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The four authors, Directors of the International Institute of Space Law (IISL), were entrusted by the Board of the IISL to investigate in a preliminary fashion the main legal aspects of the issue of immovable property rights with respect to the Moon and other celestial bodies. The present article is the result of that investigation. Moreover, it may be noted that on the basis of this investigation IISL has now decided to extend the scope of research and install a Study group for that purpose.

VIEWPOINT

Surreal Estate: Addressing the Issue of "Immovable Property Rights on the Moon"

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Abstract
At a time when scientific and commercial interest in the Moon is being reinvigorated it is becoming fashionable for ordinary individuals to "buy" plots on the lunar surface, with the "vendors" arguing that an absence of specific prohibition of individual private activity in space makes such action legal. It is therefore time for the legal community to address this situation by investigating just how legal such activity is—and bringing their findings to the attention of governments. This can be done through an examination of the relationship between national law and international space law, of the provisions of international space law—especially Article 2 of the Outer Space Treaty—and by answering any claims to private ownership of immovable property. Aside from the fact that individuals appear to be being duped, the pursuit of property claims on the Moon could impede future activities aimed at benefiting society.

1. Introduction

It almost seems like the latest "hype," the newest gadget one should acquire: a piece of the Moon or another celestial body. Currently, in various ways and to varying extents private entities and persons are claiming "ownership" or similar "rights" to the Moon or parts thereof—and the amount of relevant "sales" and other "deeds" is continuously growing. The issue thus arises as to whether "immovable property rights on the Moon" is a feasible legal concept—or a somewhat surreal effort to apply the concept of "estate" to the Moon.[1] This is not the place to go into these activities or their legal ramifications in detail.[2] This Viewpoint rather intends to argue for the need urgently to address this issue and the potentially far-reaching negative effects which may occur if such activities continue to go unchallenged.

1 "Immovable property rights" should, from this perspective, be defined as "property rights pertaining to land." "Immovables" are defined as "property which … cannot move itself, or be removed" and "refers to land and … things firmly attached thereto." *Black's Law Dictionary*, 5th edition, at 676. "Property rights" are defined as "any type of right to specific property whether it is personal or real property, tangible or intangible;" *Black's Law Dictionary*, 5th edition, at 1096. "Property" finally is defined as "that which belongs exclusively to one;" *Black's Law Dictionary*, 5th edition, at 1095.

2 For an excellent oversight of the current state of affairs, see the paper of L. I. Tennen, "Article II of the Outer Space Treaty, the Status of the Moon and Resulting Issues," presented at the IISL/ECSL Space Law Symposium 2004 at the Occasion of the 43rd Session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space, on "New Developments and the Legal Framework Covering the Exploitation of the Resources of the Moon," to be published in the *Proceedings of the Forty-Seventh Colloquium on the Law of Outer Space*.

After all, the Moon has recently become the focus of attention once more as a consequence of the USA's stated intentions to go back there and beyond to Mars. At the same time, private and commercial interests in sending unmanned spacecraft to the Moon with the aim of roving for, and if possible excavating, valuable minerals are gaining ground. Finally, in relation to such plans a few individual experts have tried to develop arguments in favor of the admissibility of private immovable property rights with regard to the Moon. So far, by and large, governments have not tended to take these somewhat surreal developments very seriously. Nevertheless, some major legal question arise as a consequence, in particular, of Article II of the 1967 Outer Space Treaty,[3] providing for a prohibition of "national appropriation" of outer space or any part thereof, but also of the 1979 Moon Agreement.[4]

With the growing number of "buyers" of plots on the Moon, it is possible that "ownership" of a part of the Moon, while maybe a joke to well-informed space lawyers or others with proper intuition, will be taken seriously by a large number of buyers and lead to conflicts with prospective private ventures. Further to this, questions might arise as to whether the current legal regime applicable to the Moon might show major gaps or uncertainties, where closing or clarifying them would alleviate the risk of legal disputes arising on immovable property rights with respect to the Moon. As a consequence, it is high time not only to investigate in detail what legal merits, if any, such claims might have;[5] but also, and in particular, to raise the awareness of the relevant government and other authorities to the appropriateness of taking counter-actions against such activities, to serve both legal certainty and the future beneficial development of space activities focused on the Moon and other celestial bodies.

