5 April 2013

English only

Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
Fifty-second session
Vienna, 8-19 April 2013
Item 6 (a) of the provisional agenda*
The definition and delimitation of outer space

Summary of information on national practices and legislation of States with regard to the definition and delimitation of outer space

Note by the Secretariat

1. At the fifty-second session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, in 2012, the Working Group on Matters Relating to the Definition and Delimitation of Outer Space requested the Secretariat to prepare, for consideration by the Working Group during the fifty-second session of the Subcommittee, in 2013, a conference room paper, which would be continually updated in the future and would summarize information on national practices and legislation of States with regard to the definition and delimitation of outer space, as contained in documents A/AC.105/635 and Add.1-17, A/AC.105/865 and Add.1-11 and A/AC.105/889 and Add.1-10, as well as in future addenda to those documents (A/AC.105/1003/annex II, para. 11 (b)).

2. The present conference room paper provides exerts from replies of Member States, contained in the above-referenced documents, which address national practices and legislation of States with regard to the definition and delimitation of outer space.

* A/AC.105/C.2/L.288.

V.13-82396 (E)

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

A/AC.105/889 and Add. 1-12

(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.

(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?

Jordan

[A/AC.105/889/Add.1]
[21 January 2008]

2. 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.

Mexico

[A/AC.105/889/Add.3]
[2 February 2009]

1. Reflecting Mexico's strong conviction that undecided issues of concern to the international community should be settled by consensus among its members, the Constitution has since 1960 (i.e. before the adoption of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies)[1] provided that the question of the delimitation of airspace and outer space should be settled at some point, ultimately when the common will of States is duly enshrined in a multilateral treaty.

Saudi Arabia

[A/AC.105/889/Add.4]
[20 April 2009]

3. Saudi Arabia believes that every State has the right of complete and exclusive sovereignty over the airspace above its territory, in accordance with the Convention on International Civil Aviation of 1944 (the "Chicago Convention"). It also believes

[1] United Nations, *Treaty Series*, vol. 610, No. 8843.

that no State may claim the right to appropriate any part of outer space, the planets or celestial bodies.

United Kingdom of Great Britain and Northern Ireland

[A/AC.105/889/Add.6]
[4 March 2010]

The United Kingdom anticipates that the development of space transportation systems functioning seamlessly between airspace and outer space, relying on lift to fly through the air for part of their flight profile, will create uncertainties about the legal regime applicable to them. In particular, the distinct liability regimes applicable to each may be conflicting. The United Kingdom is currently reviewing its licensing process and how it could relate to commercial human spaceflight, where this will likely be an issue. The United Kingdom recognizes the need to avoid hybrid solutions and will seek a regulatory solution which provides seamless consideration and a degree of legal certainty for operators.

Australia

[A/AC.105/889/Add.10]
[21 February 2012]

Question (a). The Australian Government recognizes that it is advantageous to domestic entities conducting space activities to have certainty as to the legal framework which applies to their activities. In this respect, the delimitation of activities that must comply with the requirements of the Space Activities Act and activities that need not comply is necessary for the efficient regulation of domestic Australian space activities. In achieving this goal, the existence of an accepted point of delimitation is more important than the physical location of that point.

Question (b). The Australian Government considers its current domestic regime adequate for dealing with the practical requirements of regulating domestic space activities and therefore has not considered alternative approaches to the issue.

Question (c). The Australian Government has not considered such an approach. The Australian Government recognizes that international agreement on a spatial region in which international space law applies may be useful. Such agreement should be pursued even if initial agreements do not fully resolve the delimitation of airspace and outer space. The approach of defining a lower limit of outer space may be one way in which to achieve such initial agreement.

Belgium

[A/AC.105/889/Add.11]
[28 January 2013]

The Belgian Government considers that it should announce a recent initiative by the Minister for Science Policy to amend some provisions of the Law of 17 September 2005 on the Activities of Launching, Flight Operation or Guidance of Space Objects.

However, Belgium wishes to emphasize that the initiative in question is currently at the stage of draft legislation, which must be submitted on second reading to the Council of Ministers and then to the Head of State for signature and presentation to Parliament. In theory, the amendment to the Law should be effective by the end of 2012. At this stage, any information transmitted should be understood to be subject to the formalities of assent that remain and, in particular, agreement by Parliament.

