# 1AC R2 FFL State Quals

## 1AC

### Framework

#### I affirm the resolution. Resolved: The appropriation of outer space by private entities is unjust.

#### Because this resolution is complex, I’d like to offer the following definition for clarification:

#### “Appropriation of outer space” by private entities refers to the exercise of exclusive control of space. In other words, it is a claim of either property or sovereignty. Lawyer Trapp writes in 2013.

TIMOTHY JUSTIN TRAPP, JD Candidate @ UIUC Law, ’13, TAKING UP SPACE BY ANY OTHER MEANS: COMING TO TERMS WITH THE NONAPPROPRIATION ARTICLE OF THE OUTER SPACE TREATY UNIVERSITY OF ILLINOIS LAW REVIEW [Vol. 2013 No. 4]

The issues presented in relation to the nonappropriation article of the Outer Space Treaty should be clear.214 The ITU has, quite blatantly, created something akin to “property interests in outer space.”215 It allows nations to exclude others from their orbital slots, even when the nation is not currently using that slot.216 This is directly in line with at least one definition of outer-space appropriation.217 [\*\*Start Footnote 217\*\*Id. at 236 (“**Appropriation of outer space**, **therefore, is ‘the exercise of exclusive control or exclusive use’ with a sense of permanence, which limits other nations’ access to i**t.”) (quoting Milton L. Smith, The Role of the ITU in the Development of Space Law, 17 ANNALS AIR & SPACE L. 157, 165 (1992)). \*\*End Footnote 217\*\*]The ITU even allows nations with unused slots to devise them to other entities, creating a market for the property rights set up by this regulation.218 In some aspects, this seems to effect exactly what those signatory nations of the Bogotá Declaration were trying to accomplish, albeit through different means.219

#### Thus, this resolution is questioning whether private entities claiming property in space is just or unjust.

#### Therefore, I value justice, defined as giving each their social due. Morality, by itself, is individual; justice acknowledges that some moral goods must give way for the sake of other goods. Justice is therefore required to assess morality and the resolution. Unjust is defined by Black’s Law Dictionary as:

Black’s Law [The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. No Date. <https://thelawdictionary.org/unjust/>] brett

What is UNJUST? Contrary to right and justice, or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws.

#### Therefore, the resolution demands an analysis of whether private appropriation of outer space is in line with the law. Accordingly, my value criterion is consistency with the rule of law.

#### In addition to the above reasoning, I have two separate arguments in favor of my criterion:

#### First, society ought to respect the rule of law because the social contract requires it. The basis of organized societies is that people give up the freedoms to commit heinous acts so that they might themselves be free of those heinous acts from others. Disregarding the rule of law disrespects both sides of the social covenant – citizens fail their end of the bargain by undertaking prohibited actions, and governments fail their end by permitting an illicit social situation. The rule of law, therefore, is the glue that keeps the social contract together at both ends.

#### Second, the law is a prerequisite to justice: if laws are serially avoided in society, or treated as if they do not exist, society breaks down completely and justice is impossible.

### Contention 1 is International Law

#### Article 2 of The Outer Space Treaty of 1967, currently known as the Space Constitution, declares that outer space should be considered as res communis omnium, which means a province for free exploration, explicitly not subject to national appropriation. As the Co-Director of the Institute of Space Law and Strategy and Adjunct Professor of Comparative National Space law at the University of Mississippi, Fabio Tronchetti in 2007 explains:

Tronchetti, Fabio. [Dr. Fabio Tronchetti works as a Co-Director of the Institute of Space Law and Strategy and as a Zhuoyue Associate Professor at Beihang University, Beijing (China). He also holds the position of Adjunct Professor of Comparative National Space Law at the School of Law of the University of Mississippi (United States).] “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**Since the beginning of the space era, States agreed to consider outer space, including the Moon and other celestial bodies as a res communis omnium, i.e. as an area open for free exploration and use by all States which is not subject to national appropriation.** **The non-appropriative nature of outer space, first declared in the UN General Assembly Resolution 1721 and 1962, was formally laid down in Article II of the 1967 Outer Space Treaty**. Since then, **the non-appropriation principle has provided guidance and direction for all activities in the space beyond the earth’s atmosphere. Nowadays**, however, the non-**appropriation principle is under** **attack**. Some **proposals**, **arguing the need of abolishing this principle in order to promote commercial use of outer space or claiming private ownership rights over the Moon and other celestial bodies,** **are** **undermining its importance and questioning its role as a guiding principle for present and future space activities**. In order to counter such proposals and to demonstrate their fallacy, this paper stresses **the binding legal value of the non-appropriation principle contained in Article II of the Outer Space Treaty by arguing that such principle should be considered a rule of customary international law holding a special character**. Indeed, not only is **the principle prohibiting national appropriation of outer space affirmed in the main space law treaties and declarations, but it also represents the basis of approach followed by States in elaborating and setting up international space law itself**. Therefore, **following this interpretation, neither States nor private entities are allowed to act in contrast with the nonappropriation principle and any amendment or modification thereof should only be carried out by all States acting collectively.**

