

EVALUATING POLICY ALTERNATIVES PERTAINING TO THE LEGAL DEFINITION OF "SPACE OBJECT."

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Abstract

This article is a follow up to the discussions on definitional issues in space law, particularly in the IISL Working Group, and the author's presentation at the Jerusalem Colloquium of such issues pertaining to "space object."

Following a general introduction of the subject matter, and a brief overview of earlier developments the paper notes some of the advantages and disadvantages that definitions may carry, especially in the field of space law.

The ensuing discussion makes an attempt to evaluate selected definitional alternatives that policy makers at national and international levels may consider for possible adoption.

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The conclusion stresses the importance of interdisciplinary considerations and implications in light of expected technological and scientific developments associated with space exploration in the next century.

Introduction

The first IISL Colloquium session devoted to the topic of "definitional issues of space law" was held in Montreal in 1991. This was followed up by a decision of the IISL Board at its 1992 meeting in Washington D.C. to establish a Working Group to elaborate on such issues and receive input in the form of comments and suggestions at future colloquia. In Jerusalem, another IISL session dealt with the topic of definitional issues.

One of the conclusions drawn at these sessions was that a clarification of concepts and phrases used in the major U.N.-drafted space agreements constitutes an important aspect of legal development which will have to be addressed in an interdisciplinary context by competent professionals in order to allay legal uncertainty, a serious potential impediment to the

prudent involvement of private enterprise in space activities.

My presentations dealt with some significant issues and related policy considerations pertaining to the notion of "space object" and associated with the aforementioned space treaties. It was my belief that the term "space object" was central to the international law of outer space and that the policies and laws relevant to its application would become more crucial with the anticipated expansion of space activities associated with the building of the US/International Space Station and the contemplated Moon and Mars missions in the next century.

Some Alternatives

The various learned presentations at the prior Colloquia intended to shed light on the multifaceted issues presented by a single but central notion in the space law literature, that of "space object."

From among many possible alternatives, a few important examples will be singled out.

Within the context of the main space treaties, the definition that would likely receive the widest support among scholars and policy makers would be to regard a space object as "an object launched or attempted to be launched in orbit around the earth or beyond." In view of the partial definitions of a

space object in the Liability and Registration Conventions that a space object includes "component parts" of a space object, as well as "its launch vehicle and parts thereof," the words "or a part of it" may be added after the word "object" in the above definition. Admittedly, acceptance of such addition may be a problem for those who do not regard broken pieces and other debris originating from a space object as a space object or a part of it.

There are many queries which may arise in connection with the above definition. First, there is the issue whether to regard the aerospace plane as a space object if it is used not for point-to-point transportation on earth but for space transportation and if it takes off as a conventional airplane and is not being launched in the current sense of the common usage of the term. Also, it should be noted that this definition says nothing about the various phases of the object's flight. Thus, to allay any uncertainty, an additional clarification may be added by using the phrase "from the time of its launch or attempted launch, through its ascent from earth to outer space as well as during its orbit, deorbit, reentry and landing on earth."

In connection with manned space flight the drafters may prefer to use the terms "embarkation" (closing of the door) and

“disembarkation” (opening of the door) as a starting and concluding points of the time and place frame in order to regard an object as a space object.

To avoid possible future arguments regarding the status of objects on the moon or another celestial body, the definition may make it clear that a space object includes stations, installations and other objects constructed or used by humans in outer space, including the moon or another celestial body and, if so desired, could also cover not just terrestrial but also extraterrestrial objects used in the course of space exploration. In the latter case, attention will have to be focused to determine what changes, if any, would have to be made in the Registration Convention inasmuch as objects would not directly be launched into “earth” orbit but into “moon orbit” or perhaps into the orbit of another celestial body.

To allay further doubt, it could be made clear that any space object landed on the moon or another celestial body which became part of an immovable structure would cease to be a space object or a part of it.

Conclusion

In light of the foregoing considerations a more complete legal definition of a space object

could be formulated in the following manner:

“A space object is an object or a part thereof launched or attempted to be launched in orbit around the earth or beyond from the time of its launch or attempted launch through its ascent from earth to outer space as well as during its orbit, deorbit, reentry and landing on earth. A space object includes stations, installations and other objects, whether terrestrial or extraterrestrial, constructed or used by humans in outer space, including the moon or another celestial body. Any space object landed on the moon or another celestial body which became part of an immovable structure ceases to be a space object or a part of it.”

Like with any definition, so here also, it is well to keep in mind that there is no fool-proof definition to take care of all possible scenarios which may arise in the future.

Definitional clarifications involve policy choices which decision makers will have to make in light of their value judgments on behalf of the countries they represent. Undoubtedly, there will be decision makers in the executive or legislative branches of a government who may wish to leave such determination to the judiciary if, and when, the relevant situation presents itself.

In any effort aimed at definitional clarification in the international field of space law, interdisciplinary considerations and implications in light of expected technological and scientific developments associated with space exploration in the next century should not be lost to sight.

References

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