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**Committee on the Peaceful
Uses of Outer Space****Legal Subcommittee****Fifty-sixth session**

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Item 14 of the provisional agenda*

**General exchange of views on potential legal models for
activities in exploration, exploitation and utilization of
space resources****Contribution from Belgium to the discussion under
UNCOPUOS Legal Subcommittee on item “General
exchange of views on potential legal models for activities in
exploration, exploitation and utilization of space resources”**

At the 55th session of the UNCOPUOS Legal Sub-Committee in 2016, the Belgian Delegation made a statement under agenda item 5 “General Debate” on recent and upcoming Member States’ initiatives taken at governmental level aimed at establishing national legal and/or regulatory frameworks that would authorize private operators to, notably, perform extraction of mineral resources from outer space, including asteroids and other celestial bodies. In certain cases, these initiatives would grant rights of possession, ownership, transport, use and/or sale of the extracted resources. Though further regulatory developments at the national level are still pending multiple studies concerning various issues, industry players emboldened by these law-making initiatives are already taking the first steps towards space resource exploitation.

Although Belgium acknowledges the interest of such initiatives and the innovative role of industry in space exploration and use, we reiterate the need to work toward a consensual solution clarifying the international legal framework in which such national activities should be performed. We voice our confidence in the Committee and its Member States to do so. This exercise should aim at a common understanding of the existing space law treaties and their implications on space resource activities, in order to facilitate their application. Belgium is particularly concerned about the risk of seeing multiple interpretations of the United Nations outer space treaties in this regard, thereby undermining the cooperative efforts that have always underpinned the work of the Committee and of its Sub-Committees so far. For this reason, we have advanced the present proposal, adopted by the Committee, to address the issue of potential legal models for activities in exploration, exploitation and utilization of space resources, as a single-year item on the agenda of the Legal Sub-Committee.

* [A/AC.105/C.2/L.299](#).



Belgium has taken note of a number of arguments presented in official statements as well as academic papers on space resource activities over the years. The conclusion we can draw from these is that a wide range of interpretations exists, either in favour of the use or appropriation of space resources or in favour of a prohibition of any form of such use or appropriation. Different views appear to be inspired by several interpretations of certain key concepts. For instance, while some documents address the “*use*” or “*utilization*” of space resources, others talk about “*ownership*” or “*appropriation*”, and some use both concepts interchangeably. Additionally, some distinguish between the appropriation of celestial bodies and the use of resources, while others do not.

For instance, following one argument raised by the United States Delegation, Article II of the 1967 United Nations Outer Space Treaty combined with Article I, para. 2, does not (clearly) prohibit the taking of resources from outer space, while it does explicitly forbid any appropriation of celestial bodies. However, an alternative reading of Articles I and II of the Outer Space Treaty can conclude that these provisions, taken together, allow the use of celestial bodies and their resources, but ban the appropriation of both. We should therefore distinguish between different types of space resource activities, not between celestial bodies and their resources.

It is the understanding of the Belgian Delegation that the question under the present agenda item is a longstanding issue among States Parties to the United Nations outer space treaties, in particular given the fact that some of them are parties to both the 1967 United Nations Outer Space Treaty and to the 1979 United Nations Moon Agreement.

Although Belgium regards academic exchanges and other discussions as highly valuable, notably at the occasion of UNCOPUOS meetings, it does not seem sensible to focus this exchange of views to purely legal aspects. On the one hand, such theoretical discussions distract from the common goal of establishing a workable and equitable framework. On the other hand, we like to stress that any solution within UNCOPUOS should encompass all sides of the problem, in particular its economic and political dimensions. For this reason we have noted in our submission of the present agenda item during last year’s session of this Sub-Committee, a comprehensive and workable legal model for the exploitation, exploration and utilization of space resources requires taking into account economic and political considerations as well.

Starting from the text of the 1967 Outer Space Treaty, a strict reading advocated by some on the basis of Article II of this Treaty may seem unsatisfactory from an economic point of view, to the extent that it might result in a prohibition of any means of appropriation of celestial bodies. Moreover, this approach does not resolve the legal uncertainty on whether the resources of celestial bodies can be exploited. It must be noted, however, that Article II explicitly mentions the “*use*” of celestial bodies as a prohibited means of appropriation. Moreover, we must keep in mind that both Article I and Article II OST, though they do not explicitly refer to natural resources, apply to the whole of outer space, including the Moon and other celestial bodies. Indeed, Article II OST must be read in combination with Article I, para. 2, of the same treaty, which connects the freedom of use with the non-discriminatory access for all nations, on an equal basis, to all parts of celestial bodies.

Despite these issues, it may be argued that the Outer Space Treaty allows the adoption of national legislation regulating the use of space resources. However, several questions remain regarding the implementation of such legislation that requires an international framework for a sustainable solution. The Belgian Delegation is particularly concerned about the following issues:

- How could any right of use of celestial bodies’ mineral resources be granted to a national entity without allowing that entity to claim exclusive access to a dedicated area of the celestial body surface and underground?

- How can the limitations in terms of size and duration of activities associated with such right of use be determined in a manner that would respect the freedoms of others as stipulated in the fundamental provisions of the Outer Space Treaty?
- The same questions apply to the orbital resources of celestial bodies, should it be found that they are governed by the same rules as all other resources on celestial bodies, as per Article 1 of the Moon Agreement.

