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Committee on the Peaceful Uses of Outer Space

Definition and delimitation of outer space: views of States members and permanent observers of the Committee

Note by the Secretariat

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II. Replies received from member States

Mexico

[Original: Spanish]
[1 February 2016]

Mexico is in favour of talks on the establishment of a boundary between airspace and outer space, whereby the relevant provision of its Constitution — "The Nation shall have full ownership of … the space located above the national territory, to the extent and in accordance with the rules established by international law" — would apply.

There are several reasons why such a delimitation is relevant. The following two aspects are of particular importance.

Liability

If a space object caused an accident in the airspace through which civil aircraft pass and damage was caused to an aircraft and its passengers, would the Convention on International Liability for Damage Caused by Space Objects (Liability Convention) or the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention) apply?

In the case of suborbital flights that pass through both airspace and outer space, if the space object breaks down in airspace, would the Liability Convention or the Warsaw Convention apply?

Security

Security is relevant to both aircraft and space objects, since both fly through so-called "airspace", which, in accordance with the Convention on International Civil Aviation (Chicago Convention), extends to 19 kilometres above the surface of the Earth. Military aircraft and space objects in general, including satellites, fly beyond that limit.

In that regard, the following issues should be considered:

1. Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?

   To date, both have used the airspace through which aircraft pass in order to reach so-called outer space. In the absence of a delimitation, conceptually it is all "space", with no distinction made between airspace and outer space. The boundary within which airspace may be used is derived from regulations issued by the International Civil Aviation Organization (ICAO), which establish a delimitation of 19 kilometres for flights of passengers, cargo, etc.

2. Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?

Yes. It will be important to clarify whether the flight in question is that of an aircraft or of a space object, as defined in the legal instruments governing outer space, the Moon and other celestial bodies.

The legislation applicable with respect to liability should be specified (the Warsaw Convention or the Liability Convention).

Bearing in mind the above, in the case of suborbital flights for passengers, it would be appropriate to delimit the scope of such a definition through a specific regulation setting out, inter alia, the rights and obligations of those passengers, similar to the regulations applicable to air transport (of passengers, cargo, flights for the purpose of scientific experiments, etc.).

With regard to space object launch platforms comparable to an airfield or airport, no regulations equivalent to a treaty are in force. Such platforms are subject to national legislation.

It would be extremely useful for States to define suborbital flights, but, rather than simply a definition, comprehensive regulation is needed.

3. How could suborbital flights for scientific missions and/or for human transportation be defined?

As space (outer space) flights that do not involve scientific activities or the transportation of passengers in the “airspace” in which aircraft subject to the provisions of ICAO instruments and national regulations fly.

At present, it is not easy to define such flights since there is no delimitation of outer space.

4. Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?

The question is imprecise, because it does not specify concrete acts or circumstances, for example, liability in case of collision with an airplane. That simple question has many facets.

5. How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?

Given the difficulty of negotiating and concluding a treaty — a binding instrument — regulation would be based on guidelines, resolutions or other instruments which by nature are not binding. That would not be sufficient to address issues relating to security and liability. It would be necessary to develop a formal regulation that did not become bogged down in definitions.

6. Please propose other questions to be considered in the framework of the legal definition of suborbital flights for scientific missions and/or for human transportation.

As pointed out above, a legal definition of suborbital flights alone is insufficient. The conditions of take-off and return must also be regulated. For example, a suborbital flight passes beyond the atmosphere and can reach just over 100 kilometres above the Earth, using rockets for scientific experiments that return to the atmosphere; other objects use an aircraft that takes off from an airport facility.