The Political Sovereignty of a Colony in Outer Space

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Abstract

On October 28, 2020, Elon Musk's company SpaceX published its terms of use for the beta test of its broadband mega constellation Starlink, establishing that Mars will be a free planet and that disputes will be settled through self-governance principles. It is based on this development that the problematic of this paper was initiated: When humanity arrives on Mars or another celestial body, what will be the legislation there? Furthermore, what would be the reasons for the legislation of planet Earth to apply to a location more than 62 million kilometers away in the case of Mars? Although humans have explored all the planets within our solar system, and a little ways beyond, we have not yet attempted to settle anywhere other than Earth, and the conquest of space has instead aimed to understand the origins of the Universe and of life. However, if technology allows us to colonize space, the question would arise as to whether we are legally emancipating ourselves from Earth. Public international law testifies to this quest of peoples for independence and autonomy, and a legal arsenal is available to address it. This paper aims to answer these questions by considering a combination of the right to self-determination and space law. These two branches of public international law have largely remained frozen in the past based on a process of sacralization by parts of the doctrine and judicial institutions. To avoid the colonization of space being subject to the legal interpretation only of states on Earth, upgrading these branches of law and defining a radically new jurisdiction are urgent tasks.

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I. Introduction

> [F]or me the single overarching goal of human space flight is the human settlement of the Solar System, and eventually beyond. I can think of no lesser purpose sufficient to justify the difficulty of the enterprise, and no greater purpose is possible.[1]

The colonization of space is becoming less and less of a science fiction register, and projects associated with the development of autonomous colonies are multiplying. In the context of the colonization of space, physical distancing could push colonists to refuse any terrestrial legal order, insofar as it would be difficult for the states of Earth to apply their sovereignty over these colonies. This factual situation could give rise to legal claims based on international law to recognize the autonomy of space colonies, raising questions as to what the legal processes for acquiring autonomy would be for a space colony and whether a colony would be independent or simply autonomous.

Elon Musk recently unveiled his plans to colonize Mars and explained how he plans to send one million people to the red planet by 2050.[2] This project calls for the permanent installation of colonies in space.[3] These "peoples of space" may be able to make

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1 Michael D. Griffin, *The Future of Human Space Flight*, SPACEREF (Oct. 16, 2003), http://www.spaceref.com/news/viewsr.html?pid=10683 [https://perma.cc/F5TT-D5U9].

2 Morgan McFall-Johnsen & Dave Mosher, *Elon Musk Says He Plans to Send 1 Million People to Mars by 2050 by Launching 3 Starship Rockets Every Day and Creating "a Lot of Jobs" on the Red Planet*, BUS. INSIDER (Jan. 17, 2020), https://www.businessinsider.com/elon-musk-plans-1-million-people-to-mars-by-2050-2020-1 [https://perma.cc/4J6H-ZKW2].

3 *Id.*

use of peoples' right to self-determination, allowing them to independently determine their internal and external political status without outside interference, and to pursue their political, economic, social, and cultural development as they see fit.[4] This article will focus on (a) the different legal processes that could lead a people to independence in space, and (b) eventual autonomy for human beings indigenous to outer space. Based on the first confrontation between these two associated branches of law, this article proposes a new legal response to the notion of sovereignty within the framework of public international law.

In theory, space law is based on the principle of non-appropriation, an obstacle preventing the consideration of political sovereignty in space.[5] Not possessing a strict legal status, space is subject to a functional law, leaving the door open to state interpretations. Within the meaning of the United Nations (UN) treaties and recent legislative developments concerning space resources, space is considered by many as a *res communis*, precluding any declaration of sovereignty.[6]

This article contributes to the current reflection on how to create sovereignty in space while still considering it common and ensuring shared access. The objective is to propose a theoretical approach to national sovereignty in space to feed investigations of alternatives regarding the unique and exclusive status of outer space.

More precisely, this paper emphasizes a specific approach to sovereignty in space, defining it with the help of a set of bundles of legal statutes of outer space instead of a single legal status and thereby making it possible to consider the issue. This approach to sovereignty is inspired by that from which certain scholars construct their definition of the status of astronauts. The great interest of this approach is that it frees us from the framework of binary thought brought about by comparing *res communis* and *res nullius*. Before tackling questions regarding the process of acquiring autonomy for

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4 *See* Juan Pablo Hernández Páez, *Whose Law Applies in Mars? Self-determination, National Appropriation and Private International Law*, TREATY EXAM'R (Jan. 10, 2021), https://treatyexaminer.com/spacex-mars/ [https://perma.cc/MDE8-8S85].

5 Priankita Das & Garima Khanna, *Circumventing the Non-appropriation Principle of International Space Law*, BERKELEY J. INT'L L. (May 11, 2022), https://www.berkeleyjournalofinternationallaw.com/post/circumventing-the-non-appropriation-principle-of-international-space-law [https://perma.cc/8YES-X8D3].

6 Martin Švec, *Outer Space, an Area Recognised as* Res Communis Omnium*: Limits of National Space Mining Law*, 60 SPACE POL'Y 101473 (2022).

a people in space, the article outlines the proposal regarding the consideration of space and its celestial bodies not according to a single statute but with reference to a bundle of statutes.

II. Towards a Bundle of Statutes for Outer Space

The legal status of outer space was clarified in a space treaty adopted in 1967 (Outer Space Treaty).[7] The delimitation of the legal status of space is found in the first article and begins by devoting a right of use to all of the resources constituted by outer space and the bodies therein: "The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind."[8]

The Outer Space Treaty, ratified by the majority of member states, including all of the main space powers (the United States, Russia, China, France, and Japan), provides freedom as its first principle: the freedom of exploration and the freedom of use of space, consecrated as being the "province of all mankind."[9] The status of space is thus defined as that of a legal object where activities can take place freely and which all states can use without discrimination: "Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies."[10]

The requirement that space be accessible to all and considered a "province of all mankind"[11] is a large part of the doctrine which considers space as a *res communis* (*omnium*),[12] that is, an outer space that belongs to all in its structure, as depicted in Figure 1.[13] The Outer Space Treaty goes on to proclaim that space and celestial

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7 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty].

8 *Id*. art. 1.

9 *Id*.

10 *Id*.

11 *Id*.

12 Švec, *supra* note 6.

13 *See infra* Appendix.

bodies must remain unappropriated: "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."[14]

Outer space and its resources were thus for a long time considered a *res communis*,[15] although new ambitions towards exploitation from the private sector have recently invited states to rethink this principle and to interpret it in the sense of a *res nullius*,[16] that is, an outer space that does not belong, in principle, to anyone unless someone seizes it. The U.S. Commercial Space Launch Competitiveness Act (Competitiveness Act), passed in November 2015, as depicted in Figure 2[17], allowed U.S. citizens involved in the recovery of space assets[18] to avail themselves of those assets, including their possession, ownership, transport, use, and sale.[19] The United States considers this activity not contrary to the principle of non-appropriation in the Outer Space Treaty, insofar as American nationals would not appropriate the celestial bodies themselves, but only their resources once extracted.[20] Indeed, this exclusive right instituted by American law appears incompatible with the international commitments to which the United States has subscribed, particularly the Outer Space Treaty mentioned above. However, the Competitiveness Act introduced a subtle nuance on the qualifier "national" as presented in Article II of the Outer Space Treaty: "It is the sense of Congress that by the enactment of this Act, the United States does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any celestial body."[21]

The Outer Space Treaty prohibits "national appropriation by proclamation of sovereignty," which refers to a case in which a state

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14 Outer Space Treaty, *supra* note 7, art. II.

15 Švec, *supra* note 6.

16 Wian Erlank, *Rethinking Terra Nullius and Property Law in Space*, 18 POTCHEFSTROOM ELECTRON L.J. 2503, 2514 (2015).

17 *See infra* Appendix.

18 Leonard David, *How Water on The Moon Could Fuel Space Exploration*, SPACE.COM (Mar. 29, 2012), https://www.space.com/15094-moon-water-ice-space-fuel.html [https://perma.cc/B6XR-4BL6].

19 U.S. Commercial Space Launch Competitiveness Act, Pub. L. No. 114-90, § 51303, 129 Stat. 704, 721 (2015).

20 *See id.* § 51302.

21 *Id.* § 51303.

claims a portion of space or bodies appearing therein as part of its territory.[22] However, here, American law has a different function: the state does not itself take ownership of the resources of space, but rather delegates to its citizens a legal title to make them their private property, which is then recognized and guaranteed by the state.[23] The nuance is certainly slight, but it is important.

In a way, the United States took the initiative to transform the status of the resources of outer space from a *res communes* to a *res nullius* (i.e., "things without a master") belonging to no one, but where the first to seize them can legitimately claim to be their owner. Indeed, by authorizing American citizens to appropriate space resources, which do not belong to anyone a priori, American legislation revives an ancestral acquisition model that has already been defined by Roman law. It is about a possession leading to the property such as *occupatio*,[24] a situation in which the possession is transformed immediately into property. In other words, a form of property *ex nihilo*, by which the American citizen could appropriate a thing (space resources, in this case) which belonged to no one, a *res nullius*. Thus, Roman law defined the principle of *occupatio* as being possession that makes the master of the thing the immediate owner. By moving from an outer space considered a *res communis* to the possibility of granting individual ownership of space, the recent American interpretation has indirectly redefined space as a *res nullius* with respect to its resources. We thus return to a system in which possession leads to ownership. There are further legal consequences to this legislative interpretation, as it now makes a clear distinction between the resources of outer space, which can be appropriated, and outer space itself, which remains the "province of all mankind."[25]

This new interpretation of the Outer Space Treaty has led to a fractured characterization of outer space, with its resources represented by private property and space itself characterized by national sovereignty.[26] In other words, this division of the legal

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22 Outer Space Treaty, *supra* note 7, art. II.

23 *See* Space Launch Competitiveness Act, *supra* note 17, §§ 51301-51303.

24 *The Law of Property and Possession*, ENCYCLOPÆDIA BRITANNICA, https://www.britannica.com/topic/Roman-law/The-law-of-property-and-possession [https://perma.cc/RBN3-RUMF] (last visited Dec. 20, 2022).

25 Outer Space Treaty, *supra* note 7, art. I.

26 *See* Jonathan Tjandra, *The Fragmentation of Property Rights in the Law of Outer*

status of space prohibits national appropriation—by claim of sovereignty, by means of use or occupation, or by any other means (*res communis*)—but authorizes the private appropriation of its resources (*res nullius*) by nationals of countries accepting this principle. This new statutory distinction thus considers space as both a content and a container. American nationals cannot appropriate the celestial bodies themselves (the container) but only their resources (the contents) once extracted. This double qualification appears to be on track to become a principle with customary value. In 2017, Luxembourg imitated the American pioneers and adopted a law explicitly stating that "[s]pace resources are capable of being owned."[27] In 2020, the United Arab Emirates, a rising player in the space sector, adopted similar legislation.[28]

In addition, by an executive order issued on April 6, 2020, the United States concretized the legal position expressed by the Competitiveness Act and reaffirmed the right of American citizens to recover and use space resources.[29] The text expressed the desire to find common positions on the exploitation of space resources and execute agreements to this effect with partner countries, a project that was concretized a few weeks later by the announcement of the Artemis Accords.[30] At the time of this article, sixteen countries have joined the cooperation project led by the National Aeronautics and Space Administration (NASA) for the peaceful exploration of the Moon and outer space.[31]

The Artemis Accords, which consist of bilateral agreements between the United States and its partners, seek to establish common principles governing civil activities for the exploration and

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Space, 46 AIR SPACE L. 373, 385 (2021).

