

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
Interactive Presentations - IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (IP)

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CAN A NON-FUNCTIONAL FACILITY ON THE MOON BECOME RES NULLIUS AND BE OCCUPIED BY A SUBSEQUENT STATE? ANALYZING THE LIMITATION ON THE STATE JURISDICTION AND OWNERSHIP OVER FACILITIES CONSTRUCTED ON THE MOON.

**Abstract**

Permanent Structures and Facilities on the Moon are often established at locations containing rare and valuable lunar resources. On the long run owing to loss of technical support, change in state policy or owing to scientific considerations such facilities can temporarily or permanently be vacated by the state of registry thereby rendering it inactive. Under such circumstances can another State desiring to derive benefits from that location including the already established structure, occupy and use the inactive Facility on the Moon without consent of the state of registry?

Under Article VIII of the Outer Space Treaty the state of registry retains Jurisdiction and control over the facility and its ownership remains unaffected. Therefore any unauthorized occupation and use of the facility irrespective of its functionality is prohibited. However such legal situation can enable the first comers to deny free access to the enriched areas of the moon to the subsequent states, despite not using them, resulting in a violation of right to free access guaranteed under Article I of the Outer Space Treaty.

Therefore this paper will interpret the purpose of Article VIII of the Outer Space Treaty by implementing the methods of interpretation under the Vienna Conventions on the Law of Treaties and further rely on the drafting history to establish that the State Jurisdiction is valid only when it is necessary to exercise the right to explore and use the Moon, that a permanent facility cannot be detached from the lunar surface and returned to the owner and that guaranteeing a perpetual ownership would defeat the object of the Outer Space Treaty.

Secondly this paper will analyze the limitations on the right of the state over its facility based on its non-use by drawing analogy to the durational limitation imposed on the right to occupy the geosynchronous orbit slots under the ITU regime and also analyze the physical limitation based on the concept of functional jurisdiction.

Finally this paper will conclude that State jurisdiction and ownership ceases over an inactive facility, and that such facility can become a res nullius and be lawfully occupied and used by a subsequent state.