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### Part 1 is the Offense

#### I affirm the resolved – The appropriation of outer space by private entities is unjust.

#### Civilian space programs is a smokescreen of tropes and ideology that masks military development---empirically used as the face of American space programs to deflect scrutiny

Michael Sheehan 7, Professor of International Relations, University of Swansea, 2007, The International Politics of Space, p. 43-44

In 1958 the PSAC identified four drivers of the American space programme: the human urge to explore, the need to use space for military purposes to enhance US security, national prestige, and new opportunities for scientific discovery.28 As with the Soviet Union, it was the second and third factors that would be the most compelling for the next two decades. The desire to regain and enhance national prestige would take centre stage in the short-term. Given the nature of the ideological competition between the two superpowers, prestige and national image were crucial not only in terms of how the United States perceived itself, but in terms of how the US was perceived by other countries. US statesman Bernard Baruch argued that ‘we have been set back severely not only in matters of defence and security, but in the contest for the support and confidence of the peoples of the world’.29 US foreign policy was driven by the need to win the hearts and minds of the population of America’s allies, and the uncommitted nations of the ‘Third World’, the non-aligned states neither communist nor pro-American. There was also a need to impress the governments and peoples of the Soviet Union and its allies. In all cases, it was essential that the United States was able to project successfully an image of strength and leadership.

The 1958 Space Act declared that the United States was keen to explore space for ‘peaceful purposes for the benefit of [hu]mankind’, and allowed for ‘cooperation by the United States with other nations and groups of nations’.30 This declaration had a dual purpose. The first statement was designed to deflect attention away from the military dimension of US space research and reduce foreign concerns that the United States was seeking to militarise outer space. The second statement’s purpose was to promote the image of the United States as a scientific leader that was willing to share the development of space with other nations, and which therefore clearly had no hidden agenda beyond space exploration for the general benefit of humanity. In this regard, it fitted in with other US policy initiatives designed to promote the image of the United States as a country eager to cooperate internationally in an open and transparent manner. The Marshall Plan, Atoms-for-Peace and the Peace Corps were all part of this general image-building approach, though all had other motivations as well, as did the space policy.

The apparent separation of civilian and military activities allowed the United States considerable flexibility. By having a largely transparent civilian-dominated programme, American public insecurity was alleviated, yet at the same time the US was able to continue its military programmes away from the glare of national and international scrutiny, and often successfully camouflaged behind actual or fictitious civilian space projects.

In fact, unknown to the American public, there were three, not two space programmes, white, blue and black. The white programme was the high profile civilian programme led by NASA. The blue programme was the classified military programme run by the Department of Defense. In addition, there was the ‘black programme’, the reconnaissance programme run by the intelligence agencies.

The apparent separation of the elements of the US space programme made it easier for the vast majority of the American political establishment to rally behind a substantial and energetic space programme. Liberals could support it as an alternative form of competition with the Soviet Union in an era when the dangers of nuclear war were very real, while conservatives saw the programme as developing military hardware and providing capabilities that would in the long run enhance the effectiveness of US armed forces.31

#### The collapse of the non-appropriation principle causes space arms races and implodes space law – also turns any commercial development impacts

Tronchetti 7 [Fabio Tronchetti, educator at the International Institute of Air and Space Law at Leiden University, 2007, “THE NON-APPROPRIATION PRINCIPLE UNDER ATTACK: USING ARTICLE II OF THE OUTER SPACE TREATY IN ITS DEFENCE,” International Institute of Space Law, https://iislweb.org/docs/Diederiks2007.pdf]/¶

ABSTRACT 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. PRELIMINARY CONSIDERATIONS 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 17212 and 19623 , 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. ARTICLE II OF THE OUTER SPACE TREATY: A MATTER OF DEBATE The legal content of Article II of the Outer Space Treaty is one of the most debated and analysed topic in the field of space law. Indeed, several interpretations have been put forward to explain the meaning of its provisions. Article II states that: “Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”. The text of Article II represents the final point of a process, formally initiated with Resolution 1721, aimed at conferring to outer space the status of res communis omnium, namely a thing open for the free exploration and use by all States without the possibility of being appropriated. By prohibiting the possibility of making territorial claims over outer space or any part thereof based on use or occupation, Article II makes clear that the customary procedures of international law allowing subjects to obtain sovereignty rights over un-owed lands, namely discovery, occupatio and effective possession, do not apply to outer space. This prohibition was considered by the drafters of the Outer Space Treaty the best guarantee for preserving outer space for peaceful activities only and for stimulating the exploration and use of the space environment in the name of all mankind. What has been the object of controversy among legal scholars is the question of whether both States and private individuals are subjected to the provisions of Article II. Indeed, while Article II forbids expressis verbis the national appropriation by claims of sovereignty, by means of use and occupation or other means of outer space, it does not make any explicit mention to its private appropriation. Relying on this consideration, some authors have argued that the private appropriation of outer space and celestial bodies is allowed. For instance, in 1968 Gorove wrote: “Thus, at present an individual acting on his own behalf or on behalf of another individual or private association or an international organisation could lawfully appropriate any parts of outer space…”6 . The same argument is used today by the enterprises selling extraterrestrial acres. They base their claim to the Moon and other celestial bodies on the consideration that Article II does not explicitly forbid private individuals and enterprises to claim, exploit or appropriate the celestial bodies for profit7 . 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 former10. 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. Thus, summing up, we may say that prohibition of appropriation of outer space and its parts is a rule which is valid for both private and public entity. The theory that private operators are not subject to this rule represents a myth that is not supported by any valid legal argument. Moreover, it can be also added that if any subject was allowed to appropriate parts of outer space, the basic aim of the drafters of the Treaty, namely to prevent a colonial competition in outer space and to create the conditions and premises for an exploration and use of outer space carried out for the benefit of all States, would be betrayed. Therefore, the need to protect the non-appropriative nature of outer space emerges in all its relevance.