27 Loi du 20 juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace [Law of July 20th 2017 on the Exploration and Use of Space Resources], art. 1, LUX. SPACE AGENCY.

28 Federal Law No. 12 on the Regulation of the Space Sector, 22 Rabi' Al-Akhar 1441H, art. 18 (Dec. 19, 2019) (U.A.E.).

29 Exec. Order No. 13914, 85 Fed. Reg. 20381 (Apr. 6, 2020).

30 *The Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids*, NASA (Oct. 13, 2020), https://www.nasa.gov/specials/artemis-accords/index.html [https://perma.cc/45PB-4AQX].

31 Tariq Malik, *Romania Signs the Artemis Accords for Space Exploration Cooperation*, SPACE.COM (Mar. 6, 2022), https://www.space.com/romania-signs-artemis-accords [https://perma.cc/DBC8-DABB].

use of the Moon and, ultimately, of Mars.[32] In fact, the rules governing the appropriation of space resources are already changing outside of the UN framework. Despite the fact that other legal tools have been used in attempts to regulate the status of space in the past, the Outer Space Treaty and its recent evolutions remain the positive law in force.

Another international treaty in 1979 established two additional principles.[33] On the one hand, the Moon and other celestial bodies and their natural resources constitute the "common heritage of mankind,"[34] and these resources cannot, therefore, "become property of any State, international intergovernmental or nongovernmental organizations, national organizations . . . or of any natural persons."[35] On the other hand, states are bound to undertake to establish "an international regime . . . to govern the exploitation of the natural resources of the Moon [and other celestial bodies] as such exploitation is about to become possible,"[36] in particular, to allow for "equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries . . . shall be given special consideration."[37]

The quasi-collectivist orientation of this second agreement has significantly compromised its acceptance by the international community, beginning with the United States. At present, only seventeen states are parties to the 1979 Treaty, among which there is no major space power.[38] This leads to the following question: will the status of space sovereignty take the same legislative path as the ownership of space resources?

If the interpretation of Article II of the Outer Space Treaty has led to a distinction between ownership and sovereignty of space,

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32 *Artemis Accords*, *supra* note 29.

33 *See generally* Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, Dec. 5, 1979, 1363 U.N.T.S. 23002 [hereinafter Moon Agreement] (clarifying the legal status of outer space).

34 *Id*. art. 11, ¶ 1.

35 *Id*. art. 11, ¶ 3.

36 *Id*. art. 11, ¶ 5.

37 *Id*. art. 11, ¶ 7(d).

38 Michael Listner, *The Moon Treaty: Failed International Law or Waiting in the Shadows?*, SPACE REV. (Oct. 24, 2011), https://www.thespacereview.com/article/1954/1 [https://perma.cc/56DW-87XK].

granting nationals of certain countries ownership of the contents of space, then we should ask ourselves whether we are immune to new legislative interpretation regarding its container. In particular, it could be that legislation similar to the Guano Islands Act of 1856 indirectly allows states to appropriate space in the future.[39] The Guano Islands Act is an American federal law passed by the U.S. Congress on August 18, 1856.[40] It authorizes any American citizen to take possession of an island containing guano deposits wherever the island is located as long as it is not subject to the jurisdiction of another government.[41] Thus, the sovereignty of the United States is imposed through its nationals. The difference in the current situation in space is that a state will not become the owner, even temporarily, of celestial bodies; only U.S. citizens will be able to appropriate the resources they find.[42]

Declarations of state sovereignty could also take the turn observed in the case of Scarborough Shoal, with China having installed fixed bases on the islands and atolls of the South China Sea.[43] In July 2016, the International Court of Justice (ICJ) in the Hague recognized the Philippines' right of sovereignty over an exclusive economic zone of two hundred nautical miles.[44] If the ICJ does not rule on the sovereignty of Scarborough Shoal, this would confirm that China has indeed violated the traditional fishing rights of the Philippines in this area.[45]

However, the question should be asked as to what guarantees that the legal situation regarding sovereignty in space will remain as it is. The Artemis agreements seem to have already split the legal status of space in two, while many scholars still do not seem to

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39 Lionel Maurel, *Le jour où l'espace a cessé d'être un bien commun . . .* [*The Day when Space Ceased to Be a Common Good . . .*], S.I.LEX (Dec. 1, 2015), https://scinfolex.com/2015/11/30/le-jour-ou-lespace-a-cesse-detre-un-bien-commun/ [https://perma.cc/L7HN] (Fr.).

40 Guano Islands Act, 48 U.S.C. §§ 1411-1419 (2020).

41 *Id.*

42 Moon Agreement, *supra* note 33, art. 11, ¶ 3; *see* Tjandra, *supra* note 26, at 385.

43 François-Xavier Bonnet, *Geopolitics of Scarborough Shoal* (IRASEC, Discussion Paper No. 14, 2012).

44 Robert D. Williams, *Tribunal Issues Landmark Ruling in South China Sea Arbitration*, LAWFARE (July 12, 2016), https://www.lawfareblog.com/tribunal-issues-landmark-ruling-south-china-sea-arbitration [https://perma.cc/HC79-UPTF].

45 *Id.*

measure their irreversible impact.[46] If we take a step back, we can recognize that other statutes of space law have also fractured, including those on the status of astronauts. For a long time, the point of view on the status of a human being sent into space remained the same; that is, he/she was considered an astronaut. However, the Outer Space Treaty uses two terms to designate persons in space: astronaut[47] and spacecraft personnel.[48] These two qualifiers have long been considered synonymous by the doctrine.[49] Sometimes qualified as "envoys of mankind"[50] and sometimes as "personnel of a spacecraft,"[51] individuals generally remain designated under the name of astronaut, encompassing these two expressions. However, a simple reading of the Outer Space Treaty shows that the terms "astronaut" and "on-board personnel" are used in different treaty articles.[52] Thus, by the state of current competence in space law, one can consider the person sent into space as a "personnel on board a space object" when on the terrestrial scale and thus as a subject of law, subject to the power of control and jurisdiction of his/her state of registration.[53] Simultaneously, this same person, considered on an extra-terrestrial scale, autonomous in relation to Earth, would be considered as a subject qualified as an envoy of humanity.[54]

Two criteria arise from this dual status: a geographic criterion and a criterion of subordination.[55] The astronaut, being qualified as such when he/she is located in space, is sufficiently far from Earth (geographical criterion)[56] that the control and jurisdiction of his/her

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46 *See* Lucien Rapp, *L'espace extra-atmosphérique et le droit international* [*Outer Space and International Law*], SOCIETE FRANÇAISE POUR LE DROIT INT'L [SFDI] (Oct. 2021), https ://univ-droit.fr/actualites-de-la-recherche/manifestations/36552-l-espace-extra-atmospherique-et-le-droit-international [https://perma.cc/RCF8-AHKG] (Fr.).

47 Outer Space Treaty, *supra* note 7, art. V.

48 *See id.* art. VIII.

49 Philippe Achilleas, *L'astronaute en droit international* [*The Astronaut in International Law*], *in* LEGAL AND ETHICAL FRAMEWORK FOR ASTRONAUTS IN SPACE SOJOURNS: PROCEEDINGS, at 13-28, UNESCO Doc. SHS.2005/WS/22 (2005).

50 Outer Space Treaty, *supra* note 7, art. V.

51 *See id.* art. VIII.

52 PERRINE BARTHOMEUF, LE STATUT DE L'HUMAIN DANS L'ESPACE EXTRA-ATMOSPHÉRIQUE [THE STATUS OF HUMANS IN OUTER SPACE] 66 (2019) (Fr.).

53 *Id.* at 83.

54 *Id.* at 80-81.

55 *Id.*

56 *Id.* at 80.

state of registration can no longer be achieved in fact (criterion of subordination).[57] The astronaut, as an envoy of humanity, thus finds him/herself in a situation of de facto autonomy.[58] Conversely, the "personnel on-board a spacecraft" is any individual making a trip to outer space with a view to returning to Earth (geographical criterion) and would be subject to the power of control and jurisdiction of the appropriate state having registered the space object (subordination criterion).[59] This division of the status of the individual travelling into space into a plurality of statuses is considered an urgent issue view of future activities in space.[60]

As outlined, an astronaut can be considered an envoy of humanity if he/she is in outer space within the meaning of Article V of the Outer Space Treaty, in a situation of autonomy vis-à-vis his/her state of registration.[61] Some scholars[62] have even put forward the idea that the Earth's gravity could act as a geographical criterion for distinguishing an astronaut from a spacecraft personnel. According to this criterion, an astronaut could not be attached to purely terrestrial space: the escape of the terrestrial gravitational field would be an essential condition for qualification.[63] Thus, it is because the astronaut is far from the Earth's gravitational field that he/she is less subject to the control and jurisdiction of his/her state of registration.[64] While some scholars have proposed a division of the status of the individual in space according to current UN texts on the subject and in view of future activities in outer space, it should also be asked whether it is possible to have the same open-mindedness regarding the status of space.

As we have seen, space is at present considered a "province of all mankind,"[65] and its resources are subject to appropriation by the

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57 BARTHOMEUF, *supra* note 52, at 81.

58 *Id.*

59 *Id.* at 83.

60 *See* Tanja Masson-Zwaan & Steven Freeland, *Between Heaven and Earth: The Legal Challenges of Human Space Travel*, 66 ACTA ASTRONAUTICA, 1603-04 (2010) (discussing the unclear nature of statuses of space tourists compared to those of "astronauts" and "personnel of a spacecraft").

61 BARTHOMEUF, *supra* note 52, at 81.

62 *See* George S. Robinson, *Transcending to a Space Civilization: The Next Three Steps Toward a Defining Constitution*, 32 J. SPACE L. 147, 152-53 (2006).

63 BARTHOMEUF, *supra* note 52, at 80.

64 *Id.*

65 Outer Space Treaty, *supra* note 7, art. 1.

nationals of countries who have joined the Artemis Accords[66]—at least, for the states that have ratified the Outer Space Treaty. This would not be the case for a people declaring itself autonomous or independent in space; indeed, nothing would prevent a newly declared independent people, on the basis of the right to self-determination, from declaring their sovereignty over a celestial body. Only terrestrial states would be limited by this non-appropriation principle.[67] As this *sui generis* space people would not have ratified the space law treaties (specifically the Outer Space Treaty), the principle of non-appropriation would have no reason to apply to them.[68] Thus, we would be confronted with a double problem: that of leaving arbitrary declarations of sovereignty up to colonies that have become independent and that of letting terrestrial states interpret the foundations of non-appropriation in the same way they did with space resources.

All because space still has only one legal status (as *res communis*) regarding its structure and possibilities for sovereignty and has basically not changed since 1967.[69] The unicity of the status of astronaut made it impossible to adapt the legislation in the face of future challenges (e.g., space tourism or suborbital flights), and the substance of the problem regarding political sovereignty in space is the same.[70] In other words, the narrowness with which space is envisaged via functional law makes it impossible for us to move towards legal nuance and risks space being overtaken by the powers that impose their rights in practice. As part of the current relativistic approach, space is attached a single legal status, even though having a plurality of legal statutes for the astronaut seems to be the solution in the face of future extra-atmospheric activities.[71] Furthermore, recent interpretations of space resources have already divided space between its appropriable content and its prohibited container.[72]

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66 *See id.* art. 2.

67 *See* BARTHOMEUF, *supra* note 52, at 231-32.

