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Matters relating to the definition and delimitation of outer space: replies of Greece

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

With regard to the delimitation of outer space and given the current level of space and aeronautics activities in Greece, there is no national legislation yet defining or delimiting outer space (See relevant reply by Greece in A/AC.105/C.2/2017/CRP.16).

Concrete and detailed proposals regarding the need to define and delimit outer space, or justifying the absence of such a need

While the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) has discussed the issue of definition and delimitation of outer space, no such delimitation has been established to date. Given the interdependence of the issue with new technologies being developed in States, for instance in the area of suborbital flights, it is indispensable that this delimitation takes into account the existing international aeronautical regulations of ICAO. For instance, to the extent that a suborbital flight (of any kind) takes place in the airspace, the suborbital vehicle in question should, for that part of its journey, be submitted to the applicable air traffic rules (national rules or FIR rules), in order to ensure a safe, regular and efficient air transport (art. 44(d) of the Chicago Convention).

Space operations and the regulation of space activities is of primordial interest to Greece which, together with being party to the existing space treaties, is a State Member of the European Space Agency (ESA), that regulates and unifies space regulation in the European Union. In this respect, Greece submits the following remarks and proposals regarding the need to define and delimit outer space: There are two prevailing views among experts; a spatial and a factual approach. However, not only the differentiated capacity among States to exercise their sovereignty in any part of space, but also the prohibition of national appropriation by claim of sovereignty or by means of use or occupation, as confirmed by Article II of the Outer Space Treaty (1967), would undeniably pose critical problems in a possible adoption of a spatial theory. Additionally, should the boundary be based in relation to anti-satellite tests or the activities of certain States to remove and destroy own satellites, it would be at least at an altitude equal to that of satellite orbits. This solution would not serve as a



clear boundary between airspace and outer space. In contrast, it is recommendable to promote a functional approach, given the current and foreseeable technological state. According to this theory, space is to be considered outer space at any distance from the surface of the Earth as long as it may be used by space objects, i.e. capable of performing space flight. Namely, the different nature of space activities, and the fact that there is no connection with the underlying territory, implies that these activities shall, wherever conducted, be exclusively subject to the sovereignty of the launching States. Therefore, the legal regime of outer space should be determined based on the capacity of space launches or orbits of space devices, at their lowest perigee (see relevant reply of Greece in A/AC.105/C.2/2017/CRP.16).

Questions relating to the definition and delimitation of outer space

- (i) *Is there a relationship between plans to establish a system of space traffic management and the definition and delimitation of outer space?*

The issue of definition and delimitation of outer space could have an impact on plans to establish a system of space traffic management. However, the international community must be prepared to provide answers in this respect, even in the absence of such a definition/delimitation.

- (ii) *Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?*

The definition and delimitation of outer space is linked with suborbital flights for scientific missions or manned space flights. In this context, it has to be underlined that the functionalist approach on definition and delimitation of outer space may provide greater clarity than the spatialist one, as it would result in the application of only one legal regime (i.e. space law) to suborbital flights, whose primary function is to enter outer space (despite the fact that they are also designed to traverse airspace). The functionalist approach distinguishes between aeronautical and astronautical activities, based on the primary purpose of a vehicle's design rather than on the location of the vehicle at any single point in time. Under this approach, a company's suborbital operations would be governed under space law only (with the exception of air traffic management rules for that portion of the flight that crosses airspace), because suborbital flights are designed for space travelling.

- (iii) *Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?*

The legal definition of suborbital flights for scientific missions or manned space flights would be useful for States and other actors with regard to space activities, as it is closely linked with and would contribute to the setting up of a system of global space governance.

- (iv) *How could suborbital flights for scientific missions and/or for human transportation be defined?*

The definition of suborbital flights for scientific missions or manned space flights has particularities, making it a complex subject that requires careful study, which we believe should be done within the competent UN bodies following a wide-ranging open consultation.

- (v) *Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?*

The choice whether to apply international or national law is related to the content of the definition of suborbital flights and to the specific characteristics of the flight.

- (vi) *How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?*

We consider that it will have a significant impact on the development of space law, and the extent of impact is directly related to the content of the definition of suborbital flights for scientific missions and manned space flights.
