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Practice of States and international organizations in registering space objects

Registration of space objects: harmonization of practices, non-registration of space objects, transfer of ownership and registration/non-registration of "foreign" space objects

Note by the Secretariat

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* A/AC.105/C.2/L.260.

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I. Introduction

1. At the forty-fourth session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, held in Vienna from 4 to 15 April 2005, the Working Group of the Subcommittee on practice of States and international organizations in registering space objects considered 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).

2. The Working Group agreed that member States should be invited to study the background paper and to submit information and views on the following issues: (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; and (d) practice with regard to registration/non-registration of "foreign" space objects.

3. In a note verbale dated 25 August 2005, the Secretary-General invited Governments to submit information and views on the above-mentioned issues.

4. The present document has been prepared by the Secretariat on the basis of information and views received by 9 January 2006 from the following member States of the Committee: Germany and Morocco.

II. Replies received from Member States*

Germany

[Original: English]

1. Germany welcomed the detailed analytical study contained in the 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) and was convinced that further efforts were necessary to reach an international harmonized practice in registering space objects.

1. Harmonization of practices (administrative and practical)

2. In times of growing commercial interest relating to different space applications, the authority of the United Nations register, which is and should remain the only instrument under international law for the globally uniform registration of space objects is of particular importance. It can of course be supported and complemented by other function-specific registers, like the Committee on Space Research (COSPAR) information system, the International Telecommunication Union (ITU) Space Master Register or the future International Institute for the Unification of Private Law (Unidroit) space assets register of the draft protocol to the Convention on International Interests in Mobile Equipment as a uniform point of reference.

* The replies are reproduced in the form in which they were received.

3. The important goal of the United Nations register—globally uniform registration—can only be reached if States furnish a complete and correct registration of every single space object. Therefore all States that are active in the exploration and use of outer space should be invited to become a State party to the Convention on Registration of Objects Launched into Outer Space of 1975. Furthermore, all relevant intergovernmental organizations should be invited to declare their acceptance of rights and obligations in accordance with article VII of the Convention.

4. In addition, Germany holds the view, that in order to reach a homogeneous and efficient registration it is absolutely necessary to reach a common understanding among States on how to interpret the Registration Convention and the related articles 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, of 1967. In practice a set of harmonized guidelines for the registrar in the different national registration systems is needed.

5. Every registrar should have a checklist of cases in which his country has the international obligation for registering an object launched into Earth orbit or beyond, which should be based on a common international practice. The question of an agreement according to article II, paragraph 2, of the Registration Convention (if applicable) relating to an appropriate agreement between launching States could then be considered as a second step.

6. This common practice should avoid cases of non-registration of space objects resulting from private-sector space activities. Such space activities are covered by state responsibility and are therefore according to article VI of the Outer Space Treaty subject to authorization and continuing supervision by responsible States parties. This should also be ensured for any future cases.

2. Non-registration of space objects

7. The above-mentioned background paper prepared by the Secretariat has shown the significant and growing number of non-registrations, especially in cases where satellite launches were effected by the private sector or by international satellite organizations. So further efforts are required to avoid such cases where no State is willing to accept the registration obligation in such a situation (“negative conflict of competence”).

8. According to the Outer Space Treaty, no private-sector space activities that are detached from any governmental responsibility are admitted; each State party is responsible for its nationals and their space activities.

9. In practice, however, there are a number of legal problems in the determination of the nationality of companies and organizations. As far as clarity in the registration system is concerned, the criterion should be clear and unambiguous. The criterion of the registered seat of such legal entities can be applied to any company or organization—whether national or international. In cases of privatized former public satellite organizations, no difference should be made between them and other commercial entities.

10. As far as public international organizations are concerned, the complexity of the responsibility structure (multitude of launching States) often results in a non-

registration. Therefore a general back-up solution for registration is needed in cases of missing consensus on registration. A practical solution could be to oblige the host country if there is no other agreement for the satellite.

11. A further source of divergent registration practice is the non-harmonized interpretation of the term "launching State". In addition, there is no common understanding about the wording "procuring the launch". A harmonized interpretation of these terms should follow the intention to avoid cases where private space activities and the space objects involved are not unambiguously connected to the responsibility of a State party.

3. Practice with regard to transfer of ownership of space objects in orbit

12. As a matter of fact, the registration of space objects according to the Registration Convention is reserved to launching States. The registration cannot be transferred to another country (or countries) after a transfer of ownership. After analysing the legal implications, the rule of "once a launching State, always a launching State" appears to be the most adequate solution also for the future. While the reference to a launching State with respect to a particular space object creates a clear and unambiguous allocation of responsibilities vis-à-vis the general public, a reference to the State of the owner of a space object does not fulfil these requirements.

13. Nevertheless, this does not exclude the possibility for States to furnish an additional note amending their registration to the Secretary-General with information about the transfer of ownership. This information would be of practical relevance since the State that is responsible for the new owner of the space object could be willing to settle the claim directly in the spirit of international cooperation in spite of the formal obligation of the launching State.

4. Practice with regard to registration/non-registration of "foreign" space objects

14. The separate registration of the upper stage of the launch vehicle and the payload (satellite) seems to be the most adequate rule, taking into account the legal implications of the registration, namely the continuing jurisdiction and control of the State of registry. This approach solves the problems that arise in the case of an in-orbit delivery for a third country. In the case of an in-orbit delivery, the relevant State of the customer (who will be the first owner of the satellite after the in-orbit delivery) should be regarded as launching State in the sense of "procuring the launch".

15. The goal of the registration of each and every space object can only be reached by creating a new back-up solution in cases of a missing agreement according to article II, paragraph 2, of the Registration Convention where there are two or more launching States.

16. In view of the "remaining jurisdiction and control" according to article VIII of the Outer Space Treaty, the general back-up solution *de lege ferenda* should be the registration to be effected by the State of the first operator who at the same time was the first economic user of the satellite.

17. Finally Germany would like to underline its support for any approach and harmonization process in order to ameliorate the present registration practice.

Morocco

[Original: French]

1. Harmonization of practices (administrative and practical)

1. Morocco favours a single procedure for registration, namely that relating to the Registration Convention. This would encourage non-signatory States that own space objects to accede to the Registration Convention. The complementary nature of the two registers may sometimes lead to confusion, in particular with regard to the gathering of information. It is therefore desirable that all States that launch or own space objects provide the necessary information regarding their space objects or launches that they have carried out under the Registration Convention. The collation of information submitted by States could help to enhance the function of the United Nations Register of Objects Launched into Outer Space.

2. Non-registration of space objects

2. Of the 5,730 functional space objects launched into Earth orbit or beyond since 1976, only 390 (7 per cent) have not been registered, which demonstrates that States are becoming aware of the importance of ratifying the treaties on outer space, in particular the Registration Convention. Efforts should be made to identify the factors that contribute to the non-registration of space objects, especially those operated by intergovernmental organizations or transferred to an international or other organization, as part of a commercial transaction, by a State party to the Convention. States should continue to be made aware of the importance of registering space objects launched.

3. Practice with regard to transfer of ownership of space objects in orbit

3. The working group on practice of States and international organizations in registering space objects should clarify the registration procedures to be followed by States parties. It should be noted that the Registration Convention does not contain any provision relating specifically to transfer of ownership of a space object and the responsibilities that this entails.

4. Practice with regard to registration/non-registration of “foreign” space objects

4. Morocco considers that it should be compulsory for owners of such objects to register them in accordance with the provisions in force.