Foreign and Commonwealth Office: Legal Department,

Government legal department,

One Kemble Street,

London WC2B 4TS

Our Ref: PD/MARS/05/2019

By post and by email:

DATE: 01 May 2019

Dear Sir or Madam

Re: Proposed claim for judicial review against the Secretary of State for Foreign and Commonwealth Affairs by Dr Philip Davies.

This is a formal pre-action letter sent pursuant to the Pre-Action Protocol for Judicial Review. I am the claimant, Dr Philip Davies, an individual acting on behalf of himself, but also in support of multiple international fellow claimants within a "communal claim bundle." I am requesting your response as soon as possible and in any event no later than 15 May 2019.

Proposed Defendant: Secretary of State for Foreign and Commonwealth Affairs

Claimant: Dr Philip Davies, on behalf of self plus multiple international co-claimants

Address: x xxxxxx xxxxxx, xxxxx xxxx, xxxxx, London, UK

Date of Birth: xx xxx xxxx

The details of the matter being challenged

The claimant challenges the refusal of Foreign & Commonwealth Office (FCO) to either:

A/ Present the problem of "The Mars Claim Bundle" to the Legal Subcommittee of the United Nations Committee for Peaceful Uses of Outer Space (UN COPUOUS); OR

B/ Agree an alternative pathway towards legal due process for "The Mars Claim Bundle (three discrete claims)."

This refusal was articulated on 18 March 2019 in a formal letter of reply from David Edmondson, Policy Head, Space Security and Advanced Threats, Security Policy Department, Foreign and Commonwealth Office.

The Mars Claim Bundle comprises three claims, the first being a pan-multinational communal claim to actual possession of all land on Planet Mars (Claim 1). The two further claims concern priority rights to Martian resources and temporo-spatial slots approximating to the surface of Mars.

Background facts

1. Since March 2010 the claimant has, through physical and administrative actions, publicly claimed actual possession of Planet Mars and all land therein. This original claim to celestial land was based on physical and administrative actions that were designed to satisfy the threshold criteria for occupation/possession to be recognised under international (and private) law. The claimant has, since 2017, developed two further Martian claims to form a bundle of three discrete claims ("the claims"). The two additional claims concern priority rights to Martian resources and priority rights to temporo-spatial slots which approximate to the surface of Mars. The claimant has stated that these two further claims need not apply if the original land claim proves successful in gaining registration of title into trust (with a United Nations body requested to act as trustee).

2. The claimant is a full time medical general practitioner (GP) and a former senior xxxxxx xxxxxxx xxxxxxxxxxxxxxxx xxxxxx. With a pre-existent interest in both space flight and astronomy, in January 2010 the claimant became aware of the threatened status of the Outer Space Treaty 1967 (OST: formal title is the Treaty

on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies). New national space laws were in development. These laws were destined to damage the integrity of the Outer Space Treaty. Looming space weaponization (most space faring nations agree this is almost inevitable) would lead to further weakening of the treaty. Why did this matter? Given that this treaty is the only piece of hard law that attempts to prevent aggressive weaponization of space (and explicitly bars nuclear weapons and other WMDs), it is rather important to maintain its relevance and strength.

3. In February 2010, the claimant realised that his efforts to lobby UK government and UNOOSA (United Nations Office for Outer Space Affairs) had no likelihood for success. He had campaigned for either an update to the OST or a new "hard law" that could have strength against aggressive space weaponization and ideally govern space exploitation and space debris mitigation. He devised a plan that might give his campaign some legitimate leverage.

4. In developing a plan for a sufficiently legitimate claim to actual possession of a celestial body, the claimant opined that access to legal due process could not easily be barred (there exists an international, European and UK right to property). Such a legal process was likely to attain considerable media focus, hence providing opportunity to raise awareness of the progressive weakening of the OST. The claimant opined that if the claim was sufficiently well crafted with a transparently positive strategy, the international legal due process may even regard it favourably. The claim would necessarily become a communal claim (based on one sustained act of Martian land possession). This meant that by use of a website and social media, the claimant was able to attract hundreds of international co-claimants. Most co-claimants joined the campaign on a no-cost basis although there are now some priced land claim certificates (£7), which serve to fund the future legal due process. Given that no celestial registry currently exists, the claimant anticipated the need for either a bespoke international court/registry appointed by UN or agreement with UN to arbitration through the Permanent Court of Arbitration in The Hague (PCA).

5. The fully successful outcome of the claim was imagined as the registration of Martian land into a trust, with a UN body appointed to act as trustee, co-claimants becoming beneficiaries, and (since a strategic change in the claims since in 2017) the owned land being held open as “common land.”. UN would have the preferential right to acquire full legal land title and all beneficial land shares, contingent on delivering a successfully ratified update to OST and payment of nominal fee to all co-claimants. This strategy is declared in the claimant’s formal Declaration of Intent.

