# 1NC vs Cogito

## 1

#### Space tech advancements and control will produce a qualitative military advantage – REMs, fusion power, AI, lunar base, intelligence, and space weapon platforms. US space privatization maintains a shaky but tenable US lead.

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Advancements in space technology are quickly leading to an inevitable conflict over control in space, which includes control over the Moon through lunar bases and potentially control over the colonization of Mars. The PRC has added the capability to "physically attack satellites using antisatellite [ASAT] interceptors, miniature space mines, and ground-based lasers" into its military space program.1 These capabilities fall under the guise of the Outer Space Treaty’s permission to destroy militarized satellites.2 These technologies could easily be used offensively to create a decision advantage in combat. Some analysts believe that the deliberate collision of PRC satellites with older satellites shows that the PRC has experimented with "parasitic satellites" designed to lie dormant in the vicinity of a target until activated, potentially for hacking purposes.3 The PRC even "reportedly launched a hypersonic 'prototype space fighter' " in 2010. It continues to be locked in an intense space race with the rest of the space-savvy international community—particularly Russia, the United States, and India—with a short-term goal of controlling the Moon with a lunar base and a longer-term goal of populating Mars under the rule of the PRC.4

The development of maneuverable space planes and lunar bases is not unique to the PRC. The National Aeronautical and Space Administration (NASA) developed the X-37 and X-37B space planes, and the Russian Federation is developing a maneuverable space plane using nuclear technology for power.5 All of these nations (as well as several others, including India and Japan) intend to establish lunar bases within the next 20 years.6 Despite the array of international treaties and agreements promoting peaceful global development of space resources in the name of science and humanity, it is unlikely that space will remain weapon free and likely that it will become the next frontier of global combat. Space weapons in development may use robotics, nanotechnology, and directed energy such as microwaves and lasers.7 With the establishment of a lunar base, a nation with advanced laser technology, advanced cyber weaponry, maneuverable space planes, satellite targeting capabilities, nano-science stealth technology, artificial intelligence, and self-guiding nanotechnology bullets would undoubtedly have the capacity to rule the Earth as it sees fit. All of these technologies already exist or are in development phases, and they are the future of intelligence and warfare.8

The US government and NASA, unlike the PRC and the RF, have been encouraging the commercialization of space cargo transportation to meet future American needs for access to the International Space Station (ISS) and to improve the research and development of spaceborne technologies and other developments.9 Private sector involvement has also opened the market for alternative rocket propulsion technologies that can achieve government and commercial goals for space at lower costs and faster than possible under the existing bureaucracy of NASA. Enhanced private sector involvement in space travel utilizes the free-market system to foster radical developments and investment for both government and private sector programs, incentivizing broader participation, which benefits both. Commercializing aspects of standard space operations, such as the recent partnership with SpaceX, will also pave the way for space tourism. This will free up resources for NASA and the newly minted US Space Force to pursue broader goals, such as manned deep space travel, a lunar base, and manned missions to Mars.

Part 2: Lunar Power

Rare earth metals and other minerals are quickly becoming scarce in the United States to the point where the international space race to claim the Moon and Mars has become a top priority, not just for control over them but for the resources available for exploitation. Uranium has even entered the economic radar as a good idea for boosting the American economy instead of remaining too dangerous to mine due to the associated health risks and environmental hazards. This resource is in abundance on the Moon.10 Estimates suggest there may be up to five million tons of Helium-3 (3He) contained within the lunar regolith.11 This has the potential to meet all of [hu]mankind's power needs for thousands of years when used with fusion power.12 On top of the resources potentially available, the Moon provides a unique launching position for future missions to Mars with a faster, more direct, and more efficient path to the Red Planet.13 Control over the Moon is an inherent factor in the future of the human race.