2. Facts and claims made

First a few words on the underlying facts. In 1980 an "entrepreneur" registered his "claim" to the Moon with relevant local authorities in conformity with general procedures applicable to immovable property, apparently with success. With no one coming forward with a stronger claim in the statutory period after the registration of that claim, he considered himself to "own" the Moon as a piece of real estate. In the following years, based upon this purported "ownership" of the Moon as real estate, he started "selling" plots through a company.

Apparently, he was very successful; it is claimed that tens of thousands of "customers" "bought" plots of the Moon, and he purportedly became a multimillionaire in this way. As a consequence the company branched out, both by establishing "local representatives" called "ambassadors" in other countries and by extending the possibility to "buy" real estate to other celestial bodies in the solar system.

This commercially successful example invited a following. Thus, in 1996 a pensioner in another country claimed that he owned the Moon, based upon an inherited claim from a predecessor centuries earlier, and tried to get his government to take action at the diplomatic level against the other government and the company involved. Also, in yet another state, at one point a claim was brought before the courts regarding purported violation of ownership over Mars, and several others tried to sell some sort of ownership or rights over the Moon in competition with the first company.

Once confronted with various statements from academic circles announcing that these "claims" to ownership of the Moon and celestial bodies might run counter to international space law, the "entrepreneur" essentially used two legal arguments to defend himself against these accusations. As few governments have so far taken the trouble of formally dissecting and refuting those arguments, it is necessary to briefly summarize them here. (N.B. the messages and advertisements posted on the relevant websites have been toned down over the years. It seems escape routes have been created by the responsible persons to avoid certain customer claims if "deeds" are found out to be worth little more than the paper they are written on. Even so, it is appropriate and useful to scrutinize the legal validity of these arguments in order to ensure that non-space law experts understand the extent or absence of such legal validity.)

The first argument was that the "entrepreneur" had explicitly and in writing drawn the attention of the UN Secretary-General, the President of the USA and the President of the USSR to his intention to start selling plots on the Moon, thus allowing them to protest if they felt that such a sale was not appropriate, legal or feasible. From the absence of answers he concluded that these officials had no legal questions about his claim, and therefore in turn that his claim was legal and held true.

The second argument was based upon a particular reading of the Outer Space Treaty, notably Article

3 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter Outer Space Treaty), London/Moscow/Washington, done January 27, 1967, entered into force October 10, 1967; 610 UNTS 205; TIAS 6347; 18 UST 2410; UKTS 1968 No. 10; Cmnd. 3198; ATS 1967 No. 24; 6 ILM 386 (1967). The Outer Space Treaty as per January 1, 2003 had 98 states parties, and a further 27 signatory states.

4 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (hereafter Moon Agreement), New York, done December 18, 1979, entered into force July 11, 1984; 1363 UNTS 3; ATS 1986 No. 14; 18 ILM 1434 (1979).

5 It may be pointed out that the International Institute of Space Law (IISL) is planning to launch an extensive effort to broaden and deepen the discussion on these issues soon; for up-to-date information visit the IISL website at http://www.iafastro-iisl.com/

II, which 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." As Article II only referred to *national* appropriation, i.e. appropriation "by a state," he argued that, *a contrario*, private appropriation should be deemed allowable under the Outer Space Treaty.

3. Towards a legal analysis

3.1. Introduction

Before any more substantial legal analysis two preliminary remarks are due. First, the case referred to is only the most visible manifestation of the issue of private immovable property rights in outer space, and this case therefore merely constitutes the most topical illustration of the underlying issues. Second, as already indicated above, these issues do not just relate to the case of the Moon, but essentially to all other celestial bodies (at least those in the solar system, but until further notice quite likely also those outside it).

Substantive analysis of any claim to rightful ownership of the Moon as real estate from a legal perspective would have to be undertaken in the following order, which is presented here as a summary of the main thrust of any such relevant argumentation.

First, it would be necessary to examine the relationship between national law (without further research regarding the extent this has actually occurred, it is obvious that at face value national law might allow for an original private claim to be honored) and international space law (from which the main arguments against such claims have been derived). Then, a brief analysis of relevant provisions under international space law, in particular the Outer Space Treaty, on the particular issue of immovable property rights on the Moon and other celestial bodies would be due. By doing this it would be possible to answer the specific claims made, as well as similar ones by others, and to infer the consequences following from such conclusions. Finally, one would arrive at an evaluation of how to view the events that may occur in practical terms and the consequences to be drawn therefrom. Taking the above as a road-map for any further analysis, a number of important clues to any definitive analysis and set of conclusions can already be discerned, as discussed below.