Our answer to these questions should be guided, in the first place, by fundamental considerations of equity in order to give due consideration to the interests and efforts of all countries, with particular regard for pioneers and non-spacefaring nations. This general notion of equity should be implemented taking into account, inter alia, the type and supply of the space resource concerned. While outer space appears vast and infinite, the supply of any particular type of resource is limited by many factors. Two criteria are generally taken into account for the categorization of goods in an international setting, namely “(non-)rivalry” and “(non-)excludability”. In the case of space resources, an additional criterion should be highlighted, namely accessibility. This criterion would cover both the capacity of humankind to access space resources considering the current state of technology (“absolute accessibility”) and the capacity of each nation to economically and technologically access those resources (“relative accessibility”). In this regard, it should be stressed that the absence of a balanced international framework will almost certainly put us on a path of increasing inequality, leaving technological innovation and, hence, accessibility to space resources, in the hands of a few States.

History of outer space activities has taught us that natural resources which were once seen as unlimited should be managed as scarce resources in order to minimize and manage disputes. This is the case even for those resources that are infinitely renewable and inexhaustible, such as the GSO, which this Committee recognizes should be managed in accordance with the characterization by the ITU as a limited natural resource. It may be recalled that the ITU regime has granted internationally protected rights of use of orbital positions to administrations relatively successfully without having had to resort to property rights. Rather, it has been guided by the need to use resources rationally, efficiently and economically, so that countries or groups of countries may have equitable access to them.

As far as mineral deposits on celestial bodies are concerned, nothing indicates that all nations are able, at the current stage, to access and exploit those resources on an equal foot. Furthermore, nothing allows us to consider those resources as unlimited, neither in absolute accessibility nor in quantity. Based on Article I, para. 1, as well as on Article IX, of the 1967 United Nations Outer Space Treaty, the use of outer space “*shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development*” and taking due account of any potential harmful interference caused to other States’ activities. Space resource activities must therefore be guided by an international framework that shall ensure that relevant principles of the Outer Space Treaty are fully implemented.

Belgium does not see any point in differentiating celestial bodies from their natural resources for the purpose of their regulation: what would be the purpose of prohibiting national appropriation of celestial bodies while allowing the same nations to exclusively determine the use of their resources, surely the most valuable and, hence contentious, part of celestial bodies? What would be the point of reserving celestial bodies’ use to a universal purpose while letting some nations with the highest technological development take all the benefit of their resources? Such an interpretation does not seem to be in good faith or in accordance with the ordinary meaning to be given to the terms of the Outer Space Treaty in their context and in the light of its object and purpose, as required by Article 31, para. 1, of the Vienna Convention on the Law of Treaties.

We believe this approach to be in line with the provisions of the 1979 Moon Agreement, by which Belgium is bound as a State Party. The text of the Moon Agreement has been adopted without a vote (thus by consensus)¹ by the United Nations General Assembly. The corresponding resolution may serve as a form of subsequent agreement or practice in the sense of Article 31, para. 3, sub (a) or (b) of the Vienna Convention on the Law of Treaties. The Moon Agreement is the outcome of statements made by the international community at the intergovernmental level in the application of the Outer Space Treaty. Hence it may reveal the agreement of the Parties to the Outer Space Treaty, including with respect to space resources. The preamble of the Moon Agreement makes clear that it is intended to define and develop the provisions of the Outer Space Treaty.

Although Belgium hence firmly believes that the Moon Agreement provides a good point of departure for establishing a dedicated regime for space resource activities, we do not oppose the idea of a new instrument, if it is likely that such an instrument would be subject to a much wider adherence than the Moon Agreement. However, such a new instrument should reflect a number of basic principles consistent with the Outer Space Treaty, including the principle of equitable access to and benefit from space resources, recognition of developing countries' rights and interests, as well as pioneering States' rights and interests.

Belgium believes that a reasonable interpretation of Article I and Article II, in the light of Article III, of the 1967 Outer Space Treaty, should lead to the finding that international norms are the most suitable approach for a legal framework on space resource activities. Such norms should be elaborated by the competent bodies. In this respect, Belgium considers UNCOPUOS to be the competent body in which discussions among all interested States should take place. This process should elaborate the first guidelines for an international regime governing the exploitation of space resources. Such an approach is in line with existing national laws or policies of certain States, for these initiatives clearly recognize the need to respect their international obligations.

Above all, the Belgian Delegation wishes to reiterate its strong conviction that the United Nations space law treaties should not be seen as an obstacle to the rational and sensible use of natural resources of extra-terrestrial origin. To the contrary, existing international law provides many incentives for States to work together toward a consensual and equitable regime for the benefit of present and future generations. Space industry, including national private entities, has an active role in this endeavour, one that cannot be understated and should not be ignored. In addition, national governments and authorities constitute a key element in the implementation of such a regime, as they have been ever since the adoption of the Outer Space Treaty.

In the last decades, a lot of efforts have been devoted towards adopting an interpretation of the United Nations space law treaties that would, above all, advance national — and sometimes individual — objectives or interests. Belgium fears that this evolution, bolstered by national legislation in the face of a growing deadlock at intergovernmental forums, may result in growing misunderstandings and ambiguities that would increase, rather than mitigate, the potential for conflict. It is therefore high time to once again use the treaties as our first, common, source, and to read them in a meaningful way, by treating them as an instrument of cooperation and of mutual understanding.

¹ See [A/34/PV.89](#) — 5 December 1979.