CUSTOM VS JUS COGENS: SHOULD THE NONAPPROPRIATION PRINCIPLE CONSIDERED A CUSTOMARY RULE? As anticipated, this paper is based on the idea that the non-appropriation principle is a customary rule holding a special character. In order to understand the reasons of this special status, it is necessary to clarify the legal meaning of the word custom and to explain why the interpretation of the nonappropriation principle in terms of a customary rule, and not, for instance, in terms of a rule of jus cogens, has received so large support in the legal literature. Let’s start with this last example13. According to Article 53 of the Vienna Convention on the Law of Treaties the expression jus cogens refers to a peremptory norm that is “accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”. The primary purpose of a jus cogens rule is to protect values and principles constituting the basis of the modern system of international law. Because of their fundamental role, the rules of jus cogens have a higher rank than ordinary rules deriving from treaty or custom. Hence, they do not permit derogation and once a State breaches their provisions, it becomes responsible towards the whole international community. Classic examples of jus cogens rules are: the prohibition of aggression, slavery, genocide and apartheid. Despite playing a fundamental role within the system of space law and despite being aimed to protect the interests of all mankind in relation to the utilization of outer space, the non-appropriation principle does not have the requisites and importance to be considered a jus cogens rule. Therefore, a hypothetic interpretation of the non-appropriation principle in terms of a peremptory norm should be refused. On the contrary, the nonappropriation principle shows the characteristics required to be classified as a customary rule. In accordance with Article 38.1 (b) of the Statute of the International Court of Justice international custom is defined as “evidence of a general practice accepted as law”. This definition reflects the widely accepted view that custom consists of two elements: general practice, or usus, and the conviction that such practice reflects, or amounts to, law (opinio juris). As for the practice, its features have been indicated by the ICJ in the North Sea Continental Shelf cases, where the Court stated that “State practice, including that of States whose interests are specially affected should…(be) both extensive and uniform”14. These elements were considered indispensable for the formation of a customary rule. Moreover, in the Nicaragua v. United States, the Court added that it was not necessary that the practice in question had to be “in absolute rigorous conformity” with the customary rule but that “the conduct of States should, in general, be consistent with such rule, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule”15. Usually, a practice emerges among certain States under the impulse of economic and political demands. If such practice does not encounter strong and consistent opposition from other States but is increasingly accepted, a customary rule comes into being. At this latter stage, it may be said that this practice becomes dictated by international law. In other words, now States start to believe that they must conform to the practice because an international rule obliges them to do so. Therefore, an opinio juris is formed. Thus, in order to support the view which considers the non-appropriation principle a customary rule, it is necessary to prove the existence of a States’ practice and opinio juris confirming this theory. The analysis of the practice before the conclusion of the 1967 Outer Space Treaty shows that the prohibition of the extension of State sovereignty to outer space was one of the first principles on which States agreed upon. Since the beginning of the space era, indeed, the US and the Soviet Union, the only two superpowers able to carry out space activities at that time, decided to consider outer space as non-appropriable and their behaviours confirmed such interpretation. Indeed, when space activities began, no territorial claims were put forward. The first incorporation of the nonappropriation principle into a legal document was made by means of UNGA Resolution 1721 (XVI) of 20 December 1961 which declared “Outer space and celestial bodies…are not subject to national appropriation”. Two years later Resolution 1962 (XVIII) of 13 December 1963 stated that “Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”. The formulation and content of these two Resolution was largely influenced by the willing of the two superpowers. Nonetheless, both Resolutions encountered the full support of the rest of the members of the United Nations and were adopted unanimously. This fact was the evidence of the existence of an opinio juris among the UN members confirming that the principles contained in the Resolution, and in particular the non-appropriation one, were accepted by the community of States. As affirmed by the Canadian Delegate in 1963, “the legal principles contained in the draft resolution…reflected international law as it was currently accepted by Member States”16. The US Delegate supported this view by declaring: “We believe these legal principles reflect international law as it is accepted by the Member of the United Nations”17. The above mentioned text of Resolution 1962 was restated and spelled out in Article II of the Outer Space Treaty. From a legal point of view, the Treaty transformed the nonappropriation principle into a binding legal obligation. Indeed, the legal effect of a principle set out in a treaty or convention ratified by Governments is not comparable to that of a principle laid down in a Resolution by the General Assembly. However, in my opinion, Article II simply reaffirmed a principle that was already part of general law and, as a consequence, already valid erga omnes and binding upon all States, being or not active in space operations. Article II, indeed, was declaratory of a formerly set out rule of customary law. SPECIAL NATURE OF THE NONAPPROPRIATION PRINCIPLE: CHARACTERISTICS OF A STRUCTURAL RULE OF INTERNATIONAL LAW The interpretation of the non-appropriation principle in terms of a rule of customary law has received a broad support in the legal literature. I fully agree with such interpretation. However, I suggest to goes further this classic interpretation and to give the non-appropriation principle a special character. Having in mind the fundamental role that the non-appropriation principle plays in the proper functioning of space activities and the numerous examples deriving from States practice which attest its importance, I think that the non-appropriation principle should be considered a rule holding a legal effect which is superior to that of a classic customary norm. In short words, along with the typical characteristics belonging to a customary rule, the non-appropriation principle incorporates some other elements which provides it with a peculiar status and that allow this author to collocate the nonappropriation principle in a intermediate position between a customary and a jus cogens rule. Using as a starting point the words of the ICJ, which in the North Sea Continental Shelf Case, affirmed the existence of a particular category of provisions of “a fundamentally norm-creating character…”18, I propose to classify the non-appropriation principle as a “structural” norm. The adjective structural refers to the fact that this principle represents the essence of the space law system. In my opinion, in order to identify a principle as a “structural” norm, such principle needs to hold the following characteristics: 1) It must represent the basis of the legal framework regulating a field of international law, i.e., it must constitute the fundamental pillar on which such framework is built on. 2) Its presence ensures that the other principles constituting such legal framework can operate and fulfil the purpose for which they are set out. Thus, we may say that without this structural principle the other rules of the above mentioned legal system lose their significance. 3) There must be a historical and present evidence of the special status of the norm in question. 4) If the structural norm is abolished, the legal system of which such norm constitutes the basis will collapse. 5) Its violation generates a special regime of responsibility for the State involved. Let’s see now if the non-appropriation principle incorporates these features. 1) The non-appropriation principle: the basis of space law The non-appropriative nature of outer space is the basic concept of space law. Since the first satellite was launched States agreed to renounce to any sovereignty claim on outer space and to consider outer space as nonappropriable. The upcoming space era was seen as an unrepeatable opportunity for all mankind and as a possible instrument to improve the quality of live of all people on Earth. The non-appropriation principle represented the best guarantee that this “humanitarian” and idealistic approach to the management of the space environment was put in practice. Its presence, indeed, was a manifest promise that States were willing to base space activities on a cooperative basis and to carry out the exploration and use of outer space for the benefit of all. 2) Predominance of the non-appropriation principle over the other space law rules The non-appropriation principle constitutes the premise for the putting into practice and realization of the other principles set out in the Outer Space Treaty. First of all, the freedom of exploration and use by all States of outer space (Article I, par. 2 of the Outer Space Treaty) may exist only in the presence of the non-appropriation principle. If each State was allowed to acquire territorial rights over parts of outer space, the freedom to accede to and use outer space would be reduced or completely abolished. The nonappropriation principle, indeed, is to be considered the crucial component of the res communis idea. Secondly, if national appropriation in space was allowed, the preservation of outer space for peaceful purposes only would cease to exist (Article III of the Outer Space Treaty). As analysed, the non-appropriative nature of outer space has prevented to transport terrestrial conflicts and rivalries into outer space so far. Moreover, if States were free to “nationalize” parts of outer space I seriously doubt that the principle of cooperation and mutual assistance (Article IX of the Outer Space Treaty) would keep guiding the activities of States in outer space. 3) Evidences of the structural status of the non-appropriation principle It is possible to enumerate numerous examples which support and confirm the structural status of the non-appropriation principle. These examples come both form the past, namely from the process leading to the setting up of space law, and from the current practice of States and private operators in space. Therefore, I have classified such evidences as either historical or modern. 3.1) Historical evidences The res communis omnium nature of outer space found support in legal theory and in official declarations since the beginning of the space era. Already in 1947, D. Manuilsky, UN Delegate of the USSR, proposed to submit a resolution to the UN with the purpose to declare outer space “an international entity”19. Such proposal did not find any echo. However, in the literature of the pre and post satellite era there was a generally accepted view that outer space could not be subject to national appropriation. For instance Prof. Jenks in 1965 stated “Space beyond the atmosphere is and must always be a res extra commercium incapable of appropriation by the protection into such space of any particular sovereignty based on a fraction of the earth’s surface”20, while M.S. Smirnoff in 1959 declared that “The right of occupation and discovery does not exist in space which is considered as res communis”21. The principle that outer space was non-appropriable was also affirmed in the 1960 Resolution of the International Law Association declaring “outer space may not be subject to the sovereignty or other exclusive rights of any State”22 and in the 1962 Draft Code of the David Davies Memorial Institute laying down: “Outer space , and the celestial bodies, therein, are recognized as being res communis omnium,…and neither outer space nor celestial bodies in it are capable of appropriation or exclusive use by any State”23. As to the official declarations, already in 1958 Senator Johnson addressed the United Nations by declaring that: “We of the United States have recognized and recognize, as most all men, that the penetration into outer space is the concern of all mankind. If nations proceed unilaterally, then their penetration into space becomes only extension of their policies on earth. Today outer space is free. It is unscarred by conflict. No nation holds a concession there. It must remain that way”. On 14 September 1959, the Soviet space device Lunik-2 crashed on the surface of the Moon by carrying metal emblems bearing the coat of arms of the Soviet Union and the Soviet Republics. Immediately after the Lunik’s reaching the Moon, the soviet academics L.I. Sedov and A.V. Topchiyev declared that the coat of arm did not symbolize any territorial claim24. This interpretation was confirmed by Premier Khruschev during his staying in the US. He stated: “The Soviet pennant as an old resident, will then welcome your pennant and they will live together in peace and friendship and as well as people should live who inhabit our common mother the earth…We regard the sending of the rocket into outer space and the deliverance of our pennant to the Moon as our achievement, and by this word ‘our’ we mean the countries the countries of the entire world, i.e. we mean that this is also your achievement and the accomplishment of all the people living on the earth”25. From the United States side, we can quote the significant declaration of President Eisenhower which on September 22, 1960, addressed the United Nations General Assembly by indicating some basic concepts that in his opinion had to constitute the basis for international space cooperation. Among those there were the following principles: “We agree that celestial bodies are not subject to national appropriation by any claims of sovereignty”26. Later, as we have seen, the non-appropriation principle was incorporate in UNGA Resolution 1721 and 1962. In June, 1966, both the United States and the Soviet Union submitted to the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) drafts of an instrument that would become the Outer Space Treaty. These drafts were based on the nonappropriative nature of outer space. In 1967, the non-appropriation principle of outer space was formally laid down in Article II of the Outer Space Treaty. Nine years after the signature of the Outer Space Treaty, an international case took place confirming the importance and the general acceptance of the non-appropriative nature of outer space. In 1976, eight equatorial States which were not parties to the Outer Space Treaty, claimed, by means of the Bogotà Declaration, sovereignty rights on the part of the geostationary orbit above their territory27. These States affirmed their non-acceptance of the principles of the Treaty, especially regarding the principle of non-appropriation. Their claim was rejected by the overwhelming majority of States on the ground that the non-appropriative nature of outer space was a rule binding all States independently by their participation to the Treaty. 3.2 Modern evidences As indicated in the beginning of this paper, there is an increasing number of legal authors who consider the non-appropriation principle the major obstacle to the commercial development of outer space. With particular regard to the possibility to use and exploit extraterrestrial mineral resources, these authors affirm that the current space law regime, which prohibits the creation of property rights in outer space, fails to guarantee predictability for space entrepreneurs and to protect the rewards of their efforts. Therefore, private operators are discouraged to undertake missions to exploit such resources. In order to make these exploitative activities possible these authors propose the following theories: 1) To amend or simply to remove Article II of the Outer Space Treaty and to replace it with a clause allowing for the creation of titles of property rights in outer space28; 2) To extend the existing terrestrial regime of property rights in outer space. As a consequence, all individuals would be entitled to use, exclude and dispose of outer space and its resources29; 3) The United States should ignore the 1967 non-sovereignty provision and start to appropriate parts of outer space30; 4) The United States should recognise the claim of those who discover valuable mineral resources31. According to this theory the recognition of these claims would not constitute national appropriation, but rather the exercise of the US jurisdiction over its citizens. All these theories must be rejected because they lack a solid legal basis and because none of these proposals is able to prove that a system allowing the creation of property rights, would guarantee the orderly and coordinated development of space exploitative activities. The important consideration for this paper is that, in my opinion, all these attacks on the non-appropriation principle symbolize a confirmation of the special status of such principle within the context of space law. The more such authors attack the nonappropriation principle, the more its importance and the need for keeping it as the basis of space activities emerge. The fact that this authors only focus on this principle and not on the others, such as the one establishing that the exploration and use of outer space shall be carried out for the benefit and in the interests of all mankind, is an indication that it is the essence of the space law system. Apart from these theories, the other major threat to the non-appropriation principle comes from companies which sell lunar and other celestial bodies’ acres. Among these companies one of the most popular is Lunar Embassy. Lunar Embassy has established the practice of setting out twin companies and to nominate ambassadors from around the world. Recently a juridical controversy has emerged involving the so-called Lunar Embassy in China. The legal consequences of this controversy are particularly relevant for the purpose of this paper. In October 2005 Beijing industrial and commercial authorities suspended the license of Lunar Embassy in China for having engaged in speculation and profiteering and fined it 50,000 yuan. Lunar Embassy in China sued the Beijing Administration32. The Haidian District People’s Court ruled against the company in November 2005. Then, the company decided to appeal against the Court’s decision33. In March 2007 the Beijing First Intermediate People’s Court ruled against the company, stating that no individual or State could claim ownership of the Moon34. In its pronunciation the Court cited the fact that China was part of the Outer Space Treaty, which prohibits appropriation of outer space and its parts, since 1983.

