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**Committee on the Peaceful
Uses of Outer Space**

Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States

Addendum

Note by the Secretariat*

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* The present document was prepared on the basis of replies received from Member States after 9 March 2005.



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I. Introduction

1. At its thirty-eighth session, in 1995, the Committee on the Peaceful Uses of Outer Space agreed that the purpose of the questionnaire on possible legal issues with regard to aerospace objects that had been finalized at the thirty-fourth session of the Legal Subcommittee was to seek the preliminary views of States members of the Committee on various issues relating to aerospace objects. The Committee also agreed that the replies to the questionnaire could provide the basis for the Legal Subcommittee to decide how it might continue its consideration of the related agenda item. The Committee further agreed that States members of the Committee should be invited to give their opinions on those matters.¹
2. Information received from Member States by 9 March 2005 is contained in the note by the Secretariat (A/AC.105/635 and Add.1-12).
3. At its forty-fourth session, in 2005, the Legal Subcommittee endorsed the report of the Working Group on Matters Relating to the Definition and Delimitation of Outer Space. The Working Group agreed to continue inviting Member States to reply to the questionnaire on aerospace objects (A/AC.105/850, annex I, para. 5 (a)).
4. The present document was prepared by the Secretariat on the basis of information received by 9 January 2006 from the following Member States: Germany, Latvia, Morocco, Nigeria, Spain and Syrian Arab Republic.

II. Replies received from Member States²

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?

Nigeria

[Original: English]

The definition should be considered in the light of the fact that aerospace comprises the envelope of air around the Earth and space above 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.

¹ See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20 (A/50/20)*, para. 117.

² The replies are reproduced in the form in which they were received.

Spain

[Original: Spanish]

Yes. The very word “aerospace” means that an object is able to travel through both outer space and airspace.

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

Nigeria

[Original: English]

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, functionality or purpose determines the applicable regime.

Spain

[Original: Spanish]

Yes, the regimes differ. When a flight takes place in outer space, space law applies, whereas travel in airspace is subject to air law.

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?

Nigeria

[Original: English]

In line with the response to question 1 above, 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.

Spain

[Original: Spanish]

We do not recognize such a 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?

Nigeria

[Original: English]

The status of the aircraft or spacecraft in airspace or in outer space and the legal consequences that follow from the prevailing law are determined by factors including purpose and destination.

Spain

[Original: Spanish]

In principle, it would seem that an aerospace object should be subject to air law during the take-off phase, to space law during its flight in outer space and again to air law during the landing phase. Otherwise, a special regime would have to be agreed between the country of origin and the country of destination.

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?

Nigeria

[Original: English]

We are not aware of regulations in the regime for an aerospace object that distinguish the take-off and landing phases from entry into airspace from outer space orbit and subsequent return to that orbit.

Spain

[Original: Spanish]

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?

Nigeria

[Original: English]

While the norms of national and international air law remain applicable to the vehicle or object of one State in the airspace of another State, consideration ought to be given to the purpose and destination of such vehicle or object.

Spain

[Original: Spanish]

Yes.

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 international customary law exist with respect to such passage?

Nigeria

[Original: English]

Though there are vehicles or objects from whose purpose or destination the existence of precedents may be deduced, the actual or perceived passage of such vehicles or objects during take-off and/or re-entry into the Earth's atmosphere cannot, at this time, be said to have given rise to a customary rule of international law.

Spain

[Original: Spanish]

Rules and specific agreements between launching States and possible landing States do indeed exist for the passage of aerospace objects through airspace.

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?

Nigeria

[Original: English]

Clarification may be provided by considering the provisions of the Outer Space Treaty and the Rescue Agreement, as well as the responses to questions 2 and 6 above.

Spain

[Original: Spanish]

Yes, passage through the Earth's atmosphere should be governed by air law at both the national and the international level.

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

[Original: English]

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.

Spain

[Original: Spanish]

If aerospace objects are used for transit between States, it would seem that they should be registered in accordance with the air law of the relevant State.

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

[Original: English]

See Nigeria's response to question 2 above.

Spain

[Original: Spanish]

The differences are well known. The fundamental difference is that there is freedom in outer space because no sovereign power is exercised, whereas there are legal norms governing the airspace of States that are overflowed.

General responses**Germany**

[Original: English]

The Government of Germany informed the Secretary-General that Germany's position as stated in its reply in 1996³ remains unchanged. In particular, Germany would like to reiterate that the respective issues should be studied first in the

³ See A/AC.105/635.

Scientific and Technical Subcommittee before being submitted to the Legal Subcommittee (*ex facto sequitur lex*).

Latvia

[Original: English]

The issues regarding aerospace objects are not specifically regulated in the national legislation of Latvia.

Morocco⁴

[Original: French]

Morocco is of the view that Member States should continue to provide replies to the questionnaire on possible legal issues with regard to aerospace objects.

Syrian Arab Republic

[Original: English]

The Government of the Syrian Arab Republic informed the Secretary-General that it did not wish to update its earlier reply to the questionnaire on aerospace objects.⁵

⁴ Morocco has previously submitted replies to the questionnaire (see A/AC.105/635/Add.6 and 7 and Corr.1).

⁵ See A/AC.105/635/Add.3.