

Committee on the Peaceful Uses of Outer Space (COPUOS)

Property Claims in Outer Space



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GWCIA XXV

Dear Delegates,

To be your chairperson this year, at GWCIA, is a fantastic privilege which I've been looking forward to. Please take a moment to appreciate both the personal and academic value of this opportunity. It's all too easy to minimize the importance of Model UN. At the end of the day, what we do is merely a simulation. However, it's critical that we treat this event with the utmost dedication and respect. MUN isn't just about passing resolutions. MUN is an activity which fosters intellectual and personal growth, so take a moment to appreciate others and realize that the only resolution capable of unifying a room, is the friends you made along the way.

When I created this background guide, I chose to chair COPUOS for a very specific reason, and I feel it's important that I communicate this reason to you as a delegate of my committee. The future of humanity rests in our ability to cooperate in the final frontier, the frontier of space. Not only is it critical that we maintain a deeper understanding of issues in space as citizens of the world, but it's important that we devise a framework of rules for people to play by. If we can't effectively do this, then conflict will oust cooperation and our progress as a space-bound species will surely be stifled.

The UN is both loved, and hated, for its ability to write rules. I have explicitly chosen to push the delegates of this committee into uncharted territory, where most concrete rules are yet to be written. It's up to YOU to craft the framework of the future for your nation, and all nations, in the final frontier.

Lastly, I want to remind you that because the issues we'll be debating have not been fully settled yet under international law, they will become increasingly relevant in the coming decade or so.

That being said, welcome to GWCIA, and have fun solving the issues of the future.

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- Justin Diamond

P.S. I'm available to aid you in background research on your country for this committee. If you're having any trouble, don't hesitate to reach out to me at JustinDiamond@gwu.edu. Also, I highly suggest looking through my own sources in order to get a deeper understanding of the topics. Some are very interesting reads!

Situational Context

SpaceX, a famous American corporation run by Elon Musk, has already considered staking a private claim on the Mars site at which they intend to build a permanent base. The United States will inevitably be faced with the option of formally recognizing this claim. Many nations which oppose any and all celestial property claims would inevitably dispute the legality of nationally recognizing such a claim under the current laws which dictate state-action in space, namely the 1967 Outer Space Treaty (OST), however, such a claim may still be interpreted as legal. Existing disputes of a similar nature already occurred in 1976, when eight equatorial nations (some having already ratified the OST) declared sovereignty over their countries' geostationary orbits via legal technicality. This sparked a major worldwide debate in international space law over claims in space, and whether or not geostationary orbit counts as space or a natural resource. In this instance, present international bodies failed yet again to arrive at a conclusive set of rules and regulations, and so their declaration went largely ignored.

It is up to the delegates of this committee to craft a landmark resolution on property claims in space, despite the vague nature of current and contingent international space law. The conditions of this situation also require delegates to consider/debate the goals of human development in space. In this committee, each 5 delegation will dispute the merits, drawbacks, and the legality or illegality of nationally recognizing private claims upon celestial property, both on Mars, and in other areas of space such as geostationary orbit. Many scholars and lawyers have debated this in great detail, and it will be the duty of this committee to settle the dispute(s) once and for all. The question is whether it would be an exercise of sovereignty, and therefore a violation of the Outer Space Treaty (especially Article II) for the U.S. to pass legislation

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agreeing to recognize the right of privately funded, permanent Lunar or Martian settlements, regardless of nationality, to claim land around their base.

Historical Background

The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, which is generally referred to as the “Outer Space Treaty,” was negotiated by the US and USSR in order to put an end to the costly space race. Many disagreements were “papered over” or peppered with “vague language that could be interpreted in whichever way,” in order to compromise and reach a consensual agreement. One relevant point of contention was that the USSR wanted to ban all private enterprises from entering space, but the US refused, and the clause was therefore omitted. Article II of this agreement refers specifically to the legality of staking sovereignty claims on extraterrestrial property, a section which has been heavily subjected to scrutiny by scholars of space law.

The most similar dispute regarding celestial claims occurred in 1976, when eight equatorial states met in Bogotá, Colombia to assert their sovereignty over their own geostationary orbits. The Bogotá Declaration included Colombia, Indonesia, and Kenya, with Brazil as an observer state. A satellite is most useful when it’s put in geostationary orbit (as opposed to geosynchronous orbit), so this was seen as a very valuable and necessary claim. This could also explain why some members of the international community reacted quite sharply, acting to quickly reject this declaration. A satellite placed in geostationary orbit turns within the same period as the earth itself and therefore remains stationary in relation to the underlying point

in the earth. As viewed from a point on the earth's surface, the satellite always occupies the same fixed position in the sky.