The ruling of the Chinese Court represents a very significant confirmation of the nonappropriative nature of outer space after forty years of its entry into force. It is a clear-cut indication of the fact that the nonappropriation principle holds a special status. Individuals are not allowed to act in contrast to it because its presence is vital for the safe management of outer space. If violation to the non-appropriation principle were allowed, the consequences for the whole space law system would be catastrophic. Another important re-affirmation of the importance of the non-appropriation principle has been made in 2004 by the Board of Directors of the IISL by means of the “Statement of the Board of Directors of the International Institute of Space Law on Claims to Property Rights Regarding the Moon and Other Celestial Bodies35. The Statements reads: “The prohibition of national appropriation…precludes the application of any legislation on a territorial basis to validate a private claim. Hence, it is not sufficient for sellers of lunar deeds to point to national law, or the silence of national authorities, to justify their claims…”. The Statements also calls the States Parties to the Outer Space Treaty to: “comply with their obligation under Articles II and VI of the Outer Space Treaty…under a duty to ensure that, in their legal systems, transactions regarding claims to property rights to the Moon and other celestial bodies or parts thereof, have no legal significance or recognised legal effect”. The Statement on one side rejects those theories supporting the national registration of private claims to the Moon and other celestial bodies and on the other restates the special obligation relying on States to respect and to ensure the respect of the non-appropriative nature of outer space. 4) The abrogation of the non-appropriation principle will generate the collapse of the system of space law If the non-appropriation principle was removed, it is very likely that the system of space law as we have know it so far would cease to exist. In a future space scenario without the presence of the non-appropriation principle, conflicting claims among States would arise. This situation would engender international tension and increase the risk for armed conflict in outer space. Moreover, as soon as a State was able to gain control over an area of a celestial body, there would be nothing to prevent such a State to impose taxes and royalties for the acquisition of rights by private operators to use such area and its resources. As indicated by Sters and Tennen, in a similar scenario the costs for utilizing space resources and for carrying out exploitative missions would increase36. Therefore, the abrogation of the nonappropriation principle would prevent instead of favour, as it is suggested by some, the commercial development of outer space. Additionally, if States were allowed to acquire sovereignty rights over parts of outer space, obviously they would pursue their own purposes and interests. Thus, the idea that the exploration and use of outer space is the “province of all mankind” would lose its relevance. 5) Special responsibility and consequences for the violation of the non-appropriation principle As we have just seen, if the non-appropriation principle was removed, the risk for an armed conflict in outer space would be high. Therefore, States have a special duty to act in conformity with such principle. But what if a State should suddenly decide to violate such principle and to appropriate one part of outer space? What would be the legal consequences of such behaviour? Considering the fact that Article III of the OST makes international law, including the Charter of the United Nations, applicable to the exploration and use of outer space and having in mind that Article I (1) of the UN Charter lays down the obligation to maintain peace and security, and to prevent or remove threats to peace, the individual violation by a State of the principle contained in Article II of the OST should be considered a threat to international peace. Such a State should be seen as responsible for an act of particular gravity towards the whole community of States. Therefore, in a similar situation the other States would be entitled to act collectively through the United Nations to stop such behaviour and to remove this threat to peace. A joint effort and pressure in that direction should be likely to restore the status quo ante. The argument could be put forward that if a State should decide to withdraw from the Outer Space Treaty, it would be no longer bound by the provisions of Article II and thus it could appropriate parts of outer space. This argument should be rejected on the basis that even after that withdrawal, such a State would be obliged to respect the non-appropriation principle in consideration of its structural and special status. CONCLUSION The non-appropriation principle represents the basic principle of space law. Considering its importance and its role in providing the conditions for the peaceful and orderly management and development of space activities, this paper has put forward the hypothesis of considering that principle a structural rule of international law. As it has been shown, there exist several historical and modern examples which confirm the peculiar status of the principle contained in Article II of the Outer Space Treaty. Having in mind the special characteristics of the non-appropriation principle, the theories proposing its abrogation or suggesting unilateral State actions against it are unacceptable. If these theories were put into practice, the use of outer space would evolve into a situation of chaos and, moreover, its commercial development would be hindered instead of favoured. Any hypothetical amendment of the nonappropriation principle should be carried out by all States acting collectively. This would be the only option to prevent the risk of war in outer space and to allow the harmonized management of space activities in the era of space commercialisation.