3.2. The relationship between national law and international space law

As to the relationship between national law and international law, it should immediately be asserted that international space law, including the United Nations Space Treaties and—to the extent that they reflect customary law—Declarations of Principles by way of United Nations General Assembly resolutions, forms part of public international law.[6] The general issue of the relationship between international and national law with all its ramifications is complex and multifaceted. It will be dealt with here only in the broadest of terms. The point of departure in dealing with this issue is that, once a rule at the international level applies to a particular state, such a rule, legally speaking, cannot be simply set aside or ignored at the national level. Whether implementation of international law in the national law of a given state proceeds through incorporation, transformation or direct application, the conformity between the relevant provisions of international law and national law is always in the interest of the state, for it is a basic tenet of general international law that a state may not invoke the provisions of its internal law as a justification for its failure to fulfill its international obligations. This tenet is reflected in Article 27 of the Vienna Convention on the Law of Treaties,[7] in a number of Judgments of the International Court of Justice as well as in the Draft Articles on State Responsibility of the International Law Commission.[8] Thus, by failing to take all measures to ensure the conformity of its national law with its international obligations a State may incur international responsibility.

Moreover, the principled superiority of international legal rules over the conflicting rules of national law is, in one way or another, specifically provided for in many national constitutions. For example, in the USA under Article VI of the Constitution, self-executing treaties are considered "the supreme law of the land." Also, significantly, in some of its recent Judgments and Opinions the International Court of Justice has addressed its rulings not only to the states themselves, but also to the state organs (judicial and administrative), requiring them to act

6 See also Article III, Outer Space Treaty, which provides that "States (…) shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law." Thus, general public international law functions as a *lex generalis* where the *lex specialis* of space law itself is moot, unclear or open to conflicting interpretation.

7 Vienna Convention on the Law of Treaties, Vienna, done May 23, 1969, entered into force January 27, 1980; 1155 UNTS 331; UKTS 1980 No. 58; Cmnd. 4818; ATS 1974 No. 2; 8 ILM 679 (1969). Whilst not all states may be a party to the Convention, this clause is generally recognized to have codified existing customary international law.

8 See Article 3 of Draft Articles on Responsibility of States for Internationally Wrongful Acts. "The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same as lawful by internal law." Report of the International Law Commission 2001, p. 43.

in conformity with these rulings and international undertakings of the states concerned.[9]

It follows from the above that, in the case at hand, it would not be sufficient for any purported owner of real estate on the Moon or elsewhere in outer space to point to national law to justify his claim; the crucial question to be answered is to what extent any national jurisdiction would have the right, in the absence of directly applicable international rules, or international judicial decisions, to provide for its own applicable law on the matter.

3.3. The relevant provisions of international space law

When focusing on the substance of international space law, the first problem is posed by the fact that the issue of private property of immovable assets in outer space as such is not addressed by the *corpus juris spatialis internationalis* as it currently stands. There are a few provisions in the Outer Space Treaty and the Moon Agreement, which nevertheless warrant closer attention from this perspective. With respect to the latter, however, the fact that no major spacefaring nation is to be found among the limited number of parties to that treaty, causes the provisions of that treaty to be largely irrelevant in most cases.[10]

As for the Outer Space Treaty, firstly Article VI must be mentioned. This Article makes states internationally responsible for any private activities in outer space which are deemed to constitute their respective *national* activities, as if these constituted their own activities,[11] and consequently is to authorize and continuously supervise those activities. The main issue here concerns the inclusion of purported sales of real estate on the Moon in the definition of "activities in outer space" so as to trigger application of Article VI. While the object of any "sale" is obviously in outer space, the contract dealing with it is concluded on earth, by contracting partners both present on earth themselves as well. We will return to this issue below.

Further to this issue, Article IX should also be mentioned here, as it charges states parties to the treaty to undertake appropriate international consultations when they have reason to believe the activities in outer space of their nationals may cause harmful interference with the activities of other states. Again, the issue would be whether any "sale" of real estate in outer space would amount to "an activity (…) in outer space."

