

5 April 2019

English only

**Committee on the Peaceful
Uses of Outer Space**
Legal Subcommittee
Fifty-eighth session
Vienna, 1–12 April 2019

**Comments on the draft guidance document under
UNISPACE+50 thematic priority 2. “Legal regime of outer
space and global governance: current and future
perspectives” (A/AC.105/C.2/L.310) received during the
fifty-eighth session of the Legal Subcommittee from
delegations of States members of the Committee on the
Peaceful Uses of Outer Space**

The present document contains comments on the draft guidance document under UNISPACE+50 thematic priority 2. “Legal regime of outer space and global governance: current and future perspectives” (A/AC.105/C.2/L.310) received during the fifty-eighth session of the Legal Subcommittee from delegations of the following States members of the Committee on the Peaceful Uses of Outer Space: Canada, Mexico, the Netherlands and the United States of America.

Canada

Paragraph 18 – The language could be simplified to read: “... acceding to any or all outer space treaties offers benefits, etc. similar to those offered by acceding to any other international treaty, namely...”

Paragraph 20 – Does acceding to the space treaties grant equal access to the benefits given that the principle itself was first articulated in General Assembly resolution 1962(XVIII) of 13 December 1963 and probably constitutes customary international law?

Paragraph 22 (b) – Where it reads “increase the development of customary behaviour”, what is meant here? Does it mean “good” behaviour or is it referring in some way to customary international law? It might be better to change “customary” to “good”, “responsible” or “orderly” behaviour to avoid any confusion on this point.

Section B, page 5 – It would be preferred to quote the Outer Space Treaty, Article VI in a complete fashion. The parts of Article VI that are omitted in this section are actually quite important for States considering the obligations of the Outer Space Treaty. More generally, greater emphasis should be placed on the part of Article VI

* Reissued for technical reasons on 8 April 2019.



that obliges the appropriate State to authorise and continuously supervise activities of private actors. This is critically important to the obligations a State accepts as a Party to the Outer Space Treaty. It also reinforces the point that States can unwittingly become spacefaring nations, even without a formal space program. The examples given illustrate this point, but it is needed to have the link to the obligation to authorise and supervise which is placed on the appropriate State. In other words, even if State A had nothing to do with the launch of a space object, a person could establish themselves in the jurisdiction of State A and operate the space object from State A. That would probably make State A the appropriate State to authorise and supervise the activity even though State A had no role in the deployment of the space object or its operation. The obligation on the appropriate State is the crucial link that should be highlighted here. Paragraph 37(a) – At the end of this subparagraph it should be made clear that there is no need to engage domestic legal procedures or courts. A claimant State would have to present a claim, which is similar to a legal procedure and the claims commission is a quasi-judicial proceeding.

Paragraph 43 – It should be clarified that the concept of jurisdiction and control is linked to registration in a national registry in accordance with Article VIII of the Outer Space Treaty.

Paragraph 48 – Is it accurate to state that registration provides information on the results of space activities?

Section A, page 10 – As this section is specifically addressing Launching States, the word “launch” or “launch activities” should be used throughout instead of “space activities”.

Paragraph 65 – In the first sentence, it should simply read “space activities” to reflect the fact that the appropriate State must authorise and continuously supervise private space activities. It is not only national space activities that must be authorised and supervised but all space activities where a State is the appropriate State to do so under the circumstances.

Mexico

Chapter I

3. The present document contains an overview of the legal regime governing outer space and the interconnection of substantive areas in the application and implementation of the legal regime of outer space. It aims to assist States in that they can carry out ...activities in the exploration and peaceful uses of outer space as well as in their consideration of acceding to the outer space treaties.

4. In its review, the present document emphasizes the importance of appropriate means ~~of ensuring~~ that outer space is used for peaceful purposes and that the obligations under international law and those specifically contained in the United Nations treaties on outer space are implemented by State parties.

Chapter II

8. A national regulatory framework for space activities is key for spacefaring nations and States with emerging spacefaring capacities. In many States, the legal regulation of space activities is based on an interlinked system of international norms and national space legislation. While international space law is crucial in providing the guiding principles and overarching objectives for the legal regulation of space activities, national space legislation can prove valuable in concretizing those principles and objectives and applying them within a given jurisdiction of a State with existing or emerging spacefaring capacities.

There is a problem in Spanish text.

9. The five United Nations treaties on outer space, the five sets of principles governing outer space activities and related applicable General Assembly resolutions ~~and other documents~~ form part of international space regulation.

It is preferable to include the Article III of the OST:

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

14. Under the treaties and principles governing outer space activities, the Secretary General has the obligation to a number of responsibilities which primarily involve the timely dissemination of information received from States. The types of information disseminated by the Secretary-General include space object registration data; information on the recovery and return of astronauts and space objects; notifications relating to the launch and re-entry of nuclear-powered space objects; and notifications relating to lunar exploration and habitation, remote sensing, direct broadcasting and outer space activities (including the discovery of harmful phenomena).

