



# General Assembly

Distr.: General  
25 January 2005

Original: English/French/Spanish

## Committee on the Peaceful Uses of Outer Space

### Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects: preferences of member States

#### Note by the Secretariat

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## I. Introduction

1. At the forty-second session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, in 2003, the Working Group on Matters Relating to the Definition and Delimitation of Outer Space agreed that the Secretariat should prepare, to the extent possible, an analytical summary of the replies received from Member States to the questionnaire on possible legal issues with regard to aerospace objects (see A/AC.105/805, annex II, para. 8). The report of the Working Group was endorsed by the Legal Subcommittee.
2. At the forty-third session of the Legal Subcommittee, in 2004, the Working Group on Matters Relating to the Definition and Delimitation of Outer Space considered the analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/C.2/L.249 and Corr.1) and agreed to invite member States of the Committee on the Peaceful Uses of Outer Space to indicate their preferences with regard to the views contained in the analytical summary and to submit them to the Secretariat for consideration by the Working Group as the next step towards reaching agreement on the item (see A/AC.105/826, annex II, para. 10).
3. In a note verbale dated 20 August 2004, the Secretary-General invited Governments to indicate their preferences with regard to the views contained in the analytical summary and to submit them for consideration by the Working Group on Matters Relating to the Definition and Delimitation of Outer Space.
4. The present document has been prepared by the Secretariat on the basis of information received by 17 January 2005 from the following member States of the Committee: Czech Republic, Germany, Greece, Mexico and Morocco.

## II. Replies received from member States\*

### Introductory note

#### Czech Republic

[Original: English]

The Czech Republic submitted its replies to both the original version of the questionnaire and its new version. These replies are contained in the notes by the Secretariat of 15 February 1996 (A/AC.105/635) and 31 March 2003 (A/AC.105/C.2/2004/CRP.10). Since then, the views of the Czech Republic have not changed substantially. For this reason, this reply to the request of the Secretary-General is limited to indicating the preferences to the analytical summary (see A/AC.105/C.2/L.249 and Corr.1), as requested, without adding any further considerations of the individual questions included in the questionnaire. Our preferences are based mostly on the above-mentioned replies, but they also indicate our support for some other views that might be taken into account during further discussions in the future.

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

**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?**

**Czech Republic**

[Original: English]

Our preference goes to paragraph 4 (e), which reflects our views. However, we also recognize some merit in paragraphs 4 (f) and 12 (c), and in the longer run in paragraph 12 (d).

**Greece**

[Original: English]

1. "Remaining in" should be added after the words "travelling through".
2. Travel to the atmosphere of other planets should also be considered.
3. Regarding terminology, "spacecraft" or "space vehicle" are certainly more appropriate. However, "aerospace object" could also be considered if it was exhaustively defined.
4. Care should be taken to exclude natural objects, which are also "capable of flying in space or in airspace".

**Morocco**

[Original: French]

1. The phrase "for a certain period of time" should be clarified.
2. More information should be provided on the characteristics of a space object in order to ensure that the definition is consistent with international space law.
3. It should be specified that an aerospace object is an object designed for operation in outer space.
4. In order to eliminate any misunderstanding, it would be more accurate to refer to a "spacecraft" or "space vehicle".

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

**Czech Republic**

[Original: English]

Our preference is for the *chapeau* of paragraph 14 and subparagraph (b).

**Greece**

[Original: English]

1. Although traversing the Earth's atmosphere by spacecraft is operational in nature, international air law (especially with regard to liability for any possible damage) should apply while the spacecraft/aerospace object travels through the atmosphere.
2. This is especially the case for aerospace objects that might be used for the transport of persons or cargo via orbital or suborbital flights.

**Morocco**

[Original: French]

1. Where necessary, article 1 of the Convention on International Civil Aviation of 1944 (the "Chicago Convention") should apply.
2. Aerospace objects should be considered from the point of view of their purpose and function.

