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English only

**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Fifty-fourth session
Vienna, 13-24 April 2015
Item 5 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-third session of the Subcommittee in 2014 (A/AC.105/1067, Annex I, para. 10), 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 Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (A/AC.105/1067, Annex I, Appendix).

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

* A/AC.105/C.2/L.295.



Canada

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Question 1.1: *Do the provisions 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 (Outer Space Treaty) constitute a sufficient legal framework for the use and the exploration of the Moon and celestial bodies?*

Answer: Given the current level of development and the space activities taking place, the Outer Space Treaty provides a sufficient legal framework for the use and exploration of the Moon and other celestial bodies. Scientific research, surveying work and even the removal of samples for study and identification of possible natural resources worthy of exploitation does not present great difficulties to the current legal framework. The Outer Space Treaty establishes basic legal principles that are relevant today and will probably remain relevant for the foreseeable future. The use and exploration of the Moon and other celestial bodies can be carried out in conformity with those legal principles. The challenge posed by new and innovative space activities is to ensure respect for those legal principles through continuous authorization and supervision by the appropriate State. It is for this reason that national space legislation, and its development, is an issue of crucial importance for States Party to the Outer Space Treaty.

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

Answer: Given that the Outer Space Treaty still provides a sufficient legal framework for the current use and exploration of the Moon and other celestial bodies, it is not immediately apparent what the benefits of the Moon Agreement are at present. Those States that are a party to the Moon Agreement would be better placed to expound upon those benefits.

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

Answer: It is quite clear that Article 11 of the Moon Agreement could benefit from greater clarification or an amendment. It is the most misunderstood provision in the Moon Agreement.

Question 2.1: *Could the notion of “fault”, as featured in Articles III and IV of the Liability Convention, be used for sanctioning the non-compliance by a State with the resolutions related to space activities adopted by the General Assembly or its subsidiary bodies, such as Assembly resolution 47/68 on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, and the Space Debris Mitigation Guidelines of the Committee on Peaceful Uses of Outer Space; in other words, could non-compliance with resolutions adopted by the General Assembly or with instruments adopted by its subsidiary bodies related to space activities be considered to constitute “fault” within the meaning of articles III and IV of the Liability Convention?*

Answer: A finding of fault requires a determination that a person failed to meet the standard expected of a reasonable person. Therefore, notwithstanding United Nations principles or guidelines, if a certain conduct falls below the standards expected of space faring nations, fault will likely be attributed to the author of the conduct. The opposite outcome is also possible; if a certain conduct is deemed reasonable, fault will not lie with a State simply because the conduct in question did not comply with, for example, the space debris mitigation guidelines.

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

Answer: The definition of “damage” under the Liability Convention includes the loss of property. Most of the discussions during the negotiation and conclusion of the Liability Convention regarding the term “damage” focused on the results of a physical collision with a space object. It was only in relation to personal injury or impairment of health that so-called “indirect damages” were considered compensable under the Liability Convention. Even in such cases, the harm must result from a physical impact with the debris of a space object or from contamination emanating from such an object.

Loss of property, which is included in the definition of damage, was used to explain the type of damage that could result from a physical impact. It has subsequently been explained by commentators to mean “an interference with the property resulting in its being in any way (as by contamination) rendered unfit for the use for which it was intended”. Statements made by some delegations at the time of the negotiation and conclusion of the Liability Convention made it clear that jamming or other such actions did not constitute “damage”.

Even if physical contact is unnecessary to bring a claim under the Liability Convention for damage, a manoeuvre made necessary by a piece of space debris would have to render the space object unfit for its intended use in order to conclude that there was a loss of property. Perhaps it is possible that a required manoeuvre could be so extreme that the space object was no longer able to perform its intended function due to, for example, complete exhaustion of fuel or power and/or relocation to an orbital position that does not lend itself to the continuation of the object’s intended function. In such extreme cases, it is possible that the notion of damage could be used to recover the loss suffered to avoid a space object. However, it remains doubtful that the Liability Convention was intended to cover indirect damages of this nature that did not result from a physical impact with a space object.

Question 3.1 and 3.2: *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 Outer Space Treaty and of the Convention on Registration of Objects Launched into Outer Space (Registration Convention), which would allow the transfer of the registration of a space object from one State to another during its operation in orbit? 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?

Answer: The Outer Space Treaty and the Registration Convention do not forbid the transfer of the registration of a space object as between launching States. The Registration Convention requires joint launching States to decide which one of them shall register the object (Article II(2)) but it does not prohibit such launching States from changing the initial decision of which State will register the space object. Similarly, Article VIII of the Outer Space Treaty merely sets out that the State Party on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object; Article VIII does not prohibit a transfer from one registry to another. As a result, the current State of registry could remove the space object from its registry (as there is no provision in the treaties that would prevent a State from deleting a space object from its registry) and another co-launching State could add the space object to its registry. The first State could advise the Secretary General that the space object is no longer carried on its registry, perhaps under Article IV(2), and ask that it be removed as the State of Registry on the Registration Convention list. The second State could subsequently, or together with the first State's request for deletion, advise the Secretary-General that the object is now on its registry and request that this be recorded in the register under the Registration Convention. While this practice is not spelled out in the Registration Convention, it is not prohibited so long as there is only one State of registry at any given time.

The situation is not the same in the case of a transfer from a launching State to a non-launching State. The Registration Convention only empowers launching States to register a space object. In the event that the space object is transferred to a non-launching State, that State will be unable to record the object in the register under the Registration Convention.

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

Answer: The treaties create a peculiarity regarding jurisdiction and control exercised over a space object being operated by an International Intergovernmental Organization (IO) and registered by the IO under the Registration Convention. Article VIII of the Outer Space Treaty is the only provision in the treaties that addresses jurisdiction and control over space objects based on registration of such an object in a national registry. The Registration Convention does not convey jurisdiction and control over a space object based on registration. As an IO cannot accede to or accept the obligations in the Outer Space Treaty, it seems as though the IO has no legal authority to exercise jurisdiction or control over a space object according to the treaties.