Recent plans for operational space activities in Belgium have shown that, although the space legislation of 2005 dealt appropriately and satisfactorily with the characteristics of the national space sector, it would be useful to be more specific on the scope of application of the law. This ought to be achieved by adapting the definitions given to certain keywords in the law.

Such adaptations became necessary with regard to two types of activity that might affect Belgium under the terms of the international treaties to which it is party. On the one hand, the operations of non-manoeuvrable satellites, such as CubeSats, were not clearly covered by the law. Once these satellites were in place, and no human intervention was either required or possible to control their orbit, the concept of "activity" became questionable. It was therefore decided to specify that the operational activity justifying its being subject to Belgian law consisted in the act of putting a satellite into orbit. On the other hand, suborbital flights were considered by Belgium to be activities falling within the scope of the five United Nations treaties on outer space and it was therefore preferable to find a more precise definition of the term "space object" that was not tautological.

The bill amending the Law of 17 September 2005 referred to above thus amends the definition of the term "space object" as follows:

"(a) Any object launched or intended for launching on an orbit around the Earth or to a destination beyond Earth orbit;

(b) Any component part of a space object;

(c) Any device used to launch an object on an orbit as set out in subparagraph (a) above. Such a device shall also be considered a spacecraft even where it is operated experimentally for the purposes of its development or validation stage."

The criterion whereby a space object has an orbit was included in order to bring it into line with the concept of a space object as defined by the law, in view of the obligation to register an object launched into outer space provided for in article II, paragraph 1, of the Convention on the Registration of Objects Launched into Outer Space, opened for signature on 14 January 1975.

Belgium thus confirms the "functional" approach of its definition of the scope of application of international treaties on outer space. It does not advocate any legal delimitation between airspace and outer space. The solution adopted to clarify the characteristics of the legal regime of outer space, as compared with other regimes, including that of air law, thus consists of explaining the concept of "space object", while bearing in mind its actual or hypothetical destination.

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

A/AC.105/865 and Add. 1-13

Australia

[A/AC.105/865/Add.1]
[20 March 2006]

1. Introduction

1. The present document aims to inform the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space about the history and current status of relevant sections of Australia's Space Activities Act 1998 (referred to as the "Act" below).

2. Summary of key points

2. (a) There is no definition of "outer space" in domestic Australian law and Australia recognizes that there is no internationally accepted definition or delimitation of the term;

(b) The Act regulates the launch from, and the return to, Australia of space objects and the launch of space objects by Australian nationals outside of Australia;

(c) As a result of amendments in 2002, the Act applies to space activities that occur or are intended to occur above 100 kilometres (km) in altitude;

(d) The amendments gave greater certainty about where the Act applies and the activities that the Act regulates;

(e) Identifying the 100-km altitude in the Act was not an attempt on Australia's part to define or delimit "outer space";

(f) Australia has not received to date any international feedback specifically relating to the 100-km altitude identified in the amended Act.

3. Scope of the Act

3. The Act regulates the launch from, and the return to, Australia of space objects and the launch of space objects by Australian nationals outside of Australia. The Act gives effect in domestic legislation to certain Australian obligations under the United Nations treaties on outer space.

4. The Act and "outer space"

4. When introduced in 1998, the Act applied to space activities that occurred or were intended to occur in "outer space". There is no definition of "outer space" in domestic Australian law and Australia recognizes that there is no internationally accepted definition or delimitation of the term. In the absence of such domestic or internationally agreed definitions, there was some uncertainty about where Australia's Act took effect and the activities that it regulated.

5. The amended Act applies above 100 kilometres

5. Australia amended the Act in 2001 and in 2002. Inter alia, the amendments in 2002 gave greater legislative certainty about where the Act applies and the activities that it regulates. Australia amended certain sections of the Act by replacing the term "outer space" with the phrase "an area beyond the distance of 100 kilometres above mean sea level". Consequently, the Act currently applies to space activities occurring or intended to occur above 100-km in altitude.

6. Following the amendments in 2002, the term "outer space" is used in the Act only in specific references to international agreements such as the United Nations treaties on outer space. The Act still does not define "outer space" and the term is not defined in other Australian legislation. The 100-km altitude represents a practical clarification of where the Act applies. The 100-km altitude was not an attempt on Australia's part to define or delimit "outer space".

