# APELLANT'S NOTICE

## GROUNDS OF APPEAL

Dr Philip Davies appeals against the High Court Order (i) and the reasons provided by the judge (ii and iii):

i. Permission is hereby refused; the application is considered to be totally without merit.

ii. The Summary Grounds of Defence are compelling. They explain in detail but clearly why the claim has no prospect of success. I cannot do justice to the points made in the Summary Grounds of Defence by providing my own summary and so I adopt those grounds as my own reasons for refusing permission.

iii. I do not consider that the Claimant's letter of 15th August detracts from the compelling nature of the defence. I am not surprised that the focus of the defence does not relate to the European Convention on Human Rights but paragraphs 41 to 43 of the Summary Grounds deal with the ECHR sufficiently.

1. I summarize my Grounds for appeal as follows: together with general international law, it is the HRA/ECHR which creates my right to seek protection for our communal celestial land possession. I assert that the Judge has erred in law in breaching Articles 6, 14 and also Article 1 of Protocol No.1 of the European Convention on Human Rights. I also assert that in his

assessment of the applicability and meaning of Articles II and VI of the Outer Space Treaty 1967 (and using this position as the key reason for refusing permission for JR) the Judge has erred in law. He has applied the reach of these articles well beyond their agreed extent within expanded customary law. To inflate the UK's international obligations that flow from these articles yet completely ignore the corresponding obligations within Article XI of Outer Space Treaty (and not pay any heed to the Outer Space Act 1986) is not just erroneous, it satisfies the definition of Wednesbury Unreasonableness. Thus in my Grounds for appeal I assert that under HRA/ECHR we have a right to communally possess celestial land and seek protection of that possession via access to a fair legal due process in an appropriate international setting (therefore with jurisdiction). I assert that because customary space law (which expands from the Outer Space Treaty) holds no obvious barrier to the progression of our pan-multinational communal celestial land claim, and because there are no significantly negative public interest concerns, the Court of Appeal should either award permission for Judicial Review and/or ideally go further in mandating that the respondents agree to my request that they provide the minimal assistance required to facilitate my access to fair international due process.

2. My application for Judicial Review was based on the applicability of ECHR/HRA to our pan-multinational (i.e. people of all 195 of the world's nations represented) communal claim of actual possession (= effective occupation) of land on Planet Mars. For ten years, our regular, persistent application of strong directed laser light upon Mars has caused a very small but favourable effect (with respect to very small surface/atmosphere changes to benefit the future human terraforming of Mars). Together with those continuous actions, our detailed governance/administrative plans (including

all land to be held open as ‘common land’ in trust with legal title offered to United Nations COPUOS) enable a credible claim to exclusive land possession. The claim is credible when assessed against established minimal criteria (in both international, national and private laws) for proof of effective occupation of difficult (distant), relatively barren land. This is the important cornerstone to my grounds of appeal: in order to engage Article 1 or Protocol I ECHR the actuality of celestial land possession must be legitimately arguable (but not necessarily, in my opinion, proven beyond all doubt). I am certain that our claim to celestial land possession is arguable (and hence credible) when held against the quite minimal requirements, established in law over the last century, to prove actual possession/effective occupation of difficult barren land on Earth.

Although I represent a pan-multinational communal claim of Mars Land possession, I made the application for JR as a single claimant representing the communal claim (all other confirmed claimants were offered the opportunity to be listed as co-claimants for the purpose of JR, but on my advice they declined, mostly citing financial risk as their reason). It is my understanding that our communal possession of land on Mars is factual. It represents effective occupation/actual possession. With possession sufficiently asserted, I identified Article 1 of Protocol 1 ECHR (incorporated into national law by HRA) as providing all communal claimants with the right to protect our possession/property. Protection is facilitated through international declaration/recognition and by registration of title (shared possessory title for claimants with legal title offered, through registration, to UN COPUOUS).

In order for us to have our possession internationally considered, recognised

and registered, we must be afforded fair, legal due process. The Judge's order, in adopting the Respondent's Grounds Of Resistance, did not accept that any provisions within ECHR were engaged and did not accept that the Respondent had violated Articles 6 or 14 or Article 1 of protocol 1 of the ECHR. In giving these reasons, the Judge had erred in law. As a result, in refusing the application for JR (considering the application to be totally without merit), the Judge erred in law.

3. The ECHR is faithfully derived from UDHR. Article 17 of the UDHR states: 'Everyone has the right to own property alone as well as in association with others.'

   At the time of my application for JR, the EU Charter of Fundamental Human Rights continued to apply within UK. Article 17 states 'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions.' The right to dispose of property brings with it the right to have *opportunity* to acquire property.