#### Western militarization of space *consolidates* an extra-terrestrial system of rule designed to increase coercion of non-Western powers and strengthen neoliberal exploitation of the space environment.

**Duvall et al, 8**

(\*Dr. Raymond Duvall, Professor of Political Science, University of Minnesota, Distinguished Scholar Award, from the International Theory Section of the International Studies Association, \*Dr. Jonathan Havercroft is Associate Professor in International Political Theory within Politics & International Relations at the University of Southampton, “Taking sovereignty out of this world: space weapons and empire of the future”, *Review of International Studies* (2008), 34, 755-775 Copyright© British International Studies Association dot 10. 101 7IS02602 10508008267, Ak.)

Space weapons, sovereignty, and the constitution of empire Our argument, in simple terms, is that the **unilateral militarisation of space reconstitutes and alters the social production of political society** globally in three interlocked ways that are rooted respectively in the three forms of deploying technologies/cartographies of violence in orbital space identified in the previous section: **missile defence; space control; and force application**. The conjoint effect of those three technologically induced processes of reconstitution33 is to **substitute the consolidation of an extra-territorial system of rule** - which we refer to as **empire of the future** - **for the competitive sovereignties of** the **modern states**-system. Missile defence The first weapons in **space** will probably be **deployed** for **missile defence**. The US military is testing several prototypes of components of such a system, one of which, the MDA Space Test Bed, is being funded as 2008, with the aim of integrating already existing space technologies into a system that, from orbital space, can intercept ballistic missiles in their boost phase.34 Such a system, when/if highly effective, **replaces mutual deterrence with the singular US capability** (perhaps extended to allies) **to launch unilateral pre-emptive and preventative attacks freed from concerns of retaliation** through ballistic missile counter-attacks. The missile defence system now envisioned by the US thus undermines the logic of mutual deterrence. **States not included under its umbrella become** increasingly **vulnerable to** (even **nuclear**) **attack** **by the state that controls it**.35 The **sovereignty of a state is conceptually and practically linked to its ability to maintain territorial integrity by deterring enemies from attacking**. **During the Cold War**, the deterrent effect of **nuclear weapons** was acknowledged as a primary means by which 'great power' states in conflict **protected** their **territorial integrity**, **and**, in turn, their **sovereignty**.36 Kenneth Waltz argued that the proliferation of nuclear weapons would extend deterrent effects to otherwise not-yet 'great powers', thereby strengthening the security of larger numbers of sovereign states and stabilising the international system.37 Following the logic of Herz's nuclear 'one-worldism', an **effective missile defence** system, by contrast, **will strip states of** **whatever** **'hard shell' of territorial defensibility that had been** or might be **provided by mutual deterrence** of missile attacks. The realist argument that has largely carried the day for the past half century in critical response to Herz (that the deterrent effect of mutual assured destruction of two states possessing nuclear weapons reinscribes territorial state sovereignty) accordingly is brought into doubt. If the **US** were to develop a sufficiently sophisticated **missile defence** shield, the **deterritorialising effect on the sovereignty of all other states** would be precisely those that Herz forecasted - their 'hard shell' of defensibility would be lost. There would be a significant twist, however, because, **for the US**, control of an effective **missile defence** system **would** markedly **reinscribe** its territorial 'hard shell' and **its sovereignty** in exclusively shielding it from the threat of (missile-based) attack by others. **The sovereignty of one state is reinscribed**, **while** that of **other states**, most notably 'great powers' that have depended thus far on their **deterrent capacities, is eroded**. Space control The doctrine of space control has emerged out of the belief that assets in space represent a potential target for enemies of the US.38 There are two kinds of vulnerable US assets: private-commercial; and military. One **concern** is that **rivals** may **attack commercial satellites**, thereby disrupting the flow of information and **inflicting significant harm on global markets**.39 Militarily, the concern is that, through **increasing reliance on satellites** for Earth-based military operations, **the US has created an 'asymmetrical vulnerability'**. **An adversary** (**including** **a** non-state, **'terrorist' organisation**) **could** effectively **stop** ~~immobilise~~ **US forces by destroying** ~~disabling~~ the **satellites that provide communication, command, and control** capabilities. Consequently, the project of **space control is designed to** protect commercial and military satellites from potential attacks. Its broader purpose, however, is to **prevent** **rivals** **from having any access to space for activities antithetical to US interests**; this is the imperative for **'denial of** the use of **space to adversaries'**. Thus **space control has dual functions** - it **is** both a **privatising** of **the commons of orbital space and a military exclusion** - in a form of 'inclusive exclusion'.40 **Space control represents the extension of US sovereignty into orbital space**. Its **implementation** **would** reinforce the constitutive effect identified in the previous section on missile defence, namely to **reinscribe** **the 'hard shell' border of the US, now extended to include the 'territory' of orbital space**. **US sovereignty is projected out of this world and into orbit**. Under Article II of the 1967 Outer Space Treaty, 'Outer Space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. **The US project of space control** would entail a clear violation of this article.41 In addition to expanding the scope of US sovereignty, however, this **violation of international law** has a second constitutive effect of importance, namely **to produce** a **distinctly capitalist sovereignty**. In Volume One of Capital, Marx chided classical political economists for their inability to explain how workers became separated from the means of production. Whereas political economists such as Adam Smith argued that a previous accumulation of capital was necessary for a division of labour, Marx argued that this doctrine was absurd. Division of labour existed in pre-capitalist societies where workers were not alienated from their labour. Instead, Marx argued that the actual historical process of primitive accumulation of capital was carried out through colonial relations of appropriation by force.42 While not a perfect analogy, **because of the lack of material labour**, the value of which is to be **forcibly appropriated in orbital space**, **space control is** like such **primitive accumulation in constituting** **a global capitalist order through** the **colonisation of space as previously common property**. One of the purposes of the 1967 Outer Space Treaty was to preserve a commons where all states, regardless of technical ability or economic or military power, could participate in the potential benefits space has to offer. In the years since this treaty was signed, the **primary economic use of space** has been **for commercial communications satellites**. This industry has expanded dramatically in the last two decades. Total revenues for commercial space-related industries in 1980 were $2.1 bn; by 2003 this figure had expanded to $91 bn and it was expected to increase at least as rapidly into the foreseeable future.43 **Space control is about determining who has access to this new economy**. **Positions in orbit for satellites are a new form of 'real estate'**. By controlling access to orbital space **the US would be forcibly appropriating the orbits**, in effect **turning them into primitively accumulated private property**.44 In this way, **the US becomes** even more than it is now the sovereign state for global capitalism, **the global capitalist state**. Force application from orbital space **Force application entails using weapons** either based **in space** or **deployed** **through space** **to attack targets** **on Earth** or within Earth's atmosphere. Such weapons systems (other than missiles) are many years off, but substantial research is being conducted, and military strategists are already discussing how they might be used.45

#### Weaponization and distortion of the space environment is a unique threat and is *far* more pernicious than conventional militarism. Space warfare creates a domain that distorts sovereign relations by breaking down deterrence, MAD, and institutional coherence. Such a surveillance panopticon makes resistance to violent institutions *impossible*.

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(\*Dr. Raymond Duvall, Professor of Political Science, University of Minnesota, Distinguished Scholar Award, from the International Theory Section of the International Studies Association, \*Dr. Jonathan Havercroft is Associate Professor in International Political Theory within Politics & International Relations at the University of Southampton, “Taking sovereignty out of this world: space weapons and empire of the future”, *Review of International Studies* (2008), 34, 755-775 Copyright© British International Studies Association dot 10. 101 7IS02602 10508008267, Ak.)

