

8 April 2013

English only

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**Committee on the Peaceful  
Uses of Outer Space**  
**Legal Subcommittee**  
**Fifty-second session**  
Vienna, 8-19 April 2013  
Agenda item 4 of the provisional agenda\*  
**Status and application of the five United Nations  
treaties on outer space**

**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 Austria to the set of questions prepared by the Chair of the Working Group (A/AC.105/C.2/2012/CRP.10) as a basis for continued discussion in the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, 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.2/2013/CRP.12.

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\* A/AC.105/C.2/L.288.



## **Austria**

[Original: English]  
[Received on 4 April 2013]

Responses of Austria to the questionnaire presented by the Chair during the fifty-first session of the Legal Subcommittee (A/AC.105/C.2/2012/CRP.10)

### **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 1967 Outer Space Treaty are rather general as regards the use and exploration of the Moon and other celestial bodies. There has been and still is a need to develop the principles set out in the Outer Space Treaty in more detail. This becomes particularly important in light of the growing interest among space-faring nations in new projects and missions aimed at exploring and using the Moon and other celestial bodies and their resources.

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

Austria refers to the Joint statement on the benefits of adherence to the Moon Agreement by States parties (UN Doc. A/AC.105/C.2/L.272) which it submitted together with other States parties to the Moon Agreement and which it considers still to be relevant. In particular, Austria is convinced that the Moon Agreement facilitates international scientific cooperation, safeguards the life and health of persons on the Moon or other celestial bodies better, and offers more protection for the vehicles, installations and equipment of States parties.

#### **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?**

In particular Art. 11 seems to be an obstacle for many States to adhere to the Moon Agreement. Austria sees merit in further discussing how the provisions of Art. 11 could be implemented without discouraging the exploitation of the natural resources of the Moon. This might contribute to a wider adherence to the Moon Agreement.

### **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?**

As the notion of “fault” is not defined in the 1972 Liability Convention, it has to be interpreted on the basis of Art. 31 of the Vienna Convention on the Law of Treaties, which is widely recognized as representing customary international law. Accordingly, the term “fault” has to be interpreted “in good faith in accordance with the ordinary meaning” to be given to the term in its context and in the light of the Convention’s object and purpose. It needs to be pointed out that the difference between Art. 2 which provides “absolute liability” for damage on Earth or to aircraft in flight and Art. 3 which requires “fault” reflects the difference of the position of the victims. While persons and property on Earth or in airspace not involved in outer space activities deserve the highest protection, space actors amongst themselves shall be judged by their employment of care and due diligence. International principles and guidelines, such as those contained in UNGA Resolutions on outer space and in the UNCOPUOS Space Debris Mitigation Guidelines can be regarded as representing good practice and a recognized standard of care and due diligence for activities in outer space. It may therefore be expected from actors in outer space that they respect those standards. Otherwise, there would be a presumption of negligence. In this sense, Austria considers the above mentioned principles and guidelines as relevant for establishing “fault” under the Liability Convention.

**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?**

Art. I of the Liability Convention defines “damage”, inter alia, as “loss of or damage to property”. It could be argued that any costs relating to a manoeuvre in order to avoid collision qualify as “damage” under the Liability Convention, as the term “property” is not limited to physical property. Under this proposition, the issues of liability and compensation become relevant.

At the occasion of the ratification of the Liability Convention by Austria in 1980, the Austrian government pointed out in the Explanatory Report to the parliament that the notion of “damage” as defined in Art. I had a broad meaning and encompassed “death, corporal injury or other impairments of health as well as loss or damage to property of a State or of a natural or a juridical person, or to property of an international intergovernmental organisation.” The Austrian text used the term “Vermögen” as a translation of the term “property”. “Vermögen” does not refer to the physical qualities of property but to its commercial value. Damage to property, thus, is not limited to physical damage to property but includes mere economic loss.

The government’s Explanatory Report of 1980 continued to explain that the notion of “damage” as defined in Art. I of the Liability Convention “does not include immaterial damage; indirect damage as well as consequential damage seem, however, to be covered.” This interpretation confirms the conclusion that merely economic damage is covered by the definition of “damage”.

As regards the calculation of the amount of compensation payable to the victim, Art. XII says that it shall be determined “in accordance with international law and

the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, [...] to the condition which would have existed if the damage had not occurred.”

In this regard, the Austrian Explanatory Report of 1980 emphasised that Art. XII explicitly mentioned that compensation must be of such a quality that the injured person or international organisation was put in the same position as if the damage had not occurred. This apparently included a claim for lost profits. The government pointed out that, in fact, jurisprudence in international law was sufficiently well established in this regard and mentioned, in particular, the well-known judgment of the Permanent Court of International Justice in *Chorzów* 1928 which obviously served as a model for the formulation of the provision in Art. XII.