Uranium has long been a part of the nuclear fission enterprise on Earth but comes with high costs, including radioactive waste and extreme health and environmental hazards due to the radiation produced in the fission process. Terrestrial reserves of other energy-producing resources, like oil and natural gas, have also been projected to be exhausted within 50–100 years under current and projected mining and usage rates.14 Alternatively, the element tritium (T), which has a half-life of 12.32 years, naturally decays into 3He,15 which can be used to create a new kind of power—fusion power. Fusion power can be generated by combining deuterium (D) with either more D, T, or 3He, using the following calculations shown in order of their ignition temperatures: D + T = 4He [Helium-4] + n [neutrons] + 17.6 MeV [Million electron Volts] D + D = T + H [Hydrogen] + 4.0 MeV (50%) = 3He + n + 3.3 MeV (50%) D + 3He = 4He + H + 18.4 MeV16 Fusion power can also be created by combining 3He with more 3He, creating Helium-4 (4He).17 The combination of 3He and 3He is the most energy efficient, producing the greatest net energy,18 but also requires the highest ignition temperature to achieve fusion.19 Unfortunately, 3He exists only in minute amounts on Earth.20 The nation that establishes a mining and transportation industry capable of bringing lunar 3He to Earth, and develops a fusion plant network that transforms 3He into power, could control a substantial portion of the planet’s energy industry for decades. Some scientific estimates discount both the estimates of the potential amount of extractable 3He in the lunar regolith and the potential to achieve industrial fusion reactors on Earth capable of processing it. Exemplifying this scientific stance are the calculations of Ian Crawford, who believes both prospects are greatly exaggerated and that there are only approximately 220,507 tons of 3He available in logical extraction areas, such as the titanium-rich lunar basalt flats.21 Despite his dissent, Crawford admits even lunar resources that seem impractical and economically inefficient to transport resources to Earth may provide substantial economic benefits for space-based uses, such as solar power systems and spacecraft fusion engines, for example,22 which would not require transport back to Earth. Earth's finite resources make lunar and space resource exploitation an inevitability. The most pertinent factor governing future human resource exploitation in space is the question of which nation will achieve a successful and effective industrial supply chain first. The most probable three nations to achieve this are the US, the PRC, and the RF, and the three areas that need to be navigated to succeed are facility establishment, production/refinement, and transportation. Establishing lunar facilities is the easiest of these goals, especially when lunar resources that can be used for building are taken into account, which decreases the amount of materials needed to be brought to the Moon and the time needed for construction. In 2008, a NASA experiment found that lunar regolith has potential construction properties. When scientists heated the regolith and used sulfur as a binding agent, they made "waterless concrete," which can be molded and is nearly as strong as concrete when it hardens.23 This process requires minimal effort and relies primarily on direct heat application and the ability to shape the regolith. Consequently, the entire process can be automated by robots with the appropriate tools on the lunar surface, such as the ones NASA began developing specifically for this purpose in 2009.24 The simplicity of the operational requirements means that these three nations already have the technical capability to begin construction using lunar soil after arriving on the Moon. They will also all be capable of bringing any other materials that would be necessary to construct facilities or bases on the lunar surface. Unlike the US, and contrary to existing international law, the PRC's stance on the Moon is that it is territory,25 despite the prohibition on "national appropriation" of celestial bodies outlined in Article II of the Outer Space Treaty.26 The PRC has also proposed mining 3He for future fusion power opportunities.27 The RF, while not openly pursuing a territorial ambition for the Moon, is certainly exploring and advancing prospects of economic development, including 3He extraction and tourism.28 Facility development and resource exploitation areas on the Moon are limited. This will exacerbate the race for prime locations and desirable resources, particularly at the poles, where water ice is believed to exist in large quantities (which can be used to sustain lunar human habitation), and in the titanium- and 3He-rich basalt flats of Mare Tranquillitatis and Oceanus Procellarum.29 Once established, facility operations can begin to extract and refine resources either for use on the lunar surface or for transportation to Earth. Transportation of materials from the Moon to Earth is a substantial financial and logistical undertaking. It will not be easy to show a profit after the considerable expenses associated with it. Nevertheless, extraction and transportation of 3He and other resources to Earth, specifically for fusion power production, have been expressed as long-term goals of the PRC and the RF within decades. Interestingly, the US has not stated this as a goal but has already shifted its space transportation industry sufficiently toward the private sector. The private sector will have the most viable opportunity to build the first industrial space transportation system, specifically because of advantages in the American free-market system.30 By encouraging private sector participation in the space industry and commercializing space transportation, the US has made production of space technologies competitive with proposals in the National Space Policy.31 A competitive industry makes substantial investments in research, development, and production of space transports; engine components for space travel; and tools for use in zero gravity. America cannot afford to fall behind in the race for lunar facility establishment and resource exploitation. This is for reasons of economic and national security and the future security of human expansion into space as the Moon offers the most efficient launching position for missions to Earth's red neighbor, Mars. Part 3: Mars Domination Mars is widely accepted by the scientific community to be the most plausible planet for the first human habitation on a celestial body and, consequently, the most likely location for the first space colony and eventually a second planet for humankind. Thus, Mars is a desirable goal for nations involved in space exploration for many reasons. The territory on Mars, for example, will most likely become marketable for economic value to civilians in the long term. The Outer Space Treaty prevents ownership of territory on celestial bodies but makes no mention of ownership or sale for profit of structures built on, or items brought to, celestial bodies, just as there is no explicit language in the treaty preventing profit-based resource exploitation on celestial bodies by either governments, organizations, or private nationals.32 Additionally, the inevitability of Mars becoming a second planet inhabited by humanity must be considered, along with all of the implications of living spaces and ownership of property that will eventually follow. Denying this inevitability and claiming it as outlawed by international law due to the prohibition on appropriating territory on a celestial body would essentially equate owning property on Earth as also outlawed by international law. After all, Earth is also a celestial body. Language in the treaty encourages expansion into space and essentially says that if persons, governments, or organizations build something on a celestial body, they own that building33 and can do what they want with it, including selling it. They cannot, however, claim to own the planet's ground outside the building—yet. Resources on Mars, while still not mapped out as substantially as lunar resources have been, will likewise create new markets for economic prosperity and national wealth, including more 3He deposits from solar winds like those found in lunar regolith along with substantially high concentrations of iron.34 In addition to buildings constructed on celestial bodies, spacecraft and facilities constructed in space and on celestial bodies are also considered to be the territory of the owning nation, which means that the UN Charter applies to facilities and spacecraft in space and on celestial bodies. UN Charter Article 2(4), in particular, protects space explorers and potential future residents on Mars by prohibiting the "use of force against the territorial integrity" of another nation party to the treaty,35 which all space-faring nations are. Article 51 further dictates that if attacked, "the inherent right of . . . self-defense" shall not be impaired.36 Article V of the Outer Space Treaty prescribes that, in space, all humans are bound to "render all possible assistance to" each other as "envoys of Mankind."37 Essentially, a peaceful international course is possible—even mandated—for human expansion into space. Unfortunately, the PRC and the RF regard space and celestial bodies as territorial goals,38 leading to the assumption that attempts will be made to control and defend such territories as necessary to achieve space superiority, control over space resources, and managerial power over the future colonization of Mars. Control over Mars, in addition to affecting resource exploitation, transportation, and scientific advancements, also has implications for the direction of humanity in space. Establishment of a human colony, or human colonies, on Mars will eventually lead to territorial spaces, development of the land and air (potentially involving terraforming the planet for atmospheric enhancement), and security issues. While an established colony on the Red Planet is still likely decades away, trends within the PRC and RF governments suggest that any established colony on Mars under their jurisdiction would be authoritarian, weaponized, and secret. Given the nature of weather on Mars, fortified structures are easily justified, and the lack of a conventional weapons ban on celestial bodies makes weaponization of such a colony both legal and desirable, mainly because of the third inherently desired factor—secrecy. The inevitability of PRC and RF presence on Mars also suggests that any US developments will also include fortifications and weaponization. While the Outer Space Treaty mandates cooperation between nations on celestial bodies, the extreme distance between Earth and Mars means that a compliance verification system with effective monitoring and enforcement will be complicated, if not impossible, for the foreseeable future. For these reasons, a nation that effectively controls near-Earth space and establishes a security presence on the Moon will effectively be in a position to control Mars. Part 4: Space Control Celestial bodies are not the only potential fields of conflict in space, and in the short term, space itself has become a much more immediately relevant focus for spacefaring nations and the world. This is particularly the case in the vicinity of Earth, including orbital paths for communication technologies, weapon platforms, and sensors. Technological improvements and the proliferation of nation-state and private sector interest and capacity to enter space are causing the acceleration of an inevitability—usable orbital space around Earth is diminishing.39 Satellites and other spaceborne assets orbiting Earth are quickly filling up all of the most useful places to perform their assigned functions within Earth's various orbits, and space debris is complicating matters even further. Increasing numbers of space objects are causing difficulty in establishing safe orbital paths for newly launched spacecraft while increasing the risk to launches destined for deep space.40 Adding to these complications are international developments of ASAT weapons, many of which add to the more than 500,000 pieces of space debris traveling as fast as 17,500 mph41 already orbiting Earth.42 ASATs in use and under development include essentially two broad areas: kinetic energy (KE), such as missiles and rail guns, which impact targets in space; and directed energy (DE), which includes lasers, particle beams, and cyber weapons.43 The Outer Space Treaty, while prohibiting nuclear weapons from being used in any way in space including being stationed in space, "has no specific provision prohibiting the use of conventional weapons, [including lasers], in outer space,"44 which inherently authorizes them. The Outer Space Treaty also contains no prohibition of such weapons being stationed on space-based platforms, including on celestial bodies, or of them being used to target objects on Earth, in space, or on celestial bodies.45 In other words, these weapons are legal in every way, regardless of the potential damage they can cause to international stability and humanity. There are, however, multiple ongoing debates over the nature, definitions, and classifications of several kinds of ASATs currently in operation or in developmental phases. Nearly every KE ASAT results in a large amount of space debris, which causes an abundance of future and immediate problems for space activities, including endangerment of the basic military and commercial functions of satellites for the Global Positioning System (GPS), communications, and recreation. Space debris is therefore a highly undesirable side effect for any nation to risk and potentially dangerous to the integrity of a nation's armed forces. David Koplow addresses this issue in a substantially relevant and logical way in his article “An Inference about Interference: A Surprising Application of Existing International Law to Inhibit Anti-Satellite Weapons.” His stated thesis is as follows: “The [National Technical Means] NTM-protection provisions of arms control treaties already prohibit the testing and use of destructive, debris-creating ASATs, because it is foreseeable that the resulting cloud of space junk will, sooner or later, impermissibly interfere with the operation of another state's NTM satellite, such as by colliding with it or causing it to maneuver away from its preferred orbital parameters into a safer, but less useful, location.”46 By "interfering" with these NTM verifications mandated by multiple treaties, Koplow suggests that intentional actions creating space debris are already outlawed by international law, and that the development of debris creating KE ASATs should cease and be banned immediately.47 Laser weapons, particle beams, and weapons containing depleted uranium are also under debate due to their radioactivity as well as nuclear processes used for some of their operations. Some posit that nuclear activities or materials within a weapon system should constitute classifying them as nuclear weapons, thereby outlawing them in space per the Outer Space Treaty's nuclear weapons ban.48 Advocates for these weapons declare that the weapons are not nuclear. Of the three primary types debated, laser weapons use a nuclear or chemical reaction process to fire a radioactive beam, particle beams rapidly fire atomic charged particles at a target, and hypervelocity rod bundle weapons and railguns use depleted uranium as ammunition.49 Finally, the potential exists for the use of a nuclear explosion in space designed to generate an electromagnetic pulse (EMP) attack on an Earth target, which the RF "has worked on developing" in the form of an “EMP ASAT.”50 With the RF’s recent developments in ASATs and its stated intent “to station weapons in space,”51 the complete weaponization of space by the RF and other nations—including the US and the PRC—is inevitable. The RF and PRC are aggressively pursuing ASAT weapon advancements and preparing for space combat operations, including the RF recently fielding a "ground-based laser weapon" even as it publicly advocated for space not to be weaponized.52 Part 5: The Future of Space Space exploration converges on two of Sun Tzu's concepts of the strategic battlespace: “open ground” and the “ground of intersecting highways.” The former consists of areas where all sides have "liberty of movement" and the latter of areas where "contiguous states" converge.53 On open ground, Sun Tzu advises not "to block the enemy’s way," and on intersecting grounds he suggests to "join hands with your allies.54 Space is essentially a combination of these types of ground, where all nations are contiguously connected, and yet it consists of a legally recognized area of free movement for all persons and nations. Interestingly, Sun Tzu’s The Art of War, written over 2,000 years ago, advocates indirectly for peaceful human expansion into space, where allied nations proceed forth together while intentionally avoiding negative engagements with potential adversaries. This ancient concept of human cooperation and peaceful coexistence is also consistent with the Department of Defense's (DOD) and intelligence community's (IC) National Security Space Policy55 and the National Space Policy of the United States of America.56 Executive Order (EO) 13914, signed on 6 April 2020, clarifies the position of the US government that while international cooperation in space exploration is essentially mandatory, America "does not view [space] as a global commons,"57 reiterating that the Outer Space Treaty does in fact protect the individual interests of nations in space, including the right to self-defense. The policy further clarifies the intent of the United States to harvest materials from celestial bodies and strengthens the implied relationships with both the international community and the private sector concerning space exploration and related developments.58 By combining these principles, this renewed position on space developments further complements Sun Tzu’s ideas of the strategic battlespace in relation to the space domain moving into the future, regarding space as an area that can be used and exploited by everyone, but acknowledging that claims, defense, and security are also going to be essential factors in the way mankind moves forward in the space domain. In addressing the impact of space exploration, and the subsequent superiority gained by the PRC, the RF, or the US in the process, it is important to recognize the three principle issues of the strategic space environment outlined in these national policies: congestion, contestation, and competitiveness. The US IC is mandated by section 1.1 of EO 12333 to "provide . . . the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats,"59 which now include threats from space and threats toward US space assets. Congestion, contestation, and competitiveness in space now directly impact the IC's ability to effectively pursue its mandate under EO 12333 and must be addressed collectively to ensure the future national security of the United States on Earth and in space. Enhancing the space industrial base’s ability to innovate and participate in the expansion of humankind into space fosters a unique opportunity to share with, and benefit from, research and development initiatives related to activities in space. Combining private sector and government resources together has the potential to greatly accelerate advancements across a wide range of space assets—including spacecraft developments, zero gravity research, energy production, and weapon applications—all of which will help minimize the risks of congestion, contestation, and competitiveness. Congestion in space refers to objects, including active devices and dangerous debris, filling up the usable orbital paths used for government and commercial purposes, primarily satellites. It also applies to finite amounts of bandwidth and frequencies used for transmissions that are currently being exhausted by demand threatening to exceed supply.60 Congestion will also inherently refer to space traffic once an industry exists that requires transportation between the Earth and the Moon, as well as to physical locations for lunar and Martian resource exploitation facilities and extraction points and places to build and operate on celestial bodies, including the Moon and Mars. This will eventually include a significant focus on the colonization of Mars since large portions of the planet are unsuitable for human habitation due to terrain, radiation, meteoroids, and weather. Short-term intelligence and counterintelligence impacts from the congestion of near-Earth space consist of primarily radio interference, protecting satellites from becoming compromised, effective deployment and concealment of collection platforms, and ensuring the integrity of protected information in transit.

Sharing space in accordance with Sun Tzu’s ancient wisdom does not mean ceding it, and while space debris is the primary factor in congestion, contestation is becoming an issue due to potential adversarial ASATs. Contestation is an anticipated inevitability and one that will grow exponentially as more nations enter space and with further developments and potential use of ASATs, either in war, by accident, or for other reasons. Murphy’s Law applies, even in space. Currently, competitiveness is driving both the potential for contestation as well as the congestion in near-Earth space. Commercial and multi-governmental competition is increasing for space-related research and development, deployment of assets, and physical space for occupation by those assets. Intelligence agencies in many nations, including allies and adversaries of the US, are now advancing the deployment, use, and decision advantages of spaceborne intelligence assets, including space-based surveillance and weapons platforms. Reasserting US superiority over the space environment is vital to the continuation of American leadership on Earth and the effectiveness of IC assurance of national security through space superiority. American leadership in space exploration is the only way to ensure that humanity's expansion into the stars is undertaken with the ideologies of liberty and free-market economics leading the way.

America’s leadership in ingenuity and technological developments, combined with free-market capitalism, has transformed the face of the world for more than two centuries. Its leadership has created the environment necessary to explore game-changing space technologies. These technologies will revolutionize the entire space industry. For example, the Variable Specific Impulse Magnetoplasma Rocket (VASIMR) is an experimental electromagnetic thruster for spacecraft propulsion that will dramatically reduce travel time to Mars and other destinations.61 Commercial spacecraft like the Dream Chaser Cargo System will result in a private sector space travel industry, incentivizing space tourism and, potentially, a space cargo transportation industry. 62 In February 2020, the US Department of Energy announced a $50 million investment in fusion research and development projects across the country.63 One of these is the Plasma Science and Fusion Center at the Massachusetts Institute of Technology with the goal of keeping the United States at the forefront of fusion energy development.64 Another is the Fusion Technology Institute at the University of Wisconsin, which is focusing on advancing research in the field of helium-based fusion power production technologies on Earth.65 This technology will address finite terrestrial energy resources and production of 3He-based electricity from lunar regolith.