7. The relevant sections of the Act that were amended in 2002 are listed below. For ease of identification, text inserted into the Act in the context of the 2002 amendments is underlined:

(1) Section 8, definition of "launch": "***launch*** *a space object means launch the object into an area beyond the distance of 100 km above mean sea level, or attempt to do so*";

(2) Section 8, definition of "launch vehicle": "***launch vehicle*** *means a vehicle that can carry a payload into or back from an area beyond the distance of 100 km above mean sea level*";

(3) Section 8, definition of "return": "***return*** *a space object means return the space object from an area beyond the distance of 100 km above mean sea level to Earth, or attempt to do so*";

(4) Section 8, definition of "space object": "***space object*** *means a thing consisting of*:

> *"(a) a launch vehicle; and*
>
> *"(b) a payload (if any) that the launch vehicle is to carry into or back from an area beyond the distance of 100 km above mean sea level;*

or any part of such a thing, even if:

> *"(c) the part is to go only some of the way towards or back from an area beyond the distance of 100 km above mean sea level; or*
>
> *"(d) the part results from the separation of a payload or payloads from a launch vehicle after launch;"*

(5) Notes to Subsections 26 (2) and 42: "*A ... returning space object need not be the same as the space object launched. For example, a launch vehicle could carry a payload into an area beyond the distance of 100 km above mean sea level and return without it, or even collect a different payload from an area beyond the distance of 100 km above mean sea level and return that to Earth*."

8. A full copy of the current version of the Act is available on the Internet (www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401851 ?OpenDocument). An Explanatory Memorandum provides further information on

the specific changes made to the Act in 2002 and the rationale for each of the changes (available on the Internet at www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/bills/bytitle/AE0A850D95E7667ACA256F7200243200?OpenDocument&VIEWCAT=attachment&COUNT=999&START=1). The Explanatory Memorandum formed part of a suite of documents considered by the Australian Parliament when it amended the Act.

9. Further links to Australia's involvement in space are available through the Australian Government Space Portal (http://www.industry.gov.au/space).

6. International feedback on the Act

10. Since the Act was amended in 2002, Australia has responded to international requests for general information about the Act such as from overseas Governments that may be reviewing their own respective domestic space legislation. Australia has not received to date any international feedback on the Act specifically relating to the 100-km altitude at which the Act applies.

Czech Republic

[A/AC.105/865/Add.3]
[21 January 2008]

The Czech Republic does not yet have a national law relating to space activities and no other national law deals either directly or indirectly with the issue of the definition and/or delimitation of outer space and air space. As a sovereign State, the Czech Republic affirms its complete and exclusive sovereignty over the air space above its territory. This issue may be considered in conjunction with the drafting of its national law on space activities, if and when such a policy is mentioned.

Belarus

[A/AC.105/865/Add.4]
[2 February 2009]

1. According to Belarusian law, the airspace above a State's territory is part of that territory and all States have sovereignty over their own airspace. Furthermore, all States have the exclusive right to establish, independently and without outside interference of any kind, the rules governing flights in the airspace above their territory. Thus, under its Air Code of 2006, the airspace above Belarus is part of the territory of Belarus and the State has full and exclusive sovereignty over its airspace.

2. Law No. 156-3 of 5 May 1998, on objects belonging exclusively to the State, declares that the airspace above the territory of Belarus is the exclusive property of the State.

3. As regards the issue of the definition and delimitation of outer space, however, Belarus, which embarked on outer space activities only recently, does not yet have separate domestic legislation relating to outer space but is currently developing

legislation that will, inter alia, cover that issue. Current law divides the airspace of Belarus into two categories: classified and unclassified. Airspace below an altitude of 20,100 m is classified and flights within it are governed by domestic legislation: the Air Code and the Rules for the Use of Airspace adopted by Order No. 1471 of the Council of Ministers on 4 November 2006. Outside classified airspace (above an altitude of 20,100 m), which is considered outer space, the provisions of international agreements apply.

4. The 1994 Constitution of Belarus states that Belarus recognizes the supremacy of the generally accepted principles of international law and shall ensure that its domestic legislation is in conformity with them. Law No. 421-3 of 23 July 2008, on international agreements, which entered into force on 5 December 2008, provides that Belarus shall faithfully implement the international agreements it enters into, in accordance with international law.

5. The legal norms contained in the international agreements entered into by Belarus are part of the legislation in force within the territory of Belarus and are applied automatically, except in cases in which it is specified in an international agreement that domestic legislation must be adopted and promulgated for such norms to be applied.