6. The claimant understood that general international law applied to space and celestial bodies, as per Article III of OST. International law has, over the last one hundred years, agreed the criteria required to acquire new land territory, depending on the geographical/geological nature of the land involved. Effective occupation (and land use) was the key for nations to acquire new territory. If the land was of low quality (usually distant and relatively barren), then there was a much lower proof requirement for effective occupation to be recognised by an international court. There was no formal requirement for settlement (see the cases of Las Palmas Island, Clipperton Island and Eastern Greenland). Similarly, in private law, with actual possession being the equivalent of effective occupation, a squatter in adverse possession did not necessarily have to inhabit the claimed land if it was of a rather difficult or barren nature. Whether in public international law or private law, the acquisition of new (unregistered) land required the sustained demonstration of intent to possess/occupy and some early measures to control or benefit the land in order to make it ready for future use or settlement.

7. Thus, the claimant investigated measures by which he might, using existing international law as a guide, gain actual possession of celestial land. As an amateur astronomer, he had already employed low strength laser pointers in the course of locating and demonstrating the celestial positions of stars and the near planets. Through research (covering mathematics, physics, chemistry and biology), he estimated that high strength laser light could be applied safely from Earth to Mars and provide a very small benefit to the planet. High power laser applications to Mars would effect CO2 sublimation (from solid ice to gas), a phenomenon that

is widely viewed as a viable option for the terraforming of planet Mars. Such sublimation, if done on a much bigger scale (see Elon Musk's interview on the option to deploy thermonuclear explosions over the Martian poles to get CO2 sublimation via "the fast way") would lead to a warming atmosphere. Just a few degrees temperature rise may in turn generate a greenhouse effect which would help to deliver an atmosphere on Mars, sufficient to avoid the human need for pressure suits.

8. Since 2010, the claimant has been regularly applying high power laser light to Mars (portable lasers, providing blue or red laser light, up to 3500mW when fixed to an astronomical telescope with a computerised "tracking mount"). Standard operating procedures are strictly observed in order to maintain safety for aircraft and general public. Constant laser applications to Mars are conducted over 15 minutes (average), twice weekly (average). The majority of applications are conducted when the only airport within 40km (TAG Farnborough Airport) is closed. The operation of laser is always in accordance with CAP 736: Operation of Directed Light, Fireworks, Toy Balloons and Sky Lanterns within UK Airspace.

9. Constant Laser applications formed the basis for the claim to possession of all Martian land. In addition to this was the frequent use of programmable high-powered laser Morse code messages, beamed to Mars (declaring claimant's peaceful possession of planet Mars). Further to this effort to demonstrate actual possession to Mars, the claimant developed a comprehensive governance plan for the management of Martian land (should the claim prove successful via international due process). This plan expected UN agreement to act as trustee of Martian land and to attempt an update to OST. Since 2018, contingency plans were developed to provide a workable solution even if UN declined the role of trustee. This plan provided for the communal holding of all Martian land as "common land" (with public rights of access and use) with the formation of an effective user group to act as a governing body/trustee (for commercial exploitation and debris/waste management purposes).

10. The claimant opined that his actions to support a claim of actual possession of celestial land did indeed satisfy the minimal legal criteria, traditionally based on geographical/geological qualities, to acquire distant, difficult and relatively barren unregistered land. He realised that planet Mars, although rather distant and barren, held much higher strategic value than those rather barren islands or polar regions on Earth, but opined that for such strategic value to be weighted within a legitimate assessment of the merits of his communal claim, it absolutely required legal due process in an international court/registry with jurisdiction. Having satisfied himself (with the benefit of expert legal and scientific advice) that his claim could pass the threshold for legitimacy under public international (and private) law, he turned to examine the possible resistance to his claim within "space law". The cornerstone of all space law is the Outer Space treaty (OST). International scholars will variably acclaim the extent that customary law has grown from this 52 year old treaty. The claimant's opinion (after much discussion with leading legal experts xxxxxx xxxxxxxx and xxxxx xxxxxxxxxxxxx), was that OST and extended customary law did not block his claim to planet Mars possession. Moreover, it did not block his right to property: celestial property.

11. The claimant identified UNCOPUOS (specifically the legal subcommittee, that being the committee that created and agreed the OST) as the natural setting for the initial consideration (for legal due process) of The Mars Land Claim. This was confirmed via email discussions with Mr Niklas Hedman, Chief, Committee, Policy and Legal Affairs Section (CPLA), UN Office for Outer Space Affairs (UNOOSA), United Nations Office at Vienna. In March 2017, Mr Hedman stated: "you must have your case presented formally to the Committee on the Peaceful Uses of Outer Space (COPUOS) and its subsidiary bodies, by a State member of the Committee."