These are just a few examples of the future of space technology research and development, and such technologies were all made possible because of the structure of the American free-market system. The biggest challenge for the IC will be to balance President Dwight Eisenhower’s vision with Sun Tzu’s battlefield strategies. Eisenhower understood in 1958 that “through [space] exploration, man hopes to broaden his horizons, add to his knowledge, [and] improve his way of living on earth.”66 Sun Tzu knew that “all warfare is based on deception,” “the highest form of generalship is to balk the enemy's plans,” and the greatest fighters “put themselves beyond the possibility of defeat” to achieve victory.67 American leaders participating in seizing and maintaining US space superiority shoulder this responsibility and must forge a new path forward that enhances human life on Earth, denies the possibility of victory to US adversaries, and ensures the integrity and security of American assets in the space domain as the world moves forward together into the future.

#### Private property rights are key to economic investment in space

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Current space law is unclear as to whether private entities may claim possession of resources extracted from their endeavors in outer space. The lack of certainty prevents private entities from entirely investing in infrastructure and capabilities to access new deposits of resources due to the depletion of minerals and resources on Earth. The establishment of a new space regime devoid of non-appropriation principles found in international law is necessary to motivate private entities to invest the capital in extracting and transporting space resources back to Earth. This Comment seeks to understand how the current framework of space law impacts the property rights of private entities and their claim to resources in space. The 1967 Outer Space Treaty prohibited the claiming of property by sovereign nations. However, the concept of private entities now having the capability to extract resources from outer space has reignited the issue of property rights in outer space. With resources becoming scarcer or priced out of the market, the solution of mining these resources from celestial bodies has caused a new space race. Past multilateral agreements have dealt with similar discoveries such as the polymetallic nodules on the ocean floor; however, these agreements led to disputes as to ownership and the rights to extract said resources. With little to no support from the industrialized nations, the structure of any new regime must ensure access for the benefit of humankind. The benefit of allowing these private entities the right to claim mined resources must be weighed against potential drawbacks in order to create a framework that balances the interest of the free market with that of the common heritage principle. In determining that a suitable framework fails to guide a new space regime, this Comment proposes that a new governing body comprising a rotation of space-faring and nonspacefaring nations act as a regulatory body for the interest of all of humankind.

I. INTRODUCTION On October 4, 1957, the Space Age officially began when the Soviet Union launched Sputnik into orbit, the first successful, human made satellite.1 A little more than a decade later, on July 20, 1969, American astronauts Neil Armstrong and Edwin “Buzz” Aldrin became the first humans to land and step foot on the moon.2 Neil Armstrong marked the completion of John F. Kenney’s national goal of landing an astronaut on the moon when he radioed back to Earth “[t]hat’s one small step for man, one giant leap for mankind.”3 The launch of Sputnik, the moon landing, and other endeavors achieved by the scientific community, kick-started a chain of events leading to the current ambition of exploring outer space and mining resources throughout the solar system. The push for unlocking low-cost space travel and space industrialization by entrepreneurs, like Elon Musk and Jeff Bezos, propels the search for extraterrestrial materials such as water and minerals.4 According to NASA, minerals found in the asteroid belt between Mars and Jupiter contain an estimated value of approximately $100 billion for every person on Earth.5 However, uncertainty lingers because private entities are unsure that they will possess property rights to their payload or the mined celestial body.6 Celestial bodies refer to naturally occurring objects in space. The United States Commercial Space Transportation Advisory Committee (“COMSTAC”), an advisory body to the Federal Aviation Administration’s (“FAA”) Office of Commercial Space Transportation (“FAA-AST”), has undertaken review regarding the granting of private property licenses.7 COMSTAC expressed a desire to confirm that private entity resource extractions may be owned and utilized as it deems appropriate.8

The current framework of space law is a combination of agreements with the foundation of space law consisting of 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”).9 At the time of signing, the Outer Space Treaty hoped to foster cooperative and peaceful exploration of outer space without discrimination of any kind.10 However, Article II of the Outer Space Treaty contains the bane of private property rights in outer space, which forbids the national appropriation of the moon and other celestial bodies.11 While the Outer Space Treaty explicitly mentions the prohibition of public entities claiming celestial bodies, private enterprises risk failing to have their interest in property rights recognized by the global community. Private entities and investors grapple with the issues pertaining to their rights to mine and extract resources from outer space legally. Without further international recognition of their property rights, private entities may shy away from exploring the concept of celestial mining. The issue of not knowing what laws are applicable, or to whom private companies are accountable, impedes the progress private entities make in achieving their goal of harvesting extraterrestrial resources. Private entities fear that the non-appropriation clause of Article II of the Outer Space Treaty, the epicenter of the issue, will strip them of the right to transport their mined resources back to Earth. A new legal regime will likely need to be formed that facilitates the continuation of innovation and promotes the exploration of outer space. Whether or not past private and public international doctrines, i.e., the law of the sea, may provide guidance in creating a new doctrine of space law is yet to be determined.

The advancement in modern technology, along with the depletion of natural resources, creates a unique opportunity for private entities to resolve this issue through the exploitation of outer space. Space law is once again relevant due to its inadequacies in protecting the property rights of said entities in space. Part II will explore the different treaties and principles that gave rise to space law, and Part III will analyze whether the application of such principles should continue, or if the establishment of a new regime offers a more beneficial long-term solution. Part IV will then explore the structure of a new outer space regime and the enforcement of property rights. II. LEGAL PRINCIPLES INFLUENCING THE DEVELOPMENT OF SPACE LAW As the world continues to transform and evolve, lawmakers across the globe must adapt past laws or develop and ratify new laws to address current events and situations. The venture into outer space is similar to that of famous past explorations in which customary laws guided journeys, providing a framework of starting points for the crafting of the present-age space law. Space law must adapt and evolve as engineers and the science community make discoveries that past generations could only dream about. The United Nations General Assembly (“General Assembly”) maintains the view that “International Law” is not spatially restricted, and that its charter is relevant even in the outer reaches of outer space and to celestial bodies.12 When analogizing to present international treaties, the most applicable set of principles is that of the high seas.13 Based on the principle of res communis, issues arise because there is a lack of precise rules.14 Since the beginning of the space race in 1957, the United Nations facilitated general agreements on how space exploration should be conducted. However, an understanding of past and current laws is necessary to determine how to proceed in recognizing property rights in space for private entities.

A. History of the Current Space Law Framework Space law is the body of law applicable to and involved in governing space-related activities.15 Space law is “associated with the rules, principles, and standards of international law appearing in the five international treaties and five sets of principles governing outer space,” originating under the supervision of the United Nations Organization.16 The foundation of space law, similar to general international law, is composed of matters such as international agreements, treaties, conventions, rules and regulations of international organizations, General Assembly resolutions, national laws, executive and administrative orders, and judicial decisions.17 Following the launch of Sputnik in 1957, the General Assembly created an ad hoc committee concerned with identifying legal issues involving outer space activities.18 The Committee on the Peaceful Uses of Outer Space (“COPUOS”) was established in 1958 and was made permanent on December 12, 1959.19 COPUOS is intended to endorse peaceful international collaboration and establish the common interest of humankind in outer space.20 It is the preeminent body regarding the formation of international space law, drafting five international treaties and five sets of principles regarding space-related activities.21 Topics covered by the treaties include nonappropriation of outer space by any one country, arms control within space, and the freedom of exploration.22 The primary focus of the treaties being any and all activities performed in outer space be done so to enhance the well-being of humankind and the promotion of international cooperation.23 In 1966, COPUOS proposed the Outer Space Treaty, which was ratified soon after in 1967.24 The Outer Space Treaty forms the bedrock for international cooperation in the peaceful exploration of space and the development of new law.25 The Outer Space Treaty’s principles focus on exploration carried out for the benefit and in the interest of all countries (Art. I), preclusion of sovereign states from appropriating celestial bodies in outer space (Art. II), the performance of activities in outer space in accordance with international law (Art. III), and the prohibition of launching any kinds of objects or armaments into orbit that possess nuclear weapons or any other kinds of weapons of mass destruction (Art. IV).26 Of importance to this Comment is the language of Article II. Article II does not explicitly mention the property rights of private entities; the failure to do so led to a split regarding whether such rights breach the Outer Space Treaty.27 COPUOS concluded four more treaties following the ratification of the Outer Space Treaty.28 The second treaty was the Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space (“Rescue Agreement”), which entered into force in 1968.29 The Rescue Agreement elaborates on Articles V and VII of the Outer Space Treaty.30 It provides that nations rescue and assist distressed astronauts, which also includes returning them to their launching state.31 Also, states, upon request, are to provide assistance in recovering space objects that re-enter Earth outside of the territory of its proper owner.32 The Convention on International Liability for Damage Caused by Space Objects (“Liability Convention”), the third of the five COPUOS treaties, was under the scrutiny of the Legal Subcommittee of COPUOS for approximately nine years.33 The General Assembly ultimately reached an agreement in 1971, and the Liability Convention entered into force in 1972.34 The Liability Convention expounds on Article VII of the Outer Space Treaty providing “that a launching [s]tate shall be absolutely liable to pay compensation for damage caused by its space objects on the surface of the Earth or to aircraft, and liable for damage due to its faults in space.”35 The Liability Convention possesses the procedures regarding claim settlement for damages.36 The COPUOS Legal Subcommittee drafted the Convention on Registration of Objects Launched into Outer Space (“Registration Convention”), the fourth treaty, from 1962 until the General Assembly adopted the treaty in 1974.37 The convention entered into force in September 1976.38 This treaty builds upon desires in prior treaties to provide a mechanism to assist identifying space objects.39 The Registration Convention made a request for the Secretary-General to maintain the registration and provide open admittance to the information.40 The fifth and final treaty by COPUOS was the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (“Moon Agreement”).41 The General Assembly adopted the agreement in 1979; however, the Moon Agreement lacked widespread ratification, with only five countries signing by July 1984.42 The overall purpose of the Moon Agreement was to reinforce the principles highlighted in the provisions of the Outer Space Treaty and their application to the Moon and other celestial bodies.43 The Moon Agreement seeks to encourage peaceful exploration, avoid disruption of celestial environments, and alert the United Nations of the location and purpose of any construction of a station on a celestial body.44 In addition, the Moon and its natural resources are identified as belonging to the common heritage of humankind and, should exploitation of these resources become feasible, an international regime should be created to oversee such progress.45 Since its inception, the Moon Agreement, containing the resource limitation found within the common heritage principle, garnered little support internationally, particularly within the United States.46 With only fourteen signatories, none being spacefaring nations, the Moon Agreement lacks international recognition as law.47 However, the provisions of the Moon Agreement may block the full economic potential and development of space.48 A comprehension of international law aids in understanding the principle of the common heritage of humankind emphasized in the Moon Agreement

#### Primacy solves arms races and great power war – unipolarity is sustainable, and prevents power vacuums and global escalation

**Brands 18** [(Hal, Henry Kissinger Distinguished Professor at Johns Hopkins University's School of Advanced International Studies and a senior fellow at the Center for Strategic and Budgetary Assessments) "American Grand Strategy in the Age of Trump," Page 129-133]

Since World War II, the United States has had a military second to none. Since the Cold War, America has committed to having overwhelming military primacy. The idea, as George W. Bush declared in 2002, that America must possess “strengths beyond challenge” has featured in every major U.S. strategy document for a quarter century; it has also been reflected in concrete terms.6

From the early 1990s, for example, the United States consistently accounted for around 35 to 45 percent of world defense spending and maintained peerless global power-projection capabilities.7 Perhaps more important, U.S. primacy was also unrivaled in key overseas strategic regions—Europe, East Asia, the Middle East. From thrashing Saddam Hussein’s million-man Iraqi military during Operation Desert Storm, to deploying—with impunity—two carrier strike groups off Taiwan during the China-Taiwan crisis of 1995– 96, Washington has been able to project military power superior to anything a regional rival could employ even on its own geopolitical doorstep.

