

60th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Joint IAF/IISL Session on Legal Framework for Collaborative Space Activities (7-B3.8)

Author: Mr. Alvaro Fabricio Dos Santos
Advocacy General of the Union - AGU, Brazil

Prof. José Monserrat Filho
Brazilian Association of Air and Space Law, Brazil

THE PRINCIPLE OF COOPERATION AND MUTUAL ASSISTANCE AND THE COMMERCIAL
EXPLORATION OF OUTER SPACE: HOW TO REACH A BALANCE?

Abstract

The principle of cooperation and mutual assistance was firstly adopted by the United Nations through its 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. Article IX of the 1967 Outer Space Treaty later endorsed it. It was also reaffirmed in 1986 by the Principles Relating to Remote Sensing of the Earth from Outer Space. More recently, it was reiterated by the 1996 Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries. Outer space has become a profitable business in a manner that public space activities have given place to commercial ones. In this scenario, the principle of cooperation and mutual assistance is gradually becoming ineffective. The study-case of this paper is the Chinese-Brazilian Earth Resources Satellite Program (CBERS), whose objective is entirely devoted to peaceful purposes. In the scope of the Chinese-Brazilian cooperation, Brazil was in charge of providing electronic components for CBERS satellite systems and, for doing so, it needed to import electronic components from the United States. However, the government of the United States imposed restrictions to export electronic components for dual use to China. These restrictions caused Brazil many difficulties, such as the increase of contract price, the need of identifying new suppliers, and delays in schedule. The criteria adopted by a State to deny an export license is a closed national affair, therefore the State affected by such a decision has no right to claim or to defend its legitimate interest, even when the restrictions are clearly based on marketing and commercial reasons. Currently, satellites are vitally important for the development of any country, hence a negative response for a request of an export license may have severe impact on the development of a State, especially in the case of developing countries. Is there any legal solution for a developing country to overcome this barrier? Could the United Nations provide some help? This paper tries to point out some ideas in order to handle this issue.