12. Over the course of nine years from 2010, the claimant notified UK government, US State Department, and UNOOSA of his claim and issued each with repeatedly updated applications for "First Registration of All land on Planet Mars." In 2016 he

intensified his practise with the opening of a website (MarsForSale.com) in addition to the existing social media sites. In July 2016 he engaged in email conversations (involving the said applications) with Helen Mulvein OBE, Legal Counsellor, United Kingdom Mission to the United Nations. She stated that "The UK Government will not be taking any action on this." She went on to state:

"The provisions of the Outer Space Treaty (Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies) apply to this issue, with Article 2 providing:
'*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.'*
This applies to Mars, the Moon and any other celestial body."

13. The claimant then approached Clive Hughes, Desk Officer for Space Security and Emerging Technology, Security Policy Department, Foreign & Commonwealth Office. Mr Hughes represented UK Government as delegate to both the legal subcommittee and the full UN-COPUOUS body. He replied by email on several occasions from August to November 2016. He echoed the goals of the claimant's campaign, stating:
"I appreciate the intent of your initiative. We too are working to ensure that outer space remains a safe and secure domain, free of conflict, in which productive human activity can be conducted. … Although there are complex challenges to doing so, a new legally binding treaty to update the OST maybe something we can achieve in the future".
Mr Hughes then invoked Articles II and VI of the OST to explain why FCO would not support the claim to "private legal title for land on Mars."
He further stated:
"But we do not believe that attempting to establish legal title to land on Mars (or any other celestial body beyond Earth) is a viable or constructive route towards establishing a new treaty. There are many governments, including the UK, which would disagree with such an approach. … I note your intent would be to pass the

land into UN trusteeship at a future date. However, there is no basis for the government to support the ownership-in-trust of celestial lands by the UN. For these reasons, we cannot support your request for legal assessment of your claim by the UN or any other body. … There is no FCO procedure for complaints of this nature. If you wish to take the matter further, I suggest you seek independent legal advice."

The claimant replied, challenging the applicability of Articles II and VI of OST, and advising that if Article VI really did apply, then UK government had strict national and international obligations to adhere to (under Article VI OST and Outer Space act 1986).

Mr Hughes replied in October 2016: "My apologies for the delay. I will spare you detailed excuses but I would appreciate it, if you could bear with me for a while longer. These are complex, long-term issues so some internal consultations are in order." Ultimately, in November 2016, he replied by email to inform:

"Our view remains the same as expressed in my email of 25/08/2016. We do not think your approach is the right way to promote the peaceful exploration and use of outer space and, as I mentioned, I am concerned that it could, in fact, be counterproductive.

We will therefore not be presenting your proposal to COPUOS or the GA".

14. The claimant understood that there was no likelihood of resolving the situation, as it stood, without recourse to a judicial review in UK High Court. However, the claimant was by that time formulating a wholly different construct for the Mars Land Claim and its future propagation. Thus, between November 2016 and February 2019, a new construct was imagined. From a single land claim grew three discrete claims (Martian land, priority rights to Martian resources, and priority rights to temporal-geographical slots (approximating to surface of Mars) for purposes of use and/or homesteading. The additional claims are discrete but need not apply if "claim 1" (land) is successful. All claims have now become pan-multinational claims (with people of all 195 nations of the world represented in defined, equitable numbers). This completely changes the nature of the claim. Article 1 of OST prescribes that the use of outer space "shall be the province of all

mankind". The claimant assessed this to mean that space was the responsibility of, and for benefit of, *all mankind*, but not necessarily *all nations*. Whilst all states had free access to all space and celestial bodies, it was the province of *all mankind*. Thus, the newly constructed claim contained free allocations of claim certificates for people of all nations, in equitable numbers (according to population statistics and Human Rights standards). It served to allocate land equitably throughout humankind and establish either UN trusteeship or a user group (AllMankind.org) which would hold legal title and govern Martian activity with a careful but pro-commerce direction. The creation of such a regulatory body was another new element to the claim. In all eventualities, whether the UN chose to engage with the claimant's plan or not, a successful registration of Martian land would result in common land (with open access rights for all) that would be held in trust with a regulatory body in place to advance space commerce but protect celestial land from abusive exploitation and preserve the Martian opportunities for people from currently non-space faring nations. Finally, the claimant also addressed the applicability of articles II and VI of OST again. After much study of the travaux préparatoires, U.S. State department records, scholarly articles and even telephone conversations with the sole surviving drafter of both the UNGA "*Principles Declaration*" in 1963 and OST in 1967 (Dr Craig Eisendrath), the claimant determined that whilst it could be argued that Article VI OST did apply to the claims in question (as per previous FCO positions), that would not serve to block the claim. With new arguments on position and many changes to the original claim, the claimant opined that it was time to approach the UK government anew.

