

56th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Nandasiri Jasentuliyana Keynote Lecture on Space Law & 5th Young Scholars Session (1)

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THE DELIMITATION BETWEEN AIR SPACE AND OUTER SPACE AND THE EMERGENCE OF
AEROSPACE OBJECTS

Abstract

The legal border between air space and outer space still awaits international agreement. The ambiguity remains as to the legal status of near space, the intermediate zone between what is definitely airspace and what is definitely outer space. This lacuna, however, has not given rise to significant difficulties in the determination of applicable law with respect to traditional flight craft – aircraft and space objects, due to their separated sphere of activities. This is largely due to their separated sphere of activities.

The emergence of aerospace objects poses a significant challenge to the lack of a clear boundary between airspace and outer space. Proposals have been made to determine the applicable law to them depending on their nature or purpose – those performing space missions should be governed by space law whereas those performing Earth transportation should be governed by air law. Although this approach could circumvent the difficult question of delimitation, the predominant view among states seems to point to the other direction, i.e. to consider aerospace objects as aircraft while flying in the airspace, and as space objects when passing through outer space.

The question remains as to the applicable law to aerospace objects when they fly through the intermediate near space. This article discusses the possibility of drawing a clear boundary between airspace and outer space somewhere in near space, and the viability of establishing near space as a sui generis zone as well as the applicable law to aerospace objects when they fly through such as zone.