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Committee on the Peaceful Uses of Outer Space

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

Note by the Secretariat

Addendum

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I. Introduction

1. At the fifty-second session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, in 2013, the Working Group on the Definition and Delimitation of Outer Space agreed to continue to address to the Governments of Member States the following questions (A/AC.105/1045, annex II, para. 8 (b)):

(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;

(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?

2. The present document has been prepared by the Secretariat on the basis of replies received from Algeria, Armenia, Guatemala and Kenya.

II. Replies received from Member States

Algeria

[Original: French]
[11 November 2013]

Question (a). With regard to the need to define and delimit outer space, the position of Algeria has not changed since its last report, submitted on 13 January 2012 and reproduced in document A/AC.105/889/Add.10, distributed on 21 February 2012.

Question (b). The Government of Algeria has not explored any solution other than that connected to the definition and delimitation of outer space.

Question (c). Algeria reiterates its position, as stated in its report submitted on 13 January 2012 and reproduced in document A/AC.105/889/Add.10, distributed on 21 February 2012, namely:

Algeria believes that the definition and delimitation of space must firstly be based on consensus between States members of the Committee on the Peaceful Uses of Outer Space on the specific terminology used in treaties relating to outer space, with a view to the uniform interpretation of the relevant treaties and conventions. That is because the success of an international legal framework that governs space activities depends on an understanding of the United Nations treaties concerning space that is accepted by all parties.

Armenia

[Original: Russian]
[17 January 2013]

Question (a). The Government considers it appropriate to define and/or delimit outer space, given the increasing level of aviation activities and aviation technologies.

Question (b). The Government considers it appropriate to look at other approaches to resolving the aforementioned issue.

Question (c). Although the Government has not given consideration to the possibility of defining a lower limit of outer space or an upper limit of airspace, it recognizes the possibility of enacting special legislation relating to a mission carried out by an object in both airspace and outer space.

Guatemala

[Original: Spanish]
[8 November 2013]

Question (a). Yes, because with the increasing use of outer space for scientific and commercial purposes, it is necessary to ratify treaties that comply with international law and to create laws that help resolve situations caused by the use of outer space.

Question (b). No, because the criteria for the use of outer space are prescribed by the United Nations and those for the use of the geostationary orbit by the International Telecommunication Union (ITU). As a signatory, Guatemala is in a position to sign the existing corresponding conventions and to assert its rights before ITU.

Question (c). No. The Government is not currently considering defining those limits but it could acknowledge the definitions that have already been established by the United Nations and ITU as a first step toward asserting its rights, provided those definitions do not conflict with national interests.

Kenya

[Original: English]
[22 November 2013]

Question (a). The Government of Kenya considers it necessary to define outer space and/or to delimit airspace and outer space in view of the various activities and developments in space and aviation technologies.

The definition of outer space is significant for the following reasons:

- (i) To establish its boundaries and legal regime;
- (ii) To regulate its exploitation and exploration;
- (iii) To protect it from violation and unlawful intrusion;

- (iv) To ensure its sustainability.

International law provides for the limitation of national airspace at 100 km above the ground, the boundary between the Earth's atmosphere and outer space.

The delimitation of airspace is important for the following reasons:

- (i) It establishes the sovereignty of States over the said space, which means that other States cannot enter into the said space without the permission of the State within which the airspace is located. According to common law principles, sovereignty was understood to extend for an unlimited distance into the airspace, hence the current need to delimit airspace;

- (ii) It affirms the territorial integrity of the State in relation to airspace, which protects the State within which the airspace is located from unlawful intrusion and interference;

- (iii) It regulates the use of airspace in relation to aviation. This means that the aircrafts of other States can only enter the airspace of a particular State with the permission of that State;

- (iv) It determines the security of the State from aerial threats. In view of the growing threat of terrorism and aggression, there is a need for States to secure their airspace from all forms of external threats.

The delimitation of outer space is necessary for various reasons. Among those reasons are the following:

- (i) Outer space is deemed to be a "province" for all mankind, meaning that all States have a common interest in it. This implies that outer space should be explored and exploited for the benefit of all mankind with regard to resource management, the environment, information, communication, food, health, security etc.;

- (ii) Outer space has unique resources and opportunities and is therefore useful for exploration and exploitation that should benefit humanity;

- (iii) Outer space is *res communis* and therefore must be exploited peacefully, without threatening the interests of other States;

- (iv) The sustainable use of outer space. In other words, if it is treated as *res nullius*, the threat to its sustainability could be real.

Question (b). For the time being, Kenya does not consider another approach.

Question (c). The definition of a lower limit of outer space and an upper limit of airspace, in view of the enactment of international and national laws relating to a mission carried out by an object in both spheres, is important. The following reasons justify the foregoing:

- (i) The demarcation of the boundaries between airspace and outer space to enable the operation of the applicable legal regime;

- (ii) The ascertainment of the sovereignty of States over national airspace and the non-appropriation of outer space;

- (iii) The ascertainment of the rights and obligation of States in both spheres;

- (iv) The peaceful use of both spheres;
- (v) The enjoyment of outer space among all mankind.

The enactment of international and national laws regulating objects in both airspace and outer space is critical, and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and its successors is an effort in that direction. The draft code of conduct for outer space activities is also an attempt to strengthen the international and national legal regime. The incorporation of the aforementioned instruments into national regimes will also contribute to the compliance of States with those international instruments and will support any new instruments delimiting airspace and outer space.