15. The huge raft of changes from the original claim (from 2016 until 2019), plus a changing political climate (Brexit, international reaction to U.S. Commercial Space Launch Competitiveness Act, the new American Space Commerce Free Enterprise Act ("outer space shall not be considered a global commons") plus the new introduction of LaunchUK and The Space industry Act 2018), meant that the claimant sensed opportunity to approach FCO again with new information and a more structured approach in order to gain a more correct understanding (within

FCO) of the celestial claims: the key issues for FCO to understand were that there were now three discrete celestial claims, all three being pan-multinational in construct and with a plan for immediate registration of celestial land into trusteeship of UN (or an elected user group), with all claimed land now to be held as common land with access/use rights for all. The claimant himself, whilst prepared to undertake any role as settlor, trustee, or regulatory body representative, did not wish to obtain any beneficial title for the celestial land claimed (unless legally required). The nature of the three claims was set out in a "Legal Self-Assessment Document" as well as in summary form within a "Declaration of Intent" that all co-claimants signed up to.

16. The claimant approached (by email) David Edmondson (FCO, details above) after being advised by Clive Hughes that he had vacated the space portfolio. In four separate emails the claimant informed Mr Edmondson of the three claims, the pan multinational nature of the claims, and the plans to register Martian land into a trust (ideally with UN as trustee), with all land held open as common land. The defendant was advised on the pressure applied to the UN (within the plan) in order to effect a successfully ratified update to OST. The claimant requested (as per the previous advice from UNOOSA) that Mr Edmondson agree to have the problem of "The Mars Claims" introduced to COPUOS, initially the LSC (legal subcommittee), in order to consider an appropriate pathway to legal due process. This mechanism (presentation of the claims to LSC) did not require, in any way, actual support from UK Government. The claimant demanded that should this request be refused, then an alternative pathway to legal due process must be investigated and suggested. Mr Edmondson spent four weeks "consulting across government" in order to reach a formal letter of reply. On 18th March he stated: "Article VI of the OST sets out that States bear international responsibility for activities in outer space, including where such activities are carried out by private entities. Article II of the Outer Space Treaty provides 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.'* This applies to Mars, the Moon and any other celestial body. Appropriating land on

Mars, or any other celestial body, may be regarded as a national activity seeking national appropriation of a part of a celestial body, which would be contrary to the provisions of the Outer Space Treaty. You state an intent to pass the land into UN trusteeship at a future date. This is not a function of the United Nations and we see no clear basis for government to support the ownership-in-trust of celestial lands by the UN."

17. The claimant attempted to clarify the matter (UN trusteeship was not a vague future ambition, it was built into the application for first registration, such that if the claim was successful the land would be registered into trust with UN being requested to assume trusteeship). The claimant advised that actual possession (=effective occupation) was not barred by OST. The claimant noted again that if Article VI OST really did apply, then UK Government must assume the national obligations that come with both Article VI and the applicable Outer Space Act 1986. The claimant also noted the inclusion of "political reasons" for not engaging with any provision of opportunity for communal ownership of property (that being celestial property, already claimed to be under possessory title: the claimant is seeking international registration of that possessory title in order to protect the claimed possession). The claimant declares the applicability of the Human Rights Act 1998 (covering Article 1 of the First Protocol, ECHR).

18. Having repeatedly requested that some equitable solution be found (he offered to attend any appointment in person to achieve this), the claimant was unsuccessful in gaining an actual answer to his requests. It is true that the original, rudimentary claim, as dealt with by Clive Hughes, had lead to an official negative answer to the claimant's original requests. The new requests (representing the new claims with different constructs) have not been met with any appropriate answer. Nevertheless, from Mr Edmondson's formal reply of 18th March 2019 (as again confirmed by a final email from him dated 17th April 2019), the claimant may assume that there is no willingness by FCO (hence, the defendant) to provide any legal route to consider this claim of celestial property or priority rights. He may also assume that the reasons for this unwillingness are both legal and political.

The political component was clearly the defendant's unwillingness to consider any trusteeship role for UN in space. The assumed legal position of the defendant is that Article VI OST does indeed apply. From that, the defendant has determined not to facilitate any route to international legal assessment of the claims. It must also therefore assume the authorization, monitoring and reporting (to Secretary General UN) responsibilities that come with articles VI and XI. The defendant has also thus assumed responsibilities for assessment (and potential licensing) of the claimant's ongoing activities within UK Gov national and international obligations that arise from the Outer Space Act 1986 (and newly in-law, The Space Industry Act 2018).

19. Thus, with no other options available (and a maximum three months window of opportunity after the formal response from defendant), the claimant now feels compelled to claim for Judicial Review in the Administrative Court. This letter before claim is a final attempt by claimant to gain access to his rightful opportunity to register the land claimed to be in his (communal) possession. Given that a UK court would not have jurisdiction to assess the full merits of a pan-multinational shared claim to celestial land for purposes of registration into an international trust, the claimant does identify that such legal due process could only occur in an international legal setting. A bespoke court/registry could be formed, under UN direction, for such a purpose. Brooks W Daly, Deputy Secretary General of PCA, has advised claimant that the PCA stands ready to arbitrate in the claim if sufficient consent for arbitration can be gained (from COPUOUS or UNGA). So therefore, the purpose of a Judicial Review is only to ascertain if claimant does have a legitimate right to have opportunity to register property (or priority rights) via some international legal due process.