Austria is therefore of the opinion that 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 (provided that this amounts to fault in the specific circumstances of the case) represents damage under the Liability Convention which has to be compensated.

In addition, Austria considers the principle of the obligation to mitigate damage as a general principle recognized by civilized nations in the meaning of Art. 38 of the ICJ Statute. Not performing a manoeuvre and instead risking a collision and accepting a loss which is much higher than the loss caused by the manoeuvre would run counter this principle. Such behaviour should not be protected or rewarded under the legal regime of outer space.

Austria sees the need for further discussions on the notion of “damage” in the Working Group.

**2.3 Are there specific aspects related to the implementation of the 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)?**

Principle XIV of the UNGA Resolution confirms Art. VI of the Outer Space Treaty and states that “States operating remote sensing satellites shall bear international responsibility for their activities and assure that such activities are conducted in accordance with these principles and the norms of international law, irrespective of whether such activities are carried out by governmental or non-governmental entities or through international organizations to which such States are parties.”

Austria would like to point out that Principle XIV is different from Art. VI of the Outer Space Treaty. The latter refers to “national activities in outer space” and determines the State’s responsibility for them. However, it does not define what a “national activity” is. Subsequent State practice has shown that States consider both governmental and non-governmental activities in outer space as “national activities”. The main reason is that Art. VI explicitly provides for their international responsibility for both governmental and non-governmental space activities.

In contrast, Principle XIV only refers to the international responsibility of States for “their activities”. This obviously differs from the much-disputed notion of “national activities”. It is, however, also unclear whether the term “their activities” includes

both governmental and non-governmental space activities. A grammatical interpretation would lead to the conclusion that non-governmental activities are not covered, because they are not “their”, i.e. “the States’ activities”.

However, the second part of Principle XIV confirms the responsibility of States to assure that such activities are conducted in accordance with the principles on remote sensing as adopted by the General Assembly and the norms of international law, “whether such activities are carried out by governmental and non-governmental entities”. There is therefore a need to address to what extent the different wording of the two provisions can have concrete consequences in practice.

### **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?**

As regards the 1967 Outer Space Treaty, the legal basis for registration of space objects can be found in Art. VIII and Art. XI. These provisions are rather general and, according to Austria, neither prescribe nor prohibit the transfer of space activities and the corresponding change of registration. Art. VIII provides that a State party “on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object”. This is only an indirect reference to the right or the obligation to register. Art. VIII does not say that only the launching State has the right to register the space object in its national registry. Furthermore, it does not say anything about registration in an international registry. Such international registration is only indirectly addressed in the Outer Space Treaty, namely in Art. XI which provides that the State parties “agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities.” This provision, according to Austria, does not preclude the change of registration of a space object.

On the other hand, the 1975 Registration Convention provides in its Art. II that “the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain”. It further makes clear that only one State should be the state of registry in relation to a space object when there are two or more launching States (para. 2). In this case, “they shall jointly determine which one of them shall register the object”. It follows that it is unproblematic to change the State of registry when the transfer of space activities takes place between two or more launching States.

Whether the change of the State of registry is possible also when the other State is not a launching State in relation to the space object is still an open question. As a matter of principle, Austria would favour an interpretation of the provisions of the 1975 Registration Convention that would allow and promote the change of the State of registry in case of transfer of space activities. It submits that the wording of the Registration Convention does not preclude such an interpretation.

In order to support this interpretation, Austria proposes to explore whether the rule of treaty interpretation codified in Article 31 (3) (b) of the Vienna Convention on the Law of Treaties can be applied. According to this rule “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” has to be taken account for the purpose of the interpretation of a treaty, together with the context.

**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 space activities should be handled in compliance with Art. VI of the 1967 Outer Space Treaty which provides that States bear international responsibility for national activities in outer space whether such activities are carried on by governmental agencies or non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the treaty. It follows that the transfer of space activities needs authorization by the appropriate State party. Several States have included respective provisions in their national space legislations. Austria has also done so in section 8 of its Outer Space Act of 2011.

**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?**

Jurisdiction and control exercised by an international intergovernmental organisation should not substantially differ from that exercised by a State. However, it is true that the term “jurisdiction” is not usually applied with regard to an international organisation. Nevertheless, Austria submits that the term “jurisdiction” should be interpreted in accordance with the object and purpose of Art. VIII of the 1967 Outer Space Treaty, namely to identify who has the right to exercise control over a space object. Austria does not see any problem in according such a right to an international organisation which according to XXII of the 1975 Registration Convention has declared its acceptance of the rights and obligations of the said Convention. It assumes that any organisation which registers a space object is clothed, by the respective member States, with the necessary competences to effectively control and supervise the space object (see the advisory opinion of the International Court of Justice in the ‘Reparation for Injuries’-case).