The area above the equator which qualifies as geostationary orbit is approximately 36,000km above Earth's surface. Because of this precise location, geostationary orbit is a very limited resource, and the countries directly underneath it generally agree that this space should be considered their own "natural resource." This distinction, however, is very important. Unlike the national recognition of privately claimed property in space, the states behind the Bogotá Declaration were actually aiming to qualify geostationary orbit as an Earth based resource — a claim which many scientists and countries rushed to debunk.

Some years later, a second international treaty commonly referred to as the "1979 Moon Treaty" was crafted by international lawmakers. This agreement would have turned all jurisdiction in space over to the collective will of an international body. This was supposed to effectively bar all claims of legal ownership in space unless otherwise accepted by the entire international community. Despite lawmakers' efforts, most countries refused to ratify it. Today, the Moon Treaty is widely considered to be non-binding, and is excluded from international law. 6 Regardless, some states remain supportive of this treaty's operating principles.

SpaceX was founded in 2002. It's most well known for being spearheaded by an eccentric and ambitious CEO, Elon Musk. SpaceX is one of the world's fastest growing providers of space services, and it's currently in-contract for over 100 launch missions worth approximately \$12 billion. This involves work with commercial organizations, as well as the US government. According to Elon Musk, "SpaceX is working on a next generation of fully reusable launch vehicles that will be the most powerful ever built, capable of carrying humans to Mars

and other destinations in the solar system.” In the wake of this rapid technological development, it’s not unreasonable that a figure such as Elon Musk would seek recognition from the country in which he is incorporated before attempting to establish a permanent settlement on Mars. While this hasn’t yet occurred, it’s something that the international community must inevitably come to an agreement on.

Solutions

There are multiple schools of legal thought which can be applied to the interpretation of the 1967 Outer Space Treaty. It’s critically important that each delegate understands their national ethos towards the development of outer space. This goes hand in hand with applying any given legal interpretation. While each country has its own goals and ideals with regards to development and policy in space, there are two outstanding interpretations and many more potential resolutions.

Those skeptical of privatizing development in space seek to guard the final frontier from all hands with the exception of those belonging to the sovereign state. As a solution, these states may seek anything from barring state recognition of private entities, to banning all forms of private property in space. This stems from the concern that some nation, presumably the U.S., could use that permission to cheat the no-sovereignty rules of existing treaties. Those who promote the privatization of development in space could, in theory, seek any number of additional resolutions in order to fundamentally protect, or even encourage, the private development of space. By maintaining their right to recognize private claims, they could legitimize such operations in good faith. Because there are many conceivable interpretations of

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the Outer Space Treaty, one could reasonably argue that a sovereign state recognizing private claims is already in line with contingent international law. The USA and its allies would therefore be able to recognise land claims without either renegotiation or withdrawing from the treaty. The opposition, however, maintains the legal difference between “to recognize” and “to confer,” accusing the US of the latter.

Some nations, especially equatorial ones, may still be concerned with staking a national claim on their own geostationary orbits. This is distinctly separate from the issue of recognizing private land claims, but in many ways it’s a related idea. Solutions which respond to this issue could fall on either side of the aisle, however, it’s important that the arguments on behalf of said solutions remain nuanced and consistent.

It should also be noted that every single country within this committee has some historical or contemporary stance on at least one of the matters, agreements, or declarations relevant to this discussion. Because of this, understanding the priorities of your country (and other countries) is essential. Not every country will have a clearly defined bloc or position. Where there is a lack of information, however, delegates’ must aim to accurately extrapolate from the existing values and interests of the country they represent in order to make a suitable decision. It’s also important to remember that the goal of COPUOS is to strive towards the maintenance of our ability to peacefully, cooperatively, and sustainably promote human development in space.

Questions to Consider

1. What are my country's historic goals and priorities in space and space law?
2. What agreements has my country signed and/or ratified and which agreements has my country rejected?
3. How can I make an argument based on the precedent of existing agreements my nation may or may not be bound to?
4. What is my country's experience with space, and what are its plans for the future of space?
5. What is my country's relationship with the private/commercial space sector?
6. Does my country have any space law implemented at the national level?
7. What are the geographic, economic, political, or military implications of my position?
8. What am I willing to negotiate on? What principles and practices are non-negotiable?
9. How can I attract as many partners as possible while maintaining specific resolutions?

Be conscientious of who your bloc-mates are, but try not to ignore national policy preferences for the sole purpose of siding with historical allies. In some cases, space policy transcends traditional political divides, so make sure you're weighing your priorities effectively.

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