This military dominance has constituted the hard-power backbone of an ambitious global strategy. After the Cold War, U.S. policymakers committed to averting a return to the unstable multipolarity of earlier eras, and to perpetuating the more favorable unipolar order. They committed to building on the successes of the postwar era by further advancing liberal political values and an open international economy, and to suppressing international scourges such as rogue states, nuclear proliferation, and catastrophic terrorism. And because they recognized that military force remained the ultima ratio regum, they understood the centrality of military preponderance.

Washington would need the military power necessary to underwrite worldwide alliance commitments. It would have to preserve substantial overmatch versus any potential great-power rival. It must be able to answer the sharpest challenges to the international system, such as Saddam’s invasion of Kuwait in 1990 or jihadist extremism after 9/11. Finally, because prevailing global norms generally reflect hard-power realities, America would need the superiority to assure that its own values remained ascendant. It was impolitic to say that U.S. strategy and the international order required “strengths beyond challenge,” but it was not at all inaccurate.

American primacy, moreover, was eminently affordable. At the height of the Cold War, the United States spent over 12 percent of GDP on defense. Since the mid-1990s, the number has usually been between 3 and 4 percent.8 In a historically favorable international environment, Washington could enjoy primacy—and its geopolitical fruits—on the cheap.

Yet U.S. strategy also heeded, at least until recently, the fact that there was a limit to how cheaply that primacy could be had. The American military did shrink significantly during the 1990s, but U.S. officials understood that if Washington cut back too far, its primacy would erode to a point where it ceased to deliver its geopolitical benefits. Alliances would lose credibility; the stability of key regions would be eroded; rivals would be emboldened; international crises would go unaddressed. American primacy was thus like a reasonably priced insurance policy. It required nontrivial expenditures, but protected against far costlier outcomes.9 Washington paid its insurance premiums for two decades after the Cold War. But more recently American primacy and strategic solvency have been imperiled.

THE DARKENING HORIZON For most of the post–Cold War era, the international system was— by historical standards—remarkably benign. Dangers existed, and as the terrorist attacks of September 11, 2001, demonstrated, they could manifest with horrific effect. But for two decades after the Soviet collapse, the world was characterized by remarkably low levels of great-power competition, high levels of security in key theaters such as Europe and East Asia, and the comparative weakness of those “rogue” actors—Iran, Iraq, North Korea, al-Qaeda—who most aggressively challenged American power. During the 1990s, some observers even spoke of a “strategic pause,” the idea being that the end of the Cold War had afforded the United States a respite from normal levels of geopolitical danger and competition. Now, however, the strategic horizon is darkening, due to four factors.

First, great-power military competition is back. The world’s two leading authoritarian powers—China and Russia—are seeking regional hegemony, contesting global norms such as nonaggression and freedom of navigation, and developing the military punch to underwrite these ambitions. Notwithstanding severe economic and demographic problems, Russia has conducted a major military modernization emphasizing nuclear weapons, high-end conventional capabilities, and rapid-deployment and special operations forces— and utilized many of these capabilities in conflicts in Ukraine and Syria.10 China, meanwhile, has carried out a buildup of historic proportions, with constant-dollar defense outlays rising from US$26 billion in 1995 to US$226 billion in 2016.11 Ominously, these expenditures have funded development of power-projection and antiaccess/area denial (A2/AD) tools necessary to threaten China’s neighbors and complicate U.S. intervention on their behalf. Washington has grown accustomed to having a generational military lead; Russian and Chinese modernization efforts are now creating a far more competitive environment.

#### **Nuclear war causes extinction**

Starr ’17 (Steven; Steven Starr is the director of the University of Missouri’s Clinical Laboratory Science Program, as well as a senior scientist at the Physicians for Social Responsibility. He has been published in the Bulletin of the Atomic Scientists and the Strategic Arms Reduction (STAR) website of the Moscow Institute of Physics and Technology; Jan 09, 2017; “Turning a Blind Eye Towards Armageddon — U.S. Leaders Reject Nuclear Winter Studies”; Federation of American Scientists; https://fas.org/2017/01/turning-a-blind-eye-towards-armageddon-u-s-leaders-reject-nuclear-winter-studies/; DOA December 8, 2019; JPark)

The detonation of an atomic bomb with this explosive power will **instantly ignite fires** over a surface area of **three** to **five** square miles. In the recent studies, the scientists calculated that the blast, fire, and radiation from a war fought with 100 atomic bombs could produce direct fatalities comparable to all of those worldwide in **World War II**, or to those once estimated for a “counterforce” nuclear war between the superpowers. However, the long-term environmental effects of the war could significantly disrupt the global weather for **at least a decade**, which would likely result in a vast global **famine**. The scientists predicted that nuclear firestorms in the burning cities would cause at least five million tons of black carbon smoke to quickly rise above cloud level into the stratosphere, where it could not be rained out. The smoke would circle the Earth in **less than two weeks** and would form a global stratospheric smoke layer that would remain for **more than a decade**. The smoke would absorb warming sunlight, which would heat the smoke to temperatures near the boiling point of water, producing ozone losses of **20 to 50 percent** over populated areas. This would almost double the amount of UV-B reaching the most populated regions of the mid-latitudes, and it would create UV-B indices **unprecedented in human history**. In North America and Central Europe, the time required to get a painful sunburn at mid-day in June could decrease to as little as six minutes for fair-skinned individuals. As the smoke layer blocked warming sunlight from reaching the Earth’s surface, it would produce the coldest average surface temperatures in the last 1,000 years. The scientists calculated that global food production would decrease by **20 to 40 percent** during a five-year period following such a war. Medical experts have predicted that the shortening of growing seasons and corresponding decreases in agricultural production could cause up to **two billion people** to perish **from famine**. The climatologists also investigated the effects of a nuclear war fought with the vastly more powerful modern thermonuclear weapons possessed by the United States, Russia, China, France, and England. Some of the thermonuclear weapons constructed during the 1950s and 1960s were **1,000 times more powerful** than an atomic bomb. During the last 30 years, the average size of thermonuclear or “strategic” nuclear weapons has decreased. Yet today, each of the approximately 3,540 strategic weapons deployed by the United States and Russia is seven to 80 times more powerful than the atomic bombs modeled in the India-Pakistan study. The smallest strategic nuclear weapon has an explosive power of 100,000 tons of TNT, compared to an atomic bomb with an average explosive power of 15,000 tons of TNT. Strategic nuclear weapons produce much larger nuclear firestorms than do atomic bombs. For example, a standard Russian 800-kiloton warhead, on an average day, will ignite fires covering a surface area of 90 to 152 square miles. A war fought with hundreds or thousands of U.S. and Russian strategic nuclear weapons would ignite immense nuclear firestorms covering land surface areas of many thousands or tens of thousands of square miles. The scientists calculated that these fires would produce up to 180 million tons of black carbon soot and smoke, which would form a dense, global stratospheric smoke layer. The smoke would remain in the stratosphere for 10 to 20 years, and it would block as much as **70 percent of sunlight** from reaching the surface of the Northern Hemisphere and 35 percent from the Southern Hemisphere. So much sunlight would be blocked by the smoke that the noonday sun would resemble a full moon at midnight. Under such conditions, it would only require a matter of days or weeks for daily minimum temperatures to fall **below freezing** in the largest agricultural areas of the Northern Hemisphere, where freezing temperatures would occur every day for a period of between one to more than two years. Average surface temperatures would become **colder** than those experienced 18,000 years ago at the height of the **last Ice Age**, and the prolonged cold would cause average rainfall to decrease by up to 90%. Growing seasons would be completely eliminated for more than a decade; it would be too cold and dark to grow food crops, which would **doom** the majority of the **human population**.

## 2

#### Counterplan text: The Committee on the Peaceful use of Outer Space ought to

* **establish an application system for property rights on celestial bodies. Applications and approval of property rights should be granted upon the condition of**
* **open disclosure of data gathered in the exploration of a celestial body**
* **Applications must be publicly announced**
* **Property Rights will be made tradeable between private entities**
* **Property Rights will be set to expire on the conclusion of a successful extraction mission**
* **Private Entities will only be allowed one property right grant per celestial body and cannot have more than one grant at a time**
* **Ban the militarization of outer space**

#### The counterplan establishes international norms for safe extraction of resources on celestial bodies while increasing R&D in outer space.

**Steffen 21** [Olaf Steffen, Olaf is a scientist at the Institute of Composite Structures and Adaptive Sytems at the German Aerospace Center. 12-2-2021, "Explore to Exploit: A Data-Centred Approach to Space Mining Regulation," Institute of Composite Structures and Adaptive Systems, German Aerospace Center, [https://www.sciencedirect.com/science/article/pii/S0265964621000515 accessed 12/12/21](https://www.sciencedirect.com/science/article/pii/S0265964621000515%20accessed%2012/12/21)] Adam

4. The data-centred approach to space mining regulation

4.1. Core description of the regulatory regime and mining rights acquisition process

The data gathered in the exploration of a [celestial body](https://www.sciencedirect.com/topics/social-sciences/astronomical-systems) is not only of value for space mining companies for informing them whether, where and how to exploit resources from the body in question, but also for science. The irretrievability of information relating to the solar system contained in the body that will be lost during resource exploitation carries a value for humanity and future generations and can thus be assigned the characteristic of a common heritage for all mankind as invoked in the Moon Agreement. This characteristic makes exploration data an exceptional and unique candidate for use in a mechanism for acquiring mining rights because its preservation is of public interest and its disclosure in exchange for exclusive mining rights does not place any additional burden on the mining company. The following principles would form the cornerstones of the proposed regulatory regime and rights acquisition mechanism based on exploration data:

Without preconditions, no entity has a right to mine the resources of a celestial body.