68 Legal fiction that we allow ourselves to have in this paper.

69 *See generally* Michelle L.D. Hanlon & Greg Autry, *Space Law Hasn't Been Changed Since 1967—But the UN Aims to Update Laws and Keep Space Peaceful*, CONVERSATION (Nov. 23, 2021), https://theconversation.com/space-law-hasnt-been-changed-since-1967-but-the-un-aims-to-update-laws-and-keep-space-peaceful-171351 [https://perma.cc/BX3Z-NQ2P].

70 BARTHOMEUF, *supra* note 52, at 52-53.

71 *See id.* at 231.

72 *See* Tjandra, *supra* note 26, at 384-85.

To solve this issue, we could thus view space no longer as entirely prohibited but according to a "bundle of statutes."[73] This would involve fragmenting and dematerializing the unique status of outer space into a set of several legal statutes from the terrestrial point of view, without claiming to be exhaustive, as depicted in Figure 3.[74]

One of the great interests of constructing this bundle of statutes is to demonstrate that the presence of sovereignty in space through a territorial approach is possible, as it has already been imagined in the past.[75] In fact, it would be much fairer and more useful to conceive of sovereignty as a set of bundles of legal statutes, which themselves make it possible to define several types of holders of sovereignty in space over the same celestial body.

For this decomposition of the *res communis* status of space (the non-appropriation principle) into several interdependent statutes, three types of legal status could be characterized, a characterization that would apply to any celestial body.

The first category of legal status would be that which considers the relationship in space between astronauts and the Earth. Far from the Earth's field of gravity (geographical criterion), and therefore removed from terrestrial control and jurisdiction (subordination criterion), the legal status of this people would be characterized according to their situation and their application of the right to self-determination (a process detailed *infra* Part III). This legal status of a people in space (autonomy or independence) would serve as a basis for the second status category, namely, that regarding the celestial body on which the people is located. Not having ratified the space law treaties prohibiting any declaration of sovereignty in space, the legal point of view on this people would not be the same as on the terrestrial states, opening the door to the possibility of sovereignty over a celestial body.

The second legal status category regarding the relation of the

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73 For the original concept, see generally Edella Schlager & Elinor Ostrom, *Property-Rights Regimes and Natural Resources: A Conceptual Analysis*, 68 LAND ECON. 249 (1992).

74 *See infra* Appendix.

75 Jean-Jacques Lavenue, *Du statut des espaces au regime des activités : observations sur l'evolution du droit international* [*From the Status of Spaces to the Regime of Activities: Observations on the Evolution of International Law*], 29 REVUE BELGE DE DROIT INT'L [REV. B. DR. INTERN.] 409, 417-18 (1996) (Belg.).

celestial body to the people in space would be based on similar criteria, namely, that the celestial body must be outside the field of terrestrial gravity (geographical criterion) and in relation to an independent or autonomous people of Earth (criterion of subordination). The status of the celestial body respecting these two criteria could be similar to a *res nullius* with regard to the independent or autonomous people of Earth.

The third legal status category would be that of the celestial body in relation to Earth. Respecting its criterion of subordination and geography, the celestial body could not be the object of a declaration of national terrestrial sovereignty and thus would remain a *res communis*. The same celestial body could therefore have two legal statuses simultaneously: one from the terrestrial point of view and the other from the point of view of the autonomous or independent space people.

This legal construction would make it possible to respect Article I of the Outer Space Treaty by guaranteeing space as a "province of all mankind" for the signatory states by maintaining space as a *res communis*.[76] At the same time, it would open up the possibility of sovereignty over this "province of all mankind" to the "envoys of mankind."[77] This typology first has the advantage of accounting for the complexity of the world of sovereignty statutes, of opening up the taboo of sovereignty in space. Above all, it would make it possible to identify regimes of sovereignty based on a clearly defined status, without this necessarily implying the right of terrestrial alienation, as shown in Table 1.[78]

According to this framework, a telluric planet,[79] such as Mars, would have a different legal status for Earth and for an independent people in space, as shown in Table 2.[80]

Conversely, our natural satellite, the Moon, would remain a *res communis* for both the terrestrial states and peoples in space, as Table 3 demonstrates.[81] The Moon could not be subject to

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76 Legal fiction specific to this paper in which the same celestial body would have two legal statutes, according to two criteria.

77 BARTHOMEUF, *supra* note 52, at 231-32.

78 *See infra* Appendix.

79 *See generally* Sean Raymond, *Formation of Telluric Planets and the Origin of Terrestrial Water*, 2 BIO WEB OF CONFS. 01003-1 (2014).

80 *See infra* Appendix.

81 *See infra* Appendix.

sovereignty because it is too close to the Earth's gravitational field. Therefore, a colony of astronauts could not exist on the Moon without state registration of control, as Table 4 demonstrates.[82] Similarly, respecting the geographical criterion,[83] a celestial body would not have the fatality of being a *res nullius* for an independent astronaut people.

Accordingly, if several peoples or colonies were to declare themselves independent[84] or autonomous on the same celestial body, they could have the legal status of a *condominium*. In public international law, a *condominium* is a territory over which several sovereign states exercise joint sovereignty under the terms of a formal agreement.[85] The only terrestrial territories historically known under this title are the Anglo-Egyptian condominium in Sudan (1899-1956)[86] and the Franco-British condominium in the New Hebrides (1906-1980).[87] The *condominiums* still existing in the twenty-first century only concern river or maritime territories, sometimes with bridges and islets, as is the case on the Pheasant Island,[88] where sovereignty is alternated. In this vein, one could imagine a situation where sovereignty over a celestial body is jointly held or rotated by independent peoples of the Earth.[89]

In making this brief presentation of a new approach to the legal status of space, the objective is, above all, to realize that it is possible to rehabilitate the view on national sovereignty in space. Although the focus of this paper is on the self-determination of peoples in space, this approach may be interesting for

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82 *See infra* Appendix.

83 *See* Table 6 *infra* Appendix.

84 *See* Table 7 *infra* Appendix.

85 *See* Joel H. Samuels, *Condominium Arrangements in International Practice: Reviving an Abandoned Concept of Boundary Dispute Resolution*, 29 MICH. J. INT'L L. 727, 728 (2008).

86 *Anglo-Egyptian Condominium*, ENCYCLOPÆDIA BRITANNICA, https://www.britannica.com/place/Anglo-Egyptian-Condominium [https://perma.cc/3SG3-USSC] (last visited Dec. 20, 2022).

87 *See* MARGARET RODMAN, HOUSES FAR FROM HOME: BRITISH COLONIAL SPACE IN THE NEW HEBRIDES 21-26 (2001).

88 *See* Ken Jennings, *Why Pheasant Island Is Sometimes in France, Sometimes in Spain*, CONDÉ NAST TRAVELLER (Feb. 27, 2017), https://www.cntraveler.com/story/why-pheasant-island-is-sometimes-in-france-sometimes-in-spain [https://perma.cc/PPV4-SCDF].

89 *See* Table 8 *infra* Appendix.

considerations of the sovereignty in outer space.

This approach in terms of bundles of statutes would allow us to ask which forms of spatial sovereignty could be organized in the field of space colonization. Accordingly, asking the question regarding the applicability of sovereignty in terms of bundles of statutes in space requires going beyond the binary framework of considering space according to a single status from the terrestrial point of view.

In this sense, the present analysis proposes the legal consideration not of outer space but of "outer spaces." The collection of legal statutes forming a new conception of the legal status of space thus pushes for a refoundation of the theory (as well as the practice) of a single space and *res communis*.[90] Given a single statute for the astronaut and a bundle of space statutes, we would be able to legally detail with precision the different processes of acquiring autonomy for a people in space, depending on the nature of their population, their relationship with Earth, and the celestial body on which they are located.

It should be noted that the following presentation in no way claims to be exhaustive or to resolve all the associated issues. Rather, it is a question of presenting a first reading providing preliminary insight into the possibly applications of the right to external self-determination for a people in space, taking as support the jurisprudence of concrete cases that have taken place on Earth.

III. An Independent People in Outer Space

According to the state of the law in force at present, the legal processes for the acquisition of independence allowing a people to exist legally in space would fall within the framework of (A) colonization or occupation. However, a legal and doctrinal evolution of the matter illustrates the complexity of this branch of law, which is in perpetual motion, revealing that (B) secession is as much a matter of facts as of law.

A. *The Conditions of Application of the Right to External Self-determination*

The state of positive law regarding the right to self-determination in international law (1) does not imply a right to

90 Tjandra, *supra* note 26, at 379-80.

secession outside the colonial framework even if (2) its field of operation is extended to situations of occupation some years later.

1. By Colonization: A Legal Position of Non-autonomy and a Factual Situation of Non-autonomy

The conditions for the application of the right to external self-determination can be found in the UN Charter, which is also the legal instrument giving rise to this right.[91] Historically, the first description of this right to independence was given by Article 1, § 2, and Article 55 of the UN Charter proclaiming the "principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace,"[92] although the parameters were not defined. Implicit references to this right are also made in Article 73 in relation to non-self-governing territories[93] and the primary objective of self-government or the independence thereof.

The text on "non-self-governing territories" in Chapter XI of the UN Charter provides no definition of the concept apart from a vague explanation stating they are "territories whose peoples have not yet attained a full measure of self-government."[94] Indeed, the principle remains rather vague as to its legal nature and its recipients. It would seem that the emphasis is placed on the equality of peoples, who must understand themselves as states already constituted.

It was not until 1960, with the adoption of UN Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, that the principle finally came to link the concepts of "people" and "colonialism."[95] It then became absolute and acquired its true status of the "right to decolonization."[96]This fundamental text was the first legal tool to define the right to self-determination: "All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue

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91 *See* U.N. Charter art. 1, ¶ 2; *see also id*. art. 55.

92 U.N. Charter art. 1, ¶ 2, art. 55.

93 *See id*. art. 73.

94 *Id*.

95 *See* G.A. Res. 1514 (XV) (Dec. 14, 1960).

96 Christian Charbonneau, *Le droit des peuples à disposer d'eux-mêmes : un droit collectif à la démocratie . . . et riend'autre* [*The Right of Peoples to Self-Determination: A Collective Right to Democracy . . . and Nothing Else*], 9 REVUE QUEBECOISE DE DROIT INT'L 111, 112 (1995) (Can.).

their economic, social and cultural development."[97]This resolution thus states that if a people's right to self-determination is violated by "[foreign] subjugation, domination or exploitation,"[98] it "enable[s] them to exercise peacefully and freely their right to complete independence."[99] It thus establishes the right to independence or the right to external self-determination, which can be applied in the event of a violation of the right to internal self-determination.

However, a second resolution, UN Resolution 1541 (XV), passed the next day, determined several principles guiding states in the implementation of the right to self-determination of peoples and, in particular, provided details concerning Article 73 of the Charter relating to non-autonomous territories. [100] The UN General Assembly (UNGA) developed two essential criteria to identify the holders of the right of peoples: the so-called "salt water"[101] criterion and the criterion of non-autonomy, which restricted the potential holders of the right to the people colonized.[102] While Resolution 1514 had developed the foundations of the right to independence, Resolution 1541 went on to delimit the conditions of application of the right to external self-determination. Resolution 1541 delimited the conditions of application of the right to independence and thus clarified the notions of "subjugation, domination or foreign exploitation"[103] set out in Resolution 1514.

The following would proceed through the geographical criterion and subordination criterion. The first is the "salt water" criterion,[104] which targets territories geographically separated and ethnically or culturally distinct from the country that administers them: "Once it has been established that such a *prima facie* case of geographical

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97 G.A. Res. 1514, *supra* note 95, ¶ 2.

