Planetary Resources Pre-Posession: That other 1/10th of the law

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Formal Recognition: As mankind prepares to accept the task of launching commercial interests off-planet, it is our responsibility to ensure that the transition occurs free of any Earthly shackles. To this end, my contribution concerns an issue at the heart of Outer Space legislation, whose implications affecting a core foundational element of private space-faring interests have persisted for the better part of a century. Since 1967, one question, answer to which affects the whole of humanity on an infinite scope, has been a thorn in the side of space law: Does the Outer Space Treaty outlaw off-planet property for private citizens, or does it not? Private property rights were neither provided for or deemed unlawful within the text of Article II of the 1967 Outer Space Treaty. For 50 years, however, the debate has raged on. It is my aim to forever lay this controversy to rest with a definitive answer based not on treaty opinions or citations, but documentary evidence, utilizing appropriate legal channels leading to a decision executed by the competent authority responsible: A formal determination on the legality of a private individual's claim to property on a celestial body under the Outer Space Treaty, was officially rendered.

The Truth On Space Property: Through issuance of The Great Seal of the USA, the legal validity of a document claiming private ownership of off planet resources was determined in 2008 by the Secretary of State who, in full faith and credit, deemed the document fit for international legal use[1]. Such formal Authentication affirms that no part of the document conflicts with any domestic or international statutesxxx; global responsibility for authorization and continuing supervision is upheld by the arm of the US government charged with the task of interpreting and applying treaty law in a manner consistent with the corresponding interests of all states party[2]. A private sovereign claim to celestial body, this legal instrument was executed in absolute compliance with the Outer Space Treaty, setting precedent as *prima facie* evidence that such claims are **legal under the current framework.** A major roadblock now removed, this can serve as a stepping stone as the concept of private sovereignty beyond national borders begins to solidify. Instead of being killed in the cradle, there is infinite room for the application of the human right to property throughout the cosmos. The remaining sections cover potentialavenues for growth, and the hindrances that should be dealt with in a timely fashion.-

Forward progress at the National Level: The Space Settlement Initiative's proposal calls for new entities on the national level emerging to administer celestial property claims[3], however, the full scope of "National Appropriation" forbidden by the Outer Space Treaty has not been defined. Without clear definition of "national appropriation," it is unclear to what extent forward progress on a national level is hindered. In the Law of the Sea Treaty, "appropriation" is defined as exercise of sovereignty[4]. Further steps toward recognition of mineral claims through national legislation was not explicitly ruled out. The USA enacted the Deep Sea-Bed Hard Minerals Act (DSHMA), whose function was to recognize territorial claims by private entities on the ocean floor under international waters without assertion of sovereignty[5]. The precedent set by the DSHMA is not so easily rubber-stamped into similar national legislation concerning Outer Space. The scope of "national appropriation" is not spelled out in the Outer Space Treaty. It is possible that *any and all* new legislation enacted on the national level designating an existing agency with the task of recognizing off-planet property claims would be in violation of the non-appropriation clause in Article II. Without clear definition of "national appropriation," it is unclear to what extent forward progress on a national level is hindered.

Supranational Threats to Sovereignty: Though seeds have been planted, a regime charged with task of managing property and mineral claims on celestial bodies does not exist within the framework of the United Nations[6]. The only supranational entity concerned with territorial claims outside national borders is the International Sea Bed Authority, its powers designated within the Law of the Sea Treaty, whereby the deep sea-bed is governed by the Common Heritage principle - Private property is outright forbidden, private citizens placed under the authority of a top-down regime[7]. The Moon Treaty threatens to apply this same kind of governance across the solar system[8], and contrary to popular belief, *is* a "treaty in force", and *is* gaining signatories and support on a yearly basis. A new treaty, favorable to property rights, would require unanimous consent within UNCOPUOS - Such a treaty would conflict with the interests of the Moon Agreement's 13 or so signatories. As long as this treaty is in force, hope for a commercially viable solution under the framework of the United Nations is mathematically impossible.

Conclusion: Having at last confirmed the legality of off-planet private property claims under the current legal framework, further action is needed to ensure the interests of the private sector, favorable to property rights, are reflected in future legislation. We should think twice about pressing for such action on the national level, as this may constitute exactly the type of "national appropriation" that is prohibited in the Outer Space Treaty. It is time for direct action by private citizens on the international level. Here, the legislative climate affecting individual sovereignty beyond national borders is downright hostile. Treaty law negatively affecting off-planet property rights must be eliminated at the source. Decisions affecting humanity as a whole shall no longer be rendered in proceedings closed to the public. The only way to fully insure our interests are protected is through establishment of a permanent platform through which private citizens/natural persons may interact directly with the treaty-making process of the United Nations Committee on Peaceful Uses for Outer Space.

References:

[1] US Department of State Authentication #09005779-1 11/21/08

[2] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, *Article VI*

[3] Space Land Claim Recognition: Leveraging the inherent value of Lunar land for billions in private sector investment by Douglas O. Jobes and Alan B. Wasser, The Space Settlement Institute, 2008. (www.space-settlement-institute.org/Articles/LCRbrief.pdf)

[4] Third United Nations Convention on the Law of the Sea (henceforth, UNCLOS) *Art. 137, para. 1*

[5] 30 USC Chapter 26 – Deep Sea Bed Hard Minerals Act

[6] Agreement Governing The Activities Of States On The Moon And Other Celestial Bodies (1979), Art. XI para. 5

[7] UNCLOS *Art. 136, Art 137, para. 2-3*

[8] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *Art. I (scope), Art. XI (governance)*