The major advantage of **space**-based **weapons** is that they **can be deployed to attack extremely quickly**. Additionally, **it is very difficult to defend against them**. They **become the violent parallel to the surveillance panopticon**. In order to investigate the constitutive effects of force application from outer space, we need to look at two aspects of these weapons: technical (what they can do); and tactical (how they would be used).46 Technically, the two types of force application weapons systems currently envisioned, laser-energy and kinetic-energy, have different features. **Laser weapons would take only seconds to deploy**, and **they could reach any target on** or near **Earth instantaneously and very precisely**. They are not very destructive, however, and as such would not be very useful against large-scale and/or heavily shielded targets. **Kinetic**-energy **weapons**, in contrast, **have the potential to deliver very destructive force**, even well below the Earth's surface (in deep bunker-busting). They would take a few hours to deploy, however.47 While they could also be designed to attack any point on earth, they are only useful against fixed targets, because of deployment lag-time. In addition to laser and kinetic-energy systems, **conventional weapons**, such as **bombs and missiles**, **might** also **be placed in space**. They would occupy a middle ground. It would take approximately ten minutes to launch them and they could attack any targets that have relatively fixed locations.48 The tactical advantages are obvious. Their **tremendous range would enable space-based weapons to reach targets** that **other weapons cannot**, and because they are **based in orbital space** there are no concerns about violating the airspace of other states in transit, as there is with airplanes or non-ballistic missiles. They could also be **used on very short notice, in contrast to the days to weeks typically required to deploy Earth-based weapons**, such **as airplanes, ships, or troops**. Their major drawback is cost, both for development and for placing in orbit.49 As such, they would likely have limited use,50 particularly if other weapons and tactics can accomplish the same mission for lower cost. Why, for instance, would the military use a kinetic-energy weapon orbiting in space against a target when a similar result could be produced by a cruise missile or a bomb? Thus, to repeat, **the prime advantage of these weapons** is their **ability to be used very quickly against targets** that are **out of the reach of other weapons**. In what kind of military operations, then, would space-based weapons for force application be useful? Military analysts have speculated on just such questions: Alternatively, **a space weapon might be the weapon of choice** for an otherwise lower-value target **if the space weapon were the only choice available in time**, particularly for a time critical political effect. For example, a locomotive might not be worth a space-delivered smart munition. However, it might be well worth the use of a **space**-delivered smart **munition to target a locomotive** **pulling a train full of people forced from their homes for transport** **to the border** **or** to **a concentration camp** **at the beginning of an ethnic cleansing campaign** - particularly if aircraft and helicopters cannot reach the train because air defenses have not been suppressed, basing and overflight rights have not been granted, or coalition consensus on the action has not been reached.51 This scenario is fascinating for the political logic at work within it - **force application from space is required to attack an otherwise inaccessible target**. All three reasons stated for inaccessibility involve **potential gaps in US capacity to project its power globally**. **Either the defences of the target country have not been suppressed**, **or other states have not consented to let US forces fly through their airspace**, **or** other **coalition members** - presumably in NATO or the UN - **have not consented to the action**. What places **targets 'out of reach'** in this scenario, then, is **the sovereignty of other states** as **exercised through their abilities to defend their territory**, **control** their **airspace**, **and**/or **participate** (jointly) **in authorised** decision of the (global) **exception to international law**. As Schmitt has argued with respect to domestic law, **the sovereign is constituted through the capacity to decide the exception to the application of law in a moment of crisis**.52 The effect of **space weapons** for force application is to **erase that sovereignty** - **states are constituted as subjects lacking authorisation of decision, and lacking a boundary** effectively **demarcating inside from outside**. **While** **other** **weapons systems** **can** **be** **used to intervene in affairs within a state's borders**, their **constitutive logic** (with the possible exception of nuclear and some forms of biological weapons) **is not**, per se9 **corrosive of sovereignty**, **because in principle**, even if not in every instance, **they can be defended against**. **Precision space-based strikes happen so rapidly**, however, **that a defensive response is not possible**. As such **they strip states of the defensive 'hard shell' that**, classical realists argued, **is constitutive of sovereignty**. All three justifications thus **buttress the exclusive capacity of the US to 'decide the exception' globally**, **while diminishing, by circumvention**, the **sovereignty of other states**. The **hypothetical use of space weapons** in this scenario **is an imperial project**.53 Furthermore, these weapons would be **most useful against small targets, such as groups and individuals**. While the justification for the **use of space-based weapons** in the quoted scenario was to prevent genocide, the hypothetical attack **constitutes their possessor as global police**, **punishing without trial** those specific actors it deems responsible for genocide. Even if the specific act provoking space-based attack is not a violation of international law, the political society with the capacity to intervene - and with it the capacity to decide when to intervene - constitutes itself as sovereign police of the international system.54 **Space-based weapons** for force application, then, **are most useful at targeting individuals and groups at short notice** in order **to achieve** the **policing** objective of **'order' and control under a rule of law**, even as that sovereign policing decision is made outside of the very law in whose name it is made. We have already seen glimpses of this type of warfare in recent years. Consider, for example, that **the Iraq War began with a** so called **'decapitation strike'** **aimed at assassinating Saddam** Hussein in the hope of ending the war before it began. **Similar tactics have been used by the Israeli Defence Forces to kill** specific leaders of the **Palestinians**. Also, the US has used Unmanned Aerial Vehicles equipped with missiles to target members of Al Qaeda and the Taliban in Afghanistan and Pakistan. **Placing weapons in space aimed at terrestrial targets would markedly accelerate the ability to carry out** these types of **'targeted killings'** (**assassinations**). Thus, **application of force from orbital space** would have at least three crucially important constitutive effects. First, it would constitute the US, as possessor of these weapons, as the centre of a globally extensive, late-modern empire,55 a sovereign of the globe. But **this sovereign would exercise its power in a new way**. Rather than needing to have occupying forces in place to control the Earth's lands and seas, **it could rely heavily on space weapons to exercise social-political control**. While these weapons are not particularly useful in fighting large-scale wars, or in the conquest of territory, **there would no longer be a need to hold territory**. **All the global sovereign would have to do is to kill, or** perhaps even **threaten** to kill, potential adversaries around the world in order **to 'police' social and political activities** throughout its global empire.56 Second, **these weapons**, just as space-based missile defence, **would** effectively **strip other states of their territorial sovereignty**. While de jure sovereignty may remain intact, **de facto sovereignty would be** effectively **erased**, in a manner **reminiscent of classical empire**. For decades, realist international relations scholars have promoted the idea that states secure their sovereignty through self-help.57 **If states lack the capacity to defend themselves from adversaries, they are particularly vulnerable to attack and conquest**. While liberal and constructivist scholars have questioned how closely sovereignty is linked to military capability, realists have responded that throughout history states with disproportionate military power have repeatedly violated the sovereignty of weaker states.58 While **space-based weapons** in and of themselves would not enable conquest of another state, they **could be used very effectively to achieve precise political objectives on the territories nominally under the sovereign authority of other states**. Imagine what impact these weapons would have on US foreign policy with respect to two of its currently most pressing objectives. Consider, for one, how useful such weapons might be with respect to preventing a rival state, such as Iran or North Korea, from acquiring nuclear weapons. While there has been speculation that the US or Israel may launch **air strikes** against potential nuclear weapons manufacturing facilities in these countries, the logistics - **getting access to airspace from neighbouring countries, and the possibility of retaliation** against military forces in the area - **make such operations difficult**. **Using weapons in space would avoid these logistical difficulties**, thereby **making** the **missions easier** (**and** presumably **more likely**). Threatening spaced-based attack on either manufacturing sites of weapons or on the political leadership of an adversary might be sufficient in many cases to alter the behaviour of targeted governments. In short, if the **US** were to deploy such **weapons in space**, they **would** likely **be used** to similar effect **as** the **gunboat diplomacy** of the 19th century A second contemporary policy objective is to fight specific non-state actors. The 9/11 Commission Report discussed in great detail the logistical obstacles that prevented the Clinton administration from capturing or killing Osama Bin Laden,59 principally the difficulty in either launching cruise missiles into Afghanistan through another state's airspace or deploying US Special Forces in an area remote from US military bases. Had the US possessed space-based weapons at the time, they probably would have been the weapons of choice. When combined with intelligence about the location of a potential target, they could be used to kill that target on very short notice without logistical hurdles. The sovereignty of states would no longer be an obstacle to killing enemies. All that would stand in the way would be international norms against assassination and the potential political backlash of imperial subjects. While much has been made by constructivists in recent years of the **capacity of norms and taboos to restrain state behaviour** in a world of sovereign states, it does **not** necessarily follow that in a world of only one effectively global sovereign such taboos and norms would continue to function or even **exist**. The example of using space weapons to target non-state actors such as Osama Bin Laden and Al Qaeda points to a third constitutive effect of space weapons capable of force application. Because **these weapons could target anyone, anywhere, at anytime**, **everyone on Earth is** effectively **reduced to 'bare life.'**60 As Agamben demonstrates, **sovereign power determines who is outside the laws and protections of the state in a relationship of 'inclusive exclusion.'** While human rights regimes and the rule of law may exist under a late-modern global empire policed by space weapons,61 **the global sovereign will have the ability to decide the exception to** this **rule of law**, and this **state of exception** in many cases may be **exercised by** the use of **space weapons** that **constituted the sovereign in the first place**.

