed space assets protocol.

IV. Practical issues relating to the assumption of the function of supervisory authority

A. Division of responsibilities within the United Nations

14. If the United Nations were to assume the function of supervisory authority under the future space assets protocol, a suitable organ of the United Nations would have to be selected to assume that function. Having regard to the main functions of

the principal organs of the United Nations and the current division of responsibilities within the United Nations with respect to international cooperation in the peaceful uses of outer space, it would seem that the General Assembly and the Secretary-General have the most comprehensive mandates. The Assembly could delegate the function partially or wholly to the Committee on the Peaceful Uses of Outer Space or either of its Subcommittees; the Secretary-General could delegate the function partially or wholly to the Office for Outer Space Affairs. Since the exercise of the function by any of those organs is subject to constitutional limitations, consideration must first be given to those limitations.

15. The General Assembly may discuss any questions or any matters within the scope of the Charter of the United Nations (see Article 10). As reflected in years of practice, this covers matters relating to international cooperation in the peaceful uses of outer space. The function of supervisory authority under the future space assets protocol will be established to contribute to the proper implementation of the protocol and, hence, to further international cooperation in the peaceful uses of outer space. Thus, there would not seem to be any constitutional limitations for the Assembly to assume the function.

16. The Secretary-General shall perform such functions as are entrusted to him by, among others, the General Assembly (see Article 98 of the Charter). In view of the primary responsibility of the Assembly for international cooperation in the peaceful uses of outer space within the United Nations, it would seem that the Secretary-General cannot assume the function of supervisory authority in the absence of a decision to that effect by the Assembly.

17. The assumption of any function by the Secretary-General may not put him in a position where he has to seek or receive instructions from authorities external to the United Nations (see Article 100, paragraph 1, of the Charter). The provisions concerning the nature of the functions of the supervisory authority, as set out in the Cape Town Convention and the draft space assets protocol, do not envisage a situation where the contracting parties to the protocol or any other State or body would have to issue instructions to the supervisory authority or where the supervisory authority would have to seek instructions from an external authority. Some delegations expressed the view that the consideration by the contracting States to the protocol, of reports submitted by the supervisory authority concerning the discharge of its obligations under the Convention and the protocol, may not result in any action that constitutes instructions.

18. The Cape Town convention defines the functions of the supervisory authority, which include, among other things, reporting periodically to contracting States concerning the discharge of its obligations under the Convention and the protocol. Furthermore, the ability to act without delay appears to be critical in order to have a functional registry at all times and any questions relating to the exercise of functions and operating procedures must be discussed at short notice. Whereas the Secretary-General and his staff might be in a good position to perform such a function, in the view of some delegations, the exercise of this function would be subject to review by the States parties to the Cape Town Convention and the future space assets protocol. This, in the view of those delegations, may put the Secretary-General in a position where he has to seek or receive instructions from authorities external to the United Nations, which is not in conformity with Article 100, paragraph 1, of the Charter of the United Nations. Those delegations also expressed

the view that this will also violate the stipulations of the same paragraph that the Secretary-General and the staff shall be responsible only to the United Nations. Some other delegations were of the view that there would be no violation of Article 100, paragraph 1, of the Charter or of the responsibilities of the Secretary-General of the United Nations.

19. The Working Group considered whether the assumption of the function of supervisory authority by the Secretary-General would create a conflict between the role of the Secretary-General under the Charter of the United Nations as the chief administrative officer of the United Nations and the functions of the supervisory authority owing to the fact that those functions include functions that are legislative. Having regard to the Cape Town Convention and the current status of the draft protocol, it appears that the nature of the functions of the supervisory authority is administrative rather than quasi-legislative or quasi-judicial. The administrative character of the functions of the supervisory authority could be further clarified in the future space assets protocol or accompanying instruments (see sect. B below, in particular para. 22).

20. Having discussed whether or not there may be any constitutional limitations for either the Secretary-General or the General Assembly to assume the function of supervisory authority under the space assets protocol, the practical requirements for the exercise of that function need to be considered. The ability to act without delay appears to be critical in order to have a functional registry operating properly at all times. Any questions relating to the exercise of functions and operating procedures must be discussed at short notice. The Secretary-General and his staff would be in a good position to perform such a function. The exercise of the function by the Secretary-General could be subject to review by the General Assembly or a subsidiary organ, such as the Committee on the Peaceful Uses of Outer Space. Some delegations expressed the view that an organ of the United Nations must carry out any such review because an external review may result in the issuance of instructions to the supervisory authority.