#### That outweighs for two main reasons:

#### First, to build upon my main point, Article 6 of the same treaty indicates that private entities are allowed to explore and carry out missions in outer-space only if the state or country they belong to allows them to. Thus, in order for private entities to be legally allowed to appropriate outer-space, their respective state would need to authorize said action, which is impossible if the state is not allowed to appropriate themselves. As Fabio Tronchetti in 2007 continues:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**However, it must be said, that nowadays there is a general consensus on the fact that both national appropriation and private property rights are denied under the Outer Space Treaty.** **Several way of reasoning have been advanced to support this view**. **Sters and Tennen affirm that the argument that Article II does not apply to private entities since they are not expressly mentioned fails for the reason that they do not need to be explicitly listed in Article II to be fully subject to the non-appropriation principle8** . **Private entities are allowed to carry out space activities but, according to Article VI of the Outer Space Treaty, they must be authorized to conduct such activities by the appropriate State of nationality**. **But if the State is prohibited from engaging in certain conduct, then it lacks the authority to license its nationals or other entities subject to its jurisdiction to engage in that prohibited activity.** Jenks argues that “States bear international responsibility for national activities in space; it follows that **what is forbidden to a State is not permitted to a chartered company created by a State or to one of its nationals acting as a private adventurer**”9 . It has been also suggested that the **prohibition of national appropriation implies prohibition of private appropriation because the latter cannot exist independently from the former** 10. **In order to exist**, indeed, **private property requires a superior authority to enforce it, be in the form of a State or some other recognised entity**. In outer space, however, this practice of **State endorsement is forbidden**. Should a State recognise or protect the territorial acquisitions of any of its subjects, **this would constitute a form of national appropriation in violation of Article II**. Moreover, it is possible to use some historical elements to support the argument that both the acquisition of State sovereignty and the creation of private property rights are forbidden by the words of Article II. **During the negotiations of the Outer Space Treaty, the Delegate of Belgium affirmed that his delegation “had taken note of the interpretation of the non-appropriation advanced by several delegations-apparently without contradiction-as covering both the establishment of sovereignty and the creation of titles to property in private law”**11. The French Delegate stated that: “…**there was reason to be satisfied that three basic principles were affirmed,** namely: the prohibition of any claim of sovereignty or property rights in space…”12. The fact that the accessions to the Outer Space Treaty were not accompanied by reservations or interpretations of the meaning of Article II, it is an evidence of the fact that this **issue was considered to be settled during the negotiation phase.**

#### Secondly, this non-appropriation principle has allowed the peaceful exploration of space. Violating this principle would result in international conflict, rivalries, and tensions. As Fabio Tronchetti in 2007 continues:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**The non-appropriation principle represents the cardinal rule of the space law system.** Since this principle was **incorporated in Article II of the Outer Space Treaty (OST)1 in 1967, first declared in the United Nations General Assembly (UNGA) Resolutions 1721 and 1962 , it has provided guidance and basis for space activities and has contributed to 40 years of peaceful exploration and use of outer space. The importance of the non-appropriation principle stems from the fact that it has prevented outer space from becoming an area of international conflict among States.** **By prohibiting States from obtaining territorial sovereignty rights over outer space or any of its parts, it has avoided the risk that rivalries and tensions could arise in relation to the management of outer space and its resources.** Moreover, **its presence has represented the best guarantee for the realization of one of the fundamental principles of space law, namely the exploration and use of outer space to be carried out for the benefit and in the interest of all States, irrespective of their stage of development.** When in the end of the 1950’s and in the beginning of the 1960’s **States renounced any potential claims of sovereignty over outer space**, indeed, **they agreed to consider it as a res belonging to all mankind, whose utilization and development was to be aimed to encounter not only the needs of the few States involved in space activities but also of all countries irrespective of their degree of development**. If we analyse the status of outer space 40 years after the entry into force of the Outer Space Treaty, **it is possible to affirm that the non-appropriation principle has been successful in allowing the safe and orderly development of space activities**. Nowadays, **however, despite its merits and its undisputable contribution to the success of the system of space law, the non-appropriation principle is the object of direct and indirect attacks.** On one side, there are some legal proposals arguing the need for amending or abolishing it in order to promote the commercial development of outer space4 . In these proposals the non-appropriation principle is considered to be an obstacle to the exploitation of extraterrestrial resources and an anti-economic measure preventing the free-market approach to be applied to outer space. On the other side, **there is day-by-day an increasing number of websites where it is possible to buy acres of the lunar and other celestial bodies’ surface5 . The enterprises behind these questionable business, which claim to be allowed to carry on such activities by relying on an erroneous interpretation of Article II of the Outer Space Treaty, substantially operate as the non-appropriation principle was not in force. Indeed, these enterprises promise to their customers the enjoyment of full property rights over the acquired acres, thus acting in flagrant violation of the non-appropriative nature of outer space**. All these **practices are undermining the importance and value of the nonappropriation principle and questioning its leading role in the upcoming commercial era of outer space**. Hence, **the need to protect the non-appropriation principle arises**. This paper aims to fulfil this purpose by proposing a new interpretation of the nonappropriation principle which is based on the idea that **this principle represents a customary rule of international law holding a special character.** Simply stated, this **special character comes from the consideration that the nonappropriative nature of outer space and other celestial bodies is the fundamental concept on which the entire system of space law is based**. **If this concept is applied and properly respected, this system works**; **if not, this system is likely to collapse and to generate unforeseeable consequences.** These factors make the **non-appropriation principle a rule whose legal value and implications are unique not only in the context of space law but also in that of public international law as such.** Hence, I propose an **interpretation of the nonappropriation principle that appropriately expands upon its classic definition in terms of a customary rule and suggest to consider it something more than a usual customary rule but less than a jus cogens norm.** Thus, **having in mind the special characteristics and importance of the non-appropriation principle, the above mentioned theories proposing its abolition or its non-relevance must be rejected.**

