

EXTRATERRESTRIAL REAL ESTATE: DEBUNKING THE MYTH

by

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Abstract

Since its beginnings, the IISL and its members have been involved in examining the question of property rights in outer space. Meanwhile, the public at large has been enticed by the activities of several bodies purporting to sell extraterrestrial real estate. The media has helped in propagating the myth of organizations such as the Lunar Embassy, columnists seeking only sometimes the expertise of space lawyers. This, coupled with the fact that the authorities have turned a blind eye to an apparently innocuous activity, has resulted in an impressive number of people believing they legitimately own land on the Moon and on other celestial bodies, having purchased certificates professing so.

IISL members have published scientific papers debunking these extraterrestrial real estate claims, showing thus their pertinence to the field of consumer protection law rather than space law. It was suggested that the IISL as a

body and the UN Office for Outer Space Affairs, take a common position against the Lunar Embassy and similar entities. The IISL did so.

1. The Media and the Lunar Embassy

It has become commonplace to read in the newspapers or even listen or watch the story of a man in the United States who owns the Moon, and who is more than happy to share his extraterrestrial wealth with everybody – for a fee. If this would be true, it would be amazing news indeed. And even if not true, the story has the required “wow!” factor to entice the media. The “fourth power in the state” has been an often-unwitting ally of Dennis Hope, becoming a means of free publicity for the Lunar Embassy. The number of “Lunar owners” currently stands at more than 2.5 million and rising, stretched across the globe, ranging from the girl next door to the Hollywood star. Many reporters celebrated Mr. Hope’s ingenuity without bothering to check the legality of the situation, while, true enough, another part of the media has sought the legal opinion of experts - many of them members of the IISL. In an era of moral

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relativism, where statements are taken at face value, readers have commonly been left to judge for themselves who is right: the entrepreneur, or the lawyer. The media has reported on previous instances of “sales” of extraterrestrial real estate, but as the newspaper pages yellowed, the stories went forgotten. Not in the case of Dennis Hope - with the advent of the Internet, the Lunar Embassy has emerged as the wrong institution at the right time in the right place.

The press is rarely interested in genuine issues of space law, and when articles appear, they deal instead with the Lunar Embassy. In the public mind, space law does not mean return and rescue, it does not mean registration, it does not mean regulation of the frequency spectrum. For the regular guy on the street, space law deals with the sale of extraterrestrial real estate.

In terms of space law the purported sale of extraterrestrial real estate is a trivial issue. Space lawyers may agree to disagree on some issues, but there is a consensus in the community that Dennis Hope does not own the Moon, hence he cannot sell it. Yet, some members of the IISL have understood that, in order to constructively discuss the issue of property rights in outer space, they have to pay however attention to this trivial issue. Trivial for a space lawyer, not trivial for the outside world. The issue of the Lunar Embassy has hijacked the public perception of the space law. If one wants to build on a plot of land, one has to demolish the derelict house standing in the middle of the plot.

2. Why Dennis Hope Doesn't Own the Moon

While, as stated above, a space lawyer quickly dismisses the matter as not worthy of importance, he/she also has to agree that there is a world outside the ivory tower of the profession, a world not knowledgeable of space law issues. Whereas ignorance of the law is not an excuse, it is however a fact. In my articles, both for the academic community and for the public at large, I considered necessary to explain why is that the Lunar Embassy does not own the Moon:

2.1. The Lunar Embassy was not the first to claim the Moon. Besides erring from the legal point of view when stating, on its website, that “one can become the legal owner of an extraterrestrial body, if you are the first one that claimed it, and that is the Lunar Embassy”, it also errs in asserting priority. Dennis Hope’s 1980 claim is preceded by many – for instance the 1952 claim over a lunar region by a Berkeley science-fiction fan club, the 1953 claim over the whole moon by a Chilean lawyer, the 1966 lunar ownership declaration of an Ohio municipality – and the story could go on and on. In contrast with the Lunar Embassy, the old claimants did not have the Internet at that time, so their ventures never really took off.

2.2. Claiming does not mean owning. The Masai tribesmen claim they own all the cows in the whole world, by divine command. If a claim alone would entail ownership, this would entitle the Masai to universal cattle ownership. Yet, in reality, people continue to buy and sell cattle without involving the Masai, regardless of what the latter believe. The “it is mine because I say so” approach is not functional.

