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**Matters relating to the definition
and delimitation of outer space**

Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects

Note by the Secretariat

Addendum

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* A/AC.105/C.2/L.264.



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. Pursuant to that request, the Secretariat prepared, in 2004 and 2005 respectively, the document entitled "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 Add.1). Those documents summarize replies to the questionnaire received from Member States contained in documents A/AC.105/635 and Add.1-11.
2. At the forty-fifth session of the Subcommittee, in 2006, the Working Group requested the Secretariat to continue to update the analytical summary, using the replies of Member States to the questionnaire on aerospace objects contained in documents A/AC.105/635/Add.12 and 13 and future replies.
3. The present summary synthesizes the replies received from the following Member States by 8 February 2006: Libyan Arab Jamahiriya, Nigeria, Spain, Turkey and Venezuela (Bolivarian Republic of). Those replies are contained in documents A/AC.105/635/Add.12-14. Only those elements of the replies which are novel or distinct from the replies received before January 2007 and contained in document A/AC.105/C.2/L.249 and Corr.1 and Add.1 are synthesized in the present summary.

II. Analytical summary of the replies to the questionnaire on possible legal issues with regard to aerospace objects

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?

4. The view was expressed that it would be appropriate, first of all, to establish the practical or specific differences between space objects and aerospace objects and also to define them more precisely by including a reference to the general purpose of aerospace objects and the type of activity in which they are engaged.
5. The view was expressed that the definition should be considered in the light of the fact that aerospace comprises the envelope of air around the Earth and the space beyond it, which may at times be regarded as a single realm of activity in respect of the flight of air vehicles and in the launching, guidance and control of ballistic missiles, Earth satellites, space vehicles and other human-made objects that may be functional and/or non-functional, as well as naturally occurring objects.

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

6. The view was expressed that, while air law is rooted in the principle of sovereignty of States and a State may thus lay claim to rights over the airspace above its territory, the legal and philosophical basis of space law is the principle that outer space is a global commons and that no State or individual can claim rights in rem to any portion of outer space. Therefore, that State was of the view that functionality or purpose determines the applicable regime

7. The view was expressed that the regime differs, in that an instrument of general international law – the Convention on International Civil Aviation of 1944 (the “Chicago Convention”) – provides that a State has complete and exclusive sovereignty over the airspace above its territory, whereas outer space is, according to the principles of *jus cogens*, the common heritage of humankind.

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?

8. The view was expressed that aerospace law ought to be a singular branch of law or the body of legal principles and rules that is at times in effect, governing and regulating aerospace activities and flight.

9. The view was expressed that the establishment of an applicable regime on the basis of the special characteristics of a given object would make the regime itself unworkable, given the development of the technology and the consequent increasing diversity of aerospace objects. It would therefore be necessary to take into account not only the technology, but also the function and purpose of such an object.

10. The view was expressed that there is no such diversity of characteristics among aerospace objects, but it does seem that a distinction should be made between an object that can take off into outer space only by means of a launcher, even if it returns to Earth using the aerodynamic properties of an aircraft, and an object that both takes off and lands using aerodynamic properties.

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?

11. The view was expressed that it may be possible to describe the aerospace object according to the flight destination, as in the question. However, when the

destination consists of both air space and outer space, it should be clearly stated which law prevails under which conditions.

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?

12. The view was expressed that a distinction must be made according to the specific characteristics of the take-off of the aerospace object. If it takes off as a space object, both the take-off and the flight in outer space should be governed by space law, whereas when it lands as an aircraft, it should be governed by air law.

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?

13. The view was expressed that this question is especially important when considering the probability of unintentional “re-entry” of the object of one State into the airspace of another State. Especially if the object is fully or partially flight controllable, its flight should continue with respect to existing national and/or international airspace laws.

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 customary international law exist with respect to such passage?

14. Some States were of the view that rules and specific agreements between launching States and possible landing States do indeed exist for the passage of aerospace objects through airspace. Precedents must exist, given that the exploration of outer space has had several decades in which to accumulate practice.

15. The view was expressed that, with regard to the existence of customary law, it would be necessary to determine whether the relevant practice was regular, uniform and generally accepted and whether specialist opinion would endorse its usefulness or advisability.

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?

16. No replies distinct from the summarized replies contained in documents A/AC.105/C.2/L.249 and Corr.1 and Add.1 were provided.

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

17. The view was expressed that the rules concerning the registration of objects launched into outer space currently applicable to space vehicles or objects ought to be applicable also to aerospace objects.

18. The view was expressed that, since registration implies the exercise of jurisdiction by a State over moveable property within its sphere of management, it would seem logical that national registration should extend to aerospace objects. The situation would be different if aerospace exploration activity was conducted under an international authority.

Question 10. What are the differences between the legal regimes of airspace and outer space?¹

19. The view was expressed that, before the differences between the regimes of airspace and outer space can be defined, the delimitation of airspace should be clearly identified.

20. The view was expressed that the basic difference, as stated in the reply to question two, lies in the fact that the relevant principle of general international law relating to airspace recognizes the complete and exclusive sovereignty of a State over the airspace above its territory, whereas outer space is the common heritage of humanity, by virtue of *jus cogens* norms, which should, however, in no way be taken to affect the provisions of the general international law cited above.

¹ This question was introduced by the Working Group on the Definition and Delimitation of Outer Space at the forty-first session of the Legal Subcommittee. Only States that had submitted replies to the questionnaire on aerospace objects after 2002 addressed the question.