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English only

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**Committee on the Peaceful  
Uses of Outer Space**  
**Legal Subcommittee**  
**Fifty-first session**  
Vienna, 19-30 March 2012  
Agenda item 5\*  
**Status and Application of the five United Nations  
Outer Space Treaties**

**Responses to the set of Questions provided by the Chair of  
the Working Group on the Status and Application of the  
Five United Nations Treaties on Outer Space**

**Note by the Secretariat**

This document contains responses received from Belgium, Germany, and the Netherlands to the set of questions prepared by the Chair of the Working Group (A/AC.105/C.2/2011/CRP.12) as a basis for continued discussion in the Working Group on the Status and Application of the Five United Nations Outer Space Treaties, including questions related to the three topics identified by the Working Group during the forty-ninth session of the Legal Subcommittee in 2010. The set of questions are contained in document A/AC.105/C.2/2012/CRP.10.

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\* A/AC.105/C.2/L.285.



## Belgium

[Original: French]

[Received on 16 March 2012]

1. With regard to questions 1, 1.1, 1.2 and 1.3, the Belgian delegation would refer to the document entitled “Joint statement on the benefits of adherence to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies by States parties to the Agreement” (A/AC.105/C.2/L.272, annex), submitted to the Subcommittee at its forty-seventh session in 2008.
2. With regard to questions 2, 2.1 and 2.2, the Belgian delegation considers, in view of the events that have occurred since the entry into force of the Convention on International Liability for Damage Caused by Space Objects of 1972 which could have triggered the implementation of the provisions of the Convention, that the liability for faults, for which provision is made in articles III and IV of the Convention, is obsolete and does not correspond to the reality of current space activity or the associated problems, such as the occupation of terrestrial orbits or the risk of collision or interference between satellites. Moreover, the concept of “fault” is not defined in the 1972 Convention. The rules and standards to be applied to assess whether there is or is not a fault in the behaviour of a State party or a person for whom that State party is responsible are not identified in the Convention. In the absence of any relevant case law, largely owing to the preference of the vast majority of the States involved in such incidents not to activate the mechanisms provided for in articles III and IV of the Convention and to overlook any question of fault that may be attributable to one or other of them, the lack of a definition of “fault” gives rise to uncertainty and thus a relative lack of legal security. The absence of consensus on the rules applicable at the international level to space activities gives rise to the possibility of inequitable treatment of operators involved in such events (collisions, interference, urgent manoeuvres etc.) and thus an impact on the global competitiveness of the sector and the phenomenon of “forum shopping” in cases of damage, whether on the part of the responsible party or the victim. An alternative to liability for damage caused by a space object in outer space would be a mutual agreement by States parties to the 1967 Treaty and/or the 1972 Convention not to invoke the liability of a launching State or States, so long as such States have adhered to the relevant international rules and standards and implemented them effectively, perhaps on the basis of their national legislation. Such rules and standards could be those adopted by the United Nations General Assembly or by COPUOS with regard to the reduction of space debris, the use of nuclear energy sources or the long-term viability of space activities.
3. As regards the term “damage”, as defined in article I of the 1972 Convention, the Belgian delegation considers that this term should include not only direct material damage caused by the impact of a space object on another space object, the surface of the Earth or aircraft in flight but also the damage resulting from economic loss due to interference with other space systems, such as satellite drift, or else damage resulting from economic loss arising out of an avoidance manoeuvre in case of a risk of collision. The definition of damage proposed here should make it possible to define the scope of coverage for liability under article VII of the 1967 Treaty and the provisions of the 1972 Convention. It might thus also make it possible to define the extent to which the invocation of liability may be waived in

cases where adherence to the reference rules and standards provide for such a waiver (see above).

4. As for question 2.3, the Belgian delegation would like to note that the Principles set out in General Assembly resolution 41/65 of 3 December 1986 are non-binding standards. The resolution does not establish any obligation for the States addressed but restricts itself to making recommendations. A State's liability under international law is established when that State commits an objective violation of its international obligations. Thus, ignoring or failing to respect a recommendation such as those contained in the resolution does not, in itself, constitute a violation. It is, however, the case that the activities covered by General Assembly resolution 41/65 constitute, at least insofar as they consist of the operation and exploitation of satellites and their payloads, space activities in the sense of article VI of the 1967 Treaty. They may thus involve the liability of the relevant State when it fails to comply with its international obligations, for example when it conducts its activities, or allows them to be conducted, in violation of international law or allows them to be conducted by non-governmental entities without ensuring that they are authorized and/or kept under constant supervision.