Most relevant, of course, is Article II to which particular reference was made in efforts to defend the legality and applicability of claims of ownership. Article II provides for the legal status of celestial bodies, by clearly prohibiting public property rights over such bodies. As claimed, Article II indeed refers to *national* appropriation, not to private appropriation as such, which raises the question of whether, in interpreting Article II,[12] *private* property rights would also be prohibited.

As the wording of Article II as such does not provide any further clues, one must refer to the use of the word "national" elsewhere in the Treaty [1].[13] Most fundamentally, Article VI unequivocally includes "non-governmental entities" in the scope of that term. Furthermore, reference may be had to Article IX, where the word "nationals" *de facto* refers exclusively to such non-governmental entities, i.e. natural or juridical persons. Thus, already the reading of national appropriation as excluding private expropriation does not hold; consequently international space law itself does not condone private appropriation "by means of use or occupation, or by any other means," and it is hard to see how ownership of immovable property on the Moon could possibly square with such a prohibition.

But even for those not convinced by the above argument on its own, it should be pointed out that the precise phrasing of this Article should be seen in the light of the circumstances and time in which the Outer Space Treaty was concluded. One may question whether in the mid 1960s private participation in space activities proper, as opposed to being subcontracted to develop and build hardware or software, was seriously considered when drafting the treaty. At any rate, from the perspective of a systematic interpretation the Outer Space Treaty *nowhere* makes explicit reference to private com-

9 See for example, Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, April 29, 1999, *I.C.J. Reports 1999* (I), p. 62; *LaGrand* (*Germany* v. *United States of America*), Request for the indication of provisional measures, Order of March 3, 1999, *I.C.J. Reports 1999* (I), p. 16.

10 In fact, as it happens that precisely those provisions in the Moon Agreement which are most pertinent to the issue of private immovable property rights on the Moon and other celestial bodies (i.e. those of Article 11) were highly controversial, provisions causing most space-faring states not to sign or ratify, one might wonder whether this would not serve as an *a contrario*-argument in the case of non-parties as to any suggested applicability of the specific rules and principles provided in the Moon Agreement, to the extent of course these would deviate from those found in the Outer Space Treaty.

11 There is no similarity to the due care-obligation applicable in general public international law, where a state may disculpate itself with respect to private activities conducted by its nationals and/or from its territory to the extent it can prove it had acted with due care in trying to prevent such activities from resulting in the violation of the rights of other states under international law, alternatively to redress the effects of such activities afterwards.

12 In interpreting this crucial clause, reference is had to Article 31, Vienna Convention on the Law of Treaties, according to which interpretation of treaty clauses is to take place having regard to (1) the actual wording of the clause at issue, (2) the background to and history of that clause, (3) a systematic interpretation connecting that clause logically and sensibly to other relevant clauses, and (4) a teleological interpretation referring to subject and purpose of the treaty of which the clause forms part.

13 As pointed out in particular by Kerrest de Rozavel [1].

mercial ventures, and only once (in Article VI) refers to "activities by non-governmental entities." Such activities were however deemed to be subsumed completely under the relevant state's international responsibility; private activities for the purpose of space law were fully equated to public activities. A prohibition of public appropriation, as a consequence, would also encompass a prohibition on private appropriation. Also, under a teleological interpretation of Article II, the object and purpose of that Article is simply to exclude any exclusive claims to outer space or parts thereof.

In other words, the absence of any reference to private appropriation was just one manifestation of the absence of references to private parties, and not a specific exception to a general rule. It cannot therefore serve to defend the position that such a reference was deliberately left out to allow for private appropriation.

In view moreover of the comprehensive international responsibility of states for private national space activities, the conclusion to be drawn from the precise formulation of Article II should be that, with the scope of space activities now expanding into the private realm, the applicable international space law rules must also expand concurrently into that private realm. The duty of authorization and continuing supervision over private space activities, as well as the principled absence of the possibility of any individual state determining the rules in outer space, and hence also determining whether private activities should be allowed or not, would further support such a conclusion.

The next issue concerns the qualification of "sales" of real estate in outer space as "activities in outer space," with a view to triggering application of Articles VI and IX of the Outer Space Treaty. Here, the specific character of the concept "real estate" is to be taken into consideration: it is crucially linked to the territory of one state or another. It would therefore be rather difficult to argue that "contracts" on the "sale" of outer space "real estate" do *not* constitute a space activity merely because the contract as such is a terrestrial affair.