**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?**

**Czech Republic**

[Original: English]

Our preference is for paragraph 26, which reflects our views. However, we also recognize the merit of paragraph 24 (b).

**Greece**

[Original: English]

For the time being, a unified space regime could be applicable to aerospace objects outside the Earth's atmosphere. In future, more detailed definitions and procedures, for example, related to the atmospheres of other planets, will presumably become necessary.

**Morocco**

[Original: French]

1. The regime should be developed on the basis of existing treaties, in particular with regard to liability.
2. The regime could help identify aerospace objects and their legal status without violating current air and space law.

3. Special procedures for aerospace objects should be required with respect to registration, liability and traffic control.
4. The approach to situations not provided for in current air and space regimes should be reviewed and updated.

**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?**

**Czech Republic**

[Original: English]

Our preference is mostly for paragraph 33, but some elements of paragraph 35 could also be taken into account.

**Greece**

[Original: English]

Aerospace objects should be regarded as aircraft in airspace and as spacecraft in space. A classification as aircraft or spacecraft on the basis of the purpose and/or destination of the aerospace object may cause confusion.

**Morocco**

[Original: French]

1. Where an aerospace object is destined to serve outer space activities, it should be subject to space law.
2. The purpose and/or destination of aerospace objects are two important factors in determining whether an object should be considered an aerospace object.

**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?**

**Czech Republic**

[Original: English]

Our view is mostly reflected in paragraphs 41 and 44.

**Greece**

[Original: English]

In the case of passage through the territorial airspace of another State, international air law should be applied to the aerospace object. However, special arrangements and international agreement could be applied for “innocent passage” of spacecraft through airspace during take-off and landing.

**Morocco**

[Original: French]

1. Account should be taken of the technical characteristics of take-off and landing of the various types of aerospace object in order to determine whether a single regime would be appropriate or whether different norms should apply to the two phases, depending on whether or not there was motion through airspace.
2. Where an aerospace object passes through the territorial airspace of another State, international air law or the national law of the relevant State could be applied to the object in relation to that State’s sovereignty and security problem.

**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?****Czech Republic**

[Original: English]

Our view is fully reflected in paragraph 53.

**Greece**

[Original: English]

International air law should be applied to aerospace objects while they are in the airspace of another State.

**Morocco**

[Original: French]

1. Existing rules and regulations should be unified to make the flight of an aerospace object possible while it is in the airspace of another State.
2. International air law as well as the relevant domestic air law should be applicable for purposes of national security or aerial safety, as long as the object has the characteristics of both an aeroplane and a space object.
3. If a space object fails to observe its outgoing and return flight paths, it should no longer be covered by space law.
4. The registration of the object could be the criterion for determining the applicable 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?**

**Czech Republic**

[Original: English]

Our views on this question, as expressed in the above-mentioned replies of the Czech Republic, are not reflected in the analytical summary, but in our opinion paragraphs 60 and 61 deserve to be taken into account.

**Greece**

[Original: English]

No comments.

**Morocco**

[Original: French]

The norms of international space law, in particular the Convention on International Liability for Damage Caused by Space Objects and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (which, inter alia, also governs liability for damage caused by space objects), set out provisions to regulate such matters.

**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?**

**Czech Republic**

[Original: English]

Paragraph 66 partly reflects our views on this issue and paragraph 67 seems to include a reasonable suggestion for its consideration in the future.

**Greece**

[Original: English]

No comments.

**Morocco**

[Original: French]

1. Member States should be encouraged and supported by their partners or even by the Office for Outer Space Affairs to draft national legislation on space activity.
2. As for international legal rules, the existing norms should apply.



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

[Original: English]

Paragraph 69 and the first seven lines of paragraph 74 reflect our views, but it would be worthwhile to take into account paragraph 72 also.

**Greece**

[Original: English]

Although not yet necessary, a relevant amendment to the Convention on Registration of Objects Launched into Outer Space of 1975 should be considered in the near future.

