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English only

**Committee on the Peaceful
Uses of Outer Space
Legal Subcommittee
Fifty-seventh session
Vienna, 9–20 April 2018
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

At its fifty-sixth session, in 2017, the Working Group of the Legal Subcommittee on the Status and Application of the Five United Nations Treaties of Outer Space recommended ([A/AC.105/1122](#), Annex I, para.12) that States members and permanent observers of the Committee provide the Subcommittee, at its fifty-seventh session, comments and 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, taking into account the UNISPACE+50 process” ([A/AC.105/1122](#), Annex I, Appendix I).

The present conference room paper contains reply received from the Czech Republic to the set of questions.

* [A/AC.105/C.2/L.303](#).



Czech Republic

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1. The legal regime of outer space and global space governance

1.1. What is the main impact on the application and implementation of the five United Nations treaties on outer space of additional principles, resolutions and guidelines governing outer space activities?

The additional principles, resolutions and guidelines might serve as a useful tool for space actors regarding specific behaviour in outer space that is in general terms set forth in the existing United Nations Outer Space treaties. In spite of being non-binding instruments, they may address current circumstances and needs in a flexible manner.

1.2. Are such non-legally binding instruments sufficiently complementing the legally binding treaties for the application and implementation of rights and obligations under the legal regime of outer space? Is there a need for additional actions to be taken?

While non-legally binding documents might be very practical in their nature, they are not complementing the legally binding treaties per se as they cannot stipulate new legal rights and obligations. However, the non-legally binding documents facilitate the application of the treaties and are more suited to react to current developments in outer space activities.

1.3. What are the perspectives for the further development of the five United Nations treaties on outer space?

Due to a number of issues, on which the international community has not been able to reach a broad consensus, it seems unlikely today that a new treaty on outer space or any amendments to the existing ones be negotiated in the near future. With the rapid advancement of technology and with growing availability of space activities, however, States might be pushed more and more by practical concerns to strengthen their efforts and reach an agreement on specific issues.

2. United Nations treaties on outer space and provisions related to the Moon and other celestial bodies

2.1. 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 exploration of the Moon and other celestial bodies or are there legal gaps in the treaties (the Outer Space Treaty and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement))?

The Outer Space Treaty sets forth basic legal principles that are undoubtedly applicable to all activities in outer space, including the use and exploration of the Moon and other celestial bodies. Both the Outer Space Treaty as well as Moon Agreement provide for general framework and would benefit from more detailed regulation. On the other hand, with the fast development of new technologies there will be always challenges before us. Therefore, if we apply the established principles in the good faith, we should be able to carry out space activities in a peaceful and safe manner.

2.2. What are the benefits of being a party to the Moon Agreement?

The States that are party to the Moon Agreement are in better position to elaborate on the benefits.

2.3. Which principles or provisions of the Moon Agreement should be clarified or amended in order to allow for wider adherence to it by States?

Considering the modern trends in the exploration and use of outer space, aiming at the utilization of space resources, the provision of the Moon Agreement's article 11 and its possible interpretations have become widely discussed and disputed. This provision would benefit from greater clarification.

3. International responsibility and liability

3.1. Could the notion of “fault”, as featured in articles III and IV of the Convention on International Liability for Damage Caused by Space Objects (Liability Convention), be used for sanctioning 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 the 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?

The Principles adopted by the United Nations General Assembly or any other subordinate bodies are not legally binding and cannot give rise to claims under the Liability Convention on their own. Non-compliance with these non-legally binding instruments could in some specific cases be seen as a supporting argument in establishing negligence. To the extent that the principles reflect customary international law, the non-compliance with them may amount to an internationally wrongful act and the articles on Responsibility of States for Internationally Wrongful Acts will be applicable.

3.2. Could the notion of “damage”, as featured in article I of the Liability Convention, be used to cover 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 Space Debris Mitigation Guidelines of the Committee?

According to the obligation to mitigate damage, it seems imperative that a space object performs a manoeuvre in order to avoid collision with another space object or space debris as the loss in case of a collision might be much higher than the loss caused by the manoeuvre. The notion of “damage”, as featured in article I of the Liability Convention, seems to be quite limited in scope and aimed only at the results of a physical collision with a space object. Therefore, it seems that a simple economic loss caused by such manoeuvre is not covered by the definition of “damage”. However, this issue could benefit from greater clarification.

3.3. Are there specific aspects related to the implementation of international responsibility, as provided for in article VI of the Outer Space Treaty, in connection with General Assembly resolution 41/65, on the Principles Relating to Remote Sensing of the Earth from Outer Space?

The article VI of the Outer Space Treaty clearly defines that States are responsible for national activities in outer space. The United Nations General Assembly Resolution on the Principles Relating to Remote Sensing of the Earth from Outer Space confirms the applicability of article VI of the Outer Space Treaty in relation to international responsibility.

3.4. Is there a need for traffic rules in outer space as a prerequisite of a fault-based liability regime?

Traffic rules in outer space would ease activities in outer space as such and might guide the behaviour of States when a liability situation arises.

4. Registration of space objects

4.1. 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 Outer Space Treaty and 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?

The Registration Convention does not foresee nor forbid the transfer of registration of a space object from one State to another during its operation in orbit. It might be inferred from article II of the Registration Convention that among launching States such transfer is possible. On the other hand, in case of a transfer from a launching State to a non-launching State such transfer does not seem to be allowed as only launching States may register a space object.

4.2. 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 current international law does not set forth any norms relating to such transfer. However, when a company of the State of registry intends to transfer activities or ownership involving space object to a company of a foreign State, the respective States might enter into an ad-hoc agreement which would contain provisions on jurisdiction, registration, liability and other matters as they deem necessary.

4.3. What jurisdiction and control are exercised, as provided for in article VIII of the Outer Space Treaty, over a space object registered by an international intergovernmental organization in accordance with the provisions of the Registration Convention?

In accordance with article VIII of the Outer Space Treaty the States are primary responsible for the exercise of jurisdiction and control over a space object. The international intergovernmental organizations may perform such actions for which they have mandate by their member states. However, the international intergovernmental organizations may not become parties to the Outer Space Treaty. Therefore, it seems that when an international intergovernmental organization registers a space object it should ensure that at least one of its member states will exercise jurisdiction and control over such space object.

4.4. Does the concept of megaconstellations raise legal and/or practical questions, and is there a need to react with an adapted form of registration?

The megaconstellations pose challenges to space traffic and safety of space operations as the multiplicity of satellites together creates greater risk of a collision with other objects both in air space and outer space.

4.5. Is there a possibility, in compliance with the existing international legal framework, based on the existing registration practices, of introducing a registration “on behalf” of a State of a launch service customer, based on its prior consent? Would this be an alternative tool to react to megaconstellations and other challenges in registration?

Although registration of space objects that are part of megaconstellations “on behalf” of a State of a launch service provider seems practical, it is questionable whether such practice is welcomed. Registration is not only linked to jurisdiction and control over a space object, but also to the liability for damage. Therefore, the notion of such registration and the possible implications that stems from the registration need to be carefully considered.

5. International customary law in outer space

5. Are there any provisions of the five United Nations treaties on outer space that could be considered as forming part of international customary law and, if yes, which ones? Could you explain the legal and/or factual elements on which your answer is based?

In the opinion of the Czech Republic the general principles of the Outer Space Treaty can be considered as forming part of international customary law due to the wide adherence to it by the international community in the conduct of space activities. Both aspects, *opinio juris* (the Outer Space Treaty has as of now 107 State Parties and other 23 States have signed it) and State practice, are fulfilled and no dissenting practice of States not parties to the Treaty has been identified.