98 *Id.* ¶ 1.

99 *Id.* ¶ 4.

100 G.A. Res. 1541 (XV) (Dec. 15, 1960).

101 *See* Anthony Whelan, S*elf-determination and Decolonisation: Foundations for the Future*, 3 IR. STUD. INT'L AFFS. 25, 31 (1992).

102 *See* Olivier Corten, *Les visions des internationalistes du droit des peuples à disposer d'eux-mêmes : une approche critique* [*The Visions of Internationalists of the Right of Peoples to Self-Determination: A Critical Approach*], 32 CIVITAS EUROPA 93, 102 (2014) (Fr.).

103 G.A. Res. 1514, *supra* note 95, ¶ 1.

104 *See* Öyvind Österud, *The Narrow Gate: Entry to the Club of Sovereign States*, 23 REV. INT'L STUD. 167, 178 (1997).

and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration."[105]

One of the aims of addressing geographical separation is to prevent peoples not occupying a territory geographically separated from the countries administering them from claiming their independence under the principle of being a "non-self-governing territory."[106] In this way, the "salt water" criterion was created to target peoples who dominated from across seas and oceans. Some scholars clearly see in this criterion the will of the UNGA to target a very specific historical phenomenon: colonization by the West.[107] The relevant territories, therefore, represent the colonies of the Allies of the Second World War.

The second criterion of non-autonomy targets territories that are arbitrarily placed in a position or state of subordination vis-à-vis a metropolitan territory in view of administrative, political, legal, economic, historical, or other elements:

> These additional elements may be, inter alia, of an administrative, political, legal, economic, or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner that arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73(e) of the Charter.[108]

The adoption of Resolution 1541 (XV) provided a list of criteria for identifying the territories likely to obtain a secession, and it therefore recognized the right to independence only of colonized peoples.[109] The titular people can exercise this right in three ways: "A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State."[110]

However, Resolution 1514 also states that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and

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105 G.A. Res. 1541, *supra* note 100, princ. V.

106 *See* Österud, *supra* note 104, at 176-78.

107 *See* Corten, *supra* note 102, at 102.

108 *See* G.A. Res. 1541, *supra* note 100, princ. V.

109 *See id.* princ. I.

110 *See id.* princ. VI.

principles of the Charter of the United Nations."[111] Thus, it has been established that all peoples must respect the territorial integrity of states. Accordingly, there is a contradiction between the right of peoples to self-determination and the right of states to territorial integrity. These conditions of application of the right to independence are still in force at present, reducing the field of application to colonized peoples.[112]

The doctrine is divided between those who argue that this right should be open to others as a human right[113] and those who maintain that it must remain applicable only to colonized peoples.[114] Within the context of the present article, the problem is quite different: assuming that a people in space is in a situation of colonization (the criterion of subordination defined by Resolution 1541), the geographical criterion would no longer be an obstacle to the application of the right to external self-determination.[115]

Therefore, if one wishes to remain consistent with the spirit of the legislator who limited this geographical criterion to the application of the right to independence, it would also be necessary to adapt the geographical criterion so as not to simply apply Resolution 1541, which would no longer be suitable for a situation in space. Taking up the criteria for defining the status of astronauts established by certain scholars[116] and the theory proposed by the present article, the terrestrial geographical criterion corresponding to seas or oceans could be supplanted by one considering terrestrial gravity.

This adaptation of the geographical criterion would make it possible to remain consistent with the UN texts while not allowing any community to declare itself independent from the moment it

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111 G.A. Res. 1514, *supra* note 95, ¶ 6.

112 Camille Denicourt-Fauvel, *Autodétermination et sécession : le cas kurde* [*Self-determination and Secession: The Kurdish Case*], 18 LEX ELECTRONICA 1, 19 (2013) (Can.).

113 *See* Chloé Van den Berghe, Droit des peuples et recours légitime à la force [Right of Peoples and Legitimate Use of Force] 38 (May 2016) (LL.M. thesis, Université catholique de Louvain) (Belg.).

114 S. CALOGEROPOULOS-STRATIS, LE DROIT DES PEUPLES A DISPOSER D'EUX-MEMES [THE RIGHT OF PEOPLES TO SELF-DETERMINATION] 193 (Émile Bruylant ed., 1973) (Belg.).

115 The so-called "salt water" criterion targeting territories geographically separate and ethnically or culturally distinct from the country administering them would no longer be an issue when the country administering the colonized people in space is de facto the planet Earth.

116 BARTHOMEUF, *supra* note 52, at 66-81.

travels outside Earth. According to this configuration, one could imagine the "salt water" criterion becoming the gravity criterion, making it possible to avoid, for example, a people declaring itself independent on the Moon.

Furthermore, considering the subordination criterion of Resolution 1541 targeting territories that are arbitrarily placed in a position or state of subordination vis-à-vis a metropolitan territory, it would here concern subordination in relation to the state of registration of the people concerned.[117] Taking up the configuration of astronauts who must be in a situation of autonomy with respect to their state of registration to be able to be defined as "envoys of humanity," a new criterion of subordination would be added to the element defined by Resolution 1541.[118]

While the UN text implies that a legal position of non-autonomy characterizes a people likely to obtain its independence within the framework of a situation of colonization, a factual situation of non-autonomy could come to complete this criterion of subordination in order to properly characterize a community of astronauts, respecting both space law and the right to self-determination. In this configuration, a people of space would have to be factually in a situation of autonomy and not subject to the power of control or jurisdiction of the state of registration (e.g., on a long-duration space flight or positioned on a telluric planet far from Earth) but in a theoretical position of non-autonomy in view of several elements of an administrative, political, legal, or economic nature.

Thus, if a people in space were to find themselves on a remote territory (respecting the geographical criterion adopted by Resolution 1541) distant from Earth and in a colonial context (as described by Resolutions 1541 and 1514), they would be able to request the application of their external right to self-determination. It should also be noted that the principle of territorial integrity set out in Resolution 1514, which stipulates that "any attempt aimed at partially or totally destroying the national unity and territorial integrity of a country is incompatible with the aims and principles of the Charter of the United Nations,"[119] contradicts the right of peoples to self-determination on Earth. This would no longer be a

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117 In the case of our legal fiction, this would concern the peoples of the Earth.

118 The geographical criterion of "salt water" could be replaced by the criterion of the gravitational field of the Earth. *See* BARTHOMEUF, *supra* note 52, at 80.

119 G.A. Res. 1514, *supra* note 95, ¶ 6.

problem in space, considering that the territories requesting secession would not be on Earth.

Considering the right to self-determination, the doctrinal advances on the status of humans in space, and the theory regarding bundles of statutes proposed in this article, it would be possible to determine the legal status of a people colonizing Mars, determining by the same occasion the legal status of this celestial body, as in Table 5.[120]

While the right to self-determination in international law does not imply a right to secession outside the colonial framework still present in positive law, a certain extension of the operating field appeared a decade after Resolution 1514.[121]

2. *By Occupation: The Cases of Namibia and Palestine*

In 1970, on the tenth anniversary of Resolution 1514, the UNGA adopted Resolution 2625 (XXV), extending the right to self-determination to occupied peoples.[122] The resolution devotes an entire paragraph to the right of peoples to self-determination, dense with details but also (and above all) with novelties as to the regime attached thereto as well as to the delimitation of its field of application.[123] After having reaffirmed the two dimensions of this right, the Resolution, in emphasizing the imperative duty of putting an end to "colonialism," adds that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a violation" of the right of peoples and is "contrary to the Charter" of the United Nations.[124] Simple contextual interpretation shows that colonialism is only one species of the larger genus represented by these three synonyms. It follows that a people under foreign occupation (or subjugation) enjoys the right to self-determination even if the situation cannot be described as including a colonial regime.

Thus, the right to self-determination seems not to concern only the framework of decolonization. Any state occupation of a territory over which it does not have a valid title (according to international law) of territorial sovereignty falls under the category of foreign occupation, thus triggering the right to self-determination for the

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120 *See infra* Appendix.

121 Denicourt-Fauvel, *supra* note 112, at 19.

122 G.A. Res. 2625 (XXV) (Oct. 24, 1970).

123 *See id*. at 123-24.

124 *See id*. at 124

benefit of the people concerned.[125] In order to understand the legal criteria of such occupation, we must analyze the cases of Palestine, occupied by Israel during the Six-Day War of 1967, and South West Africa, occupied by South Africa, which both inspired the drafters of the resolution.[126] Indeed, the occupation of the Palestinian territories by Israel in 1967 strongly inspired Resolution 2625, although it was more recently that the UNGA requested an advisory opinion from the ICJ concerning the construction of a wall in the Palestinian-occupied territories through Resolution ES-10/14, adopted in December 2003 on an extraordinary session of urgency.[127] Following this request, the ICJ rendered its advisory opinion on July 9, 2004, citing the principle of the right of peoples to self-determination, which was enshrined in the UN Charter and reaffirmed by Resolution 2625.[128]

The ICJ concluded that the construction of the wall, along with the measures taken previously, posed a serious obstacle to the exercise by the Palestinian people of their right to self-determination and that Israel had thus violated its obligation to respect this right.[129] In this case, it is important that the situation was characterized by a state's occupation of a territory over which it did not have a valid title of territorial sovereignty and that the occupation involved a violation of the territory's right to internal self-determination.[130] Indeed, by specifying that "every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination,"[131] the ICJ confirmed that an occupation is one of the forms of violation of the internal right to self-determination and includes "alien subjugation, domination and exploitation"[132] of a people. We can make an initial remark regarding the geographical

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125 *See id*.

126 Giovanni Distefano, *Le droit des peuples à disposer d'eux-mêmes* [*The Right of Peoples to Self-determination*], *in* INTRODUCTION AUX DROITS DE L'HOMME 802, 811-12 (Maya Hertig Randall & Michel Hottelier eds., 2014) (Switz.).

127 G.A. Res. ES-10/14 (Dec. 8, 2003).

128 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 137 (July 9).

129 *Id*. at 200-01.

130 *Id*. at 181.

131 *Id*. at 172.

132 *See* G.A. Res. 2625, *supra* note 122.

situation by attaching Resolution 2625 to the advisory opinion of the ICJ given on July 9, 2004.

Another situation also inspired the drafters of Resolution 2625, namely, the illegal and invalid occupation of South West Africa (the future Namibia) by South Africa.[133] The judgment rendered by the ICJ in 1971 is of particular importance in this case.[134] As requested by the Security Council on July 29, 1970, the Court was forced to rule on the legal consequences for member states of the continued presence of South Africa in Namibia (formerly South West Africa).[135]

In 1920, Namibia,[136] a former German colony, was placed under a South African mandate by the League of Nations.[137] As mandated, South Africa was responsible for administering Namibia.[138] However, it had, in fact, annexed this territory.[139] The ICJ thus recognized the right to self-determination of the Namibian people: "These developments [of the past half century] leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned."[140] Accordingly, the ICJ confirmed and detailed the characterization of an occupation when the state does not possess a valid title of sovereignty in its opinion:

> South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it [and] . . . withdraw its administration from the Territory of Namibia. By . . . occupying the Territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation. It also remains

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133 *See* Distefano, *supra* note 126, at 811-12.

134 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 (June 21) [hereinafter Occupation of Namibia Advisory Opinion].

135 *Id.* at 16.

136 *See South Africa/Namibia (1920-1990)*, UNIV. OF CENT. ARK., https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/south-africanamibia-1920-1990/ [https://perma.cc/L7FV-LQMW] (last visited Dec. 20, 2022).

