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English only

Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
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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-second session of the Subcommittee, in 2013 (A/AC.105/1045, Annex I, para. 10), member States of the Committee were invited to provide comments and responses to the questionnaire in conference room paper A/AC.105/C.2/2013/CRP.12.

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

* A/AC.105/C.2/L.292.

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Germany

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In addition to its already delivered written and oral statements, the German delegation would like to answer in detail the questions of No. 3 of the above-mentioned questionnaire concerning registration matters as follows:

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?

The Outer Space Treaty excludes the possibility of a transfer of registration from the launching State to a non-launching State in the event of the transfer of operation or ownership of a space object. This means that a transfer of registration is only possible between launching States which is an exceptional case by transfer of operation. This follows logically from Article VII in combination with Article VIII of the Outer Space Treaty, whereby the launching State remains responsible for space objects it has launched and cannot delegate or give up this primary responsibility under international law. There are good reasons for this regulation, which prevents the use of "flags of convenience". No launching State should be able to escape responsibility within the meaning of the liability regime pursuant to Article VII of the Outer Space Treaty. A State whose operating organization takes over a satellite launched by another State is responsible under Article VI of the Outer Space Treaty, in addition to the responsibility of the launching State, because it has taken over or authorized a national activity in outer space.

The inadmissibility of the transfer of registration to a State other than the launching State is not a barrier to deviating arrangements agreed at treaty level between the parties and their States of registry. In the event of cross-border transfer of a space object, it is quite permissible for a bilateral right of recourse to be agreed in case a claim is presented to the original launching State. Moreover, it is permissible for the transfer to a new operator to be documented in the register so that as a rule those actually responsible can be addressed directly.

It must be made clear that, if a space object and in orbit delivery is ordered by a third party (launch service provider), a record in the register is not ruled out. The State of registry of the agency ordering the space object is deemed the launching State within the meaning of "procures a launch" and can therefore have an entry made in its own right.

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?

An agreement on the assumption of responsibility and on compensation in any instances of recourse should be made between the launching State which agrees to the transfer and the State of registry of the party assuming responsibility. Both the State transferring responsibility and the State assuming responsibility must be informed about any such transfer via the instruments of their national space legislation; this is, for example, explicitly regulated in France's Space Operations Act. In the interest of ensuring clarity for third parties, the State transferring responsibility will attach a brief note of its original registration and forward this additional information to UNOOSA.

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 organization in accordance with the provisions of the 1975 United Nations Registration Convention?

An intergovernmental organization's jurisdiction and control pursuant to Article VIII of the Outer Space Treaty is comprehensive, but never attains the full scope of the jurisdiction and control of a State. States always retain the primary responsibility as the States of registry of the intergovernmental organization, as a guarantor, so to speak. This clear regulation contained in the Outer Space Treaty (last half sentence of Article VI) is further proof that the definitive transfer of responsibility and liability is basically not wanted. When it comes to the matter of transfer of ownership, this point can be taken up, and it can be said that while a State may to a considerable extent be able to assume actual responsibility and control of the system, this never rules out the possibility of recourse to the original launching State.