B. Assumption of the functions of supervisory authority as specified in the Cape Town Convention

21. It has been noted that the future space assets protocol shall prevail to the extent of any inconsistency between the Cape Town Convention and the protocol. The functions of the supervisory authority may be modified in the draft protocol to accommodate any concerns of candidates that are considering the assumption of that role (see para. 8 above).

22. A first envisaged function of the supervisory authority is to establish or to provide for the establishment of the international registry (art. 17, para. 2 (a), of the Cape Town Convention). In view of the expertise required to set up the international registry, outsourcing its establishment could be considered if the United Nations were to assume the function of supervisory authority.

23. A second envisaged function of the supervisory authority is the appointment and dismissal of the registrar. Pursuant to the Cape Town Convention, the supervisory authority shall appoint and dismiss the registrar except as otherwise provided by the protocol (art. 17, para. 2 (b), of the Convention). One possibility is

that the registrar may be selected in the framework of an international tendering process. The United Nations has practical experience with public procurement procedures and it would therefore not seem to be necessary to outsource this function. It may be noted that the Aircraft Equipment Protocol envisages the appointment of the Registrar by the Supervisory Authority, that is, ICAO, at regular five-yearly intervals (art. XVII, para. 5, of the Aircraft Equipment Protocol).

24. A third envisaged function of the supervisory authority is to make or approve regulations pursuant to the future space assets protocol (art. 17, para. 2 (d), of the Convention). It appears, however, that such regulations would in practice be developed by the contracting States to the space assets protocol and that the role of the supervisory authority would merely be to promulgate them. This could be made explicit in the draft space assets protocol to avoid the suggestion that the supervisory authority would assume a legislative function.

C. Financing of the supervisory authority

25. The assumption of the function of supervisory authority by the United Nations would entail costs, including set-up costs of the international registry, staff resources and meeting costs. Since the United Nations would assume the function at the request of the diplomatic conference that adopts the draft space assets protocol, it must be ensured that such costs are met through extrabudgetary funds and not from the regular budget of the United Nations. Initial voluntary funding or financing would be necessary to cover costs during the start-up phase, such as establishing the international registry and selecting the first registrar. All costs incurred by the United Nations should therefore be covered from user fees or other sources of income. Although it is one of the functions of the supervisory authority to set user fees (art. 17, para. 2 (h), of the Cape Town Convention), the expected revenue will obviously depend on the traffic in space assets under the space assets protocol. In addition to uncertainties relating to the traffic in space assets, costs will be incurred in the start-up period before any income is generated. It needs to be assessed whether voluntary contributions of interested States and interested private parties can be relied on, as was the case for the start-up costs for the International Registry under the Aircraft Equipment Protocol, or whether other sources of income must be secured to cater for such uncertainties. The terms for the full coverage of costs could be made subject to further agreement with the contracting States to the protocol. In addition, the contract with the registrar should contain provisions governing payments by the registrar to the United Nations to cover the costs of the supervisory authority and should stipulate that all initial investments, costs and expenses necessary for the establishment and operation of the international registry shall be borne by the registrar. Some delegations expressed the view that, despite the possibilities of covering costs referred to above, this may not prove to be a viable business model, in view of the low expected traffic under the space assets protocol. The view was expressed that only reasonable costs should be covered.

D. Enjoyment of privileges and immunities

26. In view of the international public nature of the function of supervisory authority under the future space assets protocol, it would be appropriate for the

supervisory authority as well as its representatives and officials to enjoy the privileges and immunities required for the proper exercise of the function. Under the Cape Town Convention, this has been recognized, as the supervisory authority and its officers and employees “shall enjoy such immunity from legal or administrative process as is specified in the Protocol” (art. 27, para. 2, of the Convention) as well as “privileges as may be provided by agreement with the host State” (art. 27, para. 3 (a), of the Convention).

