

57th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
6th Nandasiri Jasentuliyana Keynote Lecture on Space Law and Young Scholars Session (1)

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THE LIMITS OF NON-APPROPRIATION

Abstract

Article I of the Outer Space Treaty guarantees free exploration and use of outer space and grants free access to all areas of celestial bodies. Article II, however, limits unfettered use by preventing appropriation. This paper will examine the question of when permissible use crosses the line into appropriation, specifically with regard to a State's rights and obligations with respect to (1) an object in active use and (2) an object that is no longer functional.

First, I will explore the issue of whether, and to what extent, a State may maintain long-term ownership and control over a space object without violating the ban on appropriation. I will use the regulation of the geosynchronous orbit by the ITU as an analogy to think about what rights should be allowed on the Moon and other celestial bodies. Specifically, I will explore and analyze the limits of a nation's rights over a space object under its jurisdiction and control and when such long-term use becomes de facto appropriation. This section will also consider not only the temporal limits on use, but will also contemplate the spatial perimeter of such State's jurisdiction and control, that is, whether a zone of non-interference around a space object is permissible.

Second, the paper will seek to analyze the implications of abandonment of property on the Moon or other celestial bodies, should the launching State decide it no longer wants to maintain jurisdiction and control. This could happen if the object is non-functional or simply that the object is old and no longer useful to the State. If a State renounces its control over a space object, but must retain liability should the object cause any damage, a State would have no incentive to cede any control. However, this appears to bring the State's actions into opposition with Article II, as the State would effectively be appropriating the territory in question by preventing other States from using or accessing the site. Finally, this section may examine the orthogonal questions of whether salvage of "abandoned" space objects by third parties is allowed or whether it constitutes improper interference with another State's property, and who would bear the liability for damage caused to a third party as a result of such activities.