

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
International cooperation on the way to the Moon and Mars (2)

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THE FORAY OF PRIVATE SPACE ENTERPRISES INTO THE LAST FRONTIER: NEED FOR A
NEW PROTOCOL**Abstract**

Ever since the dawn of the era of commercialisation of outer space, the role of private space enterprises has become increasingly prominent and even catalytic, toward the ambitions of mankind in the stars above. Nations over time have not only permitted private ventures, but have also begun to partner with them to execute their own missions into space. While these developments may bode well for the growth of the space industry, they bring forward complex legal issues arising from the involvement of private space sector. The fundamental legal basis for the relationship between the public and private space sectors is provided by Article VI of the Outer Space Treaty. This provision outlines the concept of ‘private activity but public responsibility’, by rendering the State responsible for both the grant of authorisation for, and supervision over private space activities. While some countries such as the United States, among others have adopted regulations governing private space enterprises, in addition to evolving legal indemnification mechanisms such as insurance, to compensate themselves for any financial responsibility that they may bear for private activities; several space faring nations such as India, have not. This lack of national regulation could leave the field open to private initiatives seeking to set up in such jurisdictions, presenting challenges for public actors. Does such a private launch from the jurisdiction of an unregulated State Party constitute a violation of its treaty obligations under the OST, given its non-supervision? Moreover, since even those countries possessing regulations have not adopted a uniform approach, there are significant differences in national legal frameworks. Could this lack of a harmonious approach may impede international space cooperation? This paper unravels these pivotal issues of authorisation and liability in relation to private space activities, by comparing the related provisions of the national space framework of the United States, Italy and India, among others. This paper also brings forth the crucial issue of sufficiency of the present international legal framework and discusses its preparedness for future legal predicaments in the context of private space activities. It evaluates the two key possibilities of either the addition of a protocol or the adoption of a new treaty. It proposes that a protocol will be poised to particularly provide for the legal dilemmas that are bound to arise from the increasing prominence of the private space industry and its significant role in changing the landscape of future space exploration.