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Near Space: Legal Aspects of Aerospace Activities (2)

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HOW MUCH OF SPACE LAW WILL BE APPLIED TO NON-ORBITAL FLIGHT ACTIVITIES FOR
SCIENTIFIC, MILITARY AND COMMERCIAL PURPOSES?

Abstract

This article analyzes whether non-orbital flight activities for scientific, military, and commercial purposes would be subject to international space law, or international air law, or the combination of the both or even a new body of law to be formulated. While a lot of attention has been paid to sub-orbital space tourism recently, there are various other non-orbital flight activities. Some are human activities and others are unmanned missions; and some are conducted around at 85-100 kilometers but others, higher than 10,000 kilometers. Scientific investigations through sounding rockets and balloons have been extensively conducted globally for decades, and a few countries have carried out destructive anti-satellite (ASAT) tests using terrestrial-based ballistic missiles. Once prohibited by some of the US-USSR/Russia bilateral nuclear arms control agreements (SALT II and START), the experiments of the Fractional Orbital Bombardment System (FOBS) type weapons were resumed again. In the commercial area, start-ups often develop a non-orbital flight vehicle before completing a full-fledged space launch vehicle to launch satellites. Non-orbital space tourism of various modes (vertical take-off/vertical landing (VTVL), horizontal take-off/horizontal landing (HTHL), vertical take-off/horizontal landing (VTHL), etc.) brings about urgent issues to identify the field of law to be applied. A point-to-point transportation system would also become a new mode of non-orbital flight activity in the next decade. The tentative conclusion is that scientific investigations and military tests will be subject to international space law, and therefore unique national responsibility regime will be applicable to these activities. This will not be changed if such activities are restricted within one national territory or transnational. For space tourism, if it is restricted within one State, space law will be applied, but the combination of both air law and space law would be applicable for space tourism or other human transportation system involving multiple countries. This article studies to what extent either field of law will be applied with respect to the activities mentioned just above.