

60th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
'NewSpace', New Laws/ How governments can foster new space activities (2)

Author: Ms. Maria Manoli
Institute of Air and Space Law, McGill University, Canada

PONDERING THE LEGITIMACY OF THE OUTER SPACE TREATY FROM THE PERSPECTIVE
OF SPACE NATURAL RESOURCES EXPLOITATION: IS IT TIME TO ACT INSTEAD OF REACT?

Abstract

One of the goals of Space Law is to secure the use of outer space for the advancement of humankind. At the same time, technological developments towards space mining reveal that such endeavor can only be realized with the active participation of the private sector that would inevitably require either the *a priori* permissibility of commercial exploitation of space resources, or the *a posteriori* acceptance of it. However, one controversial question arises: How would it be possible to continue securing the use of outer space towards the advancing humankind when the commercialization of substantive parts of the latter seems legally blocked. Such a question is directly linked to the issue of whether the time for New Laws as envisioned by NewSpace activities has arrived.

This paper attempts to answer the above question on the basis of benefit-sharing mechanisms. Specifically, it asks whether benefit-sharing agreements would legitimize the exploitation/commercialization of space natural resources, and if so, how would this be legally feasible. In fact, the drafters of the Outer Space Treaty (OST) left this option open by including Art. XV in the said treaty, which foresees the possibility to amend the latter. It is on these grounds that this paper proposes to amend or complement the OST with a model agreement (contract) between private companies that wish to undertake exploitation activities and States. The paper suggests the establishment of a new Working Group under the auspices of COPUOS to examine profit (benefit)-sharing agreements that already exist in other fields of exploitation and decide what model would be the most appropriate for the purposes of space resources exploitation. The objective of the proposed Working Group will be to come up with a model agreement that attributes benefits to the private companies analogous to their investment, and to the authorizing States the right to collect and further distribute benefits deriving from the undertaken activities on the basis of existing group performance profit-sharing economic models.

The paper endeavors to demonstrate that the OST has not lost its legitimacy; on the contrary, it provides a solid basis on which States ought to cooperate furthering an intricate law-making process. Such a process would guide towards the advancement of humankind through the new means that technology offers to it and which public and private NewSpace actors have a duty to use in a modernized yet sustainable manner.