5. Principle XII of General Assembly resolution 41/65, under which a sensed State is entitled, in certain conditions, to data concerning its territory, is no more than a recommendation, even though it is formulated in extremely precise terms and is recognized as an important commitment on the part of States. Unless it is considered that the practice arising out of its implementation may be considered as giving rise to a rule of customary law, a State's international liability may not be invoked if it does not, in a given situation or for any reason, comply with this recommendation.

6. With regard to questions 3, 3.1 and 3.2, the Belgian delegation would refer to General Assembly resolution 62/101 of 17 December 2007. In addition, it would draw the Working Group's attention to the following considerations:

(a) As international law and, in particular, the United Nations treaties on outer space currently stand, it does not seem possible to allow the transfer of the registration of a space object from the register of its State, or one of its launching States, to the register of a State that is not the launching State of the object in the sense of article 1 of the Convention on Registration of Objects Launched into Outer Space. This impossibility arises out of the essential connection that exists between, on the one hand, the status of the launching State and the obligations arising therefrom and, on the other hand, the registration of the space object;

(b) Transferring the registration of the same object from the register of one launching State to that of another launching State is, on the other hand, conceivable, insofar as, even if the possibility is not provided for in the treaties, neither is it prohibited or prevented by international law. Article II, paragraph 2, of the 1975 Convention also permits launching States of the same space object to decide among themselves which of them will register the object. It is therefore not unreasonable to think that the same States may change that decision and subsequently designate, by mutual agreement, a new State of registry from among themselves;

(c) Although the last phrase of article II, paragraph 2, of the 1975 Convention allows launching States to conclude appropriate agreements on jurisdiction and

control over the space object, it should be recalled that article VIII of the 1967 Treaty attributes such jurisdiction and control to the State of registry in the first instance. The exercise of such jurisdiction and control entails prerogatives but also obligations. Quite apart from the international responsibility for space activities attributed to the appropriate State by article VI of the 1967 Treaty and international liability for damage in article VII of the same Treaty, within the authority of the launching State, the exercise of jurisdiction and control gives rise to a specific international liability within the authority of the State of registry. It is thus for the State of registry to ensure that the use of a space object and on-board activities are truly in conformity with international law. This particularly applies to manned space vehicles;

(d) In order to provide some of the legal flexibility required by the economic development of space activities and their constantly increasing multinational nature, the Working Group could consider legal solutions whereby the denomination of launching State could be extended to States that were not initially involved in launching a space object but wished, for the sake of expediency, to have the retrospective status of launching State. Such a situation could arise where the company of a State not involved in the launching acquires the space object in question and takes up the operations concerned, thereby making it advisable for the State to which it belongs to register the space object. Such a procedure would not in any way prevent the victim of any damage caused by the space object from seeking a remedy from the original launching States. On the contrary, a new State with real liability would join the initial launching States. One approach that could be considered for allowing the retrospective qualification of launching State would be to allow such a State to make an official statement declaring itself a sponsor of the launch (“State conducting the launch”). The retroactive effect of such a statement would be justified by the newly established interest of the State that makes such a declaration as a result of the fact that one of its nationals, or the State itself, has taken possession of the space object and the associated activities. An alternative approach would be to consider that the agreements mentioned in the last part of article II, paragraph 2, of the 1975 Convention are not restricted to the group of States that launched the same space object but may be extended to third States. The effective exercise of jurisdiction and control over the space object and its personnel could thus be transferred to third States. This solution, however, would not allow such a transfer to other States; as far as they are concerned, only the State of registry would be responsible for exercising jurisdiction and control over the space object. It should be noted that registering a space object with the international register held by the Secretary-General of the United Nations does not play any role in allocating jurisdiction and control over that object. The question of transfer therefore arises only in relation to national registers.

7. With regard to question 3.3, the Belgian delegation considers that the effects of the registration of a space object by an international organization that has declared its acceptance of the provisions of the 1975 Convention, in accordance with article VII, paragraph 1, of the Convention, are limited to the identification of the space object having that organization as the launching State. Where the organization has also declared its acceptance of the provisions of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, such registration should indicate the nature of the organization’s authority to launch. On the other hand, there is no apparent legal

basis for considering that an organization that has registered a space object in accordance with the provisions of the 1975 Convention can transfer the exercise of the jurisdiction and control over the space object. This effect is provided for exclusively by article VIII of the 1967 Treaty, to which only States may be party. Moreover, even if it were justifiable to extend the provisions of article VIII to international organizations, they could exercise only limited jurisdiction and control over the object and its personnel, in accordance with the principle of *spécialité légale*, which restricts the sovereign powers of an organization of public international law to no more than the powers and mandates for which the organization was established. It would therefore be appropriate to ensure that, in the case of the registration of a space object, particularly a manned space vehicle, by an international organization, one or more member States of the organization could confer on it the effective exercise of jurisdiction and control over the space object and its personnel.