2.3. Animus alone does not suffice. In the acquisition of possession, besides “*animus possidendi*” - the intention to possess – one also requires “*corpus possidendi*” - an act of physical nature giving effect to the intention to take the thing. At the moment, Dennis Hope lacks this element, although he plans to physically send his Registry Archive to the Moon. Should this happen, his position would become stronger, but at the very best, its effect would be limited to a pint-sized lunar plot. And it remains the question of compatibility with the Outer Space Treaty, together with the fact that Mr. Hope claims to own more celestial bodies than the soon-to-be-impacted Moon.

2.4. The non-appropriation principle of the Outer Space Treaty. Article II of the said text forbids the “national appropriation by claims of sovereignty, by means of use or occupation, or by any other means” of outer space, including the moon and other celestial bodies. If States cannot appropriate the extraterrestrial realms, then *a fortiori* neither can their nationals.

2.5. The absence of objections from the authorities is not relevant. Protest was not to be expected from the UN and USSR, when confronted with such trivial claim; in this case, the maxim *qui tacet consentire videtur* is to be read as *qui tacet negat*. God himself does not send fire and brimstone to all the false prophets who declare themselves as anointed by Him.

3. The media and the IISL

While not many IISL members come forward to the press to denounce the actions of the Lunar Embassy, they are

however happy to be interviewed by the media, when asked.

I am one of the IISL members who received the attention of the media – from space.com to BBC to the Space Show to La Tercera etc¹ – yet this is due also to the fact that I went into an offensive against the practice of the sale of extraterrestrial real estate. This has been done by orthodox methods – by publishing articles on the subject – but also by creating my own “wow” factor. Thus, in 2001 I have claimed the Sun, in a tongue-in-cheek attempt to demonstrate the ridiculousness of such an approach². If Mr. Hope owns the Moon, then he and his buyers should pay me utility fees for the light and heat my “own” celestial body provides. This stunt could not pass unnoticed by the press, and resulted in many interview requests, where I was more than happy to explain why Mr. Hope does not own the Moon.

Even if they did not claim any celestial bodies to attract attention, other IISL colleagues have been interviewed by the press. In an article published in 2000, CNN’s RICHARD STENGER seeks the legal opinion of FRANS VON DER DUNK, introduced to the readers as “co-director of the International Institute for Air and Space Law at Leiden University in the Netherlands”. In VON DER DUNK’s opinion, Lunar Embassy’s endeavors are - “either a hollow claim or a fraud ... the [Outer Space] treaty, by forbidding nations from appropriating territory in space ... prevents individuals from doing the same ... The rights of private ownership depend on one national jurisdiction or another ... - without a national system in space, there is no way for a citizen to authenticate a claim³”.

VON DER DUNK's expertise has been sought by other media, for instance by Space.com. In a commentary published four years later, ROBERT ROY BRITT introduces VON DER DUNK as "a space law expert at Leiden University" and "co-director of the International Institute of Space Law (IISL)". In this interview, VON DER DUNK warns the readers –

"[y]ou should not expect to have paid for any valid legal title to a plot in outer space, just for a nice piece of paper to stick on your wall ... Whether [the sale of extraterrestrial property] means it's fraud and such a claim is null and void under national law, would basically be up to any national legal system to determine⁴"

In a 2002 interview to UPI's MARINA KOZLOVA, Professor JOANNE IRENE GABRYNOWICZ, director of the National Remote Sensing and Space Law Center at the University of Mississippi declared on the subject of extraterrestrial real estate –

"The legitimacy of the Lunar Embassy's sale of deeds to property on the Moon and other celestial bodies is highly questionable, and most likely illegal under both the 1967 Outer Space Treaty and the 1979 Moon Treaty⁵"

Another distinguished member of the IISL consulted by the media on this issue is RAM S. JAKHU, associate professor at McGill University's Institute of Air & Space Law in Montreal. He told MARGIE WYLIE, a Newhouse News Service reporter, that -

"The Outer Space Treaty says that governments must make sure that all activities are carried out under supervision and licensing, so what is not allowed by a government cannot be allowed by private citizens either,

or you defeat the entire purpose of the treaty⁶"

The Christian Science Monitor published an article in August 2004 dealing with "the rules to govern the cosmos". SHEERA FRENKEL interviewed several space lawyers on the role of space law. Introducing SYLVIA OSPINA, a member of the board of directors at the IISL, FRENKEL quotes her on the issue of extraterrestrial real estate: -

"I can try selling you the Atlantic Ocean or the Brooklyn Bridge also, but I won't get very far" says Ospina⁷.