Certainly no one would argue that a contract on the sale of real estate on Dutch territory not concluded in accordance with Dutch law could be valid simply because the two contracting partners were not Dutch nationals or residents and concluded the contract outside the Netherlands. Hence, by analogy such contracts on "real estate" in outer space should be deemed to constitute space activities in the sense of Articles VI and IX of the Outer Space Treaty, leading to application of the provisions contained therein.

This brings our analysis to the next stage. Since outer space is not subject to national jurisdiction and territorial sovereignty, *prima facie* it might perhaps be argued that outer space differs precisely on this point from (here) the Netherlands, and that, as a consequence of the fact that no national law is applicable on a territorial basis, a contract signed elsewhere on "real estate" would *a contrario* be legally valid. However, such an argument overlooks the fundamental character of "real estate" as being tied to one territorial jurisdiction or other. Ownership over immovable property is not a self-evident phenomenon, defined by natural law or divine intervention; it is a concept provided for by national laws which each elaborate it in their own fashion.[14] For example, how a private person can come to own real estate,[15] what his rights and obligations are in respect of such real estate,[16] and how he can be disowned in case of overriding public interests,[17] are all determined by the relevant national law—and this often in quite different fashion.

In view of the fundamental ties of real estate to territory, and in the international legal sense too, such national laws apply exclusively on a territorial basis. Dutch laws on private ownership of immovable property apply to Dutch territory; US laws to US territory, and so on. In other words, national law, and any claim based upon registration under it, is irrelevant with respect to determining possible private ownership of "real estate" on the Moon.[18]

In conclusion, by excluding "national appropriation" Article II of the Outer Space Treaty precludes both private appropriation in itself as being covered by that term, and the application of any sovereignty and national legislation on a territorial basis. Hence, no national laws allowing for private appropriation could ever apply to the Moon or other celestial bodies.

3.4. Answering any claims to private ownership of immovable property

From the above analysis, direct answers to the claims being put forward are now also possible, and arise as follows.

On the first claim, of consent by silence of a few political authorities, this should be discarded since neither of the two presidents, nor even the UN Secretary-General, would have had the authority in the first place

14 It may be pointed out in this context that under the old communist legal system in the Soviet Union and its allies it was legally impossible for a private person to own any immovable property at all.

15 E.g. by means of depositing a claim which goes unchallenged for a specified period of time, or by means of inheriting a relevant document from a forefather.

16 E.g. as to valuable minerals or historical treasures found on one's immovable property; cf. also the concepts of "right of way" or "private passage" sometimes resting upon real estate or parts thereof.

17 E.g. when a high-speed railway line or motorway needs to be built; including rules on procedures and entitlement to compensation.

18 Reference is again to be had to Art. 27, Vienna Convention on the Law of Treaties (see *supra*, at n. 6).

to acknowledge or deny the validity of the relevant actions.[19] It is space law as such, agreed upon at the international level by all major spacefaring nations, in particular by means of the Outer Space Treaty, which already excludes the validity of any such claim [2].

On the second argument about the *a contrario* interpretation of Article II of the Outer Space Treaty, it should by now be equally clear that, whatever the precise details or merits, this too would have to be discarded. Any possible validity of a claim to title over the Moon as "real estate" under national law cannot distract from the fact that, under Article II, such national law could never extend to the Moon. Under international space law the relevant claims—and those of all of the "customers"—to "own" "real estate" on the Moon are without any validity and are in violation properly speaking of the Article's core principles and rules.

Apart from claims of the same nature, two variations have been encountered so far. One variation is to provide a disclaimer saying that whether valid title can be derived from any document referring to "real estate" on the Moon essentially depends upon the applicable jurisdiction.[20] Since it still suggests that it is somehow up to *national* jurisdictions and law to determine validity of title, this variation ignores the fact that on the Moon no valid jurisdiction with respect to immovable property rights *of any state whatsoever* can apply, as analyzed above.

The other variation is more ingenious, as it acknowledges that no validity of title to real estate can currently be derived. The document of "ownership" instead refers to a reservation for the future occasion when a valid legal regime of private ownership of immovable property on the Moon comes to be established (presumably at the international level), and then in further conformity with such regime *de lege ferenda*. While this variation has the merit of acknowledging the present impossibility of privately holding valid title to immovable property on the Moon (and at the same time points out the desirability of at least seriously considering establishment of such a regime at the international level[21]), it still entails some problems.

