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Author: Ms. GEORGIA MARIA KALOGIROU
Greece, yolandakalogirou@gmail.com

THE U.S. COMMERCIAL SPACE LAUNCH COMPETITIVENESS ACT AND THE OUTER SPACE
TREATY: A CONTRADICTION OR A LACUNA?**Abstract**

The release of the U.S. Commercial Space Launch Competitiveness Act (hereinafter U.S. Act) in 2015 has raised questions about the legality of commercial exploitation of space resources. This paper is aimed to present the arguments against this act and in particular its contradiction with Article I and II of the Outer Space Treaty (hereinafter OST). Article I of the OST obliges the State Parties to explore and use outer space in the interests of all mankind, while Article II excludes any possibility of national appropriation. Title IV of the Act, entitled as “Space Resource Exploration and Utilization” seems to be in total contravention with the abovementioned principles. In particular, the US citizens engaged in commercial activities regarding the exploitation of space resources, shall be entitled to any asteroid or space resource obtained. This entitlement includes inter alia their possession, use, and sale. Such a commercial exploitation cannot be considered as conducted “in the interests of all mankind”, since this phrase is to be interpreted as being “beneficial in a general sense”. Even if it is accepted that there exists only a negative duty not to impede the exploration and use by other States, the U.S. Act is not aligned to Article I of the Outer Space Treaty, since it provides exclusive commercial rights to its citizens. Regarding the principle of non-appropriation, it would be against its mere scope to argue that it does not apply to private activities and would constitute a lacuna for the States to exploit. Besides, this principle includes a positive obligation on behalf of the State not to grant to nationals or private entities exclusive rights to the space environment. The U.S. Act grants such rights by permitting to its nationals to engage in asteroid or space mining in general and benefit from this activity by owning, using or selling them. To conclude, the mere wording of the OST leaves room for different interpretations. At the same time, the fact that the U.S. is not a State Party to the Moon Agreement, impedes the use of its precise wording to solve the controversy. The question still remains open, but we cannot but agree that it should be answered in a manner consistent with the principles incorporated in the OST.