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Committee on the Peaceful Uses of Outer Space

Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States

Note by the Secretariat

Addendum*

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* The present document was prepared on the basis of replies received from Member States after 27 February 2007.



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I. Introduction

1. At its thirty-eighth session, in 1995, the Committee on the Peaceful Uses of Outer Space agreed that the purpose of the questionnaire on possible legal issues with regard to aerospace objects that had been finalized at the thirty-fourth session of the Legal Subcommittee was to seek the preliminary views of States members of the Committee on various issues relating to aerospace objects. The Committee also agreed that the replies to the questionnaire could provide the basis for the Legal Subcommittee to decide how it might continue its consideration of the related agenda item. The Committee further agreed that States members of the Committee should be invited to give their opinions on those matters.¹
2. Information received from Member States by 27 February 2007 is contained in the note by the Secretariat (A/AC.105/635 and Add.1-15).
3. At its forty-sixth session, in 2007, the Legal Subcommittee endorsed the report of the Working Group on Matters Relating to the Definition and Delimitation of Outer Space. The Working Group agreed to continue inviting Member States to reply to the questionnaire on aerospace objects (A/AC.105/891, annex II, para. 16 (d)).
4. The present document was prepared by the Secretariat on the basis of information received by 21 January 2008 from the following Member States: Belarus, Czech Republic, Jordan, Morocco and Ukraine.

II. Replies received from Member States*

Question 1. Can an aerospace object be defined as an object which is capable both of travelling through outer space and of using its aerodynamic properties to remain in airspace for a certain period of time?

Belarus

[Original: Russian]

This definition reflects one (but not the only) characteristic of an aerospace object, which is consistent with the current stage of aviation and space activity, and it is permissible and feasible as a legal definition of an aerospace object. An aerospace object is indeed an object capable both of travelling through outer space and of using its aerodynamic properties to remain in airspace for a certain period of time.

¹ See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20 (A/50/20)*, para. 117.

* The replies are reproduced in the form in which they were received.

Question 2. Does the regime applicable to the flight of aerospace objects differ according to whether it is located in airspace or outer space?

Belarus

[Original: Russian]

The legal regime applicable to an aerospace object in airspace is indeed different from that applicable to the same object travelling in outer space. Under the legislation of Belarus, an aerospace object travelling in airspace is regulated by air law (national or international) since, under the Convention on International Civil Aviation (Chicago Convention, 1944), the State possesses full and exclusive sovereignty over the airspace above its territory. In outer space, however, the regime applicable to aerospace objects is determined by the legal norms of space law (in our case, by the legal norms contained in the international space law treaties).

Question 3. Are there special procedures for aerospace objects, considering the diversity of their functional characteristics, the aerodynamic properties and space technologies used, and their design features, or should a single or unified regime be developed for such objects?

Belarus

[Original: Russian]

1. The development of a single or unified regime for aerospace objects is essential for effective legal regulation of their use.
2. When specific rules are drawn up as part of the unification process, the physical and technical features, functional characteristics, aerodynamic properties and design features of various aerospace objects must nonetheless be taken into account.
3. However, the term “unified regime” should not be taken to mean the combination or amalgamation of legal norms from airspace and space law, but rather the development of a single set of special procedures for aerospace objects, which are then integrated into the existing norms of airspace and space law.

Question 4. Are aerospace objects while in airspace considered as aircraft, and while in outer space as spacecraft, with all the legal consequences that follow therefrom, or does either air law or space law prevail during the flight of an aerospace craft, depending on the destination of such a flight?

Belarus

[Original: Russian]

An aerospace object is subject to different legal regimes, depending whether it is in airspace or outer space. Consequently, while the aerospace object is in airspace, it should be considered an aircraft, subject to air law, and while it is in outer space it should be considered a spacecraft, subject to space law. The destination of the flight concerned does not influence the decision relating to the legal status of the object. That said, air law should provide for special norms to take into account the unique characteristics of flights by aerospace objects.

Question 5. Are the take-off and landing phases specially distinguished in the regime for an aerospace object as involving a different degree of regulation from entry into airspace from outer space orbit and subsequent return to that orbit?

Belarus

[Original: Russian]

For the purposes of flight control and to monitor the environmental situation, ensure the safety of persons living in the territories concerned and reduce the risks encountered by participants in air and space travel, the regime governing an aerospace object must distinguish all stages in the flight of the object as being in either airspace or outer space, since the two are different in the degree of regulation involved and the procedures employed. Five stages should be distinguished: take-off, transition from airspace to outer space, flight in outer space, transition from space orbit to airspace and landing (descent).

Question 6. Are the norms of national and international air law applicable to an aerospace object of one State while it is in the airspace of another State?

Belarus

[Original: Russian]

1. At this stage, national and international air law applies to aerospace objects unless otherwise provided by the norms of the prevailing international treaties on space law to which a State is party.
2. We consider that the norms of air law should be applicable to aerospace objects to the same extent as they are applicable to aircraft of a foreign State since, when an aerospace object of one State is in the airspace of another State, it is treated

as an aircraft and subject to the air law of the latter State and to international air law.

Question 7. Are there precedents with respect to the passage of aerospace objects during take-off and/or re-entry into the Earth's atmosphere and does international customary law exist with respect to such passage?