After all, the suggestion is that, by "buying" such a "reservation", whatever the regime eventually established, one could proceed on the assumption that such a "reservation" would be acknowledged and properly implemented by it. If this were accepted, however, the establishment of such a regime would be severely prejudiced by entities "selling" the reservations, which do not have any authority to co-define the future legal regime of the Moon, unless these reservations were considered as devoid of any relevance as the "ownership" purportedly obtained under the scheme discussed. Consequently, neither of the variations sketched would lead to claims holding true either.

3.5. Consequences of the lack of validity of any "ownership" claim

The conclusions thus drawn on the lack of validity of any "ownership" or even "reservation" claim with regard to immovable property on the Moon or other celestial bodies would then lead to the following observations. The consequences essentially manifest themselves at two levels: nationally and internationally.

At the national level, presuming that the validity of claims under national law might be valid and recognized, the consequences of the international—and therefore legal—invalidity of these claims might come to the fore in applicable cases. For example, imagine a citizen within the relevant jurisdiction "owning" real estate on the Moon after "buying" it from the company concerned. Now imagine another company within the same jurisdiction, which by means of an unmanned robotic mission was excavating valuable minerals from this "real estate." Said citizen might try to sue the latter company for trespass and claim the minerals thus excavated as his rightful property. Such a case could then lead to either of two scenarios.

Unmanned robotic missions are not a science fiction scenario any more; several US companies have developed serious plans for such missions. It may be further noted that several years ago some of these companies had already reached the stage of negotiating with Australian governmental authorities to allow the return of their unmanned missions to take place on Australian territory. However, once these companies found out that Australia was a party to the Moon Agreement, which contains a moratorium on commercial exploitation and the suggestion that a regime for such exploitation, yet to be developed, would be quite strict vis-à-vis private commercial interests, they backed off. This shows that such considerations risk stifling the potentially beneficial commercial exploitation of the Moon

19 Whether the authorities mentioned ever took seriously such letters—presupposing they received them in the first place as claimed—thus is not really relevant, though not taking them seriously might further strengthen the contention that no claim of this sort could ever be validated. As Sterns & Tennen succinctly put it: "States do not have any obligation to respond to claims such as Hopes, or to every other crackpot scheme." It can certainly not serve as an argument for "consent by silence."

20 It seems, that in the case concerned at some stage it was indicated that at least under Dutch law deriving valid title to real estate from the document of "sale" upon payment might not be possible—implying, of course, valid title within *other* jurisdictions remained a distinct possibility.

21 This refers of course to current discussions raging also in the context of the Moon Agreement, where a regime allowing for private activities and private rights (including possibly rights to own immovable property) subject to certain legal requirements might go a long way to solving the lack of acceptance of that Agreement due to the deadlock over private and commercial use and exploitation. See also Sterns & Tennen, *Privateering and Profiteering*.

in the absence of a clear and generally accepted legal regime.)

On the one hand, a judge or court confronted with a case as indicated above might take the claim seriously, might not be aware of the international ramifications (read invalidity) of such a claim, might not consider contacting the relevant Department or Ministry of Foreign Affairs and might thus, on the basis of papers shown which would be valid under national law as such, award such a claim. (Although a court might normally be expected to research a legal question about the Moon and find that international law is applicable, the aforementioned scenario is essentially what happened when the original claim to ownership of the Moon was accepted locally in 1980.[22]) If a court were similarly to judge the claim valid since it was not aware that this piece of national legislation was not applicable to the Moon, and were hence at face value to take national law to be valid here, the defendant might thus find himself disappropriated, requiring appeal on his part invoking international space law to set the record straight.[23]

On the other hand, if either the judge or court in first instance, or on appeal did not award the claim, an issue of fraud might arise: to the extent that the "owner" of real estate could reasonably expect that "buying" the "real estate" on the Moon from the selling company would provide him with real title over such real estate, he might consider himself to have been defrauded.

As such this is perhaps a matter of national jurisdiction and national effect. In view, however, of the respective general ramifications of both possible outcomes at the international level, in particular where it concerns states dominant in space and private space activities, it should also be taken seriously at that level.