Legal issues: relevant law

20. Outer Space treaty 1967 and Outer Space Act 1986:

In the UK Government's explanatory notes to the new Space Industry Act 2018, is the following statement: "These Treaties are implemented in the United Kingdom

by the OSA" (OSA being the Outer Space Act 1986, and "these Treaties" being four of the Outer Space Treaties, including the OST). The Outer Space Act 1986 (plus the soon to enter into force, Space Industry Act 2018) is applicable here in so far as it applies to any activity in outer space conducted by a UK national and was largely created to address the national & international obligations imposed upon UK Government by Article VI OST, which also applied to any national activity in Outer Space, whether carried out by governmental or non-governmental entities. Although the claimant contested the applicability of Article VI OST, the defendant repeatedly declared its relevance to these claims. In referring to the applicability of Article VI OST (with respect to the management of this communal claim), the defendant must also then apply The Outer Space Act 1986. Article VI of OST requires the state to authorize and monitor the activities in outer space of non-governmental entities. If Article VI applies, then so too does Article XI, which requires the state to report on such national activities in space to UN Secretary General, the general public and scientific community. The Outer Space Act 1986 (OSA) must also then apply. This requires the Secretary of State (without delegation) to consider the licensing of national space activity, with the option to award exemption for certain activities. The Act empowers The Secretary of State to give directions to secure compliance with the international obligations of the UK (mainly the OST) and a justice of the peace to issue a warrant for direct action in order to ensure compliance with the international obligations of the UK.

21. The Human Rights Act 1998:

    From October 2000, the Human Rights Act 1998 has incorporated most of the rights contained in the European Convention on Human Rights (ECHR). This means that those rights can be enforced directly in UK courts. For the purposes of this claim, the relevant sections of HRA and ECHR are Article 1 of the First protocol (Property), Article 6 (fair trial) and possibly Article 14 (discrimination).

22. Law of Property Act 1925, Law of Property (Miscellaneous Provisions) Act 1989, plus the Land Registration Act 2002 all implicitly advocate the rightful opportunity to acquire property and thus the right to acquire, own and protect property.

23. General International Law:

    Previously, such law would not be scrutinized under judicial review, but over the last two decades there has been a growing requirement to do so. Thus it is now so. In this matter, the defendant has brought his opinion on the extent of customary international law into his decision making on the matter of these claims. The defendant's invocation of Article VI OST automatically brings in the Outer Space Act 1986 (OSA), which in turn requires the UK Government to observe and adhere to its international obligations. These obligations include the full text of OST, general international law and customary international law (see Article III of OST). The defendant, in formal replies to the claimant, repeatedly referenced some disputed elements of customary international law (private space activities = national space activities, hence private property *may* = national appropriation/claim of sovereignty). Thus, international law and the scholarly debate over matters of customary international space law is relevant to the legal appraisal of these three claims here. The judicial review process must therefore examine the relevant international law, for it has been brought into public law and directly employed by the defendant in this matter.

24. Aarhus Convention (?): This Mars claim bundle raises important issues that *may* lie within the scope of the Aarhus Convention (regarding access to environmental justice). Indeed, the defendants refusal to act on the claimant's two requests, has effectively barred access to public participation (the claimant being "the public concerned") and access to justice within the *probable* scope of this convention (formal title is: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). It is the claimant's opinion that new hard law (ideally within OST update) is necessary for the mitigation of space debris and control of weaponization, both matters being of huge relevance to our environment on Earth. The claimant now seeks expert legal counsel on this matter before including the Aarhus Convention in the formal claim for judicial review.

Grounds for Judicial Review

Ground 1: Illegality – Error of law

25. The legislation determining this matter, namely the Outer Space Act 1986 (OSA) and the Outer Space Treaty 1967 (OST), has been misapplied by the defendant. In failing to apply the regulations correctly in considering the claimant's Mars claim bundle (the claims), the defendant is acting unlawfully.

26. Article II OST has a nebulous, almost ghostly quality. This was born out of the merging of two coherent draft articles (U.S. and Soviet) in 1963. The final merged article (which remained virtually complete right through to the ratification of OST in 1967) was clunky in structure and had transposed the previously described means for acquisition of sovereignty into causal pillars of "national appropriation." The problem here was that national appropriation, at the time, was not clearly defined or understood by all parties. The merging had taken place away from the stalled COPUOS environment, in bilateral negotiations between U.S and Soviet delegations only. U.S. State Department has made available the records of U.S delegation communications during this period. There is no record of any intent to substantially alter the draft documents. The evidence (including input from the sole remaining original drafter, Dr Craig Eisendrath), simply shows an intent to prevent national appropriation or sovereignty by any means. The text of the final article however, was met with some surprise on return to COPUOS. The legal subcommittee chairman, Manfred Lachs, remarked with surprise that a new title ("use") had been created. The U.S delegation (both in 1963 and later in 1967) would use the terms national appropriation and sovereignty interchangeably. Indeed, the final consensus is that national appropriation does indeed mean the assertion of national sovereignty. Having first introduced the term (national appropriation) in 1960 with President Eisenhower's speech to UN, the U.S. Government now select sovereignty rather than national appropriation in their assessment of international obligations (see U.S. Commercial Space Launch Competitiveness Act 2015). Those nebulous qualities within Article II (especially

the concept of “national appropriation by use”) have caused some difficulties for interpretation over the years, but it is now generally agreed as customary law, that no amount of use or occupation (or anything) can ever lead to acquisition of sovereignty or national appropriation. The “by any other means” phrase in article II has been agreed to bar the acquisition of national appropriation or sovereignty via private possession, use, or claims to property rights. Thus, states can probably not bestow property rights upon non-governmental entities, including individuals.