Belarus

[Original: Russian]

In Belarus, there have been no such precedents. The only precedent relating to Belarus was the crash of the Ukrainian/Russian Dnepr carrier rocket in July 2006 with a Belarusian satellite on board; however, the area where debris fell was located exclusively within the territory of Kazakhstan. No issues directly concerned with the application of international air or space law have arisen.

Question 8. Are there any national and/or international legal norms with respect to the passage of aerospace objects during take-off and/or re-entry into the Earth's atmosphere?

Belarus

[Original: Russian]

1. At present, there are almost no norms of this kind in the air legislation of Belarus, but the need to introduce such provisions will be taken into account in the development of new legislation on space activities.
2. According to the norms of national air legislation, aerospace objects in classified airspace (up to a height of 20,100 metres) are governed by the general rules relating to take-off, flight and landing.

Question 9. Are the rules concerning the registration of objects launched into outer space applicable to aerospace objects?

Belarus

[Original: Russian]

The rules for registering objects launched into outer space are applicable to aerospace objects, since these objects, by definition, move for a certain time in outer space.

Question 10. What are the differences between the legal regimes of airspace and outer space?

Belarus

[Original: Russian]

1. The first difference between the two regimes is that the airspace of a territory belongs to the State which exercises sovereignty over that territory, and every State determines the rules governing flights over its territory and within its airspace exclusively, independently and without external interference of any kind.
2. Under our legislation, the airspace of Belarus is that part of the air which is situated above its territory. The Air Code of Belarus proclaims the full and exclusive sovereignty of the State over its airspace. Law No. 156-3, on objects which are the exclusive property of the State, adopted on 5 May 1998, likewise states that airspace is owned exclusively by the State.
3. Secondly, airspace provides one of the principal means of communication, namely, air transport. There are transport regulations in Belarus which also lay down the regime for airspace as it relates to air transport.
4. Finally, under Belarusian legislation, airspace is divided into classified and unclassified airspace. Airspace above 20,100 metres is unclassified. The regime governing flights within classified airspace in Belarus is regulated by national legislation: the Air Code and the Rules for the Use of Airspace. Outside classified airspace, which is considered to include outer space, the norms contained in international agreements are applicable.
5. Under the legislation of Belarus, airspace also constitutes a protected natural object. Law No. 29-3, on the protection of the atmosphere, adopted on 15 April 1997, states that the atmosphere is a protected natural object, consisting of the gaseous layer surrounding the Earth. The airspace is thus also protected by the environmental legislation of Belarus.
6. As can be seen from the above, the legislation of Belarus defines the regime governing airspace in some detail. There are norms regulating airspace in environmental, transport and constitutional legislation.
7. No separate national legislation has been developed relating to the outer space regime in Belarus: the country is still developing legal regulation in this area because Belarus began space activities only recently.
8. Nevertheless, Belarus has acceded to the main space treaties, including the Outer Space Treaty of 1967, and consequently does not extend its sovereignty to outer space (art. II of the Outer Space Treaty).
9. Belarus thus asserts that outer space is common to all humankind and that no State exercises State sovereignty over it; therefore, the legal regime relating to outer space should be determined by international space treaties. Nevertheless, States are responsible for their activities in space, in accordance with the Convention on Registration of Objects Launched into Outer Space.

General responses

Czech Republic*

[Original: English]

The Czech Republic has twice before submitted its replies to the questionnaire on aerospace objects. Since the submission of its replies, the position of the Czech Republic on the questions included in the questionnaire has not changed. Therefore, the Czech Republic does not feel it necessary to repeat them once again. However, its delegation to the Legal Subcommittee will be ready to continue in the consideration of criteria for analysing the replies to the questionnaire on aerospace objects in order that the Working Group and the Subcommittee can reach consensus on them.

Jordan

[Original: Arabic]

With regard to the definition of aerospace objects, these are not defined in national legislation. However, article 2 of Civil Aviation Act No. 41 of 2007 defines an aircraft as any machine whose continuous flight in aerospace is derived from air and other reactions above the surface of the Earth.

Morocco**

[Original: French]

Morocco proposes that the questionnaire on aerospace objects be set aside until the discussion of the following points had been completed within the framework of States' replies that have been received by the Legal Subcommittee:

- (a) Development of criteria for analysing the replies to the questionnaire on aerospace;
- (b) Consideration of preferences with regard to the replies of Member States to the questionnaire on aerospace objects summarized in document A/AC.105/C.2/L.249 and Corr.1 and Add.1 and 2;
- (c) Consideration of proposals concerning criteria for analysing the replies to the questionnaire on aerospace objects.

Ukraine***

[Original: Russian]

Ukraine has examined the questionnaire on possible legal issues with regard to aerospace objects, and its replies have been sent to the United Nations Office for Outer Space Affairs in the prescribed manner.

* The Czech Republic has previously submitted replies to the questionnaire (see A/AC.105/635 and Add.7 and Add.7/Corr.1).

** Morocco has previously submitted replies to the questionnaire (see A/AC.105/635/Add.6 and 7 and Add.7/Corr.1) and a general response (see A/AC.105/635/Add.13).

*** Ukraine has previously submitted replies to the questionnaire (see A/AC.105/635/Add.11 and Corr.1).