

Multi-Arena Strategy for Solidifying Private Property Rights

Wes Faires – 2026 – Space Rights, LLC

ABSTRACT

In order to gain positive interpretation of the Outer Space Treaty regarding permissible property rights for the private sector, it is necessary to analyze the Outer Space Treaty within the broader set of treaties dealing with territory beyond national borders. This presentation will compare and contrast clauses within the Outer Space Treaty system, with that of other United Nations instruments pertaining to resource utilization.

Forward progress on the national level has been made with national legislation in four nations affirming that private property rights and resource utilization is not inherently a violation of the Outer Space Treaty framework. This presentation will cover the international reaction to such national legislation. The Artemis Accords offer a way around national legislation, but stops short of addressing property rights for private citizens. With favorable momentum toward acceptance of the notion that extraction of resources do not violate the Outer Space Treaty, the next hurdle for the private sector is resources in place (in-situ).

A new Space Treaty within the United Nations is unlikely, but possible. Efforts are being made within the private sector, and within the United Nations Committee on Peaceful Uses of Outer Space towards clarification of the ambiguities within the Outer Space Treaty framework. This presentation will analyze the methodology for this to be accomplished, hopefully clarify the likelihood of private sector influence should such a treaty come to pass.

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1967 Outer Space Treaty

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 (Outer Space Treaty) is first and foremost a disarmament treaty. Second, and equally important, The Outer Space Treaty contained a clause to prevent annexation of the Moon and other celestial bodies by any nation:

“Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”
— Article II, 1967 Outer Space Treaty[1]

This article effectively prohibits exercise of territorial sovereignty in Outer Space by nations, however, No explicit provisions exist concerning rights for private citizens. And for good reason. At the time of negotiations, the concept of direct involvement by the private sector was completely alien – treaty proceedings were reserved for national governments only.

Advocates for private-sector property rights have cited as justification for their position the lack of direct prohibition of such rights. considering evidence provided in other treaties addressing property rights in general and, more specifically, those beyond national borders, it can be deduced that, had there been an intention to exclude the right to property of natural persons, the Outer Space Treaty would have stated this to a clear extent.

Justification that the prohibition of “national appropriation” in Article II functions to forbid individual citizens of member nations from property rights loses all merit upon comparative analysis with similar treaties in the international arena: What becomes clear is that specific legal terminology exists for the prohibition or restriction of private individuals from property and property-related rights within other United Nations treaties governing territory beyond national borders. *The text of the Outer Space Treaty does not contain that terminology.*

The 1979 Moon Agreement

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, commonly known as the Moon Agreement, was opened for signature on December 18, 1979. Article 1 establishes that the provisions of this Agreement relating to the moon shall also apply to other celestial bodies within the solar system, other than the earth.[2] Article 11 of the Moon Agreement contains explicit and comprehensive prohibitions that leave no ambiguity regarding private property rights:

"The moon and its natural resources are the common heritage of mankind. The moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means. Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person." [3]

The phrase "or of any natural person" represents the critical distinguishing language. Unlike the 1967 Outer Space Treaty, which addresses only "national appropriation," the Moon Agreement explicitly extends its prohibition to natural persons—individual human beings. This comprehensive prohibition leaves no room for interpretation: private property rights are explicitly foreclosed. Furthermore, Article 11(5) attempts to undertake to establish an international regime, as an alternative governance structure, but no significant effort has been put forth in this regard.[4]

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Law of the Sea Convention (1982)

The United Nations Convention on the Law of the Sea (UNCLOS), concluded on December 10, 1982, provides another instructive example of explicit prohibition. Part XI of UNCLOS addresses "The Area," defined in Article 136 as the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, declaring it the common heritage of mankind. Article 137, titled "Legal status of the Area and its resources,"[5] contains comprehensive prohibitions that parallel those in the Moon Agreement:

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof.

No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.

3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized."

The phrases "natural or juridical person" appear twice in Article 137, explicitly extending the prohibition beyond states to include both natural persons (individual human beings) and juridical persons (corporate entities). This represents unambiguous legal drafting designed to foreclose any possibility of private claims to resources. Moreover, UNCLOS establishes the International Seabed Authority as the governing body through which "mankind as a whole" exercises rights over deep seabed resources.

These two treaties—the 1979 Moon Agreement and the 1982 United Nations Convention on the Law of the Sea—containing the specific phrases "or of any natural person" and "or natural or juridical person" represent standard legal terminology for extending prohibitions beyond states to include private individuals and entities. **Both treaties are notoriously top-down and fraught with controversy, making alternative approaches through national-level interpretation both practical and necessary.**

For their part, opponents of the concept of off-planet property rights have argued that, with national entity able to assert territorial claims, and no direct treaty provisions favorable to private citizens, off-planet property rights are hindered from forward progress. This argument falls flat in the face of the Universal Declaration of Human Rights.