An international regulatory body administers the existing rights of companies for mining a specific celestial body.

Mining rights to such bodies can be applied for from this international regulatory body, with applications made public. The application expires after a pre-set period.

Mining rights are granted on the provision and disclosure of exploration data on the celestial body within the pre-set period, proposedly gathered in situ, characterising this body and its resources in a pre-defined manner.

The explorer's mining right to the resources of the celestial body is published by the regulatory body in a mining rights grant.

The data concerning the celestial body are made public as part of the rights grant within the domain of all participating members of the regulatory regime.

The exclusive mining rights to any specific body are tradeable.

The scope of the regulatory body with respect to the granting of mining rights is not revenue-oriented.

The international regulatory body would thus act as a curator of a rights register and an attached database of exploration data. The concept is superficially comparable to patent law, where exclusive rights are granted following the disclosure of an invention to incentivise the efforts made in the development process. In the following section, the characteristics of such a regulatory regime are further discussed with respect to the formation of [monopolies](https://www.sciencedirect.com/topics/social-sciences/monopolies), market dynamics, conflict avoidance, inclusivity towards less developed countries and the viability of implementation.

4.2. Discussion and means of implementation

The proposed regulatory mechanism has advantages both from a business/investor and society perspective. First, it prevents already highly capitalised companies from acquiring exploitation rights in bulk to deny competitors those objects that are easiest to exploit or most valuable, which would otherwise be possible in any kind of pay-for-right mechanism and could result in preventing market access to smaller, emerging companies. Thus, early monopoly formation can be avoided.

The use of data disclosure for the granting of mining rights ensures the scientific community has access to this invaluable source of information. In this way, space mining prospecting missions can lead to a boost in research on small celestial bodies at a speed unmatchable by pure government/agency funded science probes. This usefulness to the scientific community could lead to sustained partnerships between prospecting companies and scientific institutions and could even provide a source of funding for the companies through R&D grants and public-private partnerships. The results of the exploration efforts contribute to research on the formation of planets and the history of the solar system and provide valuable insight for space defence against asteroids. The transition of exploration from a tailored mission profile with a purpose-built spacecraft to a standard task in space flight would also lead to a cost reduction of the respective exploration spacecraft through [economies of scale](https://www.sciencedirect.com/topics/social-sciences/economies-of-scale). This describes the very benefits Elvis [[24](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib24)] and Crawford [[25](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib25)] imagined as possible effects of a space economy. Thus, there is an immediate return for society from the exploitation rights grant. It also reconciles the adverse interests of space development and [space science](https://www.sciencedirect.com/topics/social-sciences/space-sciences) as laid out by Schwartz [[26](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib26)]. It ensures that, by exploitation, information contained in celestial bodies is not lost for future generations.The application period should not be set in a manner that creates a situation that can be abused through the potential for stockpiling inventory rights. Rather, it is intended to prevent conflict in the phase before exploration data gathered by a mission, as a prerequisite to the mining rights grant, is available. In other words, only one exploration effort at a time can be permitted for a specific body. The time frame between the application and the granting of mining rights (meaning: availability of the required exploration data set) should be tight and should only consider necessary exploration time on site, transit time and possibly a reasonable launch preparation and data processing markup. These contributors to the application period make it clear that the time frame could be dynamic and individualistic, depending on the exploration target (transit time and duration of exploration) and the technology of the exploration probe (transit time). After the expiration of the application period, applications for the exploration target would again be permissible. To prevent the previously mentioned stockpiling of inventory rights, credible proof of an imminent exploration intention would need to be part of the application process, for example, a fixed launch contract or the advanced build status of the exploration probe. Such a mechanism would not contradict the statement in the OST that outer space shall be free for both exploration and scientific investigation. Applications would not apply to purely scientific exploration. An application would only be necessary as a prerequisite for mining. Even resource prospecting could take place without an application (for whatever reason), with a subsequent application comprising in situ data already gathered. For such cases, the application process would need to provide a short period for objections to enable the secretive explorer to make their efforts public. The publication of the application for the mining rights, which is nothing more than a statement of intention to explore, thus provides a strong measure for avoiding conflict.

The transparency of where exploration spacecraft are located and, at a later stage, where mining activities take place, provides additional benefits for the sustainable use of space, trust building and deterrence against malign misuse of mining technology. Involuntary spacecraft collisions of competitors in deep space are prevented by the reduction of exploration efforts at the same destination through the application for mining rights by one applicant at a time. As pointed out by Newman and Williamson [[20](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib20)], this is relevant because space debris does not de-orbit in deep space as in the case of LEO. Deep space may be vast, but the velocities involved mean that small debris particles are no less dangerous. Considering NEO mining with fleets of small spacecraft, malfunctions and/or destructive events could create debris clouds crossing Earth's orbit around the sun on a regular basis, presenting another danger to satellites in Earth's own orbit. Thus, by effectively preventing the collision of two spacecraft, one source of debris creation can be mitigated through this regulation mechanism. With respect to Deudney's [[11](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib11)] scepticism of asteroid mining and the dual-use character of technology to manipulate orbits of celestial bodies, it has to be stated that this potential is truly inherent to asteroid mining. An asteroid redirect mission for scientific purposes was pursued by NASA [[49](https://www.sciencedirect.com/science/article/pii/S0265964621000515" \l "bib49)] before reorientation towards a manned lunar mission. In one way or another, each type of asteroid mining will require the delivery of the targeted resource to a destination via a comparable technology as formerly envisioned by NASA, be it as a raw material or a useable resource processed in situ, even if this is not necessarily done through redirecting the whole asteroid and placing it in a lunar orbit. However, to be misused as a weapon, space mined resources would have to surpass a certain mass threshold to survive atmospheric entry at the target. This seems unfeasible for currently discussed mining concepts using small-scale spacecraft as described in this article. Redirecting larger masses or whole asteroids would require far more powerful mining vessels or small amounts of thrust over long periods of time. The continuous, (for a mining activity) untypical change in the orbit of an asteroid would make a redirect attempt with hostile intent easily identifiable, effectively deterring such an activity in the first place by ensuring the identification of the aggressor long before the projectile hits its target. The proposed database would provide a catalogue of asteroids with exploration and mining activities in place that should be tracked more closely because of their interaction with spacecraft. This would, in fact, be necessary per se as a precaution to avoid catastrophic mishaps, such as the accidental change of a NEO's orbit to intercept Earth by changing its mass through mining.

## Case

### AT Space War

**1] No space war. Insurmountable barriers and common interests**

Bohumil **Doboš**, scholar at the Institute of Political Studies, Faculty of Social Sciences, Charles University in Prague, Czech Republic, and a coordinator of the Geopolitical Studies Research Centre, **’19**, Geopolitics of the Outer Space, Chapter 3: Outer Space as a Military-Diplomatic Field, Pgs. 48-49)

Despite the theorized potential for the achievement of the terrestrial dominance throughout the utilization of the ultimate high ground and the ease of destruction of space-based assets by the potential space weaponry, the utilization of space weapons is with current technology and no effective means to protect them far from fulfilling this potential (Steinberg 2012, p. 255). **In current global international political and technological setting, the utility of space weapons is very limited**, even if we accept that the ultimate high ground presents the potential to get a decisive tangible military advantage (which is unclear). This stands among the reasons for the lack of their utilization so far. Last but not the least, it must be pointed out that the states also develop passive defense systems designed to protect the satellites on orbit or critical capabilities they provide. These **further decrease the utility of space weapons**. These systems include larger maneuvering capacities, launching of decoys, preparation of spare satellites that are ready for launch in case of ASAT attack on its twin on orbit, or attempts to decrease the visibility of satellites using paint or materials less visible from radars (Moltz 2014, p. 31). Finally, we must look at the main obstacles of connection of the outer space and warfare. The first set of barriers is comprised of **physical obstructions**. As has been presented in the previous chapter, the outer space is very challenging domain to operate in. Environmental factors still present the largest threat to any space military capabilities if compared to any man-made threats (Rendleman 2013, p. 79). A following issue that hinders military operations in the outer space is the predictability of orbital movement. If the reconnaissance satellite's orbit is known, the terrestrial actor might attempt to hide some critical capabilities-an option that is countered by new surveillance techniques (spectrometers, etc.) (Norris 2010, p. 196)-but the hide-and-seek game is on. This same principle is, however, in place for any other space asset-any nation with basic tracking capabilities may quickly detect whether the military asset or weapon is located above its territory or on the other side of the planet and thus mitigate the possible strategic impact of space weapons not aiming at mass destruction. Another possibility is to attempt to destroy the weapon in orbit. Given the level of development for the ASAT technology, it seems that they will prevail over any possible weapon system for the time to come. Next issue, directly connected to the first one, is the utilization of weak physical protection of space objects that need to be as light as possible to reach the orbit and to be able to withstand harsh conditions of the domain. This means that their protection against ASAT weapons is very limited, and, whereas some avoidance techniques are being discussed, they are of limited use in case of ASAT attack. We can thus add to the issue of predictability also the issue of easy destructibility of space weapons and other military hardware (Dolman 2005, p. 40; Anantatmula 2013, p. 137; Steinberg 2012, p. 255). Even if the high ground was effectively achieved and other nations could not attack the space assets directly, there is still a need for communication with those assets from Earth. There are also ground facilities that support and control such weapons located on the surface. Electromagnetic communication with satellites might be jammed or hacked and the ground facilities infiltrated or destroyed thus rendering the possible space weapons useless (Klein 2006, p. 105; Rendleman 2013, p. 81). This issue might be overcome by the establishment of a base controlling these assets outside the Earth-on Moon or lunar orbit, at lunar L-points, etc.-but this perspective remains, for now, unrealistic. Furthermore, **no contemporary actor will risk full space weaponization in the face of possible competition and the possibility of rendering the outer space useless.** No actor is dominant enough to prevent others to challenge any possible attempts to dominate the domain by military means. To quote 2016 Stratfor analysis, "(a) war in space would be devastating to all, and preventing it, rather than finding ways to fight it, will likely remain the goal" (Larnrani 20 16). This stands true unless some space actor finds a utility in disrupting the arena for others.