## Germany

[Original: English]

[Received on 19 January 2012]

1. The German government recognizes the importance of the catalogue of questions (A/AC.105/C.2/2011/CRP.12) on the “Status and application of the five United Nations Treaties on Outer Space”.
2. Germany welcomes the initiative taken by the Chair of the Working Group and looks forward to fruitful discussions during the upcoming Legal Subcommittee of UNCOPUOS. Germany supports the broad application and adherence of the United Nations Space Treaties.
3. The questions concerning responsibility and liability of States (No. 2 of the catalogue of questions) are of great legal and practical importance. Germany is of the opinion that the Resolution and Principles adopted by the UNGA and its subordinate bodies related to space activities, such as the Resolution on Principles relating to the Use of Nuclear Power Sources in Outer Space (47/68) or the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space should be given adequate importance in the definition of the notion of “fault”, as featured in Articles III and IV of the 1972 Liability Convention.
4. With regard to the registration of space objects (3 of the catalogue of questions), Germany wants to clarify that neither the Outer Space Treaty nor the Registration Convention do permit the transfer of the registration of a space object from a launching state to a non-launching state during its operation in orbit. According to Articles VII and VIII of the Outer Space Treaty, the responsibility for the space object remains with the launching state and cannot be abandoned. A launching state does not have the possibility to quit its responsibility and liability according to Article VII of the Outer Space Treaty. The responsibility of a non-launching state whose operator takes over a space object being launched by another state derives from Article VI of the Outer Space Treaty because he takes over or admits a national space activity. Bilateral arrangements between launching state and the state of the current operator are neither excluded nor predetermined by

this regime of international public law in order to allow individual internal solutions.

## The Netherlands

[Original: English]

[Received on 21 March 2012]

### **1. Issues relating to the Moon Agreement, including possible points of consensus or of concern among States about the Agreement and its implementation.**

1.1 Do the provisions of the 1967 United Nations Outer Space Treaty constitute a sufficient legal framework for the use and the exploration of the Moon and other celestial bodies?

- *The provisions of the Outer Space Treaty and the Moon Agreement provide a basic legal framework that should be maintained. The implementation of these instruments would benefit from additional guidance that complements and elaborates them, for instance through codes of conduct and guidelines. Such additional guidance is to be welcomed to address, in particular, issues related to the commercialisation of space activities as well as emerging concerns related to environmental issues and long-term sustainability of outer space activities.*

1.2 What are the benefits of being party to the 1979 United Nations Moon Agreement?

- *See Joint Statement of 3 April 2008, which was submitted by the Kingdom of the Netherlands together with other parties to the Moon Agreement (A/AC.105/C.2/L.272).*

1.3 Which principles or provisions of the 1979 United Nations Moon Agreement should be clarified or amended in order to allow its wider adherence by States?

- *The provisions of the Moon Agreement that would benefit from further clarification are those related to the classification of the Moon and its natural resources as the common heritage of mankind and the establishment of a regime for exploitation of these resources (Articles 11.1 and 11.5). A clarification (not an amendment) of these provisions could explain that they allow for the commercial exploitation of the Moon and its natural resources (see also the conclusions of the Space Law Committee of the International Law Association, Report of the Seventieth Conference, New Delhi, 2002). Such clarification could, furthermore, set out the modalities of such commercial exploitation (cf. Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982).*

### **2. Issues relating to the implementation of the mechanisms of responsibility and liability of the States parties as provided for by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and by the Convention on International Liability for Damage Caused by Space Objects.**

2.1 Could the notion of “fault”, as featured in Articles III and IV of the 1972 United Nations Liability Convention, be used for sanctioning the non-compliance by a State with the Principles adopted by the UNGA or its subordinate bodies and related to space activities, such as the Resolution on Principles relating to the Use of Nuclear Power Sources in Outer Space (47/68) or the UNCOPUOS Guidelines relating to the Mitigation of Space Debris?