137 *Id.*

138 *Id.*

139 *Id.*

140 Occupation of Namibia Advisory Opinion, *supra* note 134, at 31.

> accountable for any violations . . . of the rights to the people of Namibia. The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory.[141]

Additionally, the Court confirmed that the occupation must correspond to a violation of the internal law of the people concerned, such as that in the situation of apartheid being addressed:

> [T]he Court finds that no factual evidence is needed for the purpose of determining whether the policy of apartheid as applied by South Africa in Namibia is in conformity with the international obligations assumed by South Africa . . . . It is undisputed . . . that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races: and ethnic groups[.][142]

Considering the advisory opinion of June 21, 1971, an occupation cannot be a simple declaration of sovereignty through de facto occupation. Instead, it must be characterized by a violation of the internal rights of the occupied people.

Thus, for example, one cannot characterize the propagations of sovereignty by the Brazilian government[143] in the Amazon or by Russia in its self-colonization[144] as occupations within the meaning of Resolution 2625. In these situations, the countries are so large that part of the territory remains outside the control of the central power according to its sovereignty.[145]

From the perspective of Resolution 2625 and the Namibian and Palestinian cases, it can be argued that the right to self-determination of peoples implies a right to independence for each people deprived of its right to internal self-determination within the framework of its occupation. We can therefore identify two criteria combining Resolution 2625 and the two cases previously studied: a

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141 *Id*. at 54.

142 *Id*. at 57.

143 Tatiana Dias, *Operation Amazon Redux*, INTERCEPT (Sept. 20, 2019), https://theintercept.com/2019/09/20/amazon-brazil-army-bolsanaro/ [https://perma.cc/VCN8-TXKU].

144 Jon Kyst, *Russia and the Problem of Internal Colonization*, 7 ULBANDUS REV. 26, 26 (2003).

145 Dias, *supra* note 143.

geographical criterion and a criterion of subordination.

The geographical criterion does not correspond to the "salt water" criterion of Resolution 1541, as it can still be argued that the state occupying the territory should not have a valid title of sovereignty over the territory in question.[146] In the context of a location in outer space, a terrestrial state occupying a celestial body would be in breach of Article II of the Outer Space Treaty: "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."[147]

Thus, because space law does not recognize any "claim of sovereignty, by means of use or occupation, or by any other means,"[148] the state would not be able to take advantage of any territory on which there is a colony or people that would like to declare its independence, on the basis of Resolution 2625.[149] The criterion of subordination, according to Resolution 2625, corresponds to a violation of the internal law of the people concerned manifested by a de facto occupation, resulting in a situation of non-juridical or administrative autonomy.[150]

Within the framework of the occupation of a people in space, Resolution 2625 would have to be applied if a situation of non-legal economic autonomy is noted based on the occupation of an Earth State resulting in the violation of internal rights. However, taking up the theories of other scholars on the status of humans in space along with our theory of the bundle of statutes, a situation of de facto autonomy must also be observed.

Thus, for a people to declare independence, it would have to follow terrestrial jurisprudence in terms of the right to self-determination as well as the doctrinal evolution in terms of space law. This would represent a situation of declaration of independence under occupation following a combination of criteria.

In this section, it has been shown that the right to self-determination was first recognized only for colonial peoples before being extended to occupied peoples. Legally, these criteria remain the only two possibilities whereby a people can apply their right to

146 Distefano, *supra* note 126, at 811-12.

147 Outer Space Treaty, *supra* note 7, art. 2.

148 *Id.*

149 G.A. Res. 2625, *supra* note 122.

150 Distefano, *supra* note 126, at 811-12.

self-determination. However, the facts show that declarations of independence can also take place outside the legal framework.

B. Forms of Application of the Right to Secession

Jurisprudence on the right to self-determination shows us that declarations of independence (1) do not always take place when legal conditions are met because, (2) in some situations, they take place outside of the traditional legal framework.

1. Failure of Legality: The Cases of East Timor, Western Sahara, and Georgia

If a people in space were to meet the legal conditions of colonization or occupation outlined above,[151] it remains to be asked whether this would in fact guarantee their independence. In fact, it would not, and, as evidenced by Earth jurisprudence, the declaration of independence remains the fruit rather than the seed of effectiveness. Indeed, there have been situations where colonized peoples met all the legal conditions defined by the UN Charter but did not achieve their independence.[152] Sometimes a battle takes place between a third state and the former colonial power, which acts in favor of the people, as in the case of East Timor.[153] We might then ask whether this can be called the irony of fate or whether it is the former colonizing country that fights for the independence of the colonized people.[154]

Originally a Portuguese colony for nearly four centuries, Indonesia gained its independence from Portugal on November 28, 1975, after the Carnation Revolution.[155] However, less than a month later, on December 7, East Timor was invaded by the Indonesian army and then unilaterally annexed in 1976.[156] This annexation was never recognized by the UN; it acknowledged East Timor's right to

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151 *See supra* Section III.A.

152 *See* John Quintero, *Residual Colonialism in the 21st Century*, U.N. UNIV. (May 29, 2015), https://unu.edu/publications/articles/residual-colonialism-in-the-21st-century.html [https://perma.cc/47MZ-SW8G].

153 *See* East Timor (Port. v. Aust.), Judgment, 1995 I.C.J. 90, 96 (June 30) [hereinafter Case Concerning East Timor].

154 *See id.* at 103.

155 *Timor-Leste Timeline*, CROSS ART PROJECTS, https://www.crossart.com.au/other-projects/contemporary-art-timor-leste/timor-leste-timeline [https://perma.cc/VD9H-JEX8] (last visited Dec. 20, 2022).

156 *Id.*

self-determination, but the country was unable to exercise this right due to the invasion of its territory by Indonesia.[157]

As a result, the colonized country, Indonesia, became a colonizing country. At that time, East Timor was unable to ask for its independence based on the criteria of Resolution 1514 due to its geographical position relative to Indonesia, although it could have done this according to Resolution 2526, characterizing the occupation made by Indonesia.[158] Thus, between 1975 and 2002, the legal conditions to obtain independence based on Resolution 2625 were met for the people of East Timor, but still they did not achieve it.[159]

The UN acted hesitantly regarding the East Timor conflict. Beginning in 1982, it no longer considered Portugal the administering state of East Timor, instead granting the responsibility to the region of East Timor itself.[160] In the eyes of the UN, this distinction made East Timor responsible for its inability to emancipate itself from Indonesia.[161] The UN finally organized a self-determination referendum in August 1999, which led to the full independence of East Timor in 2002, after a period of large-scale massacres and the systematic sacking of major cities by the Indonesian army.[162] As a result, it took twenty-seven years for this people to gain independence from illegal occupation while fulfilling all the conditions of public international law.[163] This independence resulted from the takeover by the UN and the armed resistance that took place, transforming certain demonstrations into scenes of guerrilla warfare against the Indonesian occupier.[164]

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157 *History*, GOV'T OF TIMOR-LESTE, http://timor-leste.gov.tl/?p=29&lang=en [https://perma.cc/FJC3-U7VR] (last visited Dec. 20, 2022).

158 *Id.*

159 *See* Bingbin Lu, *The Case Concerning East Timor and Self-determination*, 11 MURDOCH UNIV. ELEC. J.L. (June 2004), http://classic.austlii.edu.au /au/journals/MurdochUeJlLaw/2004/17.html [https://perma.cc/76A4-5DGM].

160 Case Concerning East Timor, *supra* note 153, at 34.

161 *Id.*

162 *Timor-Leste Timeline*, *supra* note 155.

163 *Justice Denied for East Timor*, HUM. RTS. WATCH, https://www.hrw.org/legacy/backgrounder/asia/timor/etimor1202bg.htm [https://perma.cc/67QB-5NUZ] (last visited Dec. 20, 2022).

164 Frèdèric Durand, *Three Centuries of Violence and Struggle in East Timor (1726-2008)*, SCIENCESPO (Oct. 14, 2011), https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/three-centuries-violence-and-struggle-east-timor-1726-

It was thus by taking control through force that the people of East Timor were able to achieve their independence, and not by the unique combination of legal criteria, which left them annexed by Indonesia for twenty-seven years.[165] In other words, the people of East Timor had to enforce the application of their right to external self-determination.[166]

However, the right to independence was well-recognized during these twenty-seven years as evidenced by the judgment of the ICJ in 1995.[167] According to Portugal, East Timor's rights to self-determination and independence had not been respected.[168] Portugal therefore brought an action against Australia before the ICJ concerning a treaty that concluded with Indonesia disregarding the rights of East Timor.[169] The judgment, which was rendered by the ICJ on June 30, 1995, recognized not only East Timor's right to independence but also that this was "one of the essential principles of contemporary international law."[170] In the same paragraph, the ICJ recognized that "the right of peoples to self-determination . . . is a right *erga omnes*."[171] This means a fortiori that states not conventionally bound by an obligation may be obliged to respect it given its *erga omnes* enforceability.[172] The right to independence was, therefore, recognized and acted upon by an international institution without independence being achieved, demonstrating that there is no automatic mechanism in matters of secession.

Situations where the process regarding the independence of colonized peoples fails are common.[173] However, it is not often that a colonial power opposes the realization of a people's rights. There have been several conflicts in which a third country has claimed

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2008.html [https://perma.cc/8ZA7-L5UL].

165 *Id*.

166 *Id*.

167 *See* Case Concerning East Timor, *supra* note 153.

168 *Id*. at 92.

169 *See id*.

170 *Id*. at 102-03.

171 *Id*.

172 In the East Timor case, the ICJ espoused Portugal's view that the right of peoples to self-determination is of an *erga omnes* nature. However, it did not condemn Australia because it upheld its second preliminary objection and, therefore, could not rule on Portugal's claims based on the merits.

173 Quintero, *supra* note 152.

sovereignty over the territory of a colonized people, opposing the independence of the people and demanding the integration of their territory.[174] This was the case for Western Sahara, a former Spanish colony.[175] In 1963, the Spanish Sahara was registered on the list of non-autonomous territories at the request of Morocco.[176] Morocco was convinced that the Sahrawi people wanted to join its kingdom on a massive scale and that a self-determination vote would be a mere formality.[177]

On December 16, 1965, through Resolution 2072, the UNGA invited Spain to immediately take the measures necessary for the liberation of the territories of Ifni and the Spanish Sahara and to undertake negotiations on the problems related to the sovereignty of these two territories.[178] Spain and Portugal voted against the resolution, while France, South Africa, the United Kingdom, and the United States abstained.[179] In 1969, Spain returned the region of Ifni to Morocco,[180] and on August 21, 1974, it announced it would be holding a self-determination referendum in early 1975.[181]

On December 13, 1974, the UNGA adopted Resolution 3292,[182] which reaffirmed the right to self-determination of the Spanish Sahara, asked the ICJ to issue an advisory opinion on the status and legal ties of the territory, and mandated a mission to visit it.[183]

On October 16, 1975, the ICJ delivered its opinion, noting that the territory of Western Sahara was, at the time of its colonization by Spain, populated by nomadic tribes who were socially and

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174 *Sahara Occidental*, CEFAN, https://www.axl.cefan.ulaval.ca/afrique/Sahara-occidental.htm [https://perma.cc/39CQ-J4WK] (last visited Dec. 20, 2022).

175 *Id.*

176 *Western Sahara*, UNITED NATIONS (May 10, 2022) https://www.un.org/dppa/decolonization/en/nsgt/western-sahara [https://perma.cc/E9CT-89VH].