27. It is article VI OST which defines the state’s responsibility for the space activities of non-governmental entities, including individuals. Article VI has also been utilized by some scholars to opine that a bar to national appropriation must also mean a bar to private property rights. Indeed, this may be so, but only when applied within Articles II and VI in their barring of national appropriation. Thus, Professor Ricky Lee, in accordance with Professor Christol, states that the more commonly accepted views on the non-appropriation principle were that it also prohibited “a state from granting to its nationals or private entities exclusive rights to the space environment.”

28. In order for the OST to function elegantly, it should not be considered in a dissected state. If Articles I, II, VI, XI and XII are applied together, an effective, elegant framework is the result. Ultimately, as commercial space exploitation becomes more competitive, a regulatory body will indeed be needed. In meantime, OST can provide for the early exploitative years: whilst there is a bar to national appropriation (and possibly to state granting of property rights to nationals, although U.S. contests this), there is no actual limit to use or occupation unless they substantially infringe on the rights of others, as per article I. Article XII meanwhile ensures that the “user” (in possession of land containing mining installations etc) has a high degree of exclusivity (freedom to enter is qualified by the need for advanced appointment). This holistic approach is the common sense solution, already recognised by Judge Manfred Lachs and Professor Philip de Man.

29. There is nothing in OST or international law to prevent a pan-multinational communal claim to actual possession of celestial land. Such possession could be termed exclusive, but it is currently not impeding access or use by any other. Indeed, it affords the equitable opportunity for people of all nations, irrespective of current space-faring capability, to freely claim possession of Martian land. The claimant now seeks international due process in order to consider the communal right to ownership in trust of Martian land. There is nothing in space law or customary international law to prevent UN-COPUOS from agreeing, by consensus, to PCA arbitration on this Mars claim bundle (the claims). Even the "Moon Agreement" (MA) is not a barrier. Article I of MA makes provision for new legal norms to apply to Mars, thus permitting such a celestial trust to be formed with a UN body acting as trustee. Further, Article I of OST prescribes that the use of outer space "shall be the province of all mankind". The claimant assessed this to mean that space was the responsibility of, and for benefit of, all mankind, but not necessarily all nations. Whilst all states had free access to all space and celestial bodies, it was the province of *all mankind*. Thus, the claimant's pan-multinational model for communal ownership of celestial land (to be held in trust as common land with UN as trustee) would fit rather well into that ideal. In truth, the international registration of Mars land into trust, as per the claimant's strategy, is quite easily accommodated by all space law and international law. On the other hand, the recent national space laws of United States and Luxembourg do not fit particularly comfortably into existing space law.

30. The defendant invokes articles II and VI to justify a refusal to facilitate any opportunity for legal due process with respect to the claims. This is incorrect. If the claimant were applying to UK Government for registration/award of property rights to Mars, then the defendant would be correct. The claimant is making no such application or request. He is applying for international appraisal of the claims. Articles II and VI, nor any substantially agreed customary law will serve to block that application.

31. By invoking article VI of OST, the defendant must also assert that Outer Space Act 1986 (OSA) does apply. Both laws place obligations upon UK Government. Article VI requires the state to authorize and monitor all non-governmental national activities to ensure conformity with the OST. In turn, article XI also must apply. It obliges the state to advise the Secretary General of UN, the general public and international scientific community of the nature of such activities. The OSA obliges the Secretary of State (without delegation) to consider the licensing of all space activities and ensure conformity with UK's international obligations. The defendant, having invoked certain laws, has not acted on any of the obligations that each law creates. Indeed, it was the claimant who acted on an obligation placed upon him by the defendant. For air safety purposes he was advised to communicate with UK Space Agency to understand what legislation might apply. The claimant had already been in contact with UK Space Agency but did so again on request. Tobias Lin, Senior policy Advisor at UK Space Agency advised (by email) that the claimant's continued careful use of high-powered portable lasers for astronomical use in targeting the planets was not an activity that currently required a license.

32. The claimant is also keen to quote the 2018 UK Government response to the "Call for Evidence: Laser Pointers." The government reported: "Overwhelmingly, responses suggest that (perhaps with the exception of astronomers) there is no reason a member of the public needs a high powered laser pointer. However, the evidence gathered from the Call for Evidence does not indicate that a ban or licensing regime would have a positive impact towards this goal."

