
Everything Under the Sun - The Right to Property and Outer Space Development

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APA Reference

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The adaptation and extraterritorial extension of the human right to property (RTP) into outer space as a positive right is central to supporting the long-term stability and prosperity of human activities across the final frontier. Where the vast degree of untapped mineral resources in space carries the opportunity of a new “gold rush” for the 21st century, governments must navigate existing international law frameworks in preempting the varied policy challenges posed by the extraction, possession, and sale of resources in space and upon other celestial bodies. While the concept and framework of property carries the greatest potential to drive innovation and promote prosperity, the absence of direction may spur disagreements and conflict.

Property represents a clear articulation as to who possesses certain rights and control over an element. Property rights have been generally defined as contingent upon [several](#) key elements: the right to use or enjoy; the right to exclude others; and the right to alienate to another person or group. Accordingly, where the securing of property rights has been recognized as a foundational element for prosperity and security within societies on earth, the effective transposition of this paradigm into the outer space domain is predicated upon an established connection between human rights and property under RTP.

From a human rights perspective, the unique technical, physiological, policy, and environmental challenges of human activity in outer space necessitates a novel perspective upon the prevailing [terrestrial conceptions](#) of individual and personal property. Noting the paradoxical abundance and scarcity of essential resources in outer space - given the wide availability of natural resources versus continuing high cost of transporting and supplying essential elements - the anticipated democratization of space faces significant financial barriers and challenges. This includes: 1) accessibility to space, as contingent upon the material wealth and socioeconomic status of an individual; and 2) human existence in the outer space environment, given the continuing [high cost](#) of elements essential to sustaining human health, well-being, and dignity.

Context

Property rights were originally conceived of as a foundational human right by notable enlightenment era thinkers, philosophers and jurists. Herein, English philosopher John Locke claimed in his [Second Treatise](#) that “Every Man has a Property in his own Person ... [t]he Labor of his Body, and the Work of his Hands, we may say, are properly his.” Property represents the just reward for individual activity, and in most circumstances people can not be deprived of their property without committing an affront to their human rights. Where discourse surrounding property rights remains diminished within human rights conversations, the novel paradigm posed by humanity’s expansion into outer space warrants a fresh look at property rights as equally significant in space as it is upon the earth.

The advancement of RTP as a positive obligation is [premised](#) upon the unique environment of outer space and anticipated nature of future human activities in space. Noting the logistical challenges and scarcity of resources central to human survival in space, it is crucial for human spaceflight participants to have their basic needs to food, water and shelter met. Further, where control over such resources



carries the potential for abuse of power, the realization of RTP must consider the need to protect vulnerable groups from abuse, precludes the possibility of corruption, and provide universal standard that holds governments accountable.

The promotion of a human rights interpretation to individual property in the outer space context bears relevance in upholding the rule of law, ensuring [stable conditions](#) for commerce, promoting the inclusive ideal of [Space For All](#). Where human rights are universal, interdependent, and inalienable, the realization of RTP bears distinct consequences in achieving broad consensus, and in protecting associated rights - including the right to water and sanitation, right to a healthy environment, and the right to life.

A human rights approach to property holds states accountable in outer space to their international obligations to respect, protect, and fulfill human rights; and support measures conducive to human health, well being, and dignity. Legal clarity over RTP as a positive right in space is therefore crucial in ensuring the full realization of associated and subsidiary human rights values and principles.

International Space Law Agreements

Current and contingent property rights in outer space can be interpreted in a myriad of ways - with the prevailing conception highlighted within international law under the [1967 Outer Space Treaty](#) (OST). Article II of the OST 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.” While this has generally been [interpreted](#) as prohibiting the capacity for both states and private nationals to claim or exercise exclusive property rights on celestial bodies, an alternate interpretation sees only national governments and sovereign entities as prohibited from this action.

Subsequent international space law (ISL) authority regarding property, including within the [1979 Moon Agreement](#), has contributed to increased uncertainty over the justified allocation and recognition of property rights in outer space. Article 11(3) of the Moon Agreement explicitly prohibits the capacity for governments, organizations and individuals to claim ownership over the (sub)surface of the moon and any resources collected therein. However, the Agreement’s 11 signatories has been viewed as insufficient in cultivating the requisite level of consensus required for its widespread acceptance as an authoritative document within international law. This has been further complicated by the domestic acts of select space actors, with Washington adopting the [US Commercial Space Launch Competitiveness Act](#) in 2015. Herein, the government affirmed that it would recognize rights to resources extracted by US companies in space and upon other celestial bodies, but did not recognize specific claims of property rights on asteroids or other bodies.