177 *See* ANTHONY G. PAZZANITA, WESTERN SAHARA 19 (1996).

178 G.A Res. 2072 (XX), at 59-60 (1965).

179 *Id.*

180 *Spanish Return Ifni to Morocco*, N.Y. TIMES (Jan. 5, 1969), https://www.nytimes.com/1969/01/05/archives/spanish-return-ifni-to-morocco.html [https://perma.cc/TX38-D9Y8].

181 *Spain Tells U.N. She Will Hold Referendum in Sahara Colony*, N.Y. TIMES (Aug. 22, 1974), https://www.nytimes.com/1974/08/22/archives/spain-tells-un-she-will-hold-referendum-in-sahara-colony-morocco.html [https://perma.cc/XNM3-JANB].

182 G.A. Res. 3292 (XXIX), at 104 (Dec. 13, 1974).

183 Western Sahara, Advisory Opinion, 1975 I.C.J. 12, 14 (Oct. 16).

politically organized and placed under the authority of chiefs who represented them, meaning the territory was not *terra nullius*.[184] It concluded by stating that the ties Western Sahara had with Morocco and Mauritania, two neighboring states, were not strong enough to establish their sovereignty and prevent the right to self-determination of the Sahrawi people.[185] However, Morocco and Mauritania intervened in the process and went on to consider Western Sahara "an integral part of [their] territory."[186] In 1976, Spain, Morocco, and Mauritania agreed on a tripartite administration of the territory, although it was not implemented, following the partial invasion of Western Sahara by Morocco and Mauritania.[187]

The Polisario Front,[188] supported by Algeria, engaged in an armed struggle against the two countries and proclaimed the independence of the Sahrawi Arab Democratic Republic.[189] In 1977, Mauritania abandoned the fight when the UN sent a mission to the region, multiplied the resolutions affirming the right of the Saharawi people to independence, and called for peace.[190]

Overall, this did not have the desired effect, with Morocco deciding to build a militarized wall in the 1980s to mark its territory.[191] Today, Morocco controls approximately 80% of the territory, while 20% is controlled by the Polisario.[192] As the people of Western Sahara attempted to free themselves from Moroccan occupation, the Sahrawi people were indeed eligible based on the legal criteria for independence in Resolution 2526, just as in the case of East Timor.[193] Despite the support and aid sent by the UN to Western Sahara, the Moroccan occupation demonstrated that

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184 *Id*. at 29, 75-83.

185 *Id*. at 78.

186 Houda Chograni, *The Polisario Front, Morocco, and the Western Sahara Conflict*, ARAB CTR. WASH. D.C. (June 22, 2021), https://arabcenterdc.org/resource/the-polisario-front-morocco-and-the-western-sahara-conflict/ [https://perma.cc/SF23-6Q6D].

187 *Id*.

188 *Id*.

189 *Id*.

190 S.C. Res. 690 (Apr. 29, 1991).

191 Meriem Naïli, *Western Sahara: Africa's Last Colony*, ELEPHANT (Sept. 23, 2022), https://www.theelephant.info/features/2022/09/23/western-sahara-africas-last-colony/ [https://perma.cc/9NHH-B5AV].

192 *Id*.

193 Western Sahara, *supra* note 183, at 51.

peoples who wish to secede on legally valid criteria must apply the law by force.[194]

Conversely, there have been situations in which territories have claimed independence outside positive or doctrinal law, as in the case of the crisis in Georgia. After the fall of the USSR in 1991, Georgia gained independence and integrated within its territories Abkhazia and South Ossetia, with the northern part of the latter being integrated into Russia.[195] These two border regions seceded directly and had to face the Georgian forces, with Abkhazia declaring itself independent and South Ossetia joining Russia.[196] Despite the assistance provided by the UN Observer Mission in Georgia to end hostilities in 1993, the region was subject to tensions up until 2008.[197] In 2008, Georgia attempted to recover the two territories, accusing Russia of being behind their secession.[198] However, Russia, whose troops were deployed in the territories, intervened in favor of the two secessionist entities and stopped the Georgian intervention. South Ossetia and Abkhazia then reaffirmed themselves as independent republics.[199] Russia and other states recognized these two republics, while Georgia continued to denounce the annexation of the territories by Russia.[200] Georgia attempted to lodge an appeal with the ICJ against Russia based on the International Convention on the Elimination of All Forms of Racial Discrimination (December 21, 1965), condemning Russia for its violations of said convention.[201]

The ICJ pronounced provisional measures in an order on October 15, 2008, specifying that it would not prejudge the merits

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194 *See* Van den Berghe, *supra* note 113, at 38-39.

195 Stefan Wolff, *Georgia: Abkhazia and South Ossetia*, ENCYCLOPEDIA PRINCETONIENSIS, https://pesd.princeton.edu/node/706 [https://perma.cc/PUP6-8ACZ] (last visited Dec. 20, 2022).

196 Tracey German, *Abkhazia and South Ossetia: Collision of Georgian and Russian Interests* 6-7 (Research Programme Russia/NIS No. 11, 2006) https://www.ifri.org/sites /default/files/atoms/files/germananglais.pdf [https://perma.cc/7VEY-92DN].

197 *Georgia—Background*, U.N. DEP'T OF PEACEKEEPING OPERATIONS (2009), https://peacekeeping.un.org/mission/past/unomig/background.html [https://perma.cc/ZQG8-LNAL].

198 Wolff, *supra* note 195.

199 *Id.*

200 *Id.*

201 Application of the International Convention of the Elimination of All Forms of Racial Discrimination (Geor. v. Russ. Fed'n), Judgment, 2008 I.C.J. 71, ¶ 25 (Apr. 1).

of the case.[202] In a judgment on April 1, 2011, the ICJ then analyzed the preliminary objections raised by Russia and concluded that it could not rule on the merits of the case.[203]

However, the Council of the European Union (EU) decided on December 2, 2008, to establish the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG).[204] Thus, for the first time, the EU decided to take concrete action in a serious armed conflict.[205] It was also the first time that it entrusted a fact-finding mission with the political and diplomatic monitoring of a conflict after the conclusion of a ceasefire agreement.[206]

The IIFFMCG reviewed a series of arguments put forward by the parties involved in the conflict and was particularly interested in Russia's theory of remedial secession.[207] This theory can be summarized as follows: in the event of massive and manifest violations of their right to internal self-determination as well as serious abuses against their government, a victimized people can claim the right to create a new state as well as the right of secession.[208]

However, in its report, the EU stated that the theory did not have a basis in either the texts or the practices of the states, that Kosovo could not serve as a precedent in this matter, and that the most important consideration remained the territorial integrity of states.[209] Furthermore, it stated that the right to external self-determination could be recognized only in situations of colonization or occupation.[210] Two remarks could be made at that stage: one concerning remedial secession and the other concerning effectiveness. While a large part of the doctrine is in favor of

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202 *Id.*

203 *Id.*

204 *Report of the Independent International Fact-finding Mission on the Conflict in Georgia*, at 2 (Sept. 2009) [hereinafter *IIFFMCG Report*], https://www.echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf [https://perma.cc/C6EG-YCF4].

205 Id.

206 *Id.*

207 *Id.*

208 Katherine Del Mar, *The Myth of Remedial Secession*, *in* STATEHOOD & SELF-DETERMINATION 79 (Duncan French ed., 2013).

209 *IIFFMCG Report*, *supra* note 204, at 136-39.

210 *Id.*

remedial secession,[211] and thus of allowing the right to self-determination to finally obtain its status as a human right, another part of it considers remedial secession to be a threat to the territorial integrity of states.[212] However, in post-colonial situations such as in Kosovo, secession has taken place in the event of violations of the internal rights of the people, suggesting that this condition for independence could go beyond the doctrinal stage and become established as an international custom.[213]

Overall, the history of remedial secession illustrates the theory of effectiveness,[214] revealing that secession is a question of facts rather than a question of the law. Accordingly, it is up to the entire international community to recognize a new state. Nevertheless, even if remedial secession became a principle equal to Resolutions 1514 or 2526, it would remain to be asked whether the conditions were met in the cases of South Ossetia and Abkhazia, especially since only Russia spoke of abuses committed by the Georgian government against the South Ossetian and Abkhazian populations.[215] Furthermore, the populations of the territories concerned spoke of discrimination but not of serious violations of their internal rights to the point that independence was the only solution.[216] It is doubtful that the conditions for a remedial secession would have been met in this case, and a difficult fight would have been required for remedial secession to be recognized as a legal condition for the right to independence.

This implies that the declaration of independence of a people in space would be very effective if they decided to take their destiny into their own hands and enforce said independence. At the same time, if a space people would like to declare themselves as independent, they would have to respect the criteria defined by the UN texts and international jurisprudence so that the international community could recognize them as a new state.

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211 Aksel Erik Hillestad, A Right to Remedial Secession?: The Case of Kosovo and Its Implications for International Law (Apr. 26, 2010) (LL.M. thesis, University of Oslo).

212 Corten, *supra* note 102, at 100.

213 *See* Coline Charbonnier, *Une autodétermination à géométrie variable* [*Self-determination with Variable Geometry*], 15-38 MÉDITERRANÉE (Nov. 7, 2020), https://www.1538mediterranee.com/une-autodetermination-a-geometrie-variable/ [https://perma.cc/4GQL-4K4K] (Fr.).

214 Denicourt-Fauvel, *supra* note 112, at 23.

215 *IIFFMCG Report*, *supra* note 204, at 4-9.

216 *Id*. at 14, 409.

2. *Success of Effectiveness: The Cases of Eritrea, Kosovo, and Canada*

The purpose of this section is to illustrate that the realization of the right to independence of a people in space would have to go through factual application. If we look at terrestrial jurisprudence, there have been many cases in which the UN has failed to uphold the right to self-determination, both in the process of decolonization and outside of it.

There have also been situations in which the conditions were met for a people to legally become independent or in which the UN was the origin of an annexation, as in the case of the war that led to the split of Eritrea from Ethiopia.[217] Eritrea was a former Italian colony administered by the United Kingdom after World War II.[218] After consultation with political parties and local associations, and without a referendum or direct consultation of the population, the UN Commission on Human Rights decided on the attachment of Eritrea to Ethiopia, a former neighboring colony that had become independent.[219] By a resolution made on December 2, 1950, Eritrea thus became an autonomous entity federated by Ethiopia.[220]

In 1960, a popular front for the liberation of Eritrea was established,[221] and in 1962, Ethiopia annexed Eritrea, although the Eritrean people did not recognize themselves as part of the Ethiopian state.[222] In addition to the fact that the UN had the opportunity to encourage the independence of Eritrea based on Resolution 1514 in 1950, Eritrea's territorial attachment to Ethiopia was the origin of its annexation.[223] However, considering that the people of Eritrea never ceased claiming their right to self-determination, the UN could have supported the independence of

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217 *Contesting for the Coastlands and Beyond*, ENCYCLOPÆDIA BRITANNICA, https://www.britannica.com/place/Eritrea/Contesting-for-the-coastlands-and-beyond [https://perma.cc/6P9D-6ZQ3] (last visited Dec. 20, 2022).

218 *Id.*

219 *Id.*

220 *Id.*

221 Martin Plaut & Patrick Gilkes, *Conflict in the Horn: Why Eritrea and Ethiopia Are at War* (Chatham House Briefing Paper New Series No. 1, 1999).

222 *Id.*

223 *Roots of the Eritrea-Ethiopia War: A Factsheet*, GRASSROOTS INT'L (June 28, 2000), https://reliefweb.int/report/eritrea/roots-eritrea-ethiopia-war-factsheet [https://perma.cc/7MV9-J4VS].