**Morocco**

[Original: French]

If the definition of an aerospace object is the same as that of a space object, as defined in the Registration Convention, that treaty should apply to aerospace objects.

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

[Original: English]

Paragraph 76 reflects our views in principle. There is also much merit in paragraph 77, except some specific points, such as the existence of “free transit” of space objects, because only “innocent passage” can be admitted.

**Greece**

[Original: English]

The fundamental difference between airspace and outer space is that each State has complete and exclusive sovereignty over the airspace above its territories and territorial waters, while no State has such sovereignty over outer space.

**Morocco**

[Original: French]

1. Air law is based on the principle that each State has complete and exclusive sovereignty over the airspace above its territories and territorial waters, whereas space law is based on the principle that outer space is free for exploration and use for peaceful purposes.
2. Registration differs in the two cases: in the case of aircraft, the Chicago Convention and States' national laws are applicable.

## **General responses**

### **Czech Republic**

[Original: English]

Attention is drawn to the general response of the Czech Republic included on page 22 of A/AC.105/C.2/2003/CRP.10 of 31 March 2003, which was reiterated by the delegation of the Czech Republic during the discussions held in the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space at its 2003 and 2004 sessions. Our view can now be spelled out as follows:

The Czech Republic appreciates the efforts of the Committee and its Legal Subcommittee devoted to the study of all aspects of the rather complex issue of the legal status of aerospace objects. This recognition should be attributed in particular to the special Working Group of the Legal Subcommittee, which was established at several sessions of the Subcommittee and dealt with this issue. The Czech Republic believes that the present version of the questionnaire should be considered final. This questionnaire, all replies received from Member States of the United Nations to it, summaries of the discussions held in the Legal Subcommittee and its Working Group, the analytical summary prepared by the Secretariat and the preferences of member States with regard to the views contained in the analytical summary should be included in a report of the Legal Subcommittee to be submitted to the Committee, which might be willing to take note of it as representing the current status of consideration on this topic. Further discussion of the issue of aerospace objects might be suspended until such time as renewed consideration of the status of aerospace objects becomes urgent in the light of a new development.

### **Germany**

[Original: English]

Germany replied to the questionnaire in 1996. The German position is reflected correctly in the analytical summary, although the Secretariat does not refer to the replying Member State in citing a reply.

### **Mexico**

[Original: Spanish]

The Office of the Legal Adviser to the Ministry of Foreign Affairs and of the Federal Telecommunications Commission made the following comments:

The purpose of the questionnaire is to seek the views of States on the complex legal issues relating to aerospace objects and to provide a basis for the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space to decide how it might continue its consideration of matters relating to the definition and delimitation of outer space.

Given the importance of the issues set out in that document, Mexico's views as expressed in version A/AC.105/635/Add.7 of the questionnaire should be reiterated to the Subcommittee.

In the light of the diverse and sometimes divergent views (responses to question 2, for example) expressed by States with regard to the issues in question, it is clear that the Subcommittee should continue its consideration of those issues.

The analytical summary directly and indirectly incorporates Mexico's responses to the questionnaire (as contained in A/AC.105/635/Add.7). For example, paragraphs 77 and 78 of the summary reproduce those responses almost word for word.

Mexico has established a useful precedent with regard to the analysis of issues relating to aerospace objects and on that basis could strengthen its capacity to contribute to the progressive development of international legislation governing these and related issues. It is therefore recommended that the possibility be examined of establishing links with the Faculty of Engineering and the Physics Institute of the National Autonomous University of Mexico with a view to the participation of experts in the consideration of legal and technical issues relating to space law and their guidance in establishing the position that Mexico should adopt in that regard.

### **Morocco**

[Original: French]

Morocco wishes to draw attention to two basic elements to which priority should be given by the Working Group:

- (a) The need to establish a definition of aerospace objects in conformity with existing treaties;
  - (b) The need to retain the principle of liability arising out of space activities by States and specialized entities.
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