Subchapter A

21. By ratifying, implementing and observing the provisions of the outer space treaties, States demonstrate their support and its interest for:

~~e) Providing international rules and procedures for the peaceful settlement of disputes and for claiming compensation; and guaranteeing the protection of the interests of States and their nationals who fall victim to damage caused by space objects.~~

The procedure is established in the Treaty of Responsibility. This subject is detailed in Subchapter B.

Subchapter B

25. The present document notes the importance of the responsibility of States to ensure that outer space is used for peaceful purposes and to adhere to the existing legal regulation in carrying out activities in outer space.

Subchapter C

Subchapter D

43. The registration regime under international space law is based in article VIII of the Outer Space Treaty, the Registration Convention and on General Assembly resolution 1721 B (XVI). The registration regime underscores jurisdiction and control as a comprehensive legal concept. The registration regime allocates jurisdiction and control to one State. This is a factor connecting a number of rights and obligations.

The treaties on resolutions have a prevalence.

Chapter III

By working with the text in English and Spanish, it could be seen that there is a lot of difference in content and words. The wording of the English text is more understandable.

Netherlands

The Kingdom of the Netherlands would like to present the following comments to document A/AC.105/C.2/L.310. This is, admittedly, with some regret. The Netherlands would have preferred to have a plenary discussion on the comments of various states, which would make arriving at compromise easier, and have the benefit of sharing views.

As to paragraph 9, the Kingdom of the Netherlands would agree with the comment made by the distinguished representative of Mexico, to the extent that there is an important distinction between binding sources of international law and non-binding sources. General Assembly Resolutions may reflect binding rules of international law, but are themselves not binding. So the language of paragraph 9 should either refer to the content of some General Assembly Resolutions, but not their form, or should distinguish between binding and non-binding sources.

As to paragraph 29, the Kingdom of the Netherlands would like to raise a question concerning the last sentence. It states that States should ‘establish national space policies and/or legislation in order to assume their international responsibility as set out in the Outer Space Treaty.’ Now, surely, national policies cannot achieve the goal of assuming international responsibility. This can only be achieved through legal instruments, such as international agreements and/or national legislation. The language in this paragraph should reflect this. The solution may be that reference is made to the implementation of best practices through national space policies and the assumption of responsibility through national legislation.

The Kingdom of the Netherlands would like to reserve the right to make further comments and observations on this documents during in the meetings dedicated to the work of the working group on the five UN treaties.

United States of America

Para 8

Requested edit: Line 4, add “and other rulemaking or regulation” after “legislation”.

Reason: Regulatory action and other rulemaking is also a component of how states do this.

Para 9

Requested edit: Either delete “and related GA resolutions and other documents” or replace “international space law” with “international governance of outer space activities.”

Reason: United Nations General Assembly Resolutions and other similar documents are not legally binding.

Para 13

Requested edit: Add reference to the adopted LTS guidelines.

Reason: These were adopted by the Committee on the Peaceful Uses of Outer Space.

Para 16

Requested edit: Line 5, replace “for” with “relevant to

Reason: International law obligations are not directly applicable to some entities launching satellites e.g. private actors.

Para 20

Requested edit: Either delete “Acceding to...space.” or replace with exact language of Article 1 of the OST.

Reason: Current text overstates the benefit language of the OST.

Para 25

Requested edit: Delete “ensure...purposes.”

Reason: There is no such obligation.

Para 25

Requested edit: Replaced “regulation” with “obligations.”

Reason: More appropriate phrasing for international law rules.

Para 26

Requested edit: Line 5, replace “live up...and” with exact language from OST Article VI, as well as “including other applicable international legal obligations such as the UN Charter.”

Reason: Current language confuses the relationship between international space law and the rest of international law. No reason not to use language from the OST.

Para 29

Requested edit: Line 8, replace “assume” with “fulfil”

Reason: Legal accuracy

Para 36

Requested edit: Line 3, delete “by consecrating...flight”

Reason: There is no actual practice on this, and it is possible that certain limits to liability will be developed, such as those relating to foreseeability.

Para 37(a)

Requested edit: Delete “as a result...procedures.”

Reason: The liable party might refuse to pay, in which case legal procedures would need to be used.

Para 40

Requested edit: Line 2, insert “defined” in “no...ceiling”

Reason: There might be limits that develop from practice or general principles of law.

Para 54(e–g)

Requested edit: Include language referencing the obligation to have continuing supervision. Work with OOSA for location and phrasing.

Reason: Required by Article VI of the OST.

Para 56(c–e)

Requested edit: Include language referencing the obligation to have continuing supervision. Work with OOSA for location and phrasing.

Reason: Required by Article VI of the OST.