

53rd COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
The Current Status of the Rule of Law with Regard to Space Activities (4)

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IS THERE A FUTURE FOR SPACE LAW BEYOND "SOFT LAW"?

Abstract

Facing this challenging question seems to be timely and necessary, even recognising the importance of "soft law" during a certain period in development of International Space Law. "Soft law" is not necessarily an anathema. It was and is a positive response to various occasions and aspects. But at the same time, in principle, it cannot be considered the only or a better solution, particularly when we seek to assure the effective and unquestionable commitment of the parties in highly important arrangements, as well as a higher level of efficacy and predictability of the norms referred to it. At stake here is the very beneficial and contemporary discussion on relative normativity in General International Law, which should also encompass Space Law. The present paper starts from the premise that International Space Law cannot be condemned to always be based on non-binding instruments, as has occurred in the last 30 years. Today a number of extremely relevant legal issues related to space activities need to be judiciously evaluated and very probably deserve a more rigorous juridical treatment in view of their short-term consequences, but also and specially for future deleterious effects. In this list of pressing issues, we can put in the first place those relating to the security and the safety of space activities, including the military uses of outer space, the placing in Earth's orbit of new weapons, the rapid growth of space debris, as well as a more complete regulation of remote sensing activities and the increasing necessity for a global system of space traffic management. It could also be useful to add the subject of regulating the exploration and exploitation of the Moon's resources, since there already are many national plans to create lunar settlements within 20-30 years, but to date, there is not a broad agreement on the Moon, supported by the majority of countries. Is it appropriate and responsible to rely exclusively on "soft law" in such cases?