#### 2] Space commercialization is a strong constraint on conflict – solves space war

Wendy N. Whitman **Cobb 20**, is currently an associate professor of strategy and security studies at the US Air Force's School of Advanced Air and Space Studies, 7-21-2020, "Privatizing Peace: How Commerce Can Reduce Conflict in Space," Routledge & CRC Press, <https://www.routledge.com/Privatizing-Peace-How-Commerce-Can-Reduce-Conflict-in-Space/Cobb/p/book/9780367337834> // AAli

By the end of the twentieth century, scholars zeroed in on the democratic peace theory which attempts to explain why democracies do not go to war with other democracies and why, in some analyses, they seem to be more prone to peace in general than non-democracies. Similar to the golden arches, what is it about democracy that seems to induce such peacefulness? Academics have proposed everything from the nature of mediating institutions to the restraint of public opinion, to trade relations. While these variations will be explored further in Chapter 3, of interest here are the versions that focus explicitly on trade, commercial ties, and capitalism. Along these lines, Erik Gartzke argues, "peace ensues when states lack differences worthy of costly conflict."31 If the costs of conflict are too high, then states should be more unlikely to engage in it. To this end, economic globalization can provide the means through which costs are raised. “The integration of world markets not only facilitates commerce, but also creates new interests inimical to war. Financial interdependence ensures that damage inflicted on one economy travels through the global system, afflicting even aggressors."32 Focusing his analysis primarily on the influence of capitalism, Gartzke's findings suggest that states with markets more closely tied to the global economy are far less likely to experience a militarized dispute.

In thinking about the space environment today, there are obvious principles of capitalism at work. However, China, a major spacefaring state that has been making capitalist reforms, arguably remains far from a true capitalist country. This is especially true in their space industry which is heavily subsidized by the state and almost wholly integrated with China's military.34 Many other states continue to subsidize space activities heavily as well. A better approach through which to examine conflict in space is presented by an offshoot of the capitalist peace which is termed the commercial peace. The commercial peace thesis emphasizes the role of trade and the connections made through it to explain a lack of conflict. Han Dorussen and Hugh Ward write:

Trade is important not only because it creates an economic interest in peace but also because trade generates 'connections' between people that promote communication and understanding.... Based on these ideas, the flow of goods between countries creates a network of ties and communication links. If two countries are more embedded in this network, their relations should be more

peaceful 35

Given the interconnectedness of the global economy to space-based assets, a version of the commercial peace thesis can be used to argue that the chance of conflict in space is less than is commonly understood or recognized precisely because of the extent to which the global economy has become dependent on space-based assets.

To understand this argument, consider a scenario in which Russia, in preparation for a new assault on Eastern Europe, attacks a key US military satellite with the purpose of disrupting and disabling military communications in Europe. This action would conceivably enable the Russians to undertake their attack under more favorable conditions and prevent a quicker response from America and its allies. However, if the satellite was attacked via an ASAT that kinetically destroyed the US satellite, the debris cloud created from the attack could have disastrous consequences beyond military communications Much like the movie Gravity, the debris cloud could cause a chain reaction, hitting and ~~disabling~~ dismantling other satellites that would in turn disrupt civilian communications, business transactions, and perhaps even Russian military satellites. The economic effects of lost satellites would not be restricted to one country alone; the global economic consequences in terms of lost property (satellites), lost transactions, and financial havoc would echo throughout the world, including in Russia itself. Finally, the attack on one satellite could even ultimately endanger the ISS and its inhabitants, several of which are Russians. Destruction of the ISS would negate billions of dollars in investment from not just Russia, but other countries that have participated in it including Japan, Italy, and Canada. Therefore, an attack on a US military satellite would not just be an attack on one but an attack on all.

While the previous scenario highlights several reasons why it would not be in Russia's best interest to attack a US satellite, this book argues that the economic argument is both the strongest and the most restraining especially as space becomes more congested, competitive, contested, and commercialized. The emergence of private space companies enhances this argument. "In the commercial sector, companies need reliability and legal enforcement mechanisms if they are going to operate profitably in a shared environment."36 In order to foster the growing area of space commercialization, companies must be assured that the activities they undertake in space will be protected in some way or, at a minimum, allowed to proceed to the extent where they can reap the profit. This could be done through international organizations that would provide some sort of space traffic control, but the likelihood of a major international breakthrough on rules regarding space is unlikely in the near term. Therefore, actors must rely on the protections afforded them by an increasingly globalized economy that is ever more dependent on space-based assets.

#### 3] OST Fails anyways

**Evanoff 17** [Kyle Evanoff, Kyle is a research associate in international economics and U.S. foreign policy at the Council on Foreign Relations 10/10/17, "The Outer Space Treaty’s Midlife Funk," Council on Foreign Relations [https://www.cfr.org/blog/outer-space-treatys-midlife-funk accessed 12/11/2021](https://www.cfr.org/blog/outer-space-treatys-midlife-funk%20accessed%2012/11/2021)] Adam

Half a century later, however, the Outer Space Treaty has entered something of a funk. Despite the universal aspirations of the UN Committee on the Peaceful Uses of Outer Space, which molded the document into its completed form, many of the principles enshrined within the text are less suited to the present than they were to their native Cold War milieu. While the anachronism has not reached crisis levels, current and foreseeable developments do present challenges for the treaty, heightening the potential for disputes. At the crux of the matter is the ongoing democratization of space. During the 1950s and ‘60s, when the fundamental principles of international space law took shape, only large national governments could afford the enormous outlays required for creating and maintaining a successful space program. In more recent decades, technological advances and new business models have broadened the range of spacefaring actors. Thanks to innovations such as reusable rockets, micro- and nanosatellites, and inflatable space station modules, costs are decreasing and private companies are crowding into the sector. This flurry of activity, known as New Space, promises nothing less than a complete transformation of the way that humans interact with space. Asteroid mining, for example, could eliminate the need to launch many essential materials from Earth, lowering logistical hurdles and enabling largescale in-space fabrication. Companies like Planetary Resources and Deep Space Industries, by extracting and selling useful resources in situ, could help to jumpstart a sustainable space economy. They might also profit from selling valuable commodities back on terra firma. As a recent (bullish) Goldman Sachs report noted, a single football-field-sized asteroid could contain $25 to $50 billion worth of platinum—enough to upend the terrestrial market. With astronomical sums at stake and the commercial sector kicking into high gear, legal questions are becoming a major concern. Many of these questions focus on Article II of the Outer Space Treaty, which prohibits national appropriation of space and the celestial bodies. Since another provision (Article VI) requires nongovernmental entities to operate under a national flag, some experts have suggested that asteroid mining, which would require a period of exclusive use, may violate the agreement. Others, however, contend that companies can claim ownership of extracted resources without claiming ownership of the asteroids themselves. They cite the lunar samples returned to Earth during the Apollo program as a precedent. Hoping to promote American space commerce, Congress formalized this more charitable legal interpretation in Title IV of the 2015 U.S. Commercial Space Launch Competitiveness Act. Luxembourg, which announced a €200 million asteroid mining fund last year, followed suit with its own law in August. Controversies like the one surrounding asteroid mining are par for the course when it comes to the Outer Space Treaty. The agreement’s insistence that space be used “for peaceful purposes” has long been the subject of intense debate. During the treaty-making process, Soviet jurists argued that peaceful meant “non-military” and that spy satellites were illegal; Americans, who enjoyed an early lead in orbital reconnaissance, interpreted peaceful to mean “non-aggressive” and came to the opposite conclusion. Decades later, the precise meaning of the phrase remains a matter of contention. While the Outer Space Treaty has survived past disputes intact, some experts and policymakers believe that an update is in order. Senator Ted Cruz (R-TX), for instance, worries that legal ambiguity could undermine the nascent commercial space sector—a justifiable concern. Russia and Brazil, among other countries, hold asteroid mining operations to constitute de facto national appropriation. And while there are plenty of asteroids to go around for now (NASA has catalogued nearly 8,000 near earth objects larger than 140 meters in diameter), more supply-side saturation could lead to conflicts over choice space rocks. The absence of clear property rights makes this prospect all the more likely. Plans to establish outposts on the moon and Mars present a bigger challenge still. Last week, prior to the first meeting of the revived National Space Council, Vice President Mike Pence described the need for “a renewed American presence on the moon, a vital strategic goal” in an op-ed for the Wall Street Journal. His piece came on the heels of SpaceX Founder and Chief Executive Officer Elon Musk’s announcement at the 2017 International Astronautical Congress of a revised plan to colonize the red planet, with the first human missions slated for 2024. Musk hopes for the colony to house one million inhabitants within the next fifty years. While mining might require only temporary use of the celestial bodies, full-fledged colonies would necessarily be more permanent affairs. With some national governments arguing that mining operations would constitute territorial claims, lunar and Martian bases are almost certain to enter the legal crosshairs. And, even under the favorable U.S. interpretation of the Outer Space Treaty, states and private companies would need to avoid making territorial claims. If viable colony locations are relatively few and far between, fierce competition could make asserting control a practical necessity. Even so, policymakers should avoid hasty attempts to overhaul the Outer Space Treaty. The uncertainties associated with altering the fundamental principles of international space law are greater than any existing ambiguities. Commercial spacefaring already entails high levels of risk; adding new regulatory hazards to the mix would jeopardize investment and could slow progress in the sector. While the current property rights regime may be untenable over longer timelines, it remains workable for now.

#### 4] Russia and China will circumvent

**Bahney and Pearl 19** [Benjamin Bahney and Jonathan Pearl, 3-26-2019, "Why Creating a Space Force Changes Nothing," BENJAMIN BAHNEY and JONATHAN PEARL are Senior Fellows at the Lawrence Livermore National Laboratory’s Center for Global Security Research and contributing authors to [Cross Domain Deterrence: Strategy in an Era of Complexity](https://archive.md/o/Hlbi1/https:/www.amazon.com/Cross-Domain-Deterrence-Strategy-Era-Complexity/dp/0190908653). Foreign Affairs, [https://www.foreignaffairs.com/articles/space/2019-03-26/why-creating-space-force-changes-nothing accessed 12/10/21](https://www.foreignaffairs.com/articles/space/2019-03-26/why-creating-space-force-changes-nothing%20accessed%2012/10/21)] Adam

As Russia and China continue to push forward, U.S. policymakers may be tempted to use treaties and diplomacy to head off their efforts entirely. This option, although alluring on paper, is simply not feasible. Existing treaties designed to limit military competition in space have had little success in actually doing so. The 1967 Outer Space Treaty bans parties from placing nuclear weapons or other weapons of mass destruction in space, on the moon, or on other celestial bodies, but it has no formal mechanism for verifying compliance, and places no restrictions on the development or deployment in space of conventional antisatellite weapons. Even if it were possible to convince Moscow and Beijing of the benefits of comprehensive space arms control, existing technology makes it extremely difficult to verify compliance with the necessary treaty provisions—and without comprehensive and reliable verification, treaties are toothless. Moreover, regulating the development and deployment of antisatellite weapons is extremely difficult, both because they include such a broad and diverse range of technologies and because many types of antisatellite weapons can be concealed or explained away as having some other use. Unsurprisingly, Russia and China’s draft Treaty on the Prevention of Placement of Weapons in Space, which they have been pushing for several years now, has an unenforceable definition of what constitutes a “weapon” and does nothing at all to address ground-based antisatellite weapons development.