   ECHR Article 1 of Protocol 1 states 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

   The European Court of Human Rights has published an updated guide on Article 1 of Protocol No. 1 to ECHR. Therein it states at paragraph 133: 'Although Article 1 of Protocol No.1 contains no explicit procedural requirements, it has been construed to mean that persons affected by a

measure interfering with their “possessions” must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging those measures, pleading, as the case might be, illegality or arbitrary and unreasonable conduct (G.I.E.M. S.R.L. and Others v. Italy; Yildirim v. Italy; AGOSI v. the United Kingdom; Air Canada v. the United Kingdom; Arcuri and Others v. Italy; Riela and Others v. Italy). These procedural guarantees are inherent in the principle of lawfulness (Lekić v. Slovenia).’

Highlighting the positive obligations placed upon the state, the guide states: ‘Genuine, effective exercise of the right protected by Article 1 of Protocol No.1 does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his “possessions” (Öneryıldız v.Turkey).’

It is my understanding that as one of the communal claimants of Mars land possession, I have a right, under ECHR, to have opportunity to protect my possession via an appropriate and fair legal due process. I believe that the Appeal Court should describe the positive obligation placed upon the UK Government to assist me in gaining access to fair, international legal due process. In effect, this represents a procedural right which must flow from Article 1 of Protocol 1. Without access to appropriate international legal appraisal, I am deprived of the crucial legal protection that results from

international scrutiny, recognition and registration of land currently in our exclusive possession for over 10 years.

4. The Judge states that he is ‘not surprised that the focus of the defence does not relate to the European Convention on Human Rights.’ Yet it is, in addition to general international law, the ECHR (incorporated into UK law by HRA) which I believe creates the right for my claim to exist and to have access to appropriate, fair international appraisal. The Judge asserts that paragraphs 41 to 43 of the Summary Grounds of Resistance ‘deal with the ECHR sufficiently.” The Judge has erred in law. The provisions of Article 1 of Protocol 1 of ECHR are indeed engaged and have been breached by the Court Order and by the original refusal by UK Government to facilitate access to appropriate international due process for this claim.

5. In the UK, civil rights include property rights. The 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. The Mars Land Claim is a matter of civil rights. Article 6 of ECHR is the Right to a Fair Trial. For the purposes of protecting our pan-multinational communal possession of celestial land, the UK courts do not have jurisdiction. It requires a truly international legal appraisal/due process. Access to that appropriately fair trial may be facilitated by quite

minimal/limited positive action by a state government (in this case, UK Government). I believe that in this matter the combination of Article 6 ECHR and Article 1 of Protocol 1 results in a positive obligation upon UK Government (and the Judge) to seek to provide access to a fair trial (thus an international due process with jurisdiction). The Judge's High Court Order (plus the UK Government's refusal to act) is thus in breach of Article 6 ECHR.

6. The Judge's reasons for refusing permission for JR are the entire 'Summary Grounds of Defence.' Unnecessarily, he has thus also breached Article 14 of EHCR:

   Paragraph 10 of the Summary Grounds of Resistance states 'The 18 March 2019 decision from the FCO contains the following explanation for refusing to submit the Claimant's property claim to land on Mars to COPUOS … [The Claimant states] 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.'

   It is our intent to have the legal land title (to the land on Mars) offered to the UN (for UN to hold as trustee) as part of the land registration process (not some vague date in the future). The concept of UN trusteeship of celestial land can surely not be viewed as a sufficiently negative concern to require the UK Government to block the progression of our claim in the

public/general interest (as per Article 1 or Protocol 1 ECHR). Indeed, such UN trusteeship would most likely guarantee the safe, responsible, peaceful and equitable management of celestial land (and there are feasible measures to ensure that such trusteeship is managed with a more business-friendly approach compared to previous models of UN stewardship). It was the famous Professor Wilfred Jenks (the most prominent British contributor to the foundations of the Outer Space Treaty) who most coherently proposed UN ownership of celestial land.

For the UK Government (and the Judge) to list their dislike for the concept of UN trusteeship within Space (especially at a time when the weaponization of space is imminent) and use this directly as a reason for not facilitating access to international legal due process for our Mars Land Claim, is a distinctly biased position. They have employed overt discrimination in this matter, sufficient to breach Article 14 ECHR.

7. Bizarrely, in paragraph 2 of the Summary Grounds of Resistance (those grounds also being the reason for the Judge's decision), it states 'the Claimant seeks to provoke a change in international law and to influence the UK's conduct of its foreign relations vis-à-vis the other Contracting States to the 1967 Treaty including with respect to what issues the UK should submit for collective consideration and/or the position the UK should take to treaty making. This is not the proper purpose of Judicial Review."

   I do agree that legal consideration of my future hopes for a timely update to

space law (Outer Space Treaty 1967) is not a role for Judicial Review. Indeed, I did not ask for any assessment of this detail … nor is it remotely necessary to do so. Nevertheless, since the respondents' legal team (and the Judge) have thought it pertinent to criticise my motivations, I should supply a more positive quote from an early emailed response to me from FCO: '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.'