27. If the United Nations were to assume the function of supervisory authority with a view to furthering its purposes, the United Nations, representatives of members and officials of the United Nations would enjoy privileges and immunities provided for by the Cape Town Convention and the space assets protocol. The enjoyment of privileges and immunities could usefully be affirmed by the United Nations if it decides to assume the function of supervisory authority. In addition, the contract with the registrar should provide that nothing in, or relating to, the contract shall be deemed a waiver, express or implied, of any immunity from suit or legal process, or any privilege, exemption or other immunity enjoyed or which may be enjoyed by the United Nations.

28. In view of the relevant provisions of the Cape Town Convention, the enjoyment of immunities by the supervisory authority, the representatives of the members and officials of the supervisory authority could usefully be specified in the draft space assets protocol. This could be achieved through a provision pursuant to which the supervisory authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise (see art. XVII, para. 2, of the Aircraft Equipment Protocol). With respect to privileges, the Cape Town Convention envisages the application of the agreement with the host State, that is, the State in which the supervisory authority is situated, and further specification in the space assets protocol does not seem to be necessary. Accordingly, the United Nations, representatives of members and officials of the United Nations, would enjoy privileges and immunities provided for by Article 105 of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)) and related agreements.

29. The inviolability and immunity of assets, documents, databases and archives of the international registry is provided for in the Cape Town Convention and does not require further specification (art. 27, para. 4, of the Convention). It is the supervisory authority that shall own all proprietary rights in the databases and archives of the international registry (art. 17, para. 4, of the Convention) and that may waive the inviolability and immunity of assets, documents, databases and archives (art. 27, para. 6, of the Convention).

E. Protection against liability of the United Nations for damage caused by the supervisory authority

30. Pursuant to the Cape Town Convention, the registrar may be held liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the registrar and its officers and employees or from a malfunction of the international registration system (art. 28, para. 1, of the Convention). Although

this liability would accrue to the registrar and the registrar has to procure financial guarantees covering its liability to the extent determined by the supervisory authority, the risk that a person who has suffered a loss will or will also seek compensatory damages from the supervisory authority, though it would seem to be remote, cannot be eliminated. Whether there would be sufficient ground to hold the supervisory authority liable in practice would ultimately depend on the cause of action and the nature of the relationship between the registrar and the supervisory authority.

31. Although the United Nations would enjoy immunity from jurisdiction in such cases before municipal courts, the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)) requires the United Nations to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party (sect. 29). The risk that the United Nations would be required to pay compensatory damages in connection with the exercise of the function of supervisory authority can therefore not be eliminated.

32. The payment of compensatory damages constitutes a type of cost involved in the operation of the international registry. It has already been pointed out that any costs and, hence, costs resulting from liability incurred in the exercise of the function of supervisory authority, must be met through extrabudgetary funds and not from the regular budget of the United Nations, whether or not negligence on the part of the supervisory authority is established. In addition, an indemnification clause should be included in the contract with the registrar. It would stipulate that the registrar shall indemnify, hold and keep harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees, from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of the acts or omissions of the registrar or the registrar's employees, officers, agents or subcontractors, in the performance of the contract.

V. Conclusions

33. Consensus regarding the principal question of the appropriateness of the United Nations serving as the supervisory authority could not be reached.

34. Some delegations were of the view that if the United Nations were to assume the function of supervisory authority under the future space assets protocol and the diplomatic conference convened for its adoption decides to invite the United Nations to assume that function, it will be necessary for the General Assembly to adopt a resolution to that end (see para. 4).

35. Other delegations were of the view that if the United Nations were not to assume the function of supervisory authority under the future space assets protocol or the diplomatic conference convened for its adoption decides not to invite the United Nations to assume that function, the question of adopting a resolution would not arise.

Appendix II

Working paper on a draft resolution on the assumption by the United Nations of the function of supervisory authority under the protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets submitted by Canada, the Czech Republic, France, Germany, Hungary, Italy, the Netherlands, Spain, Sweden and the United States of America

The sponsors of the present working paper submit the following draft resolution with a view to facilitating the consideration and eventual adoption of such a resolution by the General Assembly.