- *No. Principles adopted by the UNGA or its subordinate bodies are not legally binding and non-compliance with these principles cannot be phrased in terms of “fault”. To the extent that the principles codify or evolve into customary international law, non-compliance with them may give rise to responsibility for an internationally wrongful act in accordance with the Articles on the Responsibility of States for Internationally Wrongful Acts (UN Doc. A/Res/56/83, Annex.).*

2.2 Could the notion of “damage”, as featured in Article I of the 1972 United Nations Liability Convention be used to cover the loss resulting from a manoeuvre performed by an operational space object in order to avoid collision with a space object or space debris not complying with the UNCOPUOS Guidelines relating to the Mitigation of Space Debris?

- *No. Damage is defined in Article I of the Liability Convention and this definition does not cover this type of economic loss. If the damage is covered by Article I of the Liability Convention, it is not relevant for the application of the Convention whether the damage resulted from a collision or an attempt to avoid a collision.*

2.3 Are there specific aspects related to the implementation of international responsibility, as provided for in Article VI of the 1967 United Nations Outer Space Treaty, in connection with the UNGA Resolution on Principles relating to the Remote Sensing of the Earth from Outer Space (41/65)?

- *No. The responsibility of states for national activities in outer space under Article VI of the Outer Space Treaty extends to remote sensing activities. States are required to authorise and supervise activities remote sensing activities, including those conducted by private entities, in accordance with this provision. The UNGA Resolution Principles relating to the Remote Sensing of the Earth from Outer Space provides guidance to states with respect to the implementation of this responsibility.*

### **3. Issues related to the registration of space objects, notably in the case of transfer of space activities or space objects in orbit, and the related possible legal solutions for the States involved.**

3.1 Is there a legal basis to be found in the existing international legal framework applicable to space activities and space objects, in particular the provisions of the 1967 United Nations Outer Space Treaty and of the 1975 United Nations Registration Convention, which would allow the transfer of the registration of a space object from one State to another during its operation in orbit?

- *There is no legal basis in the Five United Nations Treaties on Outer Space expressly allowing the transfer of registration of a space object from one state to another state during its operation in orbit, nor is such a transfer expressly prohibited. Transfer of space objects in orbit has*

*occurred in the past (e.g. the UK satellite Marcopolo 1, now Sirius 1, was bought by Sweden in 1996 and is carried on the Swedish register of objects launched into outer space)<sup>1</sup>.*

3.2 How could a transfer of activities or ownership involving a space object during its operation in orbit from a company of the State of registry to a company of a foreign State, be handled in compliance with the existing international legal framework applicable to space activities and space objects?

- *The transfer of activities or ownership involving a space object during its operation in orbit will be governed by private law (contract) and any provisions in the domestic law of the “state of registry” or the “foreign state” related to such transfer, such as permit or notification requirements. As a result of the transfer, the “foreign state” will not become the “launching State”, “State of registry” or “launching authority” for the purposes of the Outer Space Treaty, the Registration Convention or the Rescue Agreement respectively. However, the “foreign state” bears international responsibility for the space object’s operation in accordance with Article VI of the Outer Space Treaty after the transfer. The “state of registry” and the “foreign state” will thus have concurrent jurisdiction over the space object. These states can enter into an ad-hoc agreement or a framework agreement to arrange for the exercise of jurisdiction, the transfer of registration and indemnification in the event of liability (see e.g. Article V.2 of the Liability Convention and para. 2 of Resolution 59/115 of 10 December 2004 (Application of the concept of the “launching State”)). Reference is also made to Resolution 62/101 of 17 December 2007 (Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects), which provides that the “state of registry”, in cooperation with “the appropriate state according to article VI of the Outer Space Treaty” (i.e. the “foreign state”) could furnish information to the United Nations, such as the date of change in supervision, the identification of the new owner or operator, any change in orbital position, or any change of function of the space object (para. 4).*

3.3 What jurisdiction and control are exercised, as provided for in Article VIII of the 1967 United Nations Outer Space Treaty, on a space object registered by an international intergovernmental organisation in accordance with the provisions of the 1975 United Nations Registration Convention?

- *The intergovernmental organization concerned should secure that at least one of its member states exercises jurisdiction and control by applying its domestic law to the space object. For example, in the case of the Columbus laboratory of the International Space Station (ISS), several member states of the European Space Agency participating in the ISS programme have done so.*

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<sup>1</sup> See note verbale of 1 February 1999 from the Permanent Mission of Sweden to the United Nations (Vienna), addressed to the Secretary-General, UN DOC ST/SG/SER.E/352 (19 February 1999), [www.unoosa.org/oosa/showDocument.do?is\\_reg\\_doc=true&doc\\_uid=618&obj\\_uid=4171](http://www.unoosa.org/oosa/showDocument.do?is_reg_doc=true&doc_uid=618&obj_uid=4171).