At such an international level, whatever the outcome of such national cases might be, the relevant state remains responsible under Article VI of the Outer Space Treaty for the activities of nationals and national companies being in conformity with the terms of the Outer Space Treaty and international space law more generally. Since the purported sale of "real estate" is seen to be in violation of Article II of the Outer Space Treaty generally, and any claims to the contrary must be dismissed, these activities are *not* in conformity with international space law.

Whatever emerges from further and more detailed legal investigations, it is hard to imagine that any prolongation of such activities or claims would *not* amount to a breach by the relevant state party to the Outer Space Treaty of its obligations under it towards all other states parties to it, in particular of its obligations to respect the non-appropriation clause of Article II and its duty to supervise these activities under Article VI. Any claim that such further and more extended analysis would be necessary before a definitive conclusion could be provided, would only backfire by allowing such claims to gain more and more apparent legitimacy. There is sufficient evidence is on the table to start acting *now*.

The fact that national courts might reach conclusions in their judgments contrary to such lack of legal validity under Article II or under any other legal argument would not alter this conclusion; as a matter of fact it would not even be up to a national court to unilaterally interpret international treaties as to the duties they impose upon states parties vis-à-vis other states parties.

4. Conclusions

The above analysis inevitably leads to the conclusion that the issue of immovable property rights on the Moon and other celestial bodies must be rapidly tackled. Any suggestion that the sale of plots of the Moon as if they were real estate is valid should be strongly dismissed: the Moon does not comprise real estate in the normal legal terrestrial meaning of the concept, and any such claims are at best surreal.

Allowing these suggestions to maintain an aura of legality and feasibility amounts to a breach of relevant obligations under the Outer Space Treaty in particular. Whereas this may give rise to cases of fraud at the national level, subject of course to relevant national law and jurisprudence, more importantly, at the international level action should be taken to redress this situation. For the time being, it may seem a rather academic issue, but in view of the growing number of "sales" initiatives, this might soon change fundamentally.

One may refer in this context to such initiatives as undertaken within the International Law Association's (ILA) Space Law Committee. At the ILA's 70th conference in New Delhi in 2002 it discussed the issues of the status of the Moon and its ramifications for private and/or commercial exploitation in quite some detail. While it was considered that any application of the "common

22 The following text comes straight from the website of Lunar Embassy, the company which first started the hoax: "Well, in 1980, a very bright, young and handsome Mr. Dennis Hope, went to his local US Governmental Office for claim registries, the San Francisco County Seat, and made a claim for the entire lunar surface, as well as the surface of all the other eight planets of our solar system and their moons (except Earth and the sun). Obviously, he was at first taken for a crackpot, until, 3 supervisors, 2 Floors and 5 hours later, the main supervisor accepted, and registered his claim;" at http://www.lunarembassy.com/, under "News & FAQs," under "General FAQ," under Question #2, "What is the Lunar Embassy's legal basis for selling extraterrestrial properties?"

23 It may be noted, of course, that even the claim of the defendant to property over the minerals excavated might be subject to some doubts, as not all experts are in agreement on the interpretation of the relevant clauses of the Outer Space Treaty, or more properly the absence thereof for the larger part, on this particular issue. This will not however be dealt with further in the current contribution.

heritage of mankind" principle to the Moon and its natural resources, as Article 11(1) of the Moon Agreement provides as far as the states parties to the Moon Agreement are concerned, would not in itself exclude the possibility of private and commercial exploitation of the Moon and its natural resources, it also became clear that there was no specific legal guidance at the international level on the rights and obligations of both states and private parties in that respect.

At the same time, since the Moon is not real estate under the present legal situation, the above analysis points to the need to develop a viable and fair regime for *bona fide* private participation in activities on it and other celestial bodies. Many private activities, whether commercial or otherwise, would be generally harmless and probably beneficial for society in general. The absence of a clear international regime dealing with these issues also stifles any private activities with positive and honorable motives. Of course, any new regime must take into consideration the interests of space science, the feasibility of actually undertaking certain activities on the Moon, and established interests in maintaining peace, security and safety in relation to space activities.

In short, whatever further legal analysis may unearth in terms of detailed arguments, such undertakings should fit in harmoniously with existing international space law, and this includes in particular Article II of the Outer Space Treaty. If we allow the surreal "claims" to persist, we risk outer space turning into a Wild West show.

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