

56th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Poster Session (P)

Author: Mr. Viraj Parikh
National Law School of India University, India

Mr. Badrinarayanan Seetharaman
National Law School of India University, India

THE LEGALITY OF UNILATERAL REMOVAL OF OBJECTS LAUNCHED INTO OUTER SPACE:
RE-INTERPRETING ARTICLE VIII OF THE OUTER SPACE TREATY**Abstract**

The increasing incidence of space debris in outer space, especially the Low Earth Orbit poses a significant threat to the peaceful activities of all space-faring states. The recent 2009 Iridium-Cosmos collision illustrates the potential harm that non-functional, uncontrollable and abandoned space objects pose to active space objects. Currently, in order to avoid such collisions, satellite operators conduct conjunction analysis and perform collision avoidance maneuvers. However, given the unreliable nature of the data and the significant costs involved in the maneuver, there may arise situations where States may prefer to remove/destroy space objects under the registry of other states. The technology that allows states to perform such operations is already being developed. [For instance, the Clean-mE satellite being developed by Switzerland] However, such attempts at unilateral removal of space objects poses many legal hurdles.

Article VIII of the Outer Space Treaty states that the State of Registry shall retain jurisdiction and control over objects launched into Outer Space and that ownership is not affected by the presence of an object in Outer Space. Eminent publicists such as R.C. Hall, N. Jasentuliyana, H. Baker, J. Rendlemann have opined that Article VIII grants permanent ownership and jurisdiction over space objects, and does not authorize exceptions allowing for the removal of space objects without the owner's consent. For this interpretation, they rely on Article VIII Sentence 3, OST and Article V of the Rescue and Return Agreement. Hence, according to them, no state other than the state of registry can unilaterally remove a space object even if it is abandoned or res derelict.

In this paper the authors wish to present an alternative interpretation of Article VIII by adopting the interpretative methodology enshrined in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. A plain and literal interpretation of Article VIII supports the right of any state to unilaterally remove a non-functional and uncontrollable object if it poses a threat to its space activities. Such an interpretation is confirmed by the legislative history of the provision. Furthermore, it is submitted that the idea of "permanent ownership" in Outer Space defeats the very object and purpose of the Outer Space Treaty, specifically the principle of non-appropriation.

The paper also explores the possibility of precluding the wrongfulness of such a unilateral removal by invoking the doctrine of necessity available in General International Law.