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Clarifying ambiguities in the Outer Space Treaty

Conference room paper by Space Renaissance International

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Clarifying Ambiguities in the Outer Space Treaty

Introduction

1. Space Renaissance International (SRI) is a nonprofit entity founded in 2010. Our primary mission is to encourage and support civilian activity in outer space. We believe that a permanent, sustainable civilian presence in space will be a great benefit, not only to humanity's future in space, but also to humanity's future on Earth. To that end, we are promoting civilians in space as an 18th Sustainable Development Goal, "Space for All, on Earth and Beyond". We have helped to create an 18th SDG Coalition, 113 organizations within civil society that support the adoption of the new sustainable development goal by the United Nations General Assembly.
2. SRI has also created several academy committees to help educate ourselves and the public about important topics, including: Habitats; Settlements; Transportation, Mining, and Industry; Space Debris; Near-Earth Objects; Philosophy; Art; and Space Law. For more information about the proposed 18th Sustainable Development Goal and our committees, please visit our website, spacerenaissance.space.
3. SRI recognizes the important work of the Committee on Peaceful Uses of Outer Space (COPUOS) and its Legal Subcommittee and recently became an official observer. We believe that it is possible to develop an international framework that will support sustainable private outer space activity while still protecting essential public policies. We also believe that the member states should engage with the private sector, including industry, academia, and civil society, in the development of any such framework and in any new processes and institutions. We support the Working Group on the Legal Aspects of Space Resource Activity and the newly formed Action Team on Lunar Activity Consultation and applaud their willingness to facilitate private activity in outer space and to engage with the private sector in their work. Since becoming an official observer, SRI has submitted written comments to the Legal Subcommittee. What follows is a summary of the most important.

Clarifying Ambiguities in the Outer Space Treaty

4. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of (Outer Space Treaty) is the international agreement with the broadest support as customary international law. We agree that it should be the foundation of any international framework for outer space activity. However, it is ambiguous or even silent concerning outer space resource activity, especially activity by the private sector. SRI believes that supporting the private sector is good public policy. We need its resources, talent, diversity, creativity, and enthusiasm for a sustainable human presence in outer space. This is not to say that the public sector does not have those things. But it is not enough. Government budgets alone cannot provide adequate funding. We must expand the free-market economy into outer space for a sustainable human presence.
5. To do that, there are four ambiguities that must be addressed. First, and most important, we must clarify that resources removed from "in place" can become private property under national law. The diplomatic phrasing is that such removal "is not inherently appropriation", which is prohibited by Article II of the OST. The words "in place" are not found in the OST, though they are found in Article 11 of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement).
6. Secondly, we must clarify that all stations, installations, and facilities are within the legal jurisdiction and control of the country that authorizes and supervises them. This is implied in Article XII of the Outer Space Treaty, which requires notice and reciprocity for visits by other countries, and made explicit in Article 12 of the Moon Agreement. By including such language in any new international agreement or principles, we can make sure that the installations and facilities used for outer space

resource activity, including any improvements, remain within the control of the private nationals who built them, in accordance with their own national laws.

7. The third clarification concerns intellectual property rights. These are not mentioned in either the Outer Space Treaty or the Moon Agreement but are specifically supported by Section 1.19 of the Long-Term Sustainability Guidelines that were unanimously adopted by COPUOS in 2019. SRI supports the policy of sharing as much information as possible. This will help promote transparency, avoid harmful interference, advance scientific knowledge and research, and benefit emerging countries. But any new agreement must clarify that private intellectual property rights are protected.

8. The fourth clarification concerns the concept of due regard for the interests of others as required by Article IX of the Outer Space Treaty. SRI believes that Article IX's focus on consultation requires, at the least, registration of all planned activities on the Moon and other celestial bodies. Similarly, we believe that Article IX's mandate to avoid harmful contamination requires all countries to conduct an environmental impact assessment for all planned activities. Finally, we believe that due regard and the avoidance of harmful interference should be used not only to protect the present interests of those who begin resource activities, but also to protect the future interests of those who will arrive later, including countries, their nationals, and future settlements.

Recognizing Related United Nations Declarations Concerning Settlements, Settlers

9. Space Renaissance International is based on a fundamental belief that supporting private activity in outer space will benefit the Earth and its people. Clarifying these four ambiguities will give all interested stakeholders, including companies, investors, and future settlers, the certainty they need to be part of a sustainable human presence in outer space.

10. This last point highlights the unique role of Space Renaissance International as an official COPUOS observer. All of the delegates here from member states represent the interests of their own country and their country's nationals, as they should. But SRI goes a step further. We speak for the settlers. We speak for those who feel compelled to establish a human presence beyond our home planet. It is not too early to begin to consider the interests of outer space settlers and settlements, just as Article IX considers the interests of all member states.

11. To this end, we ask the Legal Subcommittee to acknowledge the Declaration of the Right to Development, adopted by the UN General Assembly in 1986. Article 1 of the Declaration states that "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

12. We also ask the Legal Subcommittee to acknowledge the Universal Declaration of Human Rights of 1948 and its applicability to individuals working and living in outer space, including the Moon and other celestial bodies.

13. Acknowledging these rights will benefit both the people of Earth and those who settle elsewhere. At the very least, any new agreement or principles should include the statement that nothing in the agreement or principles shall be interpreted as constraining the rights of settlers or settlements under customary international law.

Historical Perspective

14. Humanity is facing a historical crisis, when just a slight shift can cause massive changes that can last for decades, even centuries. The closest parallel occurred five centuries ago, when the Age of Exploration became the Age of Imperialism. Then, as now, countries with advanced technology sought to control the resources of "new" worlds, creating a legacy of war, suffering, and neglect that is still being felt today. We are concerned that humanity is about to repeat that pattern. There are some who

assert that whoever gets to a place first gets to make the rules and can establish resource exclusion zones. Others have declared outright that space is a warfighting domain. Meanwhile, humanity is being challenged by other issues. Every day we wake up to news of worsening climate change, increasing social unrest, and rising international tensions. To that has now been added the threat of conflict in outer space. The people of Earth have begun to lose faith in their governments, their private institutions, even in humanity itself. They are beginning to lose hope.

15. Our duty is nothing less than to restore that hope, to counter the despair of war and violence and neglect, to give the people of our planet a future they can believe in. We should do everything within our collective power to promote peace and prosperity in outer space, as it may be the best way to promote peace and prosperity on Earth.