1948 Universal Declaration of Human Rights

The Universal Declaration of Human Rights stands as a core foundational document of the United Nations, establishing fundamental principles that apply universally to all peoples and all nations. Article 17 of this Declaration affirms two essential principles: first, that everyone has the right to own property alone as well as in association with others; and second, that no one shall be arbitrarily deprived of his property. [6]

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1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

--Article 17, Universal Declaration of Human Rights

Eleanor Roosevelt, in her address "On the Adoption of the Universal Declaration of Human Rights" delivered on December 9, 1948, clarified the nature and purpose of this foundational document: "It is not a treaty; it is not an international agreement. It is a Declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations." [7]

The contemporary relevance of these foundational principles extends directly into space policy through UNISPACE + 50 and beyond, whose overarching thematic priority centers on "Sustainable Development in Space." A critical aspect of this initiative calls for ensuring that the principles of the 2030 Agenda for Sustainable Development are upheld in space activities. Significantly, the 2030 Agenda is grounded in and re-affirms the Universal Declaration of Human Rights, as explicitly stated in Resolution A/RES/70/1, paragraphs 10 and 19. [8] This creates a direct linkage between the 1948 establishment of fundamental human rights, including property rights, and current international space policy objectives.

As such, any forward progress on the United Nations level should ensure that human rights and the fundamental concept of property therein are upheld. *Conceptually, future evolution of an international schema favorable to private resource utilization in Outer Space is wide open.*

National Legislation

National legislation favorable to space resource utilization by private entities was passed in the USA, [9] Luxembourg, [10] United Arab Emirates [11] and Japan. [12] *** These stop short of addressing "resources in place" (in-situ) and only apply to "extracted resources". Inevitably, the question arose as to whether these acts of unilateral legislation in and of itself constituted national appropriation, prompting this response from Roscosmos in 2017:

"Russia believes that states mustn't adopt any laws and regulations on a unilateral basis because space is our common heritage and belongs to everyone," "We consider the United Nations as a suitable to discuss these issues." -Roscosmos General Director

Bilateral Efforts - Artemis Accords

The US Executive Order Encouraging International Support for the Recovery and Use of Space Resources served to produce a move toward bilateral negotiations by way of the Artemis Accords, where partnerships with nations are centered around favorable resource utilization with respect to the Outer Space Treaty framework.

The Signatories emphasize that the extraction and utilization of space resources, including any recovery from the surface or subsurface of the Moon, Mars, comets, or asteroids, should be executed in a manner that complies with the Outer Space Treaty and in support of safe and sustainable space activities. The Signatories affirm that the extraction of space resources does not inherently constitute national appropriation under Article II of the Outer Space Treaty, and that contracts and other legal instruments relating to space resources should be consistent with that Treaty." [13]

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Extracted vs In-Situ Resource Utilization

The Artemis Accords speaks to nations, without mention of private entities directly, again, stopping short of addressing in-situ resources (surface/subsurface resources in place). Recent trends on national and bilateral agreements affirming extracted resources are permissible under the Outer Space Treaty has led to a false narrative that private entities rights to resources in place (in-situ) are prohibited - this requires correction: Only the Moon Agreement directly prohibits private entities from surface/subsurface property rights. With respect to the Outer Space Treaty, Artemis Accords and national legislation, no text serves to explicitly forbid development of property rights for resources in place for private entities. The rules simply haven't been written yet.

Private Sector-Led Efforts on the National Level

In the absence of an internationally agreed upon mechanism for private property rights, favorable precedent for private sector rights to resources in place can be rendered under Article VI of the Outer Space Treaty provides a clear framework for authorization and supervision of private activities:

"States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies, shall require authorization and continuing supervision by appropriate State Party to the Treaty." [14]

On the private sector level, efforts are underway to approach the competent authorities in multiple nations seeking determination in official capacity that private sector projects relating to resource utilization upon celestial bodies by private entities do not constitute violation of the Outer Space Treaty.

Prior to the 2015 United States legislation on space resources, I approached competent national authorities to render favorable interpretation of the Outer Space Treaty, specifically seeking determination that a private individual's claim to property rights upon the three stars of Orion's Belt, as well as a claim to mineral rights upon a minor planet, was not in violation of the 1967 Outer Space Treaty.

Through this mechanism, assertion of a claim to property rights or subsurface mineral interest by a natural or juridical person situated on a near-earth celestial body may gain confirmation by the competent national authority that such claim is not in violation of the 1967 Outer Space Treaty. The authorization and supervision mechanism of Article VI, rather than serving as a barrier, can function as the very means by which private property rights gain legitimacy.

The focus of these efforts is to render favorable interpretation of the current treaty framework governing outer space with respect to private property rights and resource utilization, and to do so without litigation, under current legislation, and free from accusation of any violation of the non-appropriation principle within the Outer Space Treaty.

