

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
Virtual Presentations - IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (VP)

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NEAR SPACE ACTIVITIES - THE SEARCH FOR A NEW LEGAL REGIME

**Abstract**

The Stratosphere has been a mystery even to scientists as late as the 1970s. Even though much innovation was occurring in outer space in the 'space age', it is only recently that activities in the stratosphere and mesosphere have caught the fantasy of business. Sub-orbital flights, high-altitudinal platforms (HAPs), stratospheric balloons are some of the various ways in which the region's capabilities are being sought to be exploited. The area is also environmentally very sensitive because of the presence of the ozone layer. Legally however it is an indistinct area, where it is not clear whether the activities that take place are air space or outer space activities. Referred to by different names by different authors, this area is being designated as Near Space for the purpose of this paper. Extending from approximately 18km - 160km above sea level this is a region where most aviation activities come to an end but the atmosphere is too dense to support space activities. Given the current debates, there is a high likelihood of the area being demarcated simply as airspace or outer space, without much consideration being given to its unique scientific, technical and economic capacities. In law of the sea, for a long time, there only existed the territorial sea and the international waters. However it was found that there were various economic resources in the areas adjacent to the territorial waters, which were being misused because they belonged to the global commons of international waters. To solve this problem greater responsibility was ascribed to the coastal states with creation of the Exclusive Economic Zone (EEZ). This paper argues that it is the underlying State that has the greatest interest in preserving the Near Space above its territory. And that similar to the EEZ a specific legal regime for Near Space is needed. This legal regime would centre around limited sovereignty but full jurisdiction of the underlying State and would provide legal rules for activities such as sub-orbital flights. The paper would also use the example of EEZ to show how national laws (even in absence of an international regime) can benefit both the underlying States as well as preserve what is right now a global commons. The paper also hopes to illuminate how the conscious economic exploitation of Near Space can lead to greater sharing of economic and environmental benefits with the public at large.