Eritrea based on Resolution 2625.[224] This triggered a war of independence, culminating in a referendum organized in 1993 and the victory of the independence movement.[225]

Nevertheless, today, Eritrea is governed by a quasi-dictatorial and military system that is accused, among other things, of serious human rights violations, which has led to a massive exile of its population.[226] Contrary to the examples of Western Sahara and East Timor, this example indicates that peoples who meet all the criteria of public international law should not expect the application of their external right to self-determination by an international organization. Therefore, the secession of a people who are victims of violations of their internal right to self-determination must be applied by the people themselves.

Furthermore, claims regarding a people's right to self-determination have not been confined to the decolonization process, as demonstrated in the case of Kosovo. Since World War II, Kosovo has been an autonomous province of the Socialist Republic of Serbia, which was part of the Socialist Federal Republic of Yugoslavia.[227]

However, the international community did not immediately recognize the independence claimed by the Kosovars.[228] Most of the Kosovo population is made up of ethnic Albanians, and a minority is made up of Serbs.[229] The Serbian government at first pursued a policy of discrimination against the Albanian population,[230] while the Albanian Kosovars aspired to make Kosovo an independent republic for several decades.[231] In 1989, Milosevic stripped Kosovar Albanians of their right to internal self-determination by

224 Commentary that we allow ourselves in the light of historical events and the mechanics of UN instruments.

225 Fikrejesus Amhazion, *A Look Back on Eritrea's Historic 1993 Referendum*, TESFANEWS (Apr. 23, 2018), https://tesfanews.net/revisiting-eritrea-historic-1993-referendum/ [https://perma.cc/XFN7-TFWT].

226 Manon Renard Deloof, *Eritrea, an Oppressed Nation*, CSACTU (Dec. 29, 2021) https://www.csactu.fr/eritrea-an-oppressed-nation/ [https://perma.cc/QF4W-GLK6].

227 Anton Bebler, *The Serbia-Kosovo Conflict*, *in* "FROZEN CONFLICTS" IN EUROPE 151, 155 (Anton Bebler ed., 2015).

228 *Id*. at 157.

229 *Id*. at 155.

230 *Id*. at 156.

231 *Id*.

withdrawing their autonomy.[232]

However, the international community preferred to recognize the integrity of the Serbian state, to which Kosovo remained attached, as attested to by the Badinter Commission, which refused to consider Kosovo's request for recognition.[233] In 1996, the fight between the Albanian rebels and the Serbian government intensified, and population displacements, serious violations of fundamental rights, torture, and ethnic cleansing of the Kosovar population took place.[234] This led to war in Kosovo, which forced the intervention of the North Atlantic Treaty Organization (NATO), and the UN and the placing of Kosovo under international civil administrative authority in 1999, leading it toward independence.[235] Turning to remedial secession, elections were organized, and the independence of the Republic of Kosovo was proclaimed on February 17, 2008.[236] Following the theory of effectiveness, most states have recognized the independence of Kosovo, including the United States and a large portion of the EU.[237]

Therefore, the international community, having missed the opportunity to help or at least recognize the right to independence of the Kosovar population at the beginning of the 1990s, recognized this independence a decade later and after several violations of their internal right to self-determination.[238] This was possible because the people of Kosovo took charge of their secession rather than waiting on the international community.[239] At the same time, the secession of Kosovo, which fell into neither the category of colonization nor that of occupation, revived the debate on the legality of remedial

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232 Bebler, *supra* note 227, at 156.

233 The Arbitration Commission of the Conference on Yugoslavia (commonly known as the Badinter Arbitration Committee) was an arbitration body set up by the Council of Ministers of the European Economic Community on Aug. 27, 1991, to provide the conference on Yugoslavia with legal advice.

234 Allen Keller & Vincent Iacopino, *War Crimes in Kosovo: A Population-based Assessment of Human Rights Violations Against Kosovar Albanians*, PHYSICIANS FOR HUM. RTS. (Aug. 1, 1999), https://phr.org/our-work/resources/war-crimes-in-kosovo/ [https://perma.cc/L2ZY-A9QL].

235 S.C. Res. 1244 (June 10, 1999).

236 Bebler, *supra* note 227, at 162.

237 *Id*. at 164.

238 Commentary that we allow ourselves in the light of historical events and the mechanics of UN instruments.

239 *Id*.

secession.[240]

Once Kosovo's independence was proclaimed, the UNGA asked the ICJ to rule on the matter.[241] The ICJ issued a narrow and specific response,[242] stating that Kosovo's declaration of independence did not violate international law because the ICJ did not formally prohibit declarations of independence.[243] However, the ICJ did not recognize the unilateral declaration of independence as a right.[244]

The case of Kosovo was viewed as unique and was not set as a precedent according to the ICJ.[245] The two elements that may have motivated the ICJ's decision not to clarify the legality of the secession remedy (and de facto the effectiveness of the right to independence) in 2010 were internal and external to the independence of Kosovo in order not to open the Pandora's box of territorial claim.[246] As an internal element, in its declaration of independence, which was only proclaimed in 2008, Kosovo did not refer to the principle of the people's right to self-determination.[247] At the same time, as an external element, the countries that recognized Kosovo did so by specifying that this was a unique situation, leading to the refusal to set precedent.[248]

However, while the ICJ preferred to maintain its neutrality, and while certain members of the doctrine[249] were against the remedial secession, other judicial bodies would have validated it and, with it, the theory of effectiveness. For example, this was the case when the

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240 A situation in which a people that would be denied the exercise of their right to internal self-determination would be entitled, as an *extrema ratio*, to exercise it on the international level and, therefore, to secede.

241 Bebler, *supra* note 227, at 168.

242 G.A. Res. 63/3 (July 22, 2010).

243 *Id*. at 7.

244 *Id*.

245 *Id*.

246 Bebler, *supra* note 227, at 165.

247 *Kosovo Declaration of Independence*, REFWORLD (Feb. 17, 2008), https://www.refworld.org/docid/47d685632.html [https://perma.cc/E6G2-4BC4].

248 Christopher J. Borgen, *Introductory Note to Kosovo's Declaration of Independence*, 47 I.L.M. 461 (2008). For the original version, including citations to references, see Christopher J. Borgen, *Is Kosovo a Precedent? Secession, Self-determination and Conflict Resolution* (Global Europe Program Meeting Report No. 350, 2008).

249 Distefano, *supra* note 126, at 802.

Canadian Supreme Court ruled on Quebec's right of secession at the request of the Canadian government to set out the legal rules in the area and establish whether the people of Quebec had a right to independence.[250]

Quebec, a former French colony that became a province of Canada in 1867 after the Seven Years' War, has lost two referendums on the question of independence: in 1980, 60% of Quebecers were against it, while in 1995, 50% were against it.[251] As to whether Quebec could secede unilaterally according to international law, and if so, whether this right exists under the right to self-determination, the Canadian Supreme Court affirmed that there was no express authorization or prohibition of secession in international law and that reference must be made to the principle of effectiveness.[252]

However, as for the right to self-determination, the Canadian Supreme Court stated that it must coexist with other principles, such as the territorial integrity of states.[253] At the same time, it was stated that the right to the self-determination of peoples can take precedence over the right to the territorial integrity of states in certain limited cases, namely, a situation of colonization, a situation of similar domination (occupation), or a situation where the people are unable to exercise their right to internal self-determination, enabling them access to government to ensure their political, cultural, and social development.[254]

Here, the Canadian Supreme Court recognized two things: firstly, that the right to self-determination rests, above all, on the principle of effectiveness, and secondly, that the theory of remedial secession, as a situation, is equal in legal terms to the situations of colonization (Resolution 1514) and occupation (Resolution 2625).[255] While effectiveness seems to be the matrix of the right to

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250 *See generally* Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.).

251 *Il y a 40 ans, le Québec disait « non » à la souveraineté* [*40 Years Ago, Quebec Said "No" to Sovereignty*], RADIO-CAN. (May 15, 2020), https://ici.radio-canada.ca/nouvelle/1702511/referendum-independance-quebec-histoire-archives [https://perma.cc/M6KG-7RLB].

252 Reference re Secession of Quebec, supra note 250.

253 Roya M. Hanna, *Right to Self-Determination in In Re Secession of Quebec*, 23 MD. J. INT'L L. 213, 222 (1999).

254 *Id*. at 225.

255 *Id*. at 231.

external self-determination of a people, the legal conditions remain necessary to avoid authoritarian drifts following independence. At the same time, the application of the external right to self-determination appears to require a medium to balance the effectiveness of the application and the legality of the framework.

Case law in this area demonstrates that independence needs to be achieved by a tearing off rather than a weeding out. If a people in space one day declare themselves as independent, they will have to follow the rules and principles of international law on this matter. However, since independence is based on both the facts and the law, there is nothing preventing us from thinking that a people in space would take part in making the remedial secession a custom of international law. Independence is not the only way to achieve self-determination, and when full independence is not immediately achievable, a people in space would always have the option of autonomy and self-government.

IV. Autonomous People in Space

The following two questions on autonomy in space are here addressed: (A) Could a people in space, as the first to arrive on a celestial body, qualify as indigenous? (B) In this respect, what would the type of "autonomous regime" they could claim be?

A. Indigenous Astronauts

Current public international law does not recognize the right of indigenous peoples to independence. However, (1) in space, the reasons for this prohibition would no longer exist. On the contrary, (2) indigenous people's right to autonomy on Earth would risk going against space law.

1. An External Right as the Achilles' Heel of Territorial Integrity

If a people in space were to claim to be indigenous, a debate would occur within the international community due to there being no international agreement on the definition of the term.[256]

256 Irène Bellier, *La reconnaissance des peuples autochtones comme sujets du droit international. Enjeux contemporains de l'anthropologie politique en dialogue avec le droit* [*The Recognition of Indigenous Peoples as Subjects of International Law: Contemporary Issues of Political Anthropology in Dialogue with the Law*], 15 CLIO@THEMIS 1, 2 (2019) (Fr.).

Previously, the principle for defining an indigenous community was self-identification: an individual is indigenous when he/she identifies as such (group consciousness) and is recognized and accepted by the group as one of their members.[257] This preserved the sovereignty and power of the community to decide, without outside interference, who belonged to them.[258]

In the 1980s, a convention determined that the term "indigenous" would no longer refer to a simple population but to a people.[259] In particular, International Labor Organization (ILO) Convention No. 169 specified that "the use of the term *peoples* in this Convention shall not be interpreted as having any implications as regards the rights which may attach to the term under international law."[260]

Therefore, the legislation in force at the time did not recognize the internal or external right to self-determination of the Aboriginals, and it was necessary to wait eighteen years for this recognition.[261] Under the UN Declaration on the Rights of Indigenous Peoples adopted by the UNGA in September 2007 (2007 Declaration), indigenous peoples were granted status in international law and legally qualified.[262] However, this declaration represented a compromise, and indigenous peoples were forced to make concessions to states to ensure its adoption.[263]

While the declaration recognizes indigenous peoples' "right to belong to an indigenous community or nation"[264] and to "decide on their own identity or belonging,"[265] it does not expressly recognize their right to self-identify without state intervention.[266] The self-identification of indigenous people, therefore, is subordinated to the

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257 *See id.* at 11.

258 JOSÉ R. MARTÍNEZ COBO, SPECIAL RAPPORTEUR, STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, U.N. Sales No. E.86.XIV.3 (1987).

259 International Labour Organisation, Indigenous and Tribal Peoples Convention art. 1, June 27, 1989, 1650 U.N.T.S. 383.