6. Belarus is party to the basic international space agreements, including the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[2] which it applies automatically. Thus, in accordance with article II of the Outer Space Treaty, Belarus does not claim sovereignty over outer space. In fact, it believes that outer space is the common property of all humankind and is not subject to the sovereignty of any State, which means that the legal regime for outer space is that set out in international agreements on outer space. Belarus also believes that States bear responsibility for their activities in outer space, which is why it has ratified the Convention on International Liability for Damage Caused by Space Objects[3] and the Convention on Registration of Objects Launched into Outer Space.[4]

Mexico

[A/AC.105/865/Add.4]
[2 February 2009]

Article 42 of the Political Constitution of Mexico provides that the national territory of Mexico comprises, inter alia, the space located above the national territory to the extent and in accordance with the rules established by international law.

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[2] United Nations, *Treaty Series*, vol. 610, No. 8843.
[3] Ibid., vol. 961, No. 13810.
[4] Ibid., vol. 1023, No. 15020.

Mexico

[A/AC.105/865/Add.5]
[29 April 2009]

FEDERAL LAW ON TELECOMMUNICATIONS

Chapter 1. General provisions

VI. Satellite orbit: Trajectory of a satellite in orbit around the Earth.

VII. Geostationary orbital positions: Locations along a circular orbit above the equator that allow a satellite to orbit at the same speed as the Earth's rotation and thus permanently to maintain the same latitude and longitude.

REGULATIONS GOVERNING TELECOMMUNICATIONS

Article 2 (I) General terms

IV. Satellite Communications Stations, Systems and Networks

Space station: Radiocommunication station installed on a satellite or other space object, intended to receive, transmit or retransmit radiocommunication signals.

POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES

Chapter II

Constituent parts of the Federation and of the national territory

Article 42. The national territory shall comprise:

VI. The space located above the national territory to the extent and in accordance with the rules established by international law.

BILATERAL AGREEMENTS CONCERNING THE PROVISION OF SATELLITE SERVICES

Definitions:

Space station: A station installed on a space object that is located or planned to be located beyond the Earth's atmosphere.

INTERNATIONAL TELECOMMUNICATION UNION (ITU)

Radio Regulations

The Federal Telecommunications Commission (COFETEL) also recognizes related definitions established by the specialized international agencies of which Mexico is a member.

In addition, with regard to related practices currently under preparation, the Mexican Space Agency (AEXA) is in the process of being established. AEXA is intended as a specialized technical agency responsible for coordinating, promoting and fostering the research, exploration and use of outer space as part of the country's national heritage, and is envisaged as having the following objective:

The establishment in Mexico of technical and scientific competencies relating to outer space enabling the country to operate within a framework of autonomy in that field and to participate actively in the international space community by promoting:

1. The selection of technological solutions to national problems;

2. The implementation of solutions developed by Mexico to address specific problems;

3. The use of information and technology generated by space-related activities that are of interest to Mexico;

4. International treaties, agreements and negotiations on issues relating to space activities;

5. Coordination of space research;

6. Recognition of the importance of the development, assimilation and use of scientific knowledge and technological developments relating to space research for the economy, education, culture and society;

7. Academic exchange among scientific and technological research institutions;

8. Implementation of agreements on scientific and technological exchange and cooperation with other space agencies;

9. The involvement of Mexican enterprises with the necessary technological capacity to provide equipment, materials, inputs and services required for Mexican projects or of agencies with which agreements on exchange and cooperation are in place;

10. Reform of the Mexican production sector to enable it to compete in markets for space-related services and goods.

Netherlands

[A/AC.105/865/Add.8]
[9 December 2010]

The Space Activities Act of the Netherlands (*Wet ruimtevaartactiviteiten*) makes use of the term “outer space” (*kosmische ruimte*) in order to define the scope of the Act (*ratione materiae*, art. 2). The Act, however, does not define outer space or delimit outer space and airspace.

Reference is made to outer space in the definitions of “space activities” (*ruimtevaartactiviteiten*) and “space objects” (*ruimtevoorwerp*). The term “space activities” is defined as the launch, the flight operation or the guidance of space objects in outer space (art. l (b)); “space object” is defined as any object launched or destined to be launched into outer space (art. 1 (c)). The scope of the Act is thus not limited to activities in outer space, notwithstanding the absence of a definition or even an indication of where airspace ends and where outer space begins. This is in line with the application of the Convention on International Liability for Damage Caused by Space Objects[5] to space objects launched or intended to be launched into outer space, regardless of their geographical location at the time when damage is caused.

