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**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 Indonesia to the set of questions.

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



Indonesia

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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 main impact and the most important application and implementation of the five United Nations Treaties on Outer Space and additional space principles, resolutions and guidelines governing outer space are to ensure the peaceful use of outer space. Further elaboration and addition on principles, resolutions guidelines regarding outer space may also be needed to provide further clarification in the implementation of the existing United Nations Treaties on Outer Space provisions in practice.

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?

Indonesia is of the view that the non-legally binding instrument is a way to fill the gaps on the existing legally binding treaties on the outer space. Outer space activities is increasing and were developed by the increasing number of new space actors (state and non-state actors). In order to provide a proper and up-to-date guideline, the non-legally binding instrument should always kept updated as a living document and used as a guidance in solving new problems. The states also may consider to transform the non-legally binding instrument to a binding instrument, when it is proven to be appropriate as a guide and regulation in practice.

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

Indonesia is of the opinion that the development of space law by adding or amending the five United Nations Treaties is almost impossible. Indonesia understands the need for each state to maintain its national interest, and to reach any agreement on binding terms is difficult while draining too much of our time and energy. Indonesia also believes, that some of the provisions of the five United Nations Treaties, especially the 1967 Outer Space Treaty, have become customary law. Meanwhile, the development on space sectors, including the involvement of new state and non-state actors as well as new private international organizations in the activity of the space are not regulated by the existing treaties. Other than that, the implementation of the current regulation is also not perfect, further elaboration and adjustment are often needed. For example is the use of geostationary orbit (GSO), as a limited natural resource, further reservation for the newcomers, developing country, and the geographical situation of particular countries shall be considered. Therefore, the non-legally binding instrument can be used to address the issues including not hampering the access freedom to all areas of space-related activities, while taking into account the latest developments on outer space activities.

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 1967 provides the basic framework on international space law and principles, including for the exploration and exploitation of the Moon and other celestial bodies. More detailed set of law and regulation are needed as a guidance for day to day practice, and to resolve any difference in interpretation. Based on the international law, the Moon Agreement has been ratified by several states and binding the parties. However we noted that the space faring countries, the ones with the technology and capability to do exploration on the Moon has not yet ratified the Moon Agreement, so there is the need for Outer Space Treaty 1967 parties to compile a detailed guideline elaborating the principles Moon Agreement and transform it to be a set of applicable rules.

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

Indonesia is not a party to the Moon Agreement.

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?

Indonesia is of the view that the principle of the common heritage of mankind principle in the article 11 of the Moon Agreement should be further elaborated and addressed the lack of any international authority that regulate the exploitation on the Moon and other celestial bodies, as implemented in the international law of the sea on the exploitation of the natural resources on the high seas under the International Sea-Bed Authority (ISA). In the implementation, the elaboration has to be conducted under the article 11 of the Moon Agreement.

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?

Indonesia is of the view that in the context of responsibilities and liabilities associated with the word “fault”, and the concept of fault and damage, is set out in the Liability Convention. That the fault is often interpreted with the tendency of as a criminal matter, even though it may not causing any damage/harm. As for damage, it is something that required further compensation, so it is under the civil law. Indonesia also in the view that the non-compliance with resolution on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space must be seen by case per case approach, and there is a possibility to be considered to constitute fault within the meaning of articles III and IV of the Liability Convention. Further discussion on the technical and practical aspects on this matter are needed.

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?

Indonesia is in the view that in the context of space objects and space debris, the notion of fault and damage in outer space activities need to be analysed from the technical aspect and satellite operational aspect. A technical criteria is important to see whether certain “fault” generate a certain “damage”.

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 implementation of international responsibility as provided for in article VI of the Outer Space Treaty is only regulating the national space activity. Regarding the Remote Sensing Principle, the applicable legal principles and liability, shall be referred to the rights and obligations of both state-sensed and sensory authorities with respect to the data or remote sensing information obtained. In the relation of the aspect specific international responsibilities, Indonesia is of the view that it is import to acknowledging the rights of the sensed state and the possibility to claim if there has been a misuse of the data and information obtained from the remote sensing.

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

Indonesia is on the view that a prerequisite of a fault-based liability regime may be contra productive due to the difficulty for the parties (including the third parties) to prove the liability of the other parties. The definition of damage in space activities shall also cover both physical damage and nonphysical damage such as harmful and unlawful interference; and the loss of service, which the liability has not been regulated.

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?

Indonesia found that the registration as regulated in articles VIII and XI Outer Space Treaty and article II Registration Convention is very general and need to further regulate any transfer of ownership between states. Indonesia has ratified Registration Convention 1975 on 1997, and set a national registry that has been delivered to the United Nations Office for Outer Space Affairs as stated in the document [ST/SG/SER.E/INF/39](#) dated 29 September 2017. Indonesia also registers its satellites that launched in cooperation with other states. In Indonesia’s experience on share ownership transfer between a national corporations to a foreign ownership has not stated any transfer of space asset in the orbit(s).

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?

Indonesia is of the view that the transfer of space asset is a complex issue, not just concerning the international registration, but also other legal and technical issues. The transfer process often requires time and the space assets in the orbit may have a

limited life time. Therefore it is necessary to draft a precise applicable regulation that guarantees the rights and obligations of all parties related. Meanwhile, the existing provision on space asset, Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets signed 9 March 2012, only regulate the rights and obligations assurances of debtor and creditor on space asset financial. A further guideline is needed.

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?

Indonesia is of the view that the article VIII Outer Space Treaty 1967, has settled jurisdiction and control of the space objects in under the launching state, and so only the launching state has the right to register the space object. But in practice, there are international organizations that launch their satellites designating one of their state member as the launching state to register the satellite under its jurisdiction. Although this is in accordance with the Registration Convention, but practically it is not appropriate. Indonesia found that a further arrangement and regulation should be applied to complete the registration convention, especially on the provision of international organization ownership, registration and liability.

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?

Indonesia is of the view that the mega-constellation concept raises a legal, environmental and technical question, as it will significantly increasing the number of space objects and the space debris in the orbit. It will also raise the risk of collision and the security and safety in Space and on Earth. Indonesia is in the view that the registration procedure of mega-constellation concept need to be adapted both in United Nations Secretary-General and in ITU.

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?

Indonesia is in the view that a registration “on behalf” of a State of a launch service customer, based on its prior consent may in compliance with the existing international legal framework as well as the existing registration practices. It is also a way for megaconstellation satellites to be registered in the future, as these types of satellites may be owned by several parties, such as states, private companies, international organizations, non-governmental organizations and individuals. Any of these party can propose for prior consent for itself, before the actual registration for each space objects in the constellation.

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?

Provision in the five United Nations Treaties on Outer Space that could be considered as forming part of international customary law are the article I (the freedom of exploration and use of outer space) and article II (the principle of non-appropriation) of the Outer Space Treaty 1967. These principles are seen as the international customary law to all states including the space faring countries that ratified it.