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Information on national legislation relevant to the peaceful exploration and use of outer space: reply of the Netherlands

Note by the Secretariat

1. The present document contains the reply of the Netherlands, received by the Secretariat in February 2010, to the questions addressed to Member States by the Working Group on National Legislation Relevant to the Peaceful Exploration and the Use of Outer Space at the forty-eight session of the Legal Subcommittee, in 2009 (A/AC.105/935, annex III, para. 16).
2. The reply will also be represented in Addendum 1 to document A/AC.105/957.

Reply of the Netherlands

Several regulations related to space activities apply in the Netherlands, namely the Space Activities Act of 24 January 2007 (WeI ruimtevaartactiviteiten), the Space Objects Registry Decree of 13 November 2007 (Besluit register ruimtevoortllerpen), and the Order Concerning Licence Applications for the Performance of Space Activities and the Registration of Space Objects of 7 February 2008 (Regeling aanvraag vergunning ruimtevaartactiviteten en registratie). The Act and Decree entered into force on 1 January 2008, and the Order on 22 February 2008. The Decree and the Order implement the Space Activities Act and are subordinate to it.

Question 1) Why did your Government enact national space legislation?

The enactment of the Space Activities Act and implementing regulations originated in the necessity to implement treaty obligations incumbent on the Kingdom of the Netherlands following the emergence of non-governmental outer space activities with ties to the Netherlands. In particular, the presence of private companies that operate or intend to operate satellites for commercial communications and procures the launch of its own satellites for that purpose prompted the development of national legislation. National legislation was particularly required to enable compliance with the following treaty provisions:



- Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 Outer Space Treaty) that requires parties to authorise and continuously supervise non-governmental activities in outer space, holding the state responsible at the international level for any such activities that are not carried out in conformity with the provisions of that Treaty;
- Articles VIII and XI of the 1967 Outer Space Treaty and the Convention on the Registration of Objects Launched into Outer Space (1974 Registration Convention) that require the furnishing of information to the United Nations Secretary-General on national activities in outer space, including the operation of space objects by non-governmental entities.

The enactment of the Space Activities Act and implementing regulations originated further in the wish of the Kingdom of the Netherlands to provide a legal basis for recourse against nongovernmental entities in case the Kingdom would be liable under Article VII of the 1967 Outer Space Treaty and/or the Convention on International Liability for Damage Caused by Space Objects (1971 Liability Convention) for damage caused by activities of non-governmental entities. One of the purposes of the Act is 10 reduce the liability of the Kingdom of the Netherlands originating in non-governmental activities in outer space.

Additional reasons for the development of national legislation were:

- Orderly development of space activities;
- Beneficial international cooperation. Including in particular in the context of the European Space Agency;
- Interest in maintaining a high-key technology basis for space activities in the Netherlands;
- Stimulation of private actors, in particular to the extent they would contribute to the general aims of the Netherlands Space Action Plan (Actieplan Ruimtevaart);
- Increasing need for government certification to generate funding and secure market access.

Question 2) If your Government has not yet enacted national space law legislation, what are the reasons for the absence of such legislation?

(not applicable)

Question 3) What kinds of activities are covered? (e.g. launching, operation of space objects, space research, application of space technology, remote sensing)

The scope of the Space Activities Act (*ratione materiae*) is determined by the concept of space activities (ruimtevaartactiviteiten). This concept is defined as comprising the launch, the flight operation, or the guidance of space objects in outer space (Art. I(b)). This is not further elaborated in the Act itself, but it is explained in the explanatory note that the difference between the night operation of a space object and the guidance thereof coincides with the difference between the pre-separation and post-separation phases of the launch.

Excluded from the scope of the Space Activities Act are activities that are conducted in outer space with the assistance of a space object, such as telecommunications earth observation and satellite navigation. These activities fall within the scope of national telecommunication regulations. Thus, the Act essentially focuses on the technical and operational activities with regard to space objects, not on the variety of activities they perform.

Question 4) What is the "national-requirement"? (personal or territorial jurisdiction? i.e. activities carried by natural or legal persons of the State's nationality or in the territory of the State, or others)

The scope of the Space Activities Act (*ratione personae*) is based on the basis of the principle of territoriality and the principle of nationality of ships and aircraft. It applies to space activities that are performed in or from within the Netherlands, or else on or from a Dutch ship or Dutch aircraft (Art. 2.1).