8. My purpose for seeking JR was clearly articulated in the Judicial Review Claim Form (N461). I sought to have the following decision by the respondents (FCO and BEIS) judicially reviewed:

   Their refusal to either:

   i/ submit claimant's "communal" property claims to land on Mars to a UN committee (COPUOS) or

   ii/ attempt to find an alternative pathway towards international legal due process for the consideration of the claims.

   Rather it was the respondents who unnecessarily expanded the requirement for Judicial Review through their unfairly biased and negative assessments of my geo-political hopes (for UN trusteeship in space).

9. The foundations for the pan-multinational communal Mars land Claim lie

firmly within International Law. Such exclusive possession has a right to exist. Human Rights laws (international and UK national) recognise our right to protect such possession/property. Thus, it is remarkable that the respondents and the Judge saw no need to focus on the ECHR.

10. It is most important to note that general international law does apply to space and celestial bodies (The Outer Space Treaty (OST), Article III). Having identified our right to land possession and right to seek protection (via international appraisal, recognition and registration) in order to peacefully enjoy that possession, I also assert that there is nothing within space law (either in written 'hard law' or customary law) which should create a bar to pan-multinational communal celestial property rights.

11. The Summary Grounds of Resistance comprises several paragraphs (19,20,21,28,29,30) repeatedly declaring the absence of a procedural right within space law (OST) to have the Mars Land Claim submitted by UK Government to COPUOS. I accept that OST does not explicitly create any such procedural right. Instead, as already described in detail, it is general international law and human rights law (HRA/ECHR) which supports such rights for the claim to exist and to be progressed towards international due process (for protection via appraisal, recognition and registration).

12. I contend that with international law confirmed as applicable to space

and celestial bodies, plus the relevance of HRA/ECHR in this matter, my right to protect our communal celestial property via appropriate international legal due process is still permitted within OST and customary space law. I assert that if there is no clear barrier to pan-multinational communal celestial property rights with space laws (and there is not) and no significant concerns in the public interest, then my rights under Article 6 ECHR and Article 1 of Protocol No.1 should flow unimpeded. In order to facilitate my right to protect our possessions/property via a fair legal due process (with jurisdiction) the UK Government is obligated (under Human Rights Act 1998) to agree to enable my access to international legal appraisal.

13. The cornerstone to the Respondents' reasoning (and thus also the Judge's reasoning) for refusing my request/application is their interpretation of the applicability and meaning of customary space law which has extended from the Outer Space Treaty 1967. They maintain that within the 1967 Treaty there exists no explicit procedural right for such a communal celestial land claim to be submitted to COPUOS (UN). I agree, but I assert that there is no bar to such a submission and note that the Treaty confirms the applicability of general international law to space and celestial lands (Article III OST). Paragraph 28 of the Summary Grounds for Resistance acknowledges that 'the 1967 Treaty is silent on the question of whether the Contracting States may submit claims of their nationals or others to COPUOUS.'
They opine that customary law that extends from Articles II and VI of OST

serves to prevent them from agreeing to my request/application. In facilitating my access to international legal appraisal of our communal claim, their actions could (in their opinion) amount to national appropriation (see paragraphs 10 and 28 of the Summary Grounds of Resistance). The respondents' lawyers suggest that this view is at least tenable. This position represents the main reason for the respondents' refusal to facilitate my access to international legal due process. This is wrong. Our claim does not involve one national person. It doesn't involve several people from several nations. It involves people from all nations, represented in defined, equitable numbers. Our Declaration of Intent states that the celestial land is to be registered as common land (held open for all) with UN to be offered legal title as trustee. Such a process has no requirement for the bestowing of property rights by any individual country (an act which would breach customary law). It requires a legal appraisal to be conducted by an appropriate supranational body (UNCOPUOS is the obvious first stop) and probably an agreed international court/registry. UNOOSA (secretariat for COPUOS) has written to us advising that our claim must be introduced to COPUOS by a member state delegation. The Deputy Secretary General of the Permanent Court of Arbitration (PCA) has written that they stand ready to arbitrate on this matter, subject to appropriate consent from COPUOS. The PCA would employ their bespoke *PCA Optional Rules for Arbitration of Disputes Relating to Outer Space Activities.*

None of the above breaches customary space law: there is no national

appropriation. Indeed, our claim is very much in keeping with the text and the ethos of the OST (and also the Moon Agreement):

Article I of OST prescribes that the use of outer space 'shall be the province of all mankind'. I 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, our 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 our established strategy, is quite easily accommodated by all space law and international law.

In contrast to their cornerstone opinion that to facilitate the international legal appraisal of our communal claim would breach the Outer Space Treaty, the respondents (and thus the Judge also) then state in paragraph 35 of their Summary Grounds of Resistance:

'Whether a "pan-multinational communal claim" is recognised in international law and, if so, whether it falls within Article II of the 1967 Treaty are complex questions governed, again, solely by public international law.

