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NEMO DAT QUOD NON HABET: YOU CAN'T GIVE AWAY WHAT YOU DON'T HAVE.

Abstract

May a State lawfully grant rights to mine a celestial body over which the State does not already possess sovereignty?

A fundamental principle of legal title under international and domestic law is that a transferor of property cannot transfer greater title than the transferor himself possesses. The legal basis extends back to Roman Law. Common Law employs the legal maxim: "nemo dat quod non habet" ("no one gives what he does not have"); while Civil Law employs: "Nemo plus iuris ad alium transferre potest quam ipse habet," that is to say, "one cannot transfer more rights than one himself has."

The proposed article will examine how property rights have historically been acquired and transferred under public and private international law. The analysis will start with terrestrial mining, then examine the mining of deep seabed minerals, before turning to the right to extract celestial resources. It will conclude that, historically, either sovereignty or international agreement has been a prerequisite for a State to grant mining rights for the extraction of resources.