The General Assembly,

Bearing in mind the purpose of the United Nations to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, as enshrined in Article 1, paragraph 3, of the Charter of the United Nations,

Recalling its resolution 1472 (XIV) A of 12 December 1959 and subsequent resolutions, in which it declared its belief that the United Nations should promote international cooperation in the peaceful uses of outer space,

Convinced of the necessity and the significance of further strengthening international cooperation in order to reach a broad and efficient collaboration in this field for the mutual benefit and in the interest of all parties involved,

Recognizing, in accordance with “The Space Millennium: Vienna Declaration on Space and Human Development”, adopted by the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), held at Vienna from 19 to 30 July 1999,^a that significant changes have occurred in the structure and content of world space activity, as reflected in the increasing number of participants in space activities at all levels and the growing contribution of the private sector in the promotion and implementation of space activities,

Believing that the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001, and its Protocol on Matters Specific to Space Assets, opened for signature at [...] on [...], may have a significant potential to facilitate the development of space activities by enhancing the availability of financing for such activities, thereby bringing benefits to countries at all levels of economic and technological development,

Having regard to the invitation of the Diplomatic Conference, convened at [...] on [...], for the adoption of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets addressed to the

^a *Report of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 19-30 July 1999* (United Nations publication, Sales No. E.00.I.3), chap. I, resolution 1.

United Nations to assume the function of supervisory authority under those instruments,

1. *Decides* to accept the invitation of the Diplomatic Conference for the adoption of the Protocol to the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town, South Africa, on 16 November 2001, on Matters Specific to Space Assets to assume the function of supervisory authority under those instruments, provided that the reasonable costs incurred by the United Nations in the performance of its functions, exercise of its powers and discharge of its duties as supervisory authority are fully covered, including by fees set in accordance with article 17, paragraph 2 (h), of the Convention and determined in accordance with article XIX, paragraph 3, of the Protocol, under the terms agreed upon with the contracting States to the Protocol;

2. *Affirms* that in all aspects of the exercise of this function the United Nations, representatives of members and officials of the United Nations are entitled to privileges and immunities in accordance with Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations^b and related applicable agreements;

3. *Requests* the Secretary-General to perform this function and to report to the General Assembly on the performance of this function on an annual basis.

^b General Assembly resolution 22 A (I).

Annex III

Report of the Chairman of the Working Group on agenda item 9, entitled “Practice of States and international organizations in registering space objects”

1. In accordance with paragraph 11 of General Assembly resolution 59/116 of 10 December 2004, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, at its 711th meeting, on 4 April 2005, established a Working Group on agenda item 9, entitled “Practice of States and international organizations in registering space objects”. The Working Group was chaired by Niklas Hedman (Sweden).
2. The Working Group held 5 meetings, from 11 to 15 April 2005. At its first meeting, the Chairman recalled that in accordance with the work plan adopted by the Committee on the Peaceful Uses of Outer Space at its forty-sixth session, in 2003, the Working Group would examine reports submitted by Member States and international organizations on their practice in registering space objects. The Chairman also recalled that in 2006, at the forty-fifth session of the Subcommittee, the Working Group should identify common practices and make recommendations for enhancing adherence to the Convention on Registration of Objects Launched into Outer Space (the “Registration Convention”, General Assembly resolution 3235 (XXIX), annex). The Chairman noted the relevance of the conclusions of the Legal Subcommittee’s Working Group on the review of the concept of the “launching State”, as well as General Assembly resolution 59/115 of 10 December 2004 on the application of the concept of the “launching State”.
3. The Working Group had before it a background paper prepared by the Secretariat entitled “Practice of States and international organizations in registering space objects” (A/AC.105/C.2/L.255 and Corr.1 and 2). The Working Group noted with appreciation that the information provided in that paper had been a valuable contribution to the work of the Working Group.
4. The Working Group also had before it a conference room paper (A/AC.105/C.2/2005/CRP.10) containing statistical information on the number of space objects launched and registered or unregistered from 1957 to 2004.
5. The Working Group heard the following presentations:
 - (a) “Findings of the ‘Project 2001 Plus’ workshop on ‘Current issues in registration of space objects’” by the representative of Germany;
 - (b) “The registration policy of the European Space Agency” by the representative of the European Space Agency.
6. The Working Group was informed of the practices followed by States in registering space objects and implementing the Registration Convention. In particular, the Working Group was informed on the establishment and maintenance of national registries of objects launched into outer space; the activities of authorities responsible for maintaining national registries and the legal regulations applicable to registering space objects; criteria for including objects in national registries; the procedures applied in cases where more than one party was involved

in the launch or where private entities or international organizations were involved; the practices relating to the registration of functional and non-functional objects; and the provision of additional information to the Register of Objects Launched into Outer Space maintained by the Secretary-General under the Registration Convention. The Working Group was also informed on the practices of States concerning the inclusion of provisions related to the terms of the Registration Convention in bilateral agreements between States and between States and international organizations.