4. The IISL strikes back

Besides being lured into thinking one can buy the Moon, the public has also been enticed by companies who purport they can name stars after Aunt Judy and Cousin Bob. While names pertain of language, and language is relative - the animal called "dog" by an Englishman is called "chien" by a Frenchman and "câine" by a Romanian – the problem is with the fact that the "Aunt Judy"-like star names are not official. Only the International Astronomical Union can officially name stars. And the aforementioned entity has reacted by issuing a statement by which it –

"dissociates itself entirely from the commercial practice of "selling" fictitious star names or "real estate" on other planets or moons in the Solar System".

Within the IISL, there have been some voices calling for a similar disclaimer. And, in 2004, the IISL Board of Directors obliged. In the "Statement by the Board of Directors Of the International Institute of Space Law (IISL) On Claims to Property Rights Regarding The Moon and Other

Celestial Bodies”, our Institute agreed that there is a need for such a proclamation, given the augmentation in the extraterrestrial real estate business “raising the opportunity for individuals to be misled”. The statement reads, inter alia –

“The prohibition of national appropriation [of outer space and celestial bodies] ... precludes the application of any national legislation on a territorial basis to validate a ‘private claim’. Hence, it is not sufficient for sellers of lunar deeds to point to national law, or the silence of national authorities, to justify their ostensible claims. The sellers of such deeds are unable to acquire legal title to their claims. Accordingly, the deeds they sell have no legal value or significance, and convey no recognized rights whatsoever.

The Board of Directors of the IISL calls State Parties to the Outer Space Treaty to – “comply with their obligations under Articles II and VI of the Outer Space Treaty ...[being] under a duty to ensure that, in their legal systems, transactions regarding claims to property rights to the Moon and other celestial bodies or parts thereof, have no legal significance or recognised legal effect⁸.

It is hereby suggested that the IISL disseminates this Statement as broadly as possible, particularly to the consumer protection entities in the countries where the Lunar Embassy has agents. Perhaps, it would be indicated to be joined by the United Nations Office for Outer Space Affairs when doing so. This way, it is hoped the national authorities will react – better late than never – to this annoying business.

Notes

¹ See <www.geocities.com/virgiliu_pop/>

² POP, VIRGILIU (2002), Lawyer Claims to “Own” the Sun, Space Daily, May 6th, 2002, <www.spacedaily.com/news/oped-02e.html>

³ STENGER, RICHARD (2000), Prime lunar real estate for sale -- but hurry, CNN, November 20, 2000 <www.cnn.com/2000/TECH/space/11/20/lunar.land/>

⁴ BRITT, ROBERT ROY (2004), Lunar Land Grab: Celestial Real Estate Sales Soar, space.com, February 02, 2004 <www.space.com/scienceastronomy/mystery_monday_040202.html>

⁵ KOZLOVA, MARINA (2002), Lunar plots sold in Central Asia, UPI, Published 2/10/2002

<www.upi.com/view.cfm?StoryID=02022002-035651-4155r>

⁶ WYLIE, MARGIE (2004), Space case: Nevada man claims moon, raising the question of who can own property in space, The San Diego Union Tribune, March 7, 2004

<www.signonsandiego.com/uniontrib/20040307/news_mz1h7space.html>

⁷ FRENKEL, SHEERA (2004), Writing the rules to govern the cosmos, Christian Science Monitor August 04, 2004 <http://www.csmonitor.com/2004/0804/p15s02-stss.htm>

⁸ Statement by the Board of Directors Of the International Institute of Space Law (IISL) On Claims to Property Rights Regarding The Moon and Other Celestial Bodies, 2004, <www.iafastro-iisl.com/additional%20pages/Statement_Moon.htm>