There is clearly much uncertainty in the respondents'/Judge's understanding of how customary international space law may be applied to this matter. The fact is that there is nothing explicit (written) in law which would serve to

prevent the existence of pan-multinational communal celestial property rights (with all land held open as common land with UN to hold land title as trustee). There is also no formed opinion within customary space law that might bar such property rights. Thus, the very existence of such a credible (I state it is factual) claim to communal celestial possession should indicate the need for appropriate international legal appraisal. It is the HRA/ECHR which affords me the right to seek protection for our communal possession (international registration/recognition of title would enable the peaceful enjoyment of the possession/property). I assert that the ECHR imposes a positive obligation upon UK Government to provide the minimal assistance required to facilitate my access to international due process for the legal appraisal of our communal land claim (towards a successful registration). The respondents are clearly unsure whether space laws could be extended to bar this communal claim. Without any clear knowledge or evidence, the respondents (and thus the Judge also) have used Articles II and VI to justify their refusal of my request/application and have overridden their positive obligations to act under ECHR. This is not a tenable position. It is wrong.

14. Paragraph 26 of the Summary Grounds of Resistance rightly states:

'… where a public body purports to take into account the international obligations of the UK when reaching a decision, the courts may in certain circumstances inquire into whether that public body has properly understood the relevant obligations.'

Given that it is the respondent's uncertain understanding of customary space law (extending from the OST) which forms the main basis for their refusal to agree to my request (and thus also the main basis for the Judge's refusion of my application for JR), this matter does require scrutiny by the Court of Appeal.

15. The nebulous qualities within Article II of the OST (especially the concept of 'national appropriation by means of use') have caused some difficulties for interpretation over the years, but it is now generally agreed as customary law that no amount of occupation (or indeed 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 sovereignty or national appropriation via private possession, use or claims to property rights. Thus, states can probably not bestow celestial property rights upon non-governmental entities, including individuals (although the US Space Act has rather muddied the waters here).

16. It is article VI OST which defines the state's responsibility for the space activities of non-governmental entities, including individuals. Within the expanded application of customary law, it can serve to reinforce the 'non-appropriation principle.' Thus, Professor R. 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.” I acknowledge that. It doesn’t affect our claim.

17. Within this expanded customary law that has evolved from the OST, there is no bar to pan-multinational communal celestial property rights.

18. For the respondents (and thus, the Judge) to place such emphasis and applicability of the Outer Space Treaty (and the expanded customary law), especially Articles II and VI OST, in the reasoning for their refusal to agree to my request/application, they must then also apply a consistency across all of their international obligations. If they truly believe that in this matter Articles II and VI do apply to their fullest extent within customary law, it must be because they view my actions to be a significant *national activity in outer space* … and thus something which threatens national appropriation. Individual activities are thus considered national activities.

    I, of course, contend that our actions are pan-multinational and communal in nature.

    In applying Article VI in this manner, the respondents and Judge must consider our communal actions to be a UK national activity. In that case their international obligations within Article XI OST must equally apply. These obligations require the UK Government to report these national

activities to the Secretary general of the UN as well as the public and international scientific community. They have not done so. They have sought to apply Article VI without addressing the obligations which then flow from Article XI (and haven't even considered to engage the Outer Space Act 1986). This is not only erroneous; I believe it satisfies the definition of Wednesbury Unreasonableness. I assert that if the respondents did deliver on the obligations of Article XI (reporting our claim to the SG or the UN) then my request for fair international due process should be engaged.

19. I am seeking to protect our communal celestial possession via a fair legal due process which must (in order to hold jurisdiction) be an agreed international/supranational setting. COPUOS (UN) is clearly the most suitable international body to initially consider the matter. UNOOSA (the secretariat to COPUOS) has advised that our claim must be introduced to committee by a member state delegation. Such is the correct procedure. Should the committee consent to arbitration/consideration for registration, I note that the PCA have indicated (in writing) their readiness to assist in that process. Thus, it is my request that the UK delegation introduce the matter/problem of our communal celestial land claim to the legal subcommittee (LSC) of COPUOS. Although this is the logical route, I am prepared to consider/accept an alternative route towards international legal appraisal (should UK Gov agree to facilitate such) for the protection of our

communal celestial possession. If UK Gov followed the international obligations flowing from Article XI of OST (reporting our claim to Secretary General of UN), then that would likely serve to satisfy our request.

20. In order for the Court of Appeal to know more of the background to my communal celestial land claim I suggest the perusal of the accompanying skeleton document and a visit to our informative website pages:

http://themartians.org

http://allmankind.org

http://marsregister.org

http://twitter.com/jointhemartians

Dr P.L Davies

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