33. It is clear that the defendant views the claims to be of a trivial quality, thus not worthy of a coherent response. Yet the defendant has made no effort to analyse the merits, within international law, of the case for actual possession of rather distant, barren celestial land. Instead, the defendant has relied on the nebulous and ill-defined limits of customary international space law to block progression of a communal claim of land possession to an international court or registry. Besides

the incorrect application of law, the claimant opines that the defendant's application of customary law is not only incorrect, it sits isolated when compared with the moving opinion of other space faring nations.

34. UK space policy is to capture 10% of the global space market by 2030. With competitiveness in an exploding global market being paramount, the claimant finds it peculiar that UK government would seek to unilaterally declare a very restrictive legal interpretation of space law with respect to the feasibility of celestial property rights. Space law is barely 50 years old. Customary space law, if yet truly established, is likely to bend with state practice over the next ten years. U.S. national space law will set the tone, as it already has. If the American Space Commerce Free Enterprise Act (sitting at Congress) becomes law, then customary space law may change substantially (see article 80308: "Outer space shall not be considered a global commons"). Customary space law, although very young, has been mostly based on divided scholarly opinion and state practice with respect to the allocation of geo-stationary orbital slots for satellites. That there has not been any ugly appropriations of orbital positions is entirely due to the international acceptance of the ITU regime. There is no acceptance, yet, for any regime to manage space mining and other exploitation. State practice will thus evolve accordingly.

35. Primary case law is also very poor on this subject of celestial private property. The only court case to even minimally scrutinize space law (but very reluctantly, after several challenges) was the case of Lunar Embassy selling deeds to the Moon in China. The original charges were of fraud, but after several challenges, the Chinese court (in 2007) invoked the OST and stated that no individual or state could claim ownership of the moon. This company continues to sell these novelty deeds in USA. This says more about different political systems than global customary law. The most high-profile case of this nature (Nemitz V. United States in a Nevada court) did not actually address space law. The court carefully avoided such matter and dismissed the case as Nemitz had failed to prove he had any

property rights (he had just registered ownership of an asteroid online without any other actions). In another case, United States v. Roberts (2005), the court progressively recognized property rights of objects brought back from space to the State.

36. Customary international law emerges only when *opinio juris* and state practice are present and in alignment. With minimal case law, minimal applicable state practice, split scholarly opinions and challenging new pro-commercial national space laws, it is difficult to imagine that customary space law can extend the non-appropriation principle to bar a pan-multinational body (UN) from granting limited beneficial property rights (legal title to be held by UN) into pan-multinational shared ownership, with all land to be held as common land. Here is a useful, although unfortunate example: the OST bars WMDs in space but not other weapons. However, state practice over fifty-plus years has been to avoid all weaponization. There is certainly *opinion juris* in many nations that all weapons in space should really be barred. There is even some relevant legal text that bars all weapons: the original completed OST was, prior to its ratification, printed as an annex within UNGA Resolution 2222 (XXI). Although clearly an error, the article IV of OST therein states that no weapons are permitted. All of that would suggest that there is much more evidence for the barring of all space weapons within customary law compared to the expanded application of the non-appropriation principle that the defendant advances. Unfortunately, as the next decade will show, state practice is about to change. Weaponization in space, initially "to protect assets", will occur. That's customary space law for you.

37. With no other countries "sticking their necks out"(other than perhaps China; noting that even Russian national space law adheres to the restrictions against only national appropriation), a unilateral declaration that UK government regards all celestial land ownership rights (and possibly all property rights) to be barred, is at odds with carefully stated positions of other space faring nations and introduces unnecessary barriers to free commerce in space.

38. In summary of Ground 1, the claimant asserts that the OST and OSA have been wrongly applied. Neither laws actually bar the right of the claimant to seek protection for his (communal) celestial possessions, nor apply for international legal appraisal of the Mars claim bundle (the claims). In not addressing the obligations incurred by invoking these laws, the defendant's actions are not only erroneous, they come very close to satisfying the criteria for Wednesbury Unreasonableness. The claimant also notes that the defendant's (hence UK Government's) understanding that customary space law completely bars pan-multinational communal celestial property claims (even if suitable for international appraisal) is unilaterally extreme.

Ground 2: Breach of Human Rights Act 1998 (HRA) through error of law, probable procedural impropriety (apparent bias) and possible discrimination.

39. The following European Convention Rights are included in the Human rights Act 1998 and have been breached in this case:

    i. Article 1 of the First protocol: Protection of property
    ii. Article 6: Right to a Fair Trial
    iii. Article 14: Prohibition of discrimination (*may* have been breached)

40. Protection of property: this article primarily affords for the enjoyment and protection of possessions. It does not explicitly state the absolute right to acquire property, but rather the rightful opportunity to acquire property is implicit in the law. With respect to the Mars claim bundle (the claims), the claimant is already asserting actual communal possession (hence a possessory title) and is seeking recognition and registration of title (into trust) as per the rights protected by the HRA. Relevant as background to this right is the implicit right to property within the Law of property Act 1925 and the Land Registration Act 2002. In addition to

UK law, the international right to property is declared in article 17 of the Universal Declaration of Human Rights 1948: “Everyone has the right to own property alone as well as in association with others.” This was reaffirmed in 1988 with UNGA Resolution 43/123, which also states in pre-amble, “Recognising also … the importance of enabling everyone to acquire property”.