#### Traditional realist scenarios fail in every capacity – ensures adventurism, preemption, and war-- understanding threat creation inculcates a strong pedagogy to identify solutions.

Eric Van Rythoven, The perils of realist advocacy and the promise of securitization theory: Revisiting the tragedy of the Iraq War debate European Journal of International Relations 2016 Department of Political Science, Carleton University

Kenneth Waltz may have been correct in that states are security maximizers, but today, this may be occurring in a profoundly different way than he originally envisioned. His famous dictum argues that states look to maximize security though a balance of power that discourages both predation and counterbalancing (Waltz, 1979: 126). However, **since the end of the Cold War, we have seen a distinctively different sense of security maximization:** **an ever-expanding domain of security issues**. Despite appeals to the contrary (e.g. Walt, 1991), the broadening of security has risen to the status of international institutions, globalization and great power rivalry in terms of being a central, if ambiguous, feature of contemporary world politics. Evidence of this broadening is pervasive. The executive summary of the Pentagon’s recent ‘Quadrennial defense review’ begins with the clichéd claim that the US ‘faces a rapidly changing security environment’, defined not only by interstate war, but also by ‘sectarian conflict’ and cyber-threats (DoD, 2014: iii). While intended to limit great power conflict, the United Nations (UN) Security Council now increasingly deliberates over the dangers of infectious diseases including HIV/AIDS (UNAIDS, 2011), Polio (UN News Centre, 2013) and, more recently, Ebola (UNSC, 2014). The Organization for Security and Cooperation in Europe offers an even starker example. Its ‘comprehensive and co-operative’ approach to security holds arms control, the rule of law and minority rights as all equally viable ‘security’ concerns (OSCE, 2009: ii). **This broadening includes the wholesale addition of new sectoral concerns** (e.g. cyber-security), **as well as an intensifying of traditional dangers**. Once materially insignificant and geographically distant ‘rogue’ states, terrorists groups and local militias are now understood by policymakers and publics alike as ‘genuine’ threats to international security. Debates over what is and is not a security issue are now akin to a rowdy dinner table where several — often uninvited — guests rub elbows with more traditional military concerns**. In the midst of this broadening, there is a serious political and practical concern for realist scholars of security. If a state is encumbered by an ever-expanding security agenda that consumes more and more resources and promotes reckless adventurism abroad**, what then will be left when the genuine problem of great power conflict emerges again? As a corrective, realists have repeatedly, and often admirably, engaged in sustained advocacy campaigns to convince publics and policymakers alike of the need to constrain the national security agenda. Lost in the extensive literature on the realist tradition is a rich history of political practice embodied by E.H. Carr’s interwar polemic against liberal idealism (Cox, 2001), Hans Morgenthau’s and Kenneth Waltz’s resistance to the Vietnam war (Oren, 2009), and even contemporary neorealism’s criticism of the US’s role in Iraq (Payne, 2007; Schmidt and Williams, 2008). While realist advocacy is diverse, speaking out against expansive conceptions of national security, or ‘threat inflation’ as it is more commonly known, is a recurrent theme.1 While previous works by Payne (2007) and Oren (2009) highlight the key tensions between neorealist theory and practice, this article joins Schmidt and Williams (2008) in questioning why such advocacy fails. Like Schmidt and Williams, **I see the 2003 Iraq War as a crucial example of realism’s failure to influence public debate and to curb an expansive vision of national security**.2 **Also, in line with Schmidt and Williams, I am broadly sympathetic to explanations rooted in how a variety of ‘symbolic and political resources’ (Schmidt and Williams, 2008: 194) were employed rhetorically by neoconservatives against realists.** My concern, however, is that this explanation elides how realists sceptical of the Iraqi threat were committed to a very specific model of advocacy anchored in the metaphorical marketplace of ideas. In this ironically liberal model of public discourse, the market valuation of the Iraqi threat was grossly inflated, something to be corrected through the provision of superior information and reasoning. Even if realists had been sensitive to the value of the rhetorical resources outlined by Schmidt and Williams — and I believe at some level that they were — **the marketplace of ideas model is predicated on objective rational actors debating over facts and logic, not values**. It is against this backdrop of a tacitly liberal model of discourse that I argue for the value of securitization theory in explaining the failure of realist political advocacy. Contra the marketplace of ideas, **securitization theory envisions debates over security as explicitly power-laden, where ‘some actors are placed in positions of power by virtue of being generally accepted voices of security’** (Buzan et al., 1998: 31). Focusing specifically on the 2003 Iraq War debate, I examine how rhetorical resources in the form of identity and emotion were employed by neoconservatives against realists. Of course, the term ‘advocacy’ has a wide array of meanings and can be studied in a number of different ways. These include Kingdon’s (1995) classic framework centred on problem, policy and politics streams, studies of transnational advocacy networks (Keck and Sikkink, 1998), accounts rooted in Habermasian forms of deliberative argument (Risse, 2000), and Weberian interventions focused on objective analyses (Jackson and Kaufman, 2007). Yet, the use of the term ‘advocacy’ here is less concerned with its deliberative, persuasive or educational dimensions, important as they may be. An advocate, as is so often represented in US legal dramas, can be engaged in a forceful and competitive struggle. Rather than being an exercise in ‘soft power’, practices of advocacy can entail ‘representational force’ (Bially Mattern, 2005) and even ‘rhetorical coercion’ (Krebs and Jackson, 2007). The unique value of securitization theory, then, is how it envisions security discourse as a competitive field structured by an uneven distribution of power. This offers a distinct path into realist advocacy that exists apart from conventionally liberal approaches focused on peaceful Habermasian dialogue under cooperative ideal-speech conditions (Krebs and Jackson, 2007: 39–40). The added value of this strategy, then, is that by presenting the securitization framework as the ‘study [of] the power politics’ of the concept of security (Buzan et al., 1998: 32), the analysis is parsed in fundamentally realist terms. The resulting encounter between realism and securitization theory is then ripe for dialogue as it presents a critique that speaks the ‘language’ of realism and is less defined by outsider challenge than by familial resemblance. In making this argument, I begin by tracing contemporary neorealism’s anaemic interventions to a critique of threat inflation rooted in the liberal model of the marketplace of ideas. Despite downplaying questions of (discursive) power, this model persists, a persistence I trace to a tragic misuse of Kuhnian incommensurability. The bulk of the article then draws on the tools of securitization theory to explain the failure of realist advocacy in the 2003 Iraq War debate. While I begin with the Copenhagen School’s ‘facilitating conditions’, I ultimately stress how processes involving social identity and collective emotion came to be turned against realists by their neoconservative interlocutors. Finally, sensitive to concerns over one-way dialogue, the third section sketches the beginnings of what may be a common research agenda for realism and securitization theory organized around a common lingua franca of statecraft drawn from classical realism. Ultimately, **understanding this failure is essential for the discipline of International Relations** (IR) for two reasons. First, regardless of empirical and theoretical differences with realist thinkers, there are a number of scholars within IR who hold sympathetic policy views. On this point, academia’s broadly shared opposition to the 2003 Iraq War looms large (Peterson et al., 2005: 39). Second**, realism is typically held as the dominant paradigm within IR, particularly within security studies** (Freyberg-Inan, 2004; Krause and Williams, 1996; Miller, 2010). If the so-called dominant tradition remains politically impotent, what does that mean for more marginal approaches in influencing public debate? Understanding this failure then becomes a pressing question, with broader implications for understanding the theory–practice divide that characterizes the field as a whole.

