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English only

Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
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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 Germany to the set of questions.

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

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Germany

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Germany again wants to emphasize the practical importance of the questions raised by the Chair of the Working Group on the Status and application of the five United Nations Treaties on Outer Space (A/AC.105/C.2/2012/CRP.10). In the last years, the German delegation answered in detail to the above-mentioned catalogue of questions concerning the topics "responsibility and liability" and "registration" (A/AC.105/C.2/2013/CRP.17; A/AC.105/C.2/2013/CRP.13; A/AC.105/C.2/2012/CRP.11).

3. Registration of space objects

Germany reiterates its position as formulated in A/AC.105/C.2/2012/CRP.11 of 22 March 2012 and gives further explanations:

In case of a transfer of operation of a space object to a legal entity of a State different from the State of registration, the following legal situation has to be faced: The State of the new operator becomes responsible for this national space activity under Art. VI Outer Space Treaty (OST). A transfer of registration, with the consequence "transfer of jurisdiction and control" to the new responsible State is only feasible in the exceptional case where the new State, behind the operator, is by chance also a launching State of the launch event of that space object. In the regular case, the State of registration (the launching State or one of the original launching States) has still the burden and benefits of the legal position "jurisdiction and control". The legal limitation not to transfer "jurisdiction and control" to a non-launching State has its good reasons (persistent and non-revocable link with the responsibility and liability of a launching State). Nevertheless, the content of this legal position "jurisdiction and control" can be transferred to a large extent, on the basis of a bilateral State-to-State Agreement, to the State behind the new operator. This avoids conflicts between the State of registration and the State responsible under Art. VI OST. The formal status of the State of registration remains untouched.

The French Space Operation Act (SOA) of 3 June 2008 faces this situation by demanding an authorization for the transfer of control of the space object having been authorized under the French Space Operation Act to a third party and for the inverse case, where a French operator intends to control a space object for which the launch or control has not been authorized under the SOA (Art. 3).

In order to avoid a flag of convenience situation it is wise to safeguard the present legal situation and to add a pragmatic but responsible solution for the growing number of cases of transfer of operation. As a result, the launching State with the persistent position "jurisdiction and control" remains under international law/space law the guarantor for the good execution of those obligations, but at the same time he transfers — on a bilateral basis — the obligations to the State behind the new operator, being responsible under Art. VI OST. The major content of such an agreement could be as follows:

> "State X, launching State and State of Registry for the space object as defined in Annex A agrees to the transfer of operation from the present operator Op1 to the new operator Op2 under the jurisdiction of State Y. State Y recognizes the

> ‘jurisdiction and control’ of State X as State of Registry and agrees hereby to accept and execute the rights and obligations resulting of this position with regard to the space activities and operations of Op2 related to the space object as defined in Annex A on behalf of State X. State Y further agrees to keep State X harmless for any claims resulting of the before mentioned activities of Op2 and to indemnify State X for any claim resulting of the responsibility as launching State. A further transfer of operation to a legal entity not under the jurisdiction of State Y is only permitted with prior consent of State X.”

A generally accepted Standard State-to-State Agreement will facilitate the implementation of the related international responsibility and will not create any unacceptable burden for commercial space activities. In any case, the question of responsibility under Art. VI OST for national space activities, not resulting out of the status as launching State, has to be faced.

4. International customary law in outer space

During the session of the Working group in 2014, the catalogue of questions was amended by a fourth question relating to international customary law (“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 on which legal and/or factual elements your answer is based?”).

The German delegation is of the opinion that the general principles of the Outer Space Treaty (OST) have become international customary law since almost all States conducting activities in outer space have ratified the OST and act according to its provisions. Furthermore, a dissenting practice of the States not having signed the OST is not identifiable. Germany is of the opinion that the general principles of the OST accepted as customary law are the following: the space freedoms (Art. I OST), the non-appropriation principle (Art. II OST), the applicability of public international law to space activities (Art. III OST), the responsibility and liability of States for national activities in outer space (Art. VI and VII OST) and the duty to authorize and supervise non-governmental activities in outer space (Art. VI OST) as well as the duty to register space objects (Art. VIII OST). The universal validity of these rules is of utmost importance for the peaceful use of outer space.