The scope of the Space Activities Act can be extended by a decree of government to space activities conducted by a Dutch citizen - be it a natural or legal person - from a state not party to the 1967 Outer Space Treaty, or from its ships or aircraft, on the basis of the principle of nationality; and to the organisation of space activities within the Netherlands. e.g. space tourism, on the basis of the principle of territoriality (Art. 2.2).

The Space Activities Act only applies to the Netherlands and does not extend to the other countries of the Kingdom of the Netherlands. viz. Aruba and the Netherlands Antilles.

Question 5) What are the national authorities competent for registration, authorization and supervision in Member States? (government, ministry, space agency, relationship between them)

The Minister of Economic Affairs is responsible for the registration, authorisation and supervision of space activities in accordance with the Space Activities Act. He has delegated this responsibility to the Netherlands Radio Communications Agency (Agentschap Telecom). This Agency is part of the Ministry of Economic Affairs (see further <http://www.agentschaptelecom.nl/english/Pages/Default.aspx>).

Question 6) What are the conditions to be fulfilled for registration and authorization? (e.g. safety of persons, property, public health, protection of the environment, space debris mitigation, financial security, strategic and economic interest of the State, international obligations of the State)

The single condition for registration of a space object under the Space Activities Act in the Netherlands registry (Register ruimtevoorwerpen) is the involvement of that object in a space activity to which the Act applies (Art. I J.1). Since the conduct of these activities by non-governmental entities is subject to authorization (Art. 3), further conditions follow from the requirements for obtaining such authorization (see further below). The Netherlands registry consists of two subregistries, namely the United Nations part and the national part (Art. 2 of the Decree). The United Nations part contains information concerning space objects in respect of which the Netherlands is the State of Registry, as defined in Article I of the 1974 Registration Convention: the national part contains information concerning any other space object that are used in connection with space activities to which the Space Activities Act applies (see further UN Doc. ST/SG/SERJE.INF.24 of 20 August 2009).

The Space Objects Registry Decree requires the submission of several parameters for registration of a space object in the Netherlands registry, namely: (a) the description and function; (b) the orbital parameters; (c) country and location of launch; (d) expected and actual launch date; (e) expected and actual decommissioning date; (f) information on the license holder (Art. 3 of the Decree). A form for the submission of this information is annexed to the Order.

The conditions to be fulfilled for authorization of a space activity under the Space Activities Act, in the form of a license, are the following:

- Compliance with regulations and restrictions that may be attached to the licence for the following purposes: (a) the safety of persons and goods; (b) protection of the environment in outer space, including space debris mitigation; (c) financial security; (d) protection of public order; (e) security of the State; or (f) fulfilment of the international obligations of the State (Art. 3.3 of the Act);
- Establishment and maintenance of what the Minister of Economic Affairs considers to be the maximum possible cover for the liability arising from the space activities for which a licence is requested (Art. 3.4 of the Act);
- Submission of the following information: (a) as complete a description as possible of the space activities in question; (b) financial documents, consisting of a projected profit and loss account with explanatory notes, a projected balance sheet with explanatory notes, a cash-now forecast, and a financial risk analysis indicating what financial control measures have been taken to ensure the continuity of space activities; (c) documentary evidence with regard to liability insurance; (d) documentary evidence with regard to authorization for the use of frequency space; (e) an account of the applicant's knowledge and experience with regard to the performance of space activities, and also documentary evidence demonstrating that this knowledge or experience is safeguarded during the performance of the space activities (Art. 4.3 of the Act and Art. 2 of the Order; a form for the submission of this information is annexed to the Order).

Pursuant to the Space Activities Act, a license must be refused if: (a) this is necessary in order to comply with a treaty or a binding decision of an international organization; (b) in the view of the Minister of Economic Affairs, facts or circumstances suggest that the safety of persons and goods, environmental protection in outer space, the maintenance of public order or national security might be jeopardized by issuing the licence; or (c) its issuance would contravene rules laid down by or pursuant to the Act (Art. 6.1).