41. The claimant opines that the claims have not, within the responsibility of the defendant, been subjected to a fair assessment of right to property. He believes that there was minimal, if any, appraisal of his actions to justify communal possession of celestial land, including the use of high-powered lasers and the development of a comprehensive governance plan for the equitable management of the land claimed. Incorrect and incomplete application of OST was employed to justify the defendant’s refusal to take any positive action with respect to the claims. In addition to this was the repeated assertion by defendant that the UK government could see no clear basis for government to support the ownership in trust of celestial lands by the UN. Although the defendant did not accurately address the claimant’s two key requests/demands, it is sufficiently clear that a refusal to act positively was based on a very specific, incorrect application of OST (and customary space law), together with this negative opinion on UN trusteeship in space. UN ownership of celestial land, far from being a “horror concept,” was most coherently proposed by Professor Wilfred Jenks, the famous British scholar who was a significant part of the David Davies Institute that produced the key document, “Draft Code on Rules on the Exploration and Uses of Outer Space”, which in turn formed the basis for UK draft submission towards the “Principles Declaration” in 1963 (which was the main skeleton of OST).

42. It is obvious that the defendant’s views on the matter of possible UN trusteeship in space did inform his decision to refuse to act on the claimant’s requests. This is unfair. UN trusteeship of celestial land, together with a business-friendly user group to form a governing body, would surely not be an overwhelmingly negative

or concerning matter for public safety. Indeed, it may be the most logical step forward in achieving safe, equitable productivity in space.

43. The claimant asserts that in quoting the lack of UK government support for the concept of UN trusteeship in space and then to use that consideration as a reason to block the claimant's right to property, the defendant was acting unfairly, and probably with some bias (apparent bias rather than overt discrimination?).

Ground 3: Possible Breach of Aarhus Convention

44. The claimant will seek expert advice on this matter prior to submission of a Judicial Review application.

The details of the action that the defendant is expected to take

45. Agree to have the matter of the claims introduced to COPUOS for consideration (with the knowledge that COPUOS consensus is required in order to facilitate arbitration through the Permanent Court of Arbitration using the PCA bespoke rules for disputes over activities in outer space). OR:

46. Investigate and provide an alternative pathway for international legal appraisal of the claims (for example, a referral to ECHR).

Effective Remedy via Judicial Review

47. Although the applicability and obligations of several laws must be appreciated, the claims come with a very simple demand: that access to international legal appraisal (legal due process) be permitted. The potential outcome of that appraisal should not be of concern to defendant or the court. Through Judicial Review the claimant will seek effective remedy by way of a mandatory order: to compel the defendant to act positively in accordance with paragraphs 45 or 46 (see above). The claimant understands that the court may have need to refer to ECHR.

Duty of Candour

48. In an earlier email to the original respondent from FCO, Mr Clive Hughes, the claimant had stated "We now have funds exceeding £250,000 (and climbing) which will be allocated to legal due process." This was untrue (and remains untrue despite some fundraising since then). Such posturing is unnecessary and serves to undermine the credibility of an otherwise honest and earnest effort to influence change within COPUOS in order to update OST to keep us all safe and prosperous. The claimant apologises for this false statement. Most co-claimants within the pan-multinational communal claim have joined on a free basis (not fee-paying).

ADR Proposals

49. Please confirm in your reply whether the Defendant is willing to consider alternative dispute resolution.

Protective Costs Orders (PCO)

50. The claimant is requesting a PCO limiting claimant's costs liability to £5000. The requested PCO would also limit defendant's costs liability to £5000.

Further Information

- Relevant information can be gained from the claimant's website and social media outlets. There is a 30-minute video presentation by claimant here: http://mars.sale/media
- There is detailed legal information here: http://mars.sale/legal-issues
- The claimant's campaign can also be scrutinized here: http://twitter.com/jointhemartians
- World leading space law professors Fabio Tronchetti and Philip de Man have agreed to act as judging panel in an international moot court competition

(open to law schools) which will use the Mars Land Claim (claim 1) as the "problem." The Mars Prize competition is found here: http://TheMarsPrize.com

The address for reply and service of court documents

Dr Philip Davies
xxxxxxxx xxxxx
xxxxxx xxxxxx
xxxxxxxx
London UK

Email: admin@celestial.org.uk

Proposed reply date

We expect a reply promptly and in any event no later than 16 May 2019. Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.

Yours faithfully

Dr Philip Davies

Signature date: 01 May 2019