7. The Working Group was informed by some States on the status of their ratification of or accession to the Registration Convention and their practice in furnishing information under General Assembly resolution 1721 B (XVI) of 20 December 1961.

8. The Working Group encouraged States parties to the Registration Convention to furnish information to the Secretary-General in accordance with the Convention.

9. The Working Group encouraged States parties to the Registration Convention to establish a national registry and to inform the Secretary-General of the establishment of such a registry.

10. The Working Group encouraged those States Members of the United Nations that had not yet ratified or acceded to the Registration Convention to become party to that Convention and to furnish, until such time as they became party to the Convention, information in accordance with General Assembly resolution 1721 B (XVI).

11. The Working Group agreed that, on the basis of the background paper prepared by the Secretariat (A/AC.105/C.2/L.255 and Corr.1 and 2) and discussions held in the Working Group, the following issues could be the focus of the attention of the Working Group at the forty-fifth session of the Legal Subcommittee, in 2006:

- (a) Harmonization of practices (administrative and practical);
- (b) Non-registration of space objects;
- (c) Practice with regard to transfer of ownership of space objects in orbit;
- (d) Practice with regard to registration/non-registration of “foreign” space objects.

12. The Working Group agreed that States should be invited to study the background paper prepared by the Secretariat (A/AC.105/C.2/L.255 and Corr.1 and 2) and to submit information and views on the issues reflected in paragraph 11 above.

13. The Working Group agreed that international intergovernmental organizations should again be invited to submit information on their practices in registering space objects.

14. The Working Group agreed that, in order for it to study the benefits of becoming party to the Registration Convention, the Secretariat should prepare a paper for consideration by the Working Group on the basis of the indicative list of benefits to, and rights and obligations of, parties to the United Nations treaties on outer space, as agreed by the Working Group on the status and application of the five United Nations treaties on outer space at the forty-third session of the

Subcommittee (see A/AC.105/826, annex I, appendix I), and compiling relevant elements from the proceedings of the series of United Nations workshops on space law.

15. The Working Group agreed that the Secretariat should prepare a list of all States that had launched objects into outer space.

16. The view was expressed that the increasing number of problems in registering space objects was related to the increasing number of commercial activities in outer space, as was evident from the non-registration of “foreign” objects by a State from whose territory or facility a space object had been launched and the transfer of ownership of a space object after it had been launched and placed in orbit. That delegation was of the view that compliance with the Registration Convention could be enhanced in respect of non-registration if the State from whose territory or facility an object was launched contacted the other relevant State or international organization to determine which of the States or international organizations involved should register the space object. That delegation was also of the view that the issues relating to the transfer of ownership of a space object after it had been launched and placed in orbit could be addressed through enhanced implementation of the provisions of the Registration Convention. Following the transfer of ownership, the State of registry could furnish to the United Nations additional information on the basis of article IV, paragraph 2, of the Convention to reflect the new state of affairs in the Register of Objects Launched into Outer Space.

17. The view was expressed that, in order to improve registration practices, States and international intergovernmental organizations could be invited to make public their national registries on the Internet and designate focal points for those registries. That delegation was also of the view that web links between the online index of the Office for Outer Space Affairs and those national registries that were available on the Internet could be made by the Office and that the contact details of the focal points should be made public through that online index. The designation of focal points and publication of contact details would facilitate communication between States and international organizations as well as between the Office and States and international organizations.

18. The view was expressed that in order for States to discharge their responsibilities effectively in promoting adherence to the Registration Convention, it was important that they first set an example by adhering to the Convention and by participating, on a continuous basis, in the work of the Legal Subcommittee.

19. The view was expressed that the objective of the Working Group was not to amend or interpret the Registration Convention but rather to enhance its application and encourage those States that had not yet become party to that Convention to do so.