#### It's about more than just following the law too, an unwavering commitment to international law is vital to peace and avoiding major conflict. The Lawyers Committee on Nuclear Policy explains,

[Institute for Energy and Environmental Research and the Lawyers Committee on Nuclear Policy. Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties. May 2002. http://www.ieer.org/reports/treaties/execsumm.pdf] //LHPSS

The evolution of international law since World War II is largely a response to the demands of states and individuals living within **a global society with a deeply integrated world economy**. In this global society, **the repercussions of** the **actions** of states, non-state actors, and individuals **are not confined within borders,** whether we look to greenhouse gas accumulations, nuclear testing, the danger of accidental nuclear war, or the vast massacres of civilians that have taken place over the course of the last hundred years and still continue. **Multilateral agreements** increasingly have been a primary instrument employed by states to meet extremely serious challenges of this kind, for several reasons. They clearly and publicly embody a set of universally applicable expectations, including prohibited and required practices and policies. In other words, they **articulate global norms**, **such as** the protection of human rights and the **prohibitions of genocide and use of** **weapons** **of mass destruction. They establish predictability and accountability** in addressing a given issue. States are able to accumulate expertise and confidence by participating in the structured system offered by a treaty. However, influential U.S. policymakers are resistant to the idea of a treaty-based international legal system because they fear infringement on U.S. sovereignty and they claim to lack confidence in compliance and enforcement mechanisms. This approach has dangerous practical27 implications for international cooperation and compliance with norms. U.S. treaty partners do not enter into treaties expecting that they are only political commitments by the United States that can be overridden based on U.S. interests. **When a** powerful and influential **state** like the United States is seen to **treat its legal obligations as a matter of convenience** or of national interest alone, **other states** will see this as a justification to relax or **withdraw from their** own **commitments**. If the United States wants to require another state to live up to its treaty obligations, it may find that the state has followed the U.S. example and opted out of compliance.

### Contention 2 is Property Law

#### Private entities attempting to claim or appropriate things in outer space violates property laws in two ways. First, private entities arbitrarily assert their claims to property not owned by them as superior or prior to others, which is in direct contradiction to current property laws. Second, space is unique in that it is external to a government capable of enforcing property laws. By asserting claims about property where laws are not enforced, the entire purpose of property law is undermined because governments are not able to protect peoples’ property. Anna Stilz, professor of politics, explains,

Stilz 1 (Anna Stilz, Anna Stilz is Laurance S. Rockefeller Professor of Politics and the University Center for Human Values. Her research focuses on questions of political membership, authority and political obligation, nationalism and self-determination, rights to land and territory, and collective agency. , 2009, accessed on 12-18-2021, Muse.jhu, "Project MUSE - Liberal Loyalty", https://muse.jhu.edu/book/30179)//phs st