#### 5] They have no internal link to their ilaw scenario – yes law might somewhat deteriorate in space but they have no spillover evidence that that kills ilaw on earth

#### 6] Appropriation of resources does not conflict with the non-appropriation principle – independently conflicting interpretations means there’s no destruction of space law OR violation of the appropriation principle

Abigail D. Pershing, J.D. Candidate @ Yale, B.A. UChicago,’19, "Interpreting the Outer Space Treaty's Non-Appropriation Principle: Customary International Law from 1967 to Today," Yale Journal of International Law 44, no. 1

II. THE FIRST SHIFT IN CUSTOMARY INTERNATIONAL LAW’S INTERPRETATION OF THE NON-APPROPRIATION PRINCIPLE

Since the drafting of the Outer Space Treaty, several States have chosen to reinterpret the non-appropriation principle as narrower in scope than its drafters originally intended. This reinterpretation has gone largely unchallenged and has in fact been widely adopted by space-faring nations. In turn, this has had the effect of changing customary international law relating to the non-appropriation principle. Shifting away from its original blanket application in 1967, States have carved out an exception to the non-appropriation principle, allowing appropriation of extracted space resources.53 This Part examines this shift in the context of the two branches of the United Nation’s customary international law standard: State practice and opinio juris.

A. State Practice

The earliest hint of a change in customary international law relating to the interpretation of the non-appropriation clause came in 1969, when the United States first sent astronauts to the moon. As part of his historic journey, astronaut Neil Armstrong collected moonrocks that he brought back with him to Earth and promptly handed off to the National Aeronautics and Space Administration (NASA) as U.S. property.54 Later, the USSR similarly claimed lunar material as government property, some of which was eventually sold to private citizens. 55 These first instances of space resource appropriation did not draw much attention, but they presented a distinct shift marking the beginning of a new period in State practice. Having previously been limited by their technological capabilities, States could now establish new practices with respect to celestial bodies. This was the beginning of a pattern of appropriation that slowly unfolded over the next few decades and has since solidified into the general and consistent State practice necessary to establish the existence of customary international law. Currently, the U.S. government owns 842 pounds of lunar material.56 There is little question that NASA and the U.S. government consider this material, as well as other space materials collected by American astronauts, to be government property.57 In fact, NASA explicitly endorses U.S. property rights over these moon rocks, stating that “[l]unar material retrieved from the Moon during the Apollo Program is U.S. government property.”5

The U.S. delegation’s reaction to the language of the 1979 Moon Agreement further cemented this interpretation that appropriation of extracted resources is a permissible exception to the non-appropriation clause of Article II. Although the United States is not a party to the Moon Agreement, it did participate in the negotiations.59 The Moon Agreement states in relevant part: 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 nongovernmental organization, national organization or nongovernmental entity or of any natural person.60

In response to this language, the U.S. delegation made a statement laying out the American view that the words “in place” imply that private property rights apply to extracted resources61—a comment that went completely unchallenged. That all States seemed to accept this point, even those bound by the Moon Agreement, is further evidence of a shift in customary international law.62

B. Opinio Juris: Domestic Legislation

Domestic law, both in the United States and abroad, provides further evidence of the shift in customary international law surrounding the issue of nonappropriation as it relates to extracted space resources.

Domestic U.S. space law is codified at Section 51 of the U.S. Code and has been regularly modified to expand private actors’ rights in space.63 Beginning in 1984, the Commercial Space Launch Act provided that “the United States should encourage private sector launches and associated services.”64 The goal of the 1984 Act was to support commercial space launches by private companies and individuals.65 It did not, however, specifically discuss commercial exploitation of space. The first such mention of commercial use of space appeared in 2004, with the Commercial Space Launch Amendments Act.66 This Act specifically aimed at regulating space tourism but did not explicitly guarantee any private rights in space.67

The most significant change in U.S. space law came with the passage of the Spurring Private Aerospace Competitiveness and Entrepreneurship (SPACE) Act in 2015. As incorporated into Section 51 of the Code, this Act provides: A United States citizen engaged in commercial recovery of an asteroid resource or a space resource under this chapter shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use, and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States.68

Whereas the idea that private corporations might go into space may have seemed far-fetched to the drafters of the Outer Space Treaty, the SPACE Act of 2015 was the first instance of a government recognizing such a trend and officially supporting private companies’ commercial rights to space resources under law. With the new 2015 amendment to Section 51 in place, U.S. companies can now rest assured that any profits they reap from space mining are firmly legal—at least within U.S. jurisdictions.

Although the United States was the first country to officially reinterpret the non-appropriation principle, other countries are following suit. On July 20, 2017, Luxembourg passed a law entitled On the Exploration and Utilization of Space Resources with a vote of fifty-five to two.69 The law took effect on August 1, 2017.70 Article 1 of the new law states simply that “[s]pace resources can be appropriated,” and Article 3 expressly grants private companies permission to explore and use space resources for commercial purposes.71 Official commentary on the law establishes that its goal is to provide companies with legal certainty regarding ownership over space materials—a goal that the commentators regard as legal under the Outer Space Treaty despite the non-appropriation principle.72 The next country to enact similar legislation may be the United Arab Emirates (UAE). According to the UAE Space Agency director general, Mohammed Al Ahbabi, the UAE is currently in the process of drafting a space law covering both human space exploration and commercial activities such as mining.73 To further this goal, in 2017 the UAE set up the Space Agency Working Group on Space Policy and Law to specify the procedures, mechanisms, and other standards of the space sector, including an appropriate legal framework.74

C. Opinio Juris: Legal Scholarship

Other major space powers are also considering similar laws in the future, including Japan, China, and Australia. 75 Senior officials within China’s space program have explicitly stated that the country’s goal is to explore outer space and to take advantage of outer space resources.76 The general international trend clearly points in this direction in anticipation of a potential “space gold rush.” 7

Mirroring the shift in State practice and domestic laws, the legal community has also changed its approach to the interpretation of the nonappropriation principle. Whereas at the time of the ratification of the Outer Space Treaty the majority of legal scholars tended to apply the non-appropriation principle broadly, most legal scholars now view appropriation of extracted materials as permissible.78 Brandon Gruner underscores that this new view is historically distinct from prior legal interpretation, noting that modern interpretations of the Outer Space Treaty’s non-appropriation principle differ from those of the Treaty’s authors.79

In contrast to earlier legal theory that denied the possibility of appropriation of any space resources, scholars now widely accept that extracting space resources from celestial bodies is a “use” permitted by the Outer Space Treaty and that extracted materials become the property of the entity that performed the extraction.80 Stressing the fact that the Treaty does not explicitly prohibit appropriating resources from outer space, other authors conclude that the use of extracted space resources is permitted, meaning that the new SPACE Act is a plausible interpretation of the Outer Space Treaty.81

However, scholars have been careful to cabin the extent to which they accept the legality of appropriation. For instance, although Thomas Gangale and Marilyn Dudley-Rowley acknowledge the legality of private appropriation of extracted space resources, they nonetheless emphasize that “[o]wnership of and the right to use extraterrestrial resources is distinct from ownership of real property” and that any such claim to real property is illegal.82 Lawrence Cooper is also careful to point out this distinction: “[t]he [Outer Space] Treaties recognize sovereignty over property placed into space, property produced in space, and resources removed from their place in space, but ban sovereignty claims by states; international law extends this ban to individuals.”83 Although there remain some scholars who still insist on the illegality of the 2015 U.S. law and State appropriation of space resources generally,84 their dominance has waned since the 1960s. These scholars are now a minority in the face of general acceptance among the legal community that minerals and other space resources, once extracted, may be legally claimed as property. 85

Taken together, the elements described above—statements made in the international arena, de facto appropriation of space resources in the form of moon rocks, the adoption of new national policies permitting appropriation of extracted space resources, and the weight of the international legal community’s opinion— indicate a fundamental shift in customary international law. The Outer Space Treaty’s non-appropriation clause has been redefined via customary international law norms from its broad application to now include a carve-out allowing appropriation of space resources once such resources have been extracted.

### AT Debris

#### 6] Transnational space corporations are k2 ADR – only they can overcome state mistrust

Frankowski 17 [(Paweł, assistant Professor at the Chair of International Relations and Foreign Policy, Institute of Political Science and International Relations, Jagiellonian University) “Outer Space and Private Companies: Consequences for Global Security,” 2017, pg. 144-145] TDI

To conclude, privatization of space security can develop in unexpected way, but in today’s space environment private actors would rather play the role of security regulators than security providers. When investment in space technologies is less profitable than other areas of economy, private actors would focus on soft law and conflict prevention in space, and new private initiatives will appear. For example, apart from important space companies, as SpaceX or Blue Origin active in outer space, other private actors as Secure World Foundation (SWF), who focus on space sustainability, will play more important role in crafting international guidelines for space activities.38 This path the way for future solutions and projects, as cleaning the space debris, extracting resources from asteroids and planetoids, refuelling satellites, providing payload capabili-ties for governmental entities on market-based logic, will be based on activity non-state actors, providing soft law and regulatory solutions, where space faring states are unable to find any compromise. Therefore private companies will be in fact global (or space) regulators, as part of UNCOPUS, being involved in space activities.39

The last argument for private involvement in space security comes from an approach based on common good and resilience of space assets, emphasized by the Project Ploughshares, as an important part of space security. As of 2017 there are more than 700,000 man-made objects on the Earth’s orbit bigger than 1 cm, while 17,000 of them are bigger than 10 cm.40 Some of them are traced by SSA systems, both American and European, but these systems are public-military owned, and private operators are not granted any access to this data. Any collision of space object with space debris, even with small particles, might result in a chain reaction, called Kessler’s syndrome, and not only private but public, and military assets will be destroyed or impaired. In such conditions, a reluctant cooperation between the public and private sector, and unwillingness to share vulnerable data by public actors seem to confirm that private space activity is more than necessary. This is an apparent case when logic of mistrust between state powers must be overcome by private actors, perhaps by suggesting common preferences for debris mitigation, and space situational awareness. In the case of space debris, Space Data Association, an initiative supported by private sector, with its main aim to enhance data sharing between commercial satellite operators, could be an example of nascent public good provided by private actors for the sake of global security.