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Developments in the International Arena

Hague International Space Resources Governance Working Group

On the international level, forward progress has been made toward the facilitation of private sector interest in future legislation pertaining to Outer Space. The Hague International Space Resources Working Group has put forth Building Blocks seeking to open dialogue with those private and public sector entities specifically working on developing a framework for resource utilization across the world. “Private sector participants and governments should be involved in the designation or establishment of an international body responsible for the identification of best practices of the utilization of space resources.”[15]

United Nations Committee on Peaceful Uses of Outer Space

Finally, the question of resource utilization has risen at the source of space legislation, within the United Nations Committee on Peaceful Uses of Outer Space (UNCOPUOS). The Working Group on Legal Aspects of Space Resources under the United Nations Committee on Peaceful Uses of Outer Space, presents an opportunity for a legally binding instrument to develop under the auspices of the United Nations Committee on Peaceful Uses of Outer Space.

Since 2021, the Working Group on Legal Aspects of Space Resource Activities has served as a platform for the presentation of the views of interested stakeholders representing a wide range of academia, civil society, institutional and private actors. Finalization of a set of initial recommended principles for such activities for the consideration of and consensus agreement by the Committee, followed by possible adoption by the General Assembly as a dedicated resolution or other action is set for 2027.[14]

The final text could serve as basis for a new international agreement, and as a United Nations instrument, should be consistent with United Nations core principles. As such, suggested contributions contrary to the Universal Declaration of Human Rights should be excluded. One particular proposed clause in the Updated draft set of recommended principles for space resource activities by the Chair and the Vice-Chair of the Working Group on Legal Aspects of Space Resource Activities, 28 April 2026,[17] repeats verbatim Article 11(3) of the Moon Agreement:

Principle 2: Freedom of Exploration and Use, Access [for All] and Non-Appropriation (C) (a)

“[...]Neither the surface nor the subsurface of the Moon and other celestial bodies, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person.[...]” [18]

This proposed text's arbitrary prohibition of “property” encompassing all “natural persons” is diametrically in opposition of the Universal Declaration of Human Rights, Article 17:

- 1. Everyone has the right to own property alone as well as in association with others.**
- 2. No one shall be arbitrarily deprived of his property.**

Efforts should be made to ensure such contradictory text is not solidified in the final draft of the Working Group on Space Resource Utilization.

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CONCLUSION

The limitations of nations on national appropriation The 1967 Outer Space Treaty do not extend directly to private-sector resource utilization, evident upon comparison to the language of the treaties that do. If national legislation and bilateral agreements favoring private ownership of extracted resources are any indication that some form of property rights will develop for resources in place. Any further progress under the auspices of the United Nations should take place with respect to the right to property espoused within the Universal Declaration of Human Rights. The right combination of action across private, national, and international arenas can solidify a favorable climate for private property rights within the current and future international framework governing outer space.

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REFERENCES

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- 2 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, art I., opened for signature Dec. 18, 1979, 1363 U.N.T.S. 21 [hereinafter Moon Agreement],
- 3 Moon Agreement, art. 11, para. 3
- 4 Moon Agreement, art. 11, para 7 and art. 18
- 5 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]
- 6 Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948), Art. 17
- 7 Eleanor Roosevelt, "On the Adoption of the Universal Declaration of Human Rights" December 9, 1948
- 8 United Nations General Assembly Resolution 70/1 "2030 Agenda for Sustainable Development" (A/RES/70/1) of 25 September 2015, para. 10, 19
- 9 51 U.S. Code § 51303 - Asteroid resource and space resource rights, Pub. L. 114-90
- 10 Loi du 20 juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace [Law of July 20th 2017 On The Exploration and Use of Space Resources], art. 1–2, Lux. Space Agency
- 11 Federal Law No. 12 on the Regulation of the Space Sector, art. 4 (Dec. 19, 2019) (U.A.E.)
- 12 Space Resources Act No. 83 of June 23, 2021 (Japan)
- 13 <https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf>
signed on September 13, 2020, by the administrator of the U.S. space agency, NASA
- 14 Outer Space Treaty, Article VI
- 15 See: ISBN #9789462361218, section iv, Page 130) The trend toward the consideration of private sector entities as a factor in negotiations for a future framework is of the utmost importance.
- 16 Five-year workplan and methods of work for the Working Group (A/AC.105/1260, Annex II, Appendix (<https://www.unoosa.org/oosa/en/ourwork/copuos/lsc/space-resources/index.html>)
- 17 Non-paper submitted by China titled "Contribution of the Delegation of China concerning the Principle of Non-Appropriation and Other Principles in the Initial Draft Set of Recommended Principles for Space Resource Activities" https://www.unoosa.org/documents/pdf/copuos/lsc/space-resources/Contribution_of_the_Delegation_of_China_concerning_the_Principle_of_Non-Appropriation_and_Other_Principles_in_the_Initial_Draft_Set_of_Recommended_Principles_for_Space_Resource_Activities.pdf
- 18 Updated draft set of recommended principles for space resource activities by the Chair and the Vice-Chair of the Working Group on Legal Aspects of Space Resource Activities 28 April 2026 https://www.unoosa.org/documents/pdf/copuos/lsc/space-resources/Updated_draft_set_of_initial_recommended_principles_as_of_28_April.pdf



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