

Legal Reality Check – follow up on this elegant document.

Dr. Davies' emailed reply to Professor von der Dunk (following his report):

'On page 8 (towards the close of paragraph 2), you say of the "**future legal situation**": *"the elapse of time itself will not be sufficient to create this situation whereby The Martians' claim would "be successful in gaining title registration."*" You later state, towards the bottom of page 11 (approaching the end of paragraph 3): *"Regardless of the (combination of) path(s) chosen, The Martians would, one way or another, have to use the meta-legal arguments provided by Mars Claim – Background and Strategy to convince the major spacefaring nations of the appropriateness, fairness, and feasibility of its plans for future ownership of 'land' on Mars."*

Now, I do accept all that ... you will see that what you have most eloquently described as the optional third and fourth paths is in fact an elegant extrapolation of my vaguely articulated legal strategy (especially the third, resulting in plenty of changes in law, but not necessarily to the core text of OST). The thrust of the analysis, however (from paragraph 2 through paragraph 3), is warning us that the holy grail of Mars-land-titled-ownership will not just "fall into our laps" with the passage of time ... rather, you suggest it is up to us to convince the space faring nations to make all those changes via a choice of paths one to four. Well of course, we absolutely will maintain an active plan, including the lobbying of individual state delegations at UN-COPUOS. We don't have a "do-nothing strategy" ... BUT, I think it is important for you to recognise that it is clearly possible (and we say hugely likely), that as space exploration moves towards commerce and 'settlement' (we say perhaps 150-200 years) that the evolution of space law will bend to accommodate some form of land appropriation. I have used the phrase "capitalism has such calorific value" to justify my confidence that such an occurrence is overwhelmingly likely in future. Now, you may well have a very different opinion, but you can see that a significant wing of our strategy is built on opportunism. If, as a result of any number of possible triggers, some space faring nations were to become tolerant/encouraging of a first celestial property claim, then we would come forward with an ethical, moral and in fact legal right to have our claim considered ... perhaps even "first in line." Whilst it can be rather disheartening to expect our capitalist western civilization to break away from the ethos of the beautiful OST, I can realistically see no alternative long-term outcome ... therefore, we should be ready to pounce with an inclusive solution that is built upon celestial appropriation (by "All Mankind"). Throughout our website we describe our goal as being "**Inclusivity built upon exclusivity**" ... our entire project is part-founded on the sad expectation that sometime in future, inclusivity (ethos of OST) will be replaced by exclusivity (tolerance for appropriation). Thus, if realised, our project shall enable a return to some inclusivity whilst still encouraging commerce (inclusivity - exclusivity - inclusivity again).

In your closing summation you state that *" the current impossibility to recognize any legal validity of The Martians' approach to private ownership of 'land' on Mars is not necessarily eternal in nature"* ... Again, whilst that is factually correct, it is my opinion that the *impossibility* will almost certainly become a real *possibility*. I think most men/women in

the street would expect that one day, in the far future, humans will own land in space. As soon as that actually happens, the real *possibility* exists. Once that possibility exists, our chances of being successful will depend on how much effective lobbying we have already done. So again, we don't have a do-nothing strategy ... we will apply pressure and explanation to encourage changes (in line with your third and fourth paths), but I truly think our most likely route to success (and I accept it is a small chance) will be an opportunistic storming of the gates whenever, for whatever reason, space law has been encouraged to tolerate appropriation. It is my opinion that such a moment is many years away ... but not necessarily... "The American Space Commerce Free Enterprise Act of 2017" went quite a long way. That act, together with the President's Executive Order (2020) stated that "*outer space shall not be considered a "global commons,"...*"

If possible, I would like you to recognise that it is entirely possible (we say very likely) that celestial appropriation would come to be legally tolerated (via one of the four paths you describe). All does not fall on our shoulders to effect these changes. Any number of events may lead to such a position.... and with that position comes an ethical, moral and indeed legal argument that our claim should be first (or maybe second, depending on the 'triggering' events) in line for consideration. In my opinion, that time will surely come; but being morally/ethically entitled to "first in line" (we could still be ignored) or even actually considered as "first in line," (considered but rejected?) doesn't guarantee success. Our chance of success comes if we have a really big membership (millions of co-claimants) and have already effectively lobbied some space faring states, such that they have an existing knowledge of our proposed model.

I hope you can find a way/place where you can assert something to that effect. Without it, it appears that everything rests on us ... whereas I am saying that a future opportunistic moment is almost inevitable ... and we (or our descendants!) must be ready for it.

I think it is important for would-be co-claimants to realise that we are doing this not because we are overwhelmingly pro-appropriation, rather it is that we think such a situation is inevitable and we want to be ready with an inclusive solution that also appeals to commerce.'

In reply to this email the professor stated:

'To be precise I do not - or to be even more precise, in this legal piece I should not - have any strong opinion on the likelihood of future developments OUTSIDE of the specific legal domain (...).'

But he did add the following lines to the Legal Reality Check document:

'Along the lines of any of the above approaches, wherever meeting all fundamental requirements as set out above, it would certainly be possible that appropriation of 'land' on

Mars would ultimately become an accepted and legally codified phenomenon. If that will happen, the new paradigm might in turn well follow the moral, ethical and philosophical approach taken by The Martians, including as of today any 'provisional registration' of relevant claims, to establish the desired measure of legal ownership. Whether that will ultimately happen or not, and if so to what extent, is largely beyond the scope of this analysis focused on the current legal parameters and conditions.

***In sum:** while under current international space law the current impossibility to recognize any legal validity of The Martians' approach to private ownership of 'land' on Mars is not necessarily eternal in nature (...)*

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