Consequently, the recent [2020 Artemis Accords](#) serves as a potential model for commitment to the responsible resource extraction and property management in outer space. NASA has [stated](#) that “the ability to extract and utilize resources on the Moon, Mars, and asteroids will be critical to support safe and sustainable space exploration and development.” In terms of securing livable conditions for human spaceflight participants and astronauts, this is certainly the case. While this rationale is not an explicit or all-encompassing property rights guarantee the Accords represent a far cry from opposing interpretations of space law, which asser a complete prohibition on property rights in outer space.

Noting the dubious nature of international authority surrounding the issue of property rights in space, these developments have given rise to both the condoning of private and individual property rights and the prohibiting of property rights entirely. Further, a review of ongoing developments across international human rights law (IHRL) and outer space agreements either prioritize social and economic rights, or neglect property rights entirely. These circumstances necessitate the need to reconcile property rights with space law under the ambit of IHRL, precluding the possibility for disagreements and conflicts through consultation and consensus on universally accepted norms.



Reconceptualizing Property in Outer Space

The promotion of a human rights perspective is founded within the contents of the [1948 Universal Declaration of Human Rights](#) (UDHR). Herein, Article 17 of the UDHR reads that “Everyone has the right to own property alone as well as in association with others”. Consequently, where the unique nature of the outer space environment poses direct challenges to the human condition and individual dignity, integration of RTP must aim to reconcile individual property rights with novel non-derogable rights to water and a breathable atmosphere in outer space. The need to prioritize individual safety, health, and dignity in space facilitates the view that property rights can only exist in association with others - attributed to the harsh nature of outer space’s environment and the challenges of access to space. RTP can thus be upheld only to the extent that the development of associated non-derogable human rights, as well as personal property rights, are protected.

Noting the indivisible nature of human rights, the unification of opposing contentions of property rights within the IHRL and ISL requires consultation by the international community surrounding the existing negative obligation to refrain from [“arbitrary deprivation”](#). The legal protection of private property against arbitrary interference creates a sphere of inviolability that is necessary for the enjoyment of other freedoms. The negative obligation of RTP thus embodies protections against expropriation and intrusive regulation by authorities. Accordingly, the abundance and ease of access to elements central to human health and survival (i.e. water, air) upon the earth, combined with a lack of political expediency, contributes to the continued lack of recognition of economic, social and cultural rights as [non-derogable absolute rights](#).

In the outer space context this definition must be contextualized by the scarce and hostile environment of space; balanced with the ability of individual actors to realise and enforce associated human rights (i.e. right to water, right to life); and measured against the necessity of holding certain essential resources in common ownership for the common safety, security, and survival of the community as a whole. The ability of the state or a community to exercise arbitrary deprivation here must therefore be qualified subjectively vis-a-vis organizations versus individuals, and in accordance with wider developments versus individual circumstances.

Conclusion

The development of RTP as a positive obligation upon states in space is therefore central to ensuring the long-term stability and prosperity of human activities across the final frontier. Likewise, the need to develop human rights as positive non-derogable absolute rights for the outer space context bears carries the interoperable potential to drive a new paradigm within IHRL jurisprudence - similarly advancing the recognition of existing economic, social, and cultural rights as positive non-derogable absolute rights under international law. Consequently, a failure to re-conceptualize RTP will bear direct consequences for the future of commerce and private investment in outer space.

The application of RTP involves establishing a delicate balance between the right to own personal property as an element tied to the well-being and of the individual, versus the common administration of goods and services critical to collective human health and dignity. Ensuring a sustainable and dignified development of outer space, respecting firms and individuals’ property rights, and ensuring others’ non-derogable rights to livable conditions are not mutually exclusive goals.

It is evident that the advancement of a human rights approach to property aims to promote transparency and accountability, ensure basic needs are met, and empower vulnerable groups - factors conducive to the health, stability, and prosperity of future human communities in space. Where existing ISL agreements have yet to consider the relevance of RTP, continued ambiguity and indecision will prove detrimental to future human spaceflight activities, the survival and stability of future human communities in space, and the future of humanity as a space-faring civilization.