### Part 2 is the Method

#### Plan - Private entities and space-faring governments will ban the appropriation of outer space by private entities.

#### Enforcement is using anti-satellite weapons against presently privately appropriated space materials in an effort to repossess the space after all personnel have been returned. This makes sure any past appropriation goes away as per the ban

#### The role of the ballot is to vote for the debater whose advocacy best reveals and breaks down militarism in outer space.

#### The plan *accelerates* the collapse of the US satellite network by *locking in* Kessler Syndrome. *Increasing* ASAT attacks against Satellites both demilitarizes space and creates enough space debris to make spacecraft operation impossible.

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(\*Dave Dunlop is a long time member of the National Space Society (NSS), has worked in educational outreach for Michigan Technological University, and first developed the Rockets for Schools Program in Wisconsin with the Wisconsin Space Business Roundtable and subsequently in Michigan. He has an MA Degree in Science Education from the University of Illinois and has held professional positions in Mental Health Administration and Education during his career. He has served on the Board of Directors of the NSS and is currently Chair of the NSS International Committee. He also frequently participates in program planning for the Lunar Track at the annual International Space Development Conference., \*\*Al Anzaldua is a retired US State Department diplomat and 30-year veteran of space advocacy. His undergraduate educational background is in Science and International Studies, followed by a Master’s degree in Latin American Studies. In the US Foreign Service, he carried out diplomatic and science-related work, primarily in Latin American and Caribbean countries. Al is the National Space Society (NSS) International Chapters Coordinator, Vice-Chair and International Relations Coordinator of the NSS International Committee, Secretary of the Tucson L5 Space Society, and active with other space or astronomy organizations. He has authored a series of articles on space issues in The Space Review and other publications and gives frequent presentations and exhibitions on space-related subjects, “Why the US and Russia should work together to clean up orbital debris”, <http://www.thespacereview.com/article/3156/1>, January 30, 2017, Ak.)

**There are over 22,000 Earth-orbiting debris objects larger than a softball** (10 centimeters) **and** around **a million shrapnel fragments** between 0.5 and 10 centimeters (ESA 2013). **With relative impact velocities** reaching **higher than 55,000 kilometers per hour in** low Earth orbit (**LEO**—between 160 and 2,000 kilometers in altitude—even **debris as small as a pea can take out spacecraft** (Liou 2014). **The deliberate destruction in 2007 of the Chinese** Fengyun **satellite with an antisatellite weapon** **and the catastrophic 2009 collision** **between** a **defunct Russian Cosmos satellite** and an operating Iridium satellite **have** together more than **doubled the number of cataloged debris fragments** (National Academy 2011). NASA, analyzing data from six space agencies, estimates that **if nothing is done** about the growing quantity of debris and increasing number of satellites in Earth orbit, **there will be a**nother **catastrophic collision every five** to nine **years** and the pace will accelerate (Liou 2014). At least some who have been studying orbital debris for many years believe that we may have already reached **a** “**tipping point**” **where**by orbital **debris in** congested **LEO** altitude bands **is colliding in a runaway** debris-generating **cascade**, often called the **Kessler syndrome**. Although this assertion is controversial, and a debris cascade **would take years to** **unfold**, at some point a Kessler cascade would nevertheless **make spacecraft operation in affected altitude** bands virtually **impossible** (McKnight 2012). Orbital debris is an ever-growing hazard to the International Space Station (NASA 2015) and the approximately 1,300 operating satellites, which represent only six percent of the 22,000 tracked objects in orbit (Baiocchi 2015). Although about 70 countries operate satellite, **the US, China, and Russia** **have the three largest fleets** (Aerospace 2015) **and** thus **have the most at risk**.

#### The plan resists state power by destroying imperial technologies. A counter-hegemonic strategy that destroys space weapon systems through ASAT and kinetic attacks allows insurgency against the worst state violence.

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(\*Dr. Raymond Duvall, Professor of Political Science, University of Minnesota, Distinguished Scholar Award, from the International Theory Section of the International Studies Association, \*Dr. Jonathan Havercroft is Associate Professor in International Political Theory within Politics & International Relations at the University of Southampton, “Taking sovereignty out of this world: space weapons and empire of the future”,  *Review of International Studies* (2008), 34, 755-775 Copyright© British International Studies Association dot 10. 101 7IS02602 10508008267, Ak.)

Imagining resistance Give1n these grim prospects for a deterritorialised global rule,69 **what are the possibilities for resistance?** Historically, **every advance in the weaponry of imperial powers has been met with an advance in counter-hegemonic strategy**. Most recently, **insurgents in Afghanistan and Iraq** **have been able to counter** the **technological superiority of US forces with** very **simple yet effective Improvised Explosive Devices**. In these instances, **those subjugated by the technologies and scientific knowledge linked to emerging weapons systems** have **reappropriated** these **weapons systems to resist** their **imperial overlords**. As such, it is reasonable to conclude that **space weaponry could be countered through** a variety of **asymmetrical tactics** such as: **destroying** ~~disabling~~ **space weapons while in orbit** **through kinetic energy, or even nuclear anti-satellite attacks**; **destroying** the **facilities where space weapons are produced or launched**, **or** the **research and development centres** (such as **universities**) that are **integral to the production of these systems**; organising strikes for the workers involved in harvesting the necessary raw materials; and refusing to pay taxes to the political apparatuses that control these systems. While it is difficult to imagine what precise forms resistance to space weapons might take, it is not unreasonable to conclude that even in a context of space-based empire, some form of political and military resistance will be possible, and will occur. Indeed, **China's** recent **launch of an Anti-Satellite system** **is an example of a state actor at the boundaries of imperial order engaging in** such a **reappropriation of a weapons technology**. **One of the reasons Chinese military strategists have given for developing Anti-Satellite tech**- nology **is that this** technology **exposes an asymmetrical vulnerability in the US military structure**. **The US military is already dependent on satellite systems to co-ordinate** its **communications and weapons targeting systems**. **By developing** a **technology that can destroy** ~~disable~~ **US communications and targeting satellites**, **the Chinese military would hope to disrupt the operational abilities of conventional US forces** should an actual shooting war between the two powers take place.70 The development gives us some idea of how **state and non-state actors at the margins of an empire** of the future **might resist space power by reappropriating its technologies**. Sovereignty as strategy Yet, even as China's ASAT test points to one possible way of resisting the empire of the future it also points to one way in which this empire is currently being constituted. Within US strategic planning circles China's ASAT test has been used as an impetus to increase funding to American space weapons research and development initiatives. This reaction by the US defence policy establishment is indicative of the strategic logic at work in the empire of the future. This strategic logic accelerates processes of deterritorialisation by pursuing the development of technologies that make the control of territory irrelevant; yet the logic simultaneously pursues the reterritoriali- sation of the US and orbital space as areas that should be off-limits to non- American actors. We are explicitly drawing on Deleuze and Guattari's concepts of deterritorialisation and reterritorialisation here.71 In their writings deterritorialisation refers to 'the movement by which "one" leaves the territory'. Reterritorialisation is the process that accompanies deterritorialisation, whereby the sovereign state apparatus recom- bines the deterritorialised elements to constitute a new assemblage. This is precisely the logic of the singular control by the US of weapons in Earth's orbital space. The strategy of the empire of the future undermines the binary logic of a states-system predicated either on territorially bounded sovereign states or a globally diffused, decentralised and deterritorialised biopolitical Empire as proposed by Hardt and Negri. Our analysis reveals a third possibility: in the empire of the future space power combines a set of otherwise heterogeneous processes. **Space based missile- defence strips all states** - **except the possessor** of the system - of **their hard shells by eroding nuclear deterrence** capabilities, **while providing the possessor of missile defence with a territory more secure from nuclear attack**. **Space control denies all states with the exception of the controlling power unfettered access** to space. Furthermore **it annexes orbital space as a territory of** the **space power**. Finally, **force application from orbital space makes any point on earth a** potential **target for the military force of empire** of the future. **This makes the traditional imperial imperative to project force through controlling territory no longer necessary**. **Empire of the future combines strategies of deterritorialisation and reterritorialisation to** simul- taneously **undermine** **some features of state sovereignty and reinforce others**. Therefore **the current assumption that many IR theorists make that international society must be based on either a collection of sovereign territorial states or deterritorialised biopolitical apparatuses ignores the possibility that these two processes can be co-constitutive**. In the empire of the future **the locus of authority is centralised but this authority governs a deterritorialised political entity**. While this new constellation of political power will present new possibilities for resistance, we should not underestimate how this empire's new modes of killing will constitute structures of domination potentially more terrifying than anything humanity has yet encountered.