It might seem, then, that Kant, like Simmons, would hold that although our acquired rights are initially indefinite, our private acts of appropria- tion in a state of nature can function to more clearly delimit their contours. Once I appropriate an external object—for example, my piece of land in the state of nature—the boundaries of my right to external freedom might simply be equivalent to those of the things and spaces that I have appropriated. If this were so, then individuals could succeed in more precisely defining property without the help of the state, and simply by coordinating expectations based on their private acts. In order to respect and acknowledge my external freedom, on this view, you would just have to cede me the spot I have rightfully occupied and to refrain from infringing on my choices within that sphere. Yet Kant does not take this position: he argues that the rights made possible by the postulate of practical reason are problematic. Whatever rights our private acts of appropriation outside the state confer upon us can only be understood as provisional rights, that is, they are not conclusive and settled (peremp- torische): indeed, for him, “It is possible to have something external as one’s own only in a rightful condition, giving laws publicly, that is, a civil condition” (MM, 6:255). What is the problem with these private methods of defining our rights to property? Why are they so unsatisfactory, from Kant’s perspective? The essential problem with acquiring property rights in a state of nature, for Kant, seems to be that we cannot unilaterally—through private will— impose a new obligation on other persons to respect our property that they would not otherwise have had.30 “By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common” (MM, 6:261).31 Even claiming to interpret the a priori general will on another person’s behalf, says Kant, is at- tempting to impose a law on them on my own private authority, since every act of appropriation is “the giving of a law that holds for everyone” (MM, 6:253).32 And he worries that this claim to private authority over others is a potential source of injustice: “Now when someone makes ar- rangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for volenti non fit inuria)” (MM, 6:314). My will to appro- priate, in the belief that my appropriation is justifiable to others, cannot yet serve as a (coercive) law for everyone else, because it cannot put them under an obligation. Kant suggests, in other words, that figuring out how to carve up shares of the external world consistently with everyone’s freedom does not ex- haust the entire problem of justice involved in acquiring rights to prop- erty. We might appeal to criteria of salience or convention to help coordi- nate our expectations on which of the many possible property distributions to choose. But we face an additional difficulty: how do we impose one of these distributions without at the same time arrogating to ourselves the private authority to lay down the law for an equally free being, one who has an innate right not to be constrained by our private will? In coercing someone to respect our view of our property rights, we are also necessarily claiming the right to impose our private will upon that person. If it is to really respect everyone’s freedom, Kant thinks, a property distribution cannot be unilaterally imposed in this way. This additional dimension of the problem of justly acquiring rights— the problem of unilateral imposition—is rooted in each person’s basic “right to do what seems right and good to him and not to be dependent upon another’s opinion about this” (MM, 6:312). This right to do what seems right and good to him derives from the moral equality of persons: no one has an innate right to decide in another person’s behalf. And be- cause each person is an equally authoritative judge, it is therefore impossi- ble—in a state of nature—to put [them] under an obligation of justice that [they] himself does not recognize. The will of all others except for himself, which proposes to put him under obligation to give up a certain possession, is merely unilateral, and hence has as little lawful force in denying him possession as he has in asserting it (since this can be found only in a general will). (MM, 6:257) In conditions of equal authority—such as those that exist in any state of nature—one is obligated only by what one recognizes, by one’s own lights, as an objectively valid requirement of justice. For that reason, no other person’s merely unilateral will can bind one in the face of one’s own disagreement. Kant concludes from this that “no particular will can be legislative for the commonwealth” (TP, 8:295), since no private person’s will can effec- tively claim to impose an obligation on others. Instead, Kant says that “all right,” that is to say all claims that impose binding duties on others, “depends on laws” (TP, 8:294). Law overcomes the problem of unilater- alism inherent in imposing new obligations on others on one’s own au- thority, by substituting an omnilateral will in place of a unilateral one: “Only the concurring and united will of all, insofar as each decides the same thing for all, and all for each, and so only the general united will of the people, can be legislative” (MM, 6:314). But why is law—imposed from a public perspective—consistent with everyone’s freedom in a way that particular wills—based on our private judgments—are not? Fundamentally, Kant argues that defining and enforcing both our rights over our bodies and our rights to external objects through public and nonarbitrary laws is the only way to secure ourselves against the coercive interference of other private persons in our affairs. For Kant, then, the only sort of property distribution to which we could all hypothetically consent must necessarily be one that is defined and enforced by the state, since all privately enforced distributions have the inevitable side-effect of subjecting us to the wills of others. To show this in more detail, Kant points out two different ways that unilateral private enforcement under- mines our right to independence: first, through unilateral interpretation— a particularly pervasive problem in the enforcement of property rights, since these rights are fully conventional in a way our rights over our bod- ies are not; and second, through unilateral coercion, which threatens in- terference by others in all our rights, both our rights over our bodies and our rights over external things.