



**Committee on the Peaceful
 Uses of Outer Space**
**Questionnaire on possible legal issues with regard to
 aerospace objects: replies from Member States**
Note by the Secretariat
Addendum
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II. Replies received from Member States

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?

Libyan Arab Jamahiriya

[Original: English]

Yes. An aerospace object can be defined as an object that is able to travel through both outer space and airspace.

Turkey

[Original: English]

Yes. There are a few examples such as the Space Shuttle and the Ansari X Prize-winner SpaceShipOne, built privately by Scaled Composites.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

The definition suggested in the questionnaire provides a good starting point for a discussion of the issue. It would, however, 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.

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

Libyan Arab Jamahiriya

[Original: English]

Yes, the regimes differ. When a flight takes place in outer space, space law applies, whereas travel in airspace is subject to air law. Space law involves the principle that outer space is a global commons and that no State or individual can claim rights to any portion of outer space, whereas 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.

Turkey

[Original: English]

It may be more appropriate to apply laws according to the location of the object if it is capable of travelling in both outer space and airspace.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

Yes, it does differ, 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?

Libyan Arab Jamahiriya

[Original: English]

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. Also the 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.

Turkey

[Original: English]

Not only would developing a unified regime that would cover all aerospace objects not be an easy task, but also its utilization in practice could be controversial.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

1. Neither international treaties nor national legislation refer to or define an “aerospace object”. The Bolivarian Republic of Venezuela is therefore not aware of any special procedures applying to such objects. It would, nonetheless, be preferable to have a uniform regime applicable to all aerospace objects.
2. To establish 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.

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?

Libyan Arab Jamahiriya

[Original: English]

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, and the legal consequences that follow from the prevailing law are determined by factors including purpose and destination.

Turkey

[Original: English]

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 airspace and outer space, it should be clearly stated which law prevails under which conditions.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

As indicated in the reply to question two, the Chicago Convention determines a State's sovereignty over its airspace. In the light of that provision, an aerospace object must necessarily be considered an aircraft while in airspace. Otherwise, it would be necessary to amend the Convention. The Bolivarian Republic of Venezuela believes, however, that space law should apply to an aerospace object throughout its flight, from the time of its launch to its final destination in outer space.

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?

Libyan Arab Jamahiriya

[Original: English]

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.

Turkey

[Original: English]

Exiting from airspace to outer space and re-entering airspace have different characteristics in principle. Although they are generally technical issues, these differences, including the unintentional “re-entry” into national airspace, should be carefully considered in the regime.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

There are no regulations or, at least, no codification of regulations governing the take-off and landing phases of aerospace objects. At most, there may exist a few rules of customary law. These could be identified on the basis of regular, uniform practice, if endorsed by legal specialists.

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?

Libyan Arab Jamahiriya

[Original: English]

Yes.

Turkey

[Original: English]

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.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

The points made in the answers to questions two and four should apply.

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?

Libyan Arab Jamahiriya

[Original: English]

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

Venezuela (Bolivarian Republic of)

[Original: Spanish]

Precedents must exist, given that the exploration of outer space has had several decades in which to accumulate practice. With regard to the existence of customary law, it would be necessary to determine, as stated in the answer to question five, 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?

Libyan Arab Jamahiriya

[Original: English]

Yes. Passage through the Earth's atmosphere should be governed by air law at both the national and the international levels.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

The Bolivarian Republic of Venezuela is not aware of the existence of any national legal norms with respect to the passage of aerospace objects during re-entry into the Earth's atmosphere. In respect of international norms, the statements contained in the replies to questions five and seven should apply.

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

Libyan Arab Jamahiriya

[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.

Turkey

[Original: English]

The characteristics of the launch and re-entry phases may be used to classify aerospace objects and to establish whether registration is necessary.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

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?

Libyan Arab Jamahiriya

[Original: English]

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 overflown.

Turkey

[Original: English]

Before the differences between the regimes of airspace and outer space can be defined, the delimitation of airspace should be clearly identified.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

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 general international law cited above.

General responses

Republic of Korea

[Original: English]

The Republic of Korea submitted as preliminary views its reply in 1996, as contained in document A/AC.105/635/Add.1. It should be noted that the necessity of defining outer space and/or delimiting airspace and outer space is still under review. The Republic of Korea has not yet considered another approach to resolving this issue, since it would be better to continue to invite Member States to reply to the questionnaire on aerospace objects until the number of replies reaches a level sufficient to initiate work on summarizing them.