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Committee on the Peaceful Uses of Outer Space

National legislation and practice relating to the definition and delimitation of outer space

Note by the Secretariat

Addendum

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II. Replies received from Member States

Colombia

[Original: Spanish]
[17 January 2013]

The Political Constitution of Colombia provides as follows:

> "Article 101. The boundaries of Colombia are those established in international treaties that have been adopted by Congress and duly ratified by the President of the Republic and those defined by arbitral awards concerning Colombia.
>
> "The boundaries provided for in this Constitution may be modified only by treaties adopted by Congress and duly ratified by the President of the Republic.
>
> "In addition to its continental territory, Colombia comprises the archipelago of San Andrés, Providencia and Santa Catalina, the island of Malpelo and other islands, islets, cays, promontories and banks belonging to it.
>
> "The subsoil, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the airspace, the segment of the geostationary orbit, the electromagnetic spectrum and the zone in which it operates are also part of Colombia, in accordance with international law or, in the absence of relevant international legislation, Colombian laws."

Also, the Constitutional Court, in its decision C-278 of 2004, in which it considered Act No. 829 of 10 July 2003 amending the Agreement of 20 August 1971 relating to the International Telecommunications Satellite Organization (INTELSAT) and the Operating Agreement of 20 August 1971, adopted by the Twenty-fifth Assembly of Parties held in November 2000 and the Thirty-first Meeting of Signatories of 2000, respectively, noted that:

> "In spite of the complexity of the legal, financial and operational transformation of INTELSAT, this Court considers that the changes introduced by means of the agreed amendments are in keeping with the constitutional principles and provisions that guide the international relations of Colombia. The changes made to the company have a direct effect on the company's commercial development, its internal structure and the dynamics of its performance in the telecommunications market, but in no way do they undermine the integrity of national sovereignty. The changes made to the original INTELSAT agreement were aimed at turning the company into a truly competitive entity with the capacity to provide services on the same basis but in the context of a globalized world in which telecommunications services are constantly improving, becoming cheaper, quicker and more flexible. In that regard, one can rest assured that national interests will benefit from the increased competitiveness of Intelsat, Ltd., which will lead to better services and, undoubtedly, lower costs. The Court recognizes, for example, that with regard to the monitoring of activities relating to satellite communication, the necessary legal authority is conferred on the International Telecommunications Satellite Organization (ITSO) in accordance with the competencies assigned to

that Organization pursuant to the agreed amendments that are the subject of this review. On that understanding, it assigns to ITSO the task of monitoring the services provided by Intelsat, Ltd. in and on behalf of Colombia ...

"The preceding considerations highlight the depth of the debate on the ownership of rights with respect to the geostationary orbit: on the one hand, the international community advocates establishment of the principle of the non-appropriation of outer space, where, it asserts, the stationary orbit is located; on the other hand, there is the initial position adopted by Colombia, outlined in the Bogota Declaration, that the geostationary orbit does not form part of outer space and that the equatorial countries exercise sovereignty over it, and the less categorical position, adopted subsequently and accepted in part in some international instruments (of the International Telecommunication Union (ITU)), acknowledging the need to utilize the geostationary orbit, over which a country exercises 'non-traditional' sovereignty, in an equitable and rational manner ...

"The declaration on the enforceability of international instruments submitted for review by the Court obliges the presiding judge to make the following interpretative declaration: Colombia reaffirms that the segment of the geostationary orbit that corresponds to it forms part of Colombian territory in accordance with the provisions set forth in articles 101 and 102 of the Constitution, and recognizes that none of the amended provisions contradict the rights asserted by the equatorial States with respect to the geostationary orbit, nor may they be interpreted as violating such rights. This interpretative declaration, which the presiding judge is required to make in expressing consent to undertake international obligations through the agreement, is intended to convey to the international community that Colombia has not renounced sovereignty over the segment of the geostationary orbit that corresponds to it but does not oppose the changes to INTELSAT that are being examined. This interpretation reaffirms Colombian sovereignty as provided for in articles 101 and 102 of the Constitution, which make it legitimate for the State to seek to defend such rights as it deems necessary before the international community, both independently and as a member of the group of equatorial countries, while at the same time taking into consideration the status of the matter in positive international law, which has begun to recognize — in ITU instruments — equitable access to the geostationary orbit, taking into account the geographical situation of the equatorial States."

In addition, several bodies of legislation have been based on the theory that the vertical projection of territory must be limited, and it is precisely that limitation that arises from the applicable legislative framework, i.e., that governing airspace and outer space. This is important not only in that the regulatory framework is different but also in that the principles on which that framework is based conflict in some cases.

Historically, the problem of defining rights over outer space was initially addressed on the basis of an analysis of aviation law. However, it soon became apparent that that body of law was insufficient to resolve the key issues relating to the management and use of space resources.

In relation to sovereignty, aviation law recognizes that States exercise sovereignty over the airspace corresponding to their territory, as enshrined in the Convention relating to the Regulation of Aerial Navigation of 1919, the Convention on International Civil Aviation of 1944 (Chicago Convention), the Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963 (Tokyo Convention), the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971. Those instruments are based on the general principle that States have sovereignty over the airspace located above their territory and that other States may not pass through such airspace without prior permission or authorization, which is the basis for the five so-called "freedoms of the air" with respect to air traffic.

In this way, international doctrine has recognized that the tools offered by aviation law serve only to resolve conflicts arising solely with regard to the planet's airspace, in other words, the space in which communication and aircraft movement occur as a result of interaction with atmospheric gases (C-278/2004).

With regard to airspace, the Congress of Colombia, through Act No. 12 of 1947, ratified the Convention on International Civil Aviation — which Colombia had signed on 7 December 1944 — according to article 1 of which the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory, which includes the land areas and territorial waters under its sovereignty, jurisdiction, protection or mandate.

That provision is reflected in the Aeronautical Regulations of Colombia, Part Six, in accordance with article 101 of the Political Constitution of 1991.