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**Committee on the Peaceful  
Uses of Outer Space****Legal Subcommittee****Fifty-fifth session**

Vienna, 4-15 April 2016

Item 7 (a) of the provisional agenda\*

**Matters relating to the definition and  
delimitation of outer space****Replies from the Chair of the Space Law Committee of the  
International Law Association (ILA) to COPUOS on certain  
legal aspects of suborbital flights**

Since 2014 the mandate of the ILA to its Space Law Committee contains a new and challenging topic, namely suborbital flights and their legal implications. It was introduced by the ILA Committee Rapporteur as a chapter of the ILA Report to the Washington DC Conference in 2004.<sup>1</sup>

The initial discussions of the ILA on suborbital flight show a wide range of options, advanced by the Space Law Committee, on ways and means of examining the topic. Some members favoured the drafting of a set of guidelines from the outset whereas others, in a more cautious attitude, observed the absence of a legal definition for this new technology noting that any action at this stage would be premature. It was widely perceived that this topic would bring back to the fore issues relating to the definition and delimitation of outer space to which the ILA answered in addendum 3 to Doc. A/AC.105/1039.<sup>2</sup>

The majority considers today that realistic answers to questions included in United Nations Doc. A/AC.105/1090, Annex II, paragraph 17 would go a long way in

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\* A/AC.105/C.2/L.297.

<sup>1</sup> Part 1 of the Washington Report, addressing dispute settlement, new applications of space technologies and space debris in new light was prepared by the Committee Chair. See Report of the Seventy-Sixth Conference of the ILA, Washington DC, 2014, subchapter on Legal Aspects of Suborbital Flight, 301-304, 311-319 and Working Session, 320-329.

<sup>2</sup> See United Nations Doc. A/AC.105/1039/Add.3 where some Replies from the Permanent Observer of the ILA to the Committee on the Peaceful Uses of Outer Space on Questions on suborbital flights for scientific missions and/or human transportation.



clarifying conflictive aspects of the topic. Other ILA proposals indicated the need for a substantial analysis of suborbital flight and national legislations enacted so far to govern the matter in the aftermath of the Washington Conference, taking as basis the exchange of opinions during the Committee's working session. All in all there are many areas under discussion, and also boundary areas in which the Space Law Committee of the ILA is currently involved.

It follows that, in setting the scenes, conflicting attitudes were already perceived within the ILA Committee as a result of the lack of precedents on the matter. As observed at its meetings, there had not been so far a successful, commercial suborbital flight in any nation. This was, no doubt, a call of attention.

The direct connection between suborbital flights, delimitation issues, liability and insurance and others was highlighted with some frequency within the ILA Space Law Committee in the past two years. Another point of contention referred to registration questions. However, from the reading of the 1975 Registration Convention it may be easily concluded that suborbital flights do not come under its provisions which are limited to "space objects launched into Earth orbit or beyond".

Security issues apart, it remains to be wondered whether these flights — which, to be considered as such, should not conclude a full orbit — might ever become weapons of easy access to the general public, let alone in the hands of terrorist groups.

In brief, many a proposal may be found to explain what should be considered a suborbital flight. A realistic course of action suggests starting at a low level of compulsion and, as first step, agreeing on a description — rather than a strict definition — of what should be understood by a "suborbital flight". A scientific description is, by nature, non-exhaustive and therefore excludes limitations. A "definition", *per contra*, implies "limiting, or confining" which endangers its survival with the passage of time. Therefore, in answer to question v of the document circulated to Permanent Observers of COPUOS on 26 August 2015, a description along the lines suggested above would certainly contribute to the progressive development space law.

Should the ILA decide to move on to the elaboration of a non-binding international instrument that "description pattern" appears a reasonable practice. This had been the case when embarking in the drafting of the *International Instrument for the Protection of the Environment from Damage caused by Space Debris*, adopted by the ILA Sixty-Sixth Conference in Buenos Aires, in 1994, and which is under permanent review by this Committee. Article 1 of this Instrument contains an enumeration of space debris possibilities which, doubtless, has survived the times as a non-exhaustive description<sup>3</sup> and remains consistent with the present international scenes.

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<sup>3</sup> See *Report of the Sixty-Sixth Conference of the ILA*, Buenos Aires (1994), 305-325. See Report and "Final Text" by the present writer. At every ILA Conference that followed there was a word on this item. Recently the opinion of space scientists was requested (see the Committee's Report to the Sofia Conference, 299-303) who considered that, in fact, the description of "space debris" contained in Article 1 of the Instrument was consistent with the current international and regional scenarios. Furthermore, the general opinion was contrary to changes as the enumeration of space debris possibilities was in harmony with the results of scientific and

The net conclusion is that suborbital flights are prompting challenging legal issues — so far unresolved — which go back to the very root of both air and space law. Therefore, a recommendation to work jointly with ICAO in this task seems realistic. Without establishing priorities at this stage, questions relating to the applicable law and national space legislations, definitions and/or descriptions regarding space flight, delimitation issues, questions underlying registration, insurance and liability, and some agreement on the legal nature of space tourists should, inter alia, be addressed without delay.

Further perceptions and preliminary conclusions from the Space Law Committee are expected at the forthcoming Seventy-Seventh Conference of the International Law Association in August 2016 in Johannesburg. At this point, as indicated above, a decision shall be taken on the possibility of drafting guidelines, a code of conduct or perhaps a model law on suborbital flight so as to give it a clearer legal framework in the current scenarios.

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technical studies on the matter and was wide enough to cover most of today's issues. For example, it includes a reference to "collision-generated debris" in Article 1 (c). On this point see the Seventy-Fifth Conference of the ILA, Sofia 2012, Report of the Space Law Committee (Part 1, by the present writer), 299-303 (at 301 on the views of the scientists).