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English only

**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Fifty-fifth session
Vienna, 4-15 April 2016
Item 6 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

In accordance with the recommendations of the Working Group at the fifty-fourth session of the Subcommittee in 2015 (A/AC.105/1090, Annex I, para. 15), member States of the Committee and international intergovernmental and non-governmental organizations having permanent observer status with the Committee were invited to provide comments and responses to the questionnaire, as contained in the Report of the Legal Subcommittee in its fifty-fourth session, held in Vienna from 13 to 24 April 2015 (A/AC.105/1090, Annex I, Appendix) and the Report of the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (A/AC.105/C.2/2015/TRE/L.1, Appendix).

The present conference room paper contains a reply by Belgium to the set of questions.

* A/AC.105/C.2/L.297.



Belgium

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Belgium would like to provide a further contribution to the reflections of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space through the questionnaire addressed to member States by its chair (document A/AC.105/1067 Annex 1 — Appendix and A/AC.105/C.2/2015/CRP.12).

To this end, the Belgian Delegation would like to submit to the Working Group the following considerations in response to some of the items of the previously mentioned questionnaire.

Question 1.

With respect to question 1 and the topic of the 1979 United Nations Moon Agreement, Belgium would like to encourage other States parties in the Agreement to reactivate the discussions held on an informal basis on a possible joint document foreshadowing the implementation of Article 11 of that Agreement.

The initial work appeared promising and allowed a constructive discussion between States parties with the view of submitting to other Member States of UNCOPUOS substantial reflections on the way to move forward with the issue of exploitation of celestial bodies' natural resources. This momentum should not be lost.

States parties to the Moon Agreement should designate contact points to participate in those informal consultations to be held at the occasion and in the margin of the Legal Subcommittee and during intersessional periods. This consultation mechanism could report to the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space.

Question 2.1.

The notion of “fault”, as featured in Articles III and IV of the 1972 United Nations Convention on International Liability for Damage Caused by Space Objects should be thoroughly reviewed in its content.

Although a substantial literature already exists on the subject, it must be noted that the liability system provided for by the Convention when it comes to damage caused in outer space has barely been referred to as a legal solution for the management of orbital activities. In practice, the Convention does not provide effective legal rules and mechanisms that could help in responding to current concerns and issues, such as space debris or orbital collision prevention. Since the adoption of the Convention in 1972, and in particular these last years, some events have provided the factual conditions for an activation of the liability on the basis of Article III and/or Article IV of the Convention. Without prejudice to future actions by States in relation with those events, it must be noted that none of them has given rise to any recognition of State liability or provided elements for a better assessment of the notion of “fault” and its application *in casu*.

Belgium witnesses the continuous development of practices and their globalization through the mechanisms of international — institutional or operational —

cooperation. The recent efforts from the international space community to achieve a certain level of normalization and standardization of those practices show the willingness to obtain a set of practical norms that could serve as guidance for operators and regulators worldwide. Such norms already exist in many other areas of economic activities with transboundary effects or impacts (e.g. maritime sector, environmental protection of international or transnational areas or resources).

Belgium considers this development as an opportunity to make a better use of the existing treaties, in particular the 1972 Convention. This would require States parties to the Convention to investigate the possibility for States willing to do so, of concluding, on a voluntary basis and thus without prejudice to their rights and obligations with regard to other States parties to the Convention, an additional arrangement which would provide for an objective definition of the notion of “fault” as featured in Articles III and IV of the Convention. This definition would be made with reference to an identified set of norms based on recognized practices such as to ensure a sufficient level of safety, security and sustainability. The additional arrangement should also provide for an effective implementation and supervision of those norms, notably through appropriate national legislation and/or regulation.

Legally speaking, the additional arrangement could be qualified as a waiver of liability between States parties for any damage resulting from an act, or a behaviour, that would not infringe the norms of reference. It would transfer the risk inherent to space operation to the whole community of orbital systems operators (States, international intergovernmental organizations and non-governmental entities). That situation would provide more legal security to space operators and regulators by clearly identifying which norms must be complied with in order for them to be deemed as having adopted a careful and diligent behaviour (as this is generally the criterion adopted for the qualification of the “fault” under third party liability regimes). Belgium also considers reasonable that, as outer space must be explored and used for the benefit of all nations, the risk associated to space operations be borne by the whole “users” community, with the exception of the risk induced by the non-compliance with the norms of reference. Belgium also considers that specific exceptions could be brought to the waiver of liability, notably as far as military spacecraft or activities are concerned.

The additional arrangement could also serve as an instrument for the exchange of information among parties in accordance with the 1967 United Nations Outer Space Treaty, as well as several recommendations of the United Nations General Assembly or of the United Nations Committee on the Peaceful Uses of Outer Space. The arrangement could also provide for clear criteria for the designation of the State of registry among several launching States, as well as of the appropriate State in charge of authorizing and continuously supervising the activity, and could set up an ad hoc mechanism for continuous cooperation among the States involved in the same activity.

Question 3.1.

The provisions of the 1975 United Nations Convention on the Registration of Objects Launched into Outer Space do not allow a non-launching State to register an object launched into outer space. At the same time, it makes the State authorizing and supervising the launching operation a potential State of registry, in its capacity of launching State.

Belgium considers that situation as not satisfactory, especially with respect to the resolution reaffirmed at several occasions by States to prevent the default of registration of space objects. Belgium has come to the conclusion that a registration by a non-launching State is better than no registration at all.

Belgium sees the limits and the shortcomings of working out this legal uncertainty through an interpretation of the provisions of the 1975 Convention, without actually amending them. Nevertheless, Belgium wishes to investigate all the possibilities to fix the legal framework with regard to the reality of space activities and considers that one path to be explored could be the registration “on behalf”.

Such a registration would be based on Article VIII of the 1967 United Nations Outer Space Treaty, which does not refer to the status of launching State as a prerequisite to act as a State of registry. The registration would be made “on behalf” of the launching State(s) when the latter fails to register the object in accordance with the 1975 Convention. The registration “on behalf” could not serve as an assumption that the acting State of registry is the launching State of the object. Its purpose would be:

(a) To allow the communication of all relevant information and data concerning the space object, its status and its operation to the United Nations Secretary General, including those mentioned in United Nations General Assembly 62/101, of 17 December 2007, on Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects;

(b) To allow, possibly on a temporary basis, the exercise of jurisdiction and control on the object.

Further arrangement between the State of registry acting on behalf and (one of) the launching State(s) of the object could result in a transfer of registration whereby the transferee State would acquire jurisdiction and control on the object according to modalities to be provided for in the arrangement.

It must be noted that registration “on behalf” should not be done by a launching State of the space object on behalf of another launching State of the same object. Such a registration may be subject to transfer under current practices.