#### Resisting status quo modes of commercial military spaceflight are in line with global anti-colonial movements toward self-determination.

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(Haris A. Durrani is a JD/PhD candidate at Columbia Law School and Princeton University (History of Science). He is winner of the Sacknoff Prize for Space History, “Is Spaceflight Colonialism?”, <https://www.thenation.com/article/apollo-space-lunar-rockets-colonialism/>, July 19, 2019, Ak.)

In **2017**, **protesters** occupied the Guiana Space Centre **in** **Kouru**, French Guiana, **shutting down half the world’s space launches** **for** nearly **the entire month of April**. French Guiana is a “department” of France, a territory whose currency is the euro and residents are French citizens. It is one of the few remaining European territories in the Americas. The territory was **a former penal colony**, Devil’s Island, which operated from 1853 to 1953, and, since 1964, **France has exploited its control over French Guiana to operate the space center**. **Against this history**, **the massive demonstration in 2017 sought redress** **for** a range of debilitating conditions that protesters attributed to mainland France: growing **unemployment**, decaying infrastructure, **paltry wages**, burdensome cost of living, high **homicide** rate, and **limited access to schools**, **medical services**, **and** potable **water**. **Occupying the** center, the “**second-busiest** **spaceport in the world** after Cape Canaveral,” **was a powerful way for the protesters to command** the **attention** of the mother country. **They pressed on** a vulnerability—French, European, and **global dependence on the center**—in order **to make visible** their **imperial plight** to the world. Demonstrators protest near Guiana Space Centre on April 4, 2017 in Kourou, French Guiana. (Sipa France via AP Images) As Americans celebrate the monumental semi-centennial of the Apollo 11 landing, the commemorations should also invite reflection on the troubled history of spaceflight and the laws that govern it. Two years before Neil Armstrong and Buzz Aldrin stepped onto the moon, the Outer Space Treaty of 1967 had ensured that no nation could declare sovereignty in space; planting an American flag on the lunar surface, US officials knew, did not amount to a national claim. But while this “anti-**imperial**” element of the Space Treaty has received deserved attention, it by no means represents the **history of spaceflight and outer-space law** as **practiced** by countries and corporations in **the Global North**—a point upon which I elaborate in the Columbia Journal of Transnational Law. While the recent spate of billionaires cashing in on spaceflight points to the inequalities that shape its development, these inequalities are hardly new. The postcolonial unrest in French Guiana is not an isolated incident. **Because of** its **proximity to the equator**, **territory in developing countries is particularly valuable for launching** into space, communicating with spacecraft, **and monitoring orbit**. This March, Jair **Bolsonaro** signed a **deal with** Donald **Trump to open** **Brazil’s** Alcântara **Launch Center** **to the US space industry**. This has **revived concerns about the land rights of** the **quilombola, indigenous black**, **and poor communities in Brazil**. **In the 1980s, the Brazilian government displaced the quilombolas when it established the space center**, **promising economic development** that has yet to be realized. Recent scholarship has pointed to the **contingencies of launch-site territory, nationalism, and self-determination** **in India and Kenya**. Recently, **protesters in Hawaii** have **attempted to prevent** the **construction of a telescope on a mountain sacred to indigenous peoples**. Meanwhile, the **US** Global Positioning System (**GPS**) has **established communication bases** **on numerous islands where America claims territory**, **disrupting communities that live there**. Similarly, the US Air Force’s **Lockheed Martin**–commissioned Space Fence, which **will monitor spacecraft and debris** in orbit, **will run 80 percent of its capabilities** out of a military base **in the Marshall Islands**, a continuing subject of US empire. In these histories, **spaceflight relies upon and continues imperial claims over territory and resources**. Within the United States, launch sites can exploit marginalized populations as well. For instance, industry and government agencies in the Mojave Desert region—one of the nation’s oldest sites for space activities—employ locals as manufacturers and engineers and teach students about spaceflight. But these developments do not seem to have improved the economy in Mojave, where the median income is below the national median. The population is predominantly black and Latino. **The US Department of Interior’s** long **history of imperial expansion** even **includes plans for a lunar colony** **and** the **use of satellites to survey resources on indigenous lands** in the United States and abroad. Moreover, the massive **technological feats of spaceflight** **rely on** **imperial claims over natural resources**. **Luxembourg**, a recent hub for commercial space, **accumulated wealth by** virtue of **its history of mining**, but **marginalized communities with valuable raw materials have fallen prey to the “resource trap” common to imperial encounters**. For instance, the fact that Mojave was a key manufacturing and mining site for the Southern Pacific Railroad implicates the region in a longer history of indigenous violence and economic difficulty. Similarly, **amid** the advent of aerial technology and **the Space Age, the US military-industrial complex funded mining projects throughout the Caribbean**, **extracting bauxite** (aluminum) with which **to construct US aerospace vehicles**. Likewise, the Ball Corporation, famous for its subsidiary Ball Aerospace, is predominantly an aluminum, steel, and packaging company. Over the last decade, China has sought to instrumentalize its space capabilities to grow a network of soft power and economic resources, offering telecommunications satellites to several states, including Nigeria, Venezuela, and Bolivia, in exchange for access to natural resources like oil, raw materials, and agriculture. **Spaceflight** almost **invariably involves activities that directly subjugate marginalized peoples**. **Space provides a strategic military position** **from which to continue postcolonial violence on Earth**, **exacerbating inequalities between spacefaring countries and** **the** so-called “**Third World**.” Space is critical for surveilling and enacting violence upon communities throughout the Third World, **from Moroccan spy satellites over occupied Western Sahara**, **to remote sensing of Afghanistan** and other strategic regions, to **monitoring** of **the US-Mexico border**: The United States spends $10 billion per year on publicly known space projects, but $15 billion on classified military activities. Moreover, **drones and** most other **military technologies that harm and surveil marginalized communities depend on** **g**lobal **p**o**s**itioning technology **and space**-based **communications**. **Significant advances in space technology developed in the context of US intervention in the Middle East and Latin America**: Remote sensing and GPS developed in the Gulf War, and, decades earlier, the first US telecommunications satellites were used to communicate with troops in Saigon. More recently, consider the US Air Force’s aforementioned Space Fence or Boeing’s Space Based Space Surveillance satellite constellation and X-37B orbital drone, which has orbited Earth several times over the past decade. Boeing and the US Air Force's unmanned X-37B space plane. (Photo by US Air Force) These **claims over territory, resources, and populations highlight** the **enormous accumulation of capital necessary to access** space. The US government and its corporate entities can afford the cost of spaceflight because it is but a fraction of their annual budgets. But for developing countries and marginalized communities, that cost is prohibitive: Spending on space is contingent on accumulated wealth.