[5] United Nations, *Treaty Series*, vol. 961, No. 13810.

The only authorization granted to date under the Space Activities Act concerns the operation of satellites in orbit. As no one could reasonably argue that the satellites concerned are not operating in outer space, the question of the definition of outer space or the delimitation of airspace and outer space is not relevant. Accordingly, in national practice, the need to define or delimit outer space has not yet arisen.

Jordan

[A/AC.105/865/Add.10]
[19 January 2011]

Regarding national legislation and practice, whether existing or under development, that are directly related to the concept and limits of outer space and navigational airspace, this subject is addressed in article 31 of Communications Law No. 13, 1995, and its amendments, which reads:

(a) Subject to the provisions of paragraph (b) of this article, no persons may use any electromagnetic waves with frequencies lower than 3,000 GHz for transmission into space, unless they have obtained a specific licence in accordance with the conditions established by the Council;

(b) The Jordanian armed forces and security agencies may, in coordination with the Authority and without obtaining a licence, use the radio frequencies allocated to them in a manner that does not interfere with other frequencies. Military and security agencies may also use other allocated frequencies, subject to the approval of the Council, in accordance with the same conditions applied to other licensees and without prejudice to other users of radio frequencies, provided that they shall be exempted from licensing fees;

(c) Subject to the provisions of any other law that requires the obtaining of a licence to operate broadcasting services, the operators of such services, including radio, television and satellite transmissions, as well as receivers, shall obtain a radio-frequency user licence in order to use the radio frequencies allocated by the Council.

Kazakhstan

[A/AC.105/865/Add.12]
[28 January 2013]

The Republic of Kazakhstan's national legislation contains a definition of outer space.

The country's Outer Space Activities Act, adopted on 6 January 2012, provides that "outer space is defined as space extending beyond airspace at a height exceeding 100 kilometres above sea level" (art. 1, para. 6, of the Act).

In accordance with article 27, paragraph 5, of the Act, a space object belonging to a foreign natural or legal person may perform a safe flight through the airspace of Kazakhstan in the process of its launch into outer space or return to Earth on condition of prior agreement with the Ministry of Defence of Kazakhstan

and the competent bodies dealing with natural and man-made emergencies and environmental protection.

Samoa

[A/AC.105/865/Add.12]
[28 January 2013]

At present, the Independent State of Samoa has not adopted domestic legislation that defines and regulates the general use and/or extent of outer space and airspace.

The only legislation in which airspace is considered is with regard to the Civil Aviation Act 1998 and the Civil Aviation Rules and Regulations 2000. The Act deals with the licensing and registration of aircraft and the registration of such while operating within Samoa's airspace. The Act is administered by the Civil Aviation Division of the Ministry of Works, Transport and Infrastructure. The Civil Aviation Division has responsibility for overseeing the safety of civil aviation activities and ensuring that Samoa's obligations under its international civil aviation agreements are implemented in accordance with section 6 of the Act.

The Convention on International Civil Aviation of 1944 (the "Chicago Convention"), to which Samoa acceded in 1996, recognized the concept of state sovereignty over its airspace. Article 1 provides that every state has complete and exclusive sovereignty over the airspace above its territory. This is despite that fact that "airspace" is not specifically defined under the Act.

Clause 3 of the Civil Aviation Rules and Regulations 2000 adopts the Civil Aviation Rules of New Zealand. The relevant provisions under the Rules are part 71 (Designation and classification of airspace) and part 72 (Objects and activities affecting navigable airspace). Part 71 designates airspace as either controlled airspace or special-use airspace. Section 2 of the Civil Aviation Act 1998 defines "controlled airspace" as airspace of defined dimensions within which an air traffic control service is provided to controlled flights. Due to limited resources (in equipment and qualifications) to effectively manage and control the use of airspace above 24,500 feet, any aircraft operated above this prescribed limit will be managed and controlled by the air traffic services of New Zealand on behalf of the Civil Aviation Division of Samoa. This mutual understanding does not have an impact on Samoa's sovereignty over its airspace pursuant to the Convention.

Aside from the Convention, Samoa does not have any domestic legislation, policies or practices in place which directly or indirectly define the (de)limitation of outer space and airspace.

Colombia

[A/AC.105/865/Add.13]
[5 March 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 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 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.