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Committee on the Peaceful Uses of Outer Space

Questions on the definition and delimitation of outer space: replies from Member States

Note by the Secretariat

Addendum

Contents

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I. Introduction

[Original: English]

1. At the forty-fifth session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, in 2006, the Working Group on the Definition and Delimitation of Outer Space agreed to address to Member States the following questions:

(a) Does your Government consider it necessary to define outer space and/or to delimit airspace and outer space, given the current level of space and aviation activities and technological development in space and aviation technologies? Please provide a justification for the answer; or

(b) Does your Government consider another approach to solving this issue? Please provide a justification for the answer (A/AC.105/871, annex II, para. 7 (f)).

2. At the forty-ninth session of the Subcommittee, in 2010, the Working Group agreed to address to the Governments of Member States the following additional question:

(c) Does your Government give consideration to the possibility of defining a lower limit of outer space and/or an upper limit of airspace, recognizing at the same time the possibility of enacting special international or national legislation relating to a mission carried out by an object in both airspace and outer space? (A/AC.105/942, annex II, para. 11 (c)).

3. At the fifty-first session of the Legal Subcommittee, in 2012, the Working Group again invited Member States to submit their replies to the above questions (A/AC.105/1003, annex II, para. 10 (b)).

II. Replies received from Member States

Colombia

[Original: Spanish]
[17 January 2013]

Question (a). Outer space is regulated by the principles and norms of space law, while airspace relates to the exercise by States of their sovereign rights. Therefore, it is clear that the legal regime governing outer space enjoys a status different to that of the legal regime governing airspace, the fundamental principle underlying which is that of exclusive sovereignty.

Interestingly, there is no existing rule or law that defines “outer space”, and that fact does not facilitate the determination of its limits in relation to airspace. The issue has sparked lengthy debates within the Committee on the Peaceful Uses of Outer Space and has led to attempts to conceptualize and delimit the two spaces, as a result of which two groups have emerged: one that is in favour of a “geographical” or “scientific” distinction; and one that is in favour of a “functional” distinction, based on the concept of “space activities”. The first group argues in favour of separating the two zones in an objective way, on the basis of altitude, i.e. a physical

delimitation. Accordingly, outer space may be considered as beginning at the point at which the Earth's atmosphere disappears or, more specifically, at an altitude of between 90 and 100 kilometres (the space below which would be referred to as airspace and consequently would be subject to the sovereignty of States). The second group considers that the scope of application of space law is not limited to outer space, but also to the zone in which an aircraft can fly and a space object may hover, depending on the atmospheric friction produced by gas masses. Others take the position that the limits of outer space should be established on the basis of an agreed definition of what is understood to constitute airspace. Some experts point out that that issue has not yet been resolved, especially because there are some who object to establishing an agreed limit for outer space because an explicit agreement would move States to claim sovereign rights, which would be detrimental to scientific advances in the conquest of outer space. Those who take that position maintain that such claims could be disproportionate, as is the case with regard to the concept of open seas; furthermore, once such a limit was established, it would be very difficult to increase or reduce it by legislative means in the event that technological advances entailed a change to the boundary. In short, they argue that an agreed delimitation of outer space would lead to an increase rather than a decrease in the number of international disputes, since there would be a greater number of claims relating to facts that are difficult to verify.

In the current circumstances, it is inappropriate to adopt a definition or delimitation of outer space, given that the absence of such a delimitation or definition has not impeded or posed a problem to space activities thus far.

It would be more appropriate to define or delimit aerospace activities and to regulate or establish the legal regime under which such activities are regulated.

Nevertheless, it is recommended that this topic continue to be included in the agendas of the Committee and the Legal Subcommittee, particularly given that outer space, as a natural resource that is limited and exhaustible, must be used in a rational, effective and equitable way that ensures equitable access for different countries and takes into account in particular the special needs of developing countries and the geographical situation of the equatorial countries. To that end, mechanisms should be established to overcome the difficulties caused by current coordination procedures, which are neither equitable nor effective in ensuring access for developing countries and, in particular, the equatorial countries.

Question (b). An aspect that could be taken into account is the type of craft and the purpose of the mission (aeronautical or space activity), on the basis of which the applicable legal framework may be determined.

Question (c). See response to question (b).