In addition, a license may be refused if: (a) a previously issued licence has been revoked owing to infringement of rules laid down by or pursuant to the Act or of the regulations attached to the licence; (b) the applicant has not discharged his obligations under a previously issued licence; (c) the application or the applicant does not comply with the rules laid down by or pursuant to this Act; (d) there is good reason to fear that the applicant will not act in accordance with the rules laid down by or pursuant to the Act; or (e) this is necessary in order to protect the interests referred to in the first bullet of paragraph 15 (Art. 6.2).

Finally, a license is to be revoked if: (a) this is requested by the licence-holder; (b) this is necessary in order to comply with a treaty or a binding decision of an international institution; or (c) there is good reason to fear that the maintenance of the licence will jeopardize the safety of persons and goods, environmental protection in outer space, the maintenance of public order or national security (Art. 7).

Question 7) Is there any regulation concerning liability? transfer of liability, limitation of (liability, recourse, insurance requirements)

The Space Activities Act addresses liability issues in some detail, but considerable flexibility is built into the system to allow further implementing regulations and individual licenses to address specific requirements of various license applications as appropriate. Pursuant to the Act:

- A license will only be issued if the prospective holder establishes and maintains what the Minister of Economic Affairs considers to be the maximum possible cover for the liability arising from the space activities for which a licence is requested (An. 3.4);
- The government has a right to recover compensation paid under Article VII of the 1967 Outer Space Treaty or the 1971 Liability Convention against the person who caused the damage; recourse against such person may be for the full amount of the

compensation paid, but against a licensee not for more than the maximum amount of his insurance coverage (Art. 12).

Question 8) How is compliance monitored? (supervision, control, sanctions)

The Space Activities Act includes a number of provisions on supervision, control and monitoring.

- As for supervision and control, the Act stipulates that officials designated by order of the Minister of Economic Affairs are responsible for the supervision of compliance with the Licensing requirements (Art 13). Implementing regulations further elaborate on the various ways and means such supervision and control can take place, taking into account existing instruments for the authorities to exercise such supervision and control.

- Supervision of compliance is organized by performing extensive audits on a regular basis. The audits consist of a space technology part, an insurance part and a financial part. The officials of the Netherlands Radio Communications Agency (Agentschap Telecom) are supported by state-of-the-art expertise in the relevant fields.

- As for sanctions, a license is to be revoked for the reasons referred to above (see para. 18) and can also be revoked if: (a) the rules laid down by or pursuant to the Space Activities Act or the regulations pertaining to the licence have been, or are being, infringed; (b) the space activities have not been commenced within the stipulated time limit; (c) the purpose of the space activities for which the licence was issued has changed substantially; (d) this is justified by a change in the technical or financial capabilities of the licence-holder; (e) the information or documents furnished with the application prove to be so incorrect or incomplete that a different decision would have been made on the application if the true circumstances had been known at the time of its assessment; (f) this is necessary in order to protect the interests referred to in the first bullet of paragraph 15 (Art. 7).

- In addition, Articles 14 to 23 contains procedures for sanctioning violations of the license conditions that are based on the General Administrative Law Act (Algemene wet bestuursrecht) which provides the general legal framework for such sanctions in the Netherlands. For example, administrative orders can be used to enforce compliance with licensing requirements and other legal obligations (Art. 14). In case of serious violations, sanctions can be imposed amounting to 450.000 Euro or 10% of the relevant annual sales of the company in the Netherlands, whichever is greater (Art. 15).

National Space Law Database

With regard to the item "National Space Law Database", in accordance with the recommendations of the Legal Subcommittee, the Secretary-General invites the submission of texts of laws and regulations as well as policy and other legal documents related to space activities for inclusion in the database maintained by OOSA (A/AC.105/935, para. 171).

In this respect, the Kingdom of the Netherlands would like to refer to its earlier submission of the English texts of the following regulations and accompanying explanatory notes:

- Space Activities Act of 24 January 2007 (Wet ruimtevaartactiviteiten);

- Space Objects Registry Decree of 13 November 2007 (Besluit register ruimtevoorwerpen);

- Order Concerning Licence Applications for the Performance of Space Activities and the Registration of Space Objects of 7 February 2008 (Regeling aanvraag vergunning ruimtevaartactiviteiten en registratie).