#### 7] No Satellite Disruption

**Pavur and Martinovic 19** [James Pavur, DPhil Researcher Cybersecurity Centre for Doctoral Training Oxford University, Ivan Martinovic, Professor of Computer Science Department of Computer Science Oxford University, “The Cyber-ASAT: On the Impact of Cyber Weapons in Outer Space,” 2019 11th International Conference on Cyber Conflict: Silent Battle, <https://ccdcoe.org/uploads/2019/06/Art_12_The-Cyber-ASAT.pdf>]

STABILITY IN SPACE Given the uncomfortable combination of high dependency and low survivability, one might expect to observe frequent attacks against critical military assets in orbit. However, **despite decades of recurring prophesies of impending space war, no such conflict has broken out** [14]–[18]. It is true that a handful of space security crises have occurred; most notably, the 2007 Chinese anti-satellite weapon (ASAT) test and the 2008 US ASAT demonstration in response [19]. Moreover, a recent Centre for Strategic and International Studies report suggests increasing interest in attacking US space assets, particularly among the Chinese, Russian, North Korean and Iranian militaries [20]. Overall, however, the space domain has remained puzzlingly peaceful. In this section, we outline three major contributors to this enduring stability: limited accessibility, attributable norms, and environmental interdependence. A. Limited Accessibility Space is difficult. Over 60 years have passed since the first Sputnik launch and only nine countries (ten including the EU) have orbital launch capabilities. Moreover, a launch programme alone does not guarantee the resources and precision required to operate a meaningful ASAT capability. Given this, one possible reason why space wars have not broken out is simply because only the US has ever had the ability to fight one [21, p. 402], [22, pp. 419–420]. Although launch technology may become cheaper and easier, it is unclear to what extent these advances will be distributed among presently non-spacefaring nations. Limited access to orbit necessarily reduces the scenarios which could plausibly escalate to ASAT usage. Only major conflicts between the handful of states with ‘space club’ membership could be considered possible flashpoints. Even then, the fragility of an attacker’s own space assets creates de-escalatory pressures due to the deterrent effect of retaliation. Since the earliest days of the space race, dominant powers have recognized this dynamic and demonstrated an inclination towards de-escalatory space strategies [23]. B. Attributable Norms There also exists a long-standing normative framework favouring the peaceful use of space. The effectiveness of this regime, centred around the Outer Space Treaty (OST), is highly contentious and many have pointed out its serious legal and political shortcomings [24]–[26]. **Nevertheless, this status quo framework has somehow supported over six decades of relative peace in orbit.** Over these six decades, norms have become deeply ingrained into the way states describe and perceive space weaponization. This de facto codification was dramatically demonstrated in 2005 when the US found itself on the short end of a 160-1 UN vote after opposing a non-binding resolution on space weaponization. **Although states have occasionally pushed the boundaries of these norms, this has typically occurred through incremental legal re-interpretation rather than outright opposition** [27]. Even the most notable incidents, such as the 2007-2008 US and Chinese ASAT demonstrations, were couched in rhetoric from both the norm violators and defenders, depicting space as a peaceful global commons [27, p. 56]. Altogether, this suggests that **states perceive real costs to breaking this normative tradition and may even moderate their behaviours accordingly.** One further factor supporting this norms regime is the high degree of attributability surrounding ASAT weapons. For **kinetic ASAT technology, plausible deniability and stealth are essentially impossible**. The literally explosive act of launching a rocket cannot evade detection and, if used offensively, retaliation. **This imposes high diplomatic costs on ASAT usage and testing**, particularly during peacetime. C. Environmental Interdependence A third stabilizing force relates to the orbital debris consequences of ASATs. China’s 2007 ASAT demonstration was the largest debris-generating event in history, as the targeted satellite dissipated into thousands of dangerous debris particles [28, p. 4]. Since debris particles are indiscriminate and unpredictable, they often threaten the attacker’s own space assets [22, p. 420]. This is compounded by Kessler syndrome, a phenomenon whereby orbital debris ‘breeds’ as large pieces of debris collide and disintegrate. As space debris remains in orbit for hundreds of years, the cascade effect of an ASAT attack can constrain the attacker’s long-term use of space [29, pp. 295– 296]. Any state with kinetic ASAT capabilities will likely also operate satellites of its own, and they are necessarily exposed to this collateral damage threat. **Space debris thus acts as a strong strategic deterrent to ASAT usage.**

### Solvency

#### Actor specificity – the 1AC advocacy was quote [“the appropriation of outer space by private entities is unjust”] – that does not include an actor but rather presents an idea, not a plan OR implementation

#### Best Case Scenario – a country just says that private appropriation is bad BUT obviously that’s not legally binding which means they don’t get any solvency

#### Actor specification is key to the development of strong policy – otherwise, governmental bickering and vagueness water down the plan

**CSULB 02**, California State University Long Beach, Graduate Center for Public Policy and Administration, Summer 2002, Third Session, PPA 590 WOMEN & PUBLIC POLICY //AAli

POLICY IMPLEMENTATION The full policy process is often described by the following steps: 1) problem definition 2) alternative generation 3) analysis of alternatives 4) policy adoption 5) policy implementation 6) policy evaluation While many courses focus on the first four steps, the last two steps are equally important. A thorough policy analysis will include some consideration of policy implementation, monitoring, and evaluation. The policy analyst can sketch out an implementation plan for the most highly ranked alternative(s) that considers: 1) relevant actors and their interests 2) required resources and who might provide them 3) facilitators and barriers likely to be encountered 4) reasonable time frame Implementation means to carry out, to fulfill, produce, and compete. This is different from creating a policy. A policy is often a broad statement of goals, without specific objectives. There is often no specific implementation plan that names actors, actions, and desired results. A policy is often more of a hypothesis; implementation converts a policy into an action program. Policies grow out of ideas, often with multiple and possibly conflicting vague goals. Policies point to a desired causal chain of events, between initial conditions and desired future consequences. Implementation is the action plan to bridge the gap between the two. Implementation may be carried out by formal as well as by informal actors, including legislators, courts, bureaucracies, pressure groups, community organizations, and even individuals. Power is widely shared among and diffused throughout government institutions. However, power over the creation of policy is not the same as control. We are relatively successful at making changes within government, but less successful at bringing about changes in the behavior of the target populations. This may be due to the fact that there is no overall constituency for much of policy implementation. With weak political parties and lack of political legitimacy of other actors, it is often left up to single-issue interest groups to influence the implementation of public policies. In addition, many public policies promise much more than they can possibly deliver or are too radical for opponents to accept. Many policies, therefore, remain only as unrealized potential. The rising inequality among social groups means that government undertakes more quality of life programs to improve the life of the less fortunate. In order to undertake these programs, agencies must adopt vague policies in order to get them passes and accepted by the more fortunate. But the more vague the policy, the more difficult the program will be to implement, and the result is often to the satisfaction of no single individual or group. This may have important implications for the legitimacy of government. The failure or success of policy implementation influences what policy-makers feel they can or want to do in the future. Both the anticipated and unanticipated outcomes of policy implementation influence future policy-making, even though these outcomes cannot be known in advance of implementation. There are two main, competing theories about implementation. One is that implementation is the continuation of the rational planning and decision-making process that is used to determine which policies to adopt. This view sees policy implementation as a continuation of rational organizational design, with a knowable and certain outcome. The other theory is the interactive model, that policy implementation is a continuation of the politics that results in the adoption of public policies, and that outcomes are uncertain. Policy implementation can be seen as a process of bargaining. Often, one unit of government cannot force another unit to do (or refrain from doing) something. When participants in a policy process share a common interest in coming to a decision but have divergent values and objectives, the bargaining model is often used to make decisions about implementation. Implementation becomes a process of complex proposals and counter-proposals among different government actors, in which the initial aims of each party are slowly modified to permit an agreement to be reached. The parties may include interest groups, citizens, other units of government, and other actors. Policies are generally neither “right” or “wrong,” but either do or do not gain increased acceptance as time goes by. Implementation affects how well policies are accepted, not just by faithfully adhering to the policy mandate but also by adapting to changing circumstances over time. Successful implementation does depend a great deal on administrative discretion and the know-how to get results. Narrowing the range of administrative latitude in implementation may limit the value of the process, while too wide a scope make it impossible to obtain success. Implementation may be seen as an evolving process, a response to changing forces and circumstances; it is a struggle over the realization of ideals. There are a large number of possible actors in policy implementation. For example: -on specific legislation, there may be legislative monitoring, oversight, and intervention to ensure that there is periodic reporting to the sponsoring committee. -For grants-in-aid, loans, or direct service provisions, sanctions, or other coercive strategies there may be a regulatory agency that is involved in implementation and oversight -Federal, state, and local agencies may need to cooperate in program implementation; there must be sufficient incentives and/or possible sanctions to ensure implementation by other levels -If several agencies are required to collaborate to implement a policy, there may be bureaucratic and administrative delays, resource hoarding, withholding of information, and other games -Within a single agency, there may be politics over where to place a new policy or program that will implement it, and arguments over whether to assign responsibility to an existing unit or create a new unit, or even contract out -If policy is implemented through contracts with private agencies, the organization must still be involved in implementation oversight, monitoring, and control -Professional organizations are often concerned how a new program will affect their members and want to have a say in its implementation -Citizens, interest groups, and other bodies also want input into the implementation process at various points. The Conditions for Effective Implementation 1) There must be sound theory underlying the program and the target group; the theory must link target group behavior to the objectives of the program. The problem is often the lack of a valid social science theory. 2) There must be unambiguous objectives that structure the implementation so as to maximize the compliance of the target group. There are often multiple goals which conflict, multiple veto points, and imperfect information. Demands for large changes in behavior may be met with equal amounts of, hostility, resistence or non-compliance. 3) There must be leaders who have the requisite skills, are supportive of the objectives, and have the necessary resources. Agencies may not be supportive of the policy objectives or may not place them high on their list of priorities. 4) There must be active support from potentially affected parties, including legislators, courts, interest groups, other units of government, etc. There may be a lack of interest or active opposition to the program from organized groups with the resources to combat the policy.

#### Independently, a lack of an actor in the 1AC kills my access to country, politics and actor DAs – that’s the stasis point of almost all negative policy prep and forces me to generic Ks – the 1AR can shift out of my DAs by claiming they defend the idea not the plan – kills clash, rigorous 1NC testing, limits and ground. That justifies infinite condo, PICs, process cps to stop aff terrorism

#### You can independently vote neg on presumption and circumvention since nobody actually implements the plan which means the aff gets 0 offense and there’s no enforcement mechanism