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Space law Developments in Asia-Pacific: Diverging national space legislation with regard to the
applicability of space law to suborbital flights (4)

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THE LEADING ROLE AUSTRALIA COULD PLAY IN FOSTERING UNIFORMITY OF NATIONAL
SPACE LEGISLATIONS AMONG THE ASIA-PACIFIC COUNTRIES

Abstract

At the time international air and space law regimes have been conceived, the prospective of future activities embracing both regimes was not given much thought. However, today, the arising of hybrid air-space activities, have made the lack of uniformity and interaction between air and space law regimes worthy of attention. Future commercial suborbital flights activities will make the choice of which legal regime to follow unclear. Different solutions to this problem have been adopted (or attempted to be) by some space faring -but also non-faring- nations, on grounds of divergent political reasons. The lack of a legal definition of those vehicles from which their legal status could be determined and the lack of a defined demarcation line between air and space, impede to frame, within a single international legal regime, important aspects of this industry such as safety, liability, traffic management, etc. In the hard prospective of an international solution on this issue, the most probable outcome is that countries which play leading role in substantial geographical areas could set national regulations to best satisfies the exigencies of the industry within the international legal regimes applicable. For example, the Australian Government, already at the 41st session of the UN COPUOS Legal Subcommittee, had made clear that the lack of demarcation between air and space had led to uncertainty with respect to which activities are covered by the Australian Space Activities Act of 1998. Therefore, since nothing has moved internationally, in 2002, with the coming into force of its Space Activities Amendment Act, Australia formalized the boundary line at 100Km, beyond which the Act is applicable. Although some may complain that, would something happen at an altitude close to the demarcation line, it shall be difficult to establish where exactly the vehicle was at the moment of the event, this step greatly facilitates the certainty of law applicable. Clear regulations are essential to foster the industry. This study wants to highlight the leading role Australia could play in the Asia-Pacific area by serving as a model so as to foster the development and uniformity of national space legislations of the Asia-Pacific countries. A critical analysis of approaches and theories and of the positions some states have already adopted on the issue, is done with the objective to suggests which steps Australia could further play in the context of different national space legislation in the Asia Pacific area.