260 *Id.* art 1, ¶ 3.

261 *See* Bellier, *supra* note 256, at 9.

262 G.A. Res. 61/295, U.N. Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter 2007 Declaration].

263 *See* Bellier, *supra* note 256, at 11.

264 2007 Declaration, *supra* note 262, art. 9.

265 *Id.* art. 33.

266 *Id.* art. 46.

identification of the state in which they find themselves. If a people in space wanted to declare themselves indigenous, it would thus be necessary, according to current legislation, for their state to authorize the declaration according to a logic of territorial integrity.[267]

However, these people would not be in an independent Earth state, leading us to believe that the self-identification rule of ILO Convention No. 169 would have greater legitimacy. It is for the same reason that the 2007 Declaration recognizes only one aspect of the right to self-determination, that is, the internal phase.[268] This right is affirmed in Articles 3 and 4 of the 2007 Declaration:

> Article 3: Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
>
> Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs as well as the ways and means for financing their autonomous functions.[269]

Article 46 of the declaration limits the legal scope of the right to self-determination by providing the following:

> Nothing in this declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.[270]

The aim, therefore, is to prevent an external exercise of self-determination. This right is exercised on an internal level and even more restrictively on a local level. Thus, the exercise of this right does not have the same legal scope as the classical right of peoples to self-determination. This threat to the territorial integrity of states justified the geographical criteria of Resolution 1541, which stipulates the following: "Any attempt aimed at the partial or total

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267 *Id.*

268 *Id.* art. 9.

269 *Human Rights*, INDIGENOUS PEOPLES' CTR. FOR DOCUMENTATION, RSCH. & INFO., https://www.docip.org/en/rights-and-freedoms/human-rights/ [https://perma.cc/R68Z-3MGT] (last visited Dec. 20, 2022).

270 *Id.* art. 46.

disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[271]

Resolution 1541 established that all peoples must respect the territorial integrity of states.[272] There is, therefore, a contradiction between the right of peoples to self-determination on the one hand and the right of states to territorial integrity on the other. A geographical criterion was thus created so that self-determination would not represent an attack on the territorial integrity of the colonizing state: "Once it has been established that such a *prima facie* case of geographical and ethnic or cultural distinctness of a territory exists, other elements may then be brought into consideration."[273]

However, in the context of indigenous peoples, such a condition was not possible to fulfill since they are de facto part of the territory of the independent state.[274] Accordingly, their right to independence could not be recognized because it went against Resolution 1514 and did not respect the geographical criteria of Resolution 1541.[275] This raises the following question: if a people in space were to claim to be indigenous, where would the violation of the territorial integrity of an independent state on Earth be?

These people in outer space, having the status of indigenous peoples within international law and not being on Earth, could freely exercise their right to self-determination and choose independence. The states that would fear this right because its exercise could potentially infringe on their territorial integrity would have no reason to be afraid because no terrestrial state, according to Article 2 of the Outer Space Treaty, can be sovereign in space.[276]

However, indigenous people in space declaring themselves independent of Earth would not face the same prohibition because they would not have ratified the Outer Space Treaty. Therefore, it is appropriate to ask to what extent the right to self-determination can

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271 G.A. Res. 1514, *supra* note 95, ¶ 6.

272 *Id.*

273 G.A. Res. 1541, *supra* note 100, princ. V.

274 *See* Bellier, *supra* note 256, at 13.

275 Commentary that we allow ourselves in the light of historical events and the mechanics of UN instruments.

276 Outer Space Treaty, *supra* note 7, art. 2.

be applied to indigenous peoples in space. The fact that the right to self-determination is effectively equated with decolonization, and therefore with independence, illustrates the reluctance of states to admit that indigenous peoples on Earth can benefit from it. These oppositions could be overcome in the absence of violations of any territorial integrity in space. Apart from any issue of territorial integrity, this would have two effects concerning a people in space asserting their independence.

First, Article 46 of the 2007 Declaration no longer recognizes the concept of the self-identification of indigenous peoples according to the principle that this would "dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States,"[277] which would no longer be necessary. Apart from any risk of violations of territorial integrity, this rule could return to that of the collective self-identification from ILO Convention 169.[278] This rule relates to the self-affirmation of the identity of indigenous peoples and was the official rule before the 2007 Declaration.[279]

Second, the right to external self-determination could be applied based on Resolution 1514 or 2625 or even remedial secession, as there would no longer be any territorial integrity issues. Continuing our reasoning concerning the doctrinal thought on the status of the human being in space as well as our theory of the bundle of statutes, a people made up of indigenous astronauts could declare themselves independent if geographical and subordination criteria were respected.

What would be impossible for indigenous peoples on Earth for reasons of territorial integrity would be possible for indigenous peoples in space. This, therefore, represents a legal fiction leading to the possibility that a people, having qualified as indigenous in space, would be able to acquire independence. Conversely, the right to self-government of indigenous peoples on Earth could be used as a pretext for states on Earth to extend their sovereignty to space.

2. *The Right to Autonomy as a Trojan Horse of State*

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277 2007 Declaration, *supra* note 262, art. 46.

278 *See* Bellier, *supra* note 256, at 11.

279 *See id.*

Sovereignty

As we have already seen, the right to self-determination is incorporated into Article 3 of the 2007 Declaration. However, Articles 4 and 5 state the following:

> Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
>
> Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.[280]

In the 2007 Declaration, the right of peoples to self-determination is understood as being applied internally since it allows indigenous peoples the right to self-determination but only within the framework of their state.[281] Therefore, they have "the right to autonomy or self-government in matters relating to their internal and local affairs."[282] From an internal point of view, this right to self-determination has never been envisaged from the angle of secession; instead, the aim was to prevent the external exercise of self-determination.[283] Therefore, for many states, ensuring the right of indigenous peoples to self-determination consists of granting them greater autonomy in the management and administration of their local affairs.[284]

When we refer to indigenous self-government, we refer to independent action on the domestic level, while foreign affairs and defense are the responsibility of the central or national government.[285] Within the framework of our legal fiction, it should then be asked what the risks would be for a state on Earth granting this autonomy rather than independence to a people who have identified themselves as indigenous to space.

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280 2007 Declaration, *supra* note 262, art. 4-5.

281 Bellier, *supra* note 256, at 13-14.

282 2007 Declaration, *supra* note 262, art. 4.

283 Bellier, *supra* note 256, at 13.

284 *See id.* at 13-14.

285 *See generally* INT'L WORK GRP. FOR INDIGENOUS AFFS., INDIGENOUS PEOPLES' RIGHTS TO AUTONOMY AND SELF-GOVERNMENT AS A MANIFESTATION OF THE RIGHT TO SELF-DETERMINATION 13-14 (2019).

This appears to be a good compromise allowing the terrestrial state to avoid losing control of its colony while leaving the independence of action on the internal level to these people. However, if the indigenous people in space were to become internally self-sufficient, this would raise the question as to who would be responsible for their external matters, including foreign affairs and defense. Legally, according to Article 46 of the 2007 Declaration, indigenous peoples cannot exercise the external right to self-determination.[286] Therefore, this right would fall on the central government or, in our fiction, on an Earth state.

Accordingly, this political trick could allow Earth states to extend their sovereignty over a celestial body by granting self-governance to a colony that identified itself as indigenous to space. In other words, an Earth space power could indirectly exercise its external right to self-determination over a celestial body by directly granting its internal right to a colony in space. This would make it possible, by means of a Trojan horse, to go against Article 2 of the Outer Space Treaty, which prohibits any declaration of sovereignty by states that have ratified the treaty.[287]

Taking up our doctrine on the status of humans in space and our theory on bundles of statutes, "envoys of mankind" cannot be under the control and jurisdiction of a state of registration.[288] The context of self-government granted to indigenous people may be possible on Earth, but it would be contradictory in space. According to this configuration, a people in space would still be under terrestrial control, and the terrestrial state would have a link of sovereignty (external right) over a celestial body, which goes against the UN treaties addressing this matter.

The only way for self-government to be granted to indigenous people in space according to the 2007 Declaration would be for their autonomy to include both the internal and external aspects of the right to self-determination. This would require finding examples of long-range progressive accommodations of self-government on Earth, including internal and external aspects of the right to self-determination. Under this configuration (with external responsibilities held not by an Earth state but by the colony itself), the self-government of a people in space would be consistent with

286 2007 Declaration, *supra* note 262, art. 46.

287 Outer Space Treaty, *supra* note 7, art. 2.

288 *Id.* art. 5.

international law. Therefore, the recognition of the right to self-government of these people would not automatically lead to an end to the aspirations to constitute a state but could be a transition towards independence.

B. Earth Case Studies

The self-government of an indigenous people in space could legally exist if a transfer of the external right to self-determination were made from Earth to the people concerned. This transfer could (1) take the form of a vote of approval and veto on the part of the indigenous people vis-à-vis the central government or (2) simply correspond to a legal agreement on specific cases.

1. Territorial Autonomy: The Status of Greenland

Greenland provides a good example of the long-range progressive accommodation of self-government involving the internal and external aspects of the right to self-determination.[289] Indeed, Greenland was declared an integral part of the Kingdom of Denmark in 1954 and consequently was withdrawn from the UN list of non-self-governing territories.[290] Today, full independence does not seem to be what most Greenlanders want.[291]

In 1979, the Greenland Home Rule came into effect, establishing a political and legal framework for self-government through statutory authorities consisting of an elected assembly (*landsting*) and an executive (*landsstyre*).[292] A gradual transfer of power to the statutory authorities then took place, providing them control over internal matters.[293] In particular, Greenlanders have the right to veto, which prevents the Danish government from going

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289 *See* Lise Lyck, *Gouvernement et développement de la gouvernance au Groenland* [*Government and Developing Government in Greenland*], 15 TÉLESCOPE 98, 98 (2009) (Can.).

290 *List of Former Trust and Non-self-governing Territories*, UNITED NATIONS, https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts [https://perma.cc/ESX3-RMED] (last visited Dec. 20, 2022).

291 Michael Paul, *Greenland's Project Independence: Ambitions and Prospects After 300 Years with the Kingdom of Denmark* 1 (Stiftung Wissenschaft und Politik Comment No. 10, 2021).

292 Lov nr. 577 af 29/11/1978 om Grønlands hjemmestyre [The Greenland Home Rule Act] (Den.).

293 Lyck, *supra* note 289, at 101.

against their wishes.[294] An indigenous people in space could claim self-government in a similar manner if provided legislative and executive autonomy separate from Earthly power and control.

In Greenland, foreign affairs are a constitutional prerogative of the Danish government.[295] However, the Greenlandic government has reached an agreement with the Danish government on the issue of the EU. The new government of Greenland considered as one of its first tasks the preparation of a referendum on the withdrawal of Greenland from the European Economic Community, demonstrating that an autonomous territory had the capacity to manage its territory at an international level.[296] In 1982, a new advisory vote took place in Greenland, with most of the population voting for Greenland to withdraw from the EU.[297] Although Greenland is part of the Kingdom of Denmark, the Danish government and the EU accepted its withdrawal, which took effect on February 1, 1985.[298]

A similar agreement could occur between a self-governing community in space and a state on Earth regarding external affairs, such as the ability to enter into international commitments. In other words, an agreement would allow attribution of the competence-competence doctrine in certain specific domains to the people in space, avoiding any link of subordination from Earth. One could imagine an "extra-terrestrial" agreement conferring on these indigenous people full and exclusive jurisdiction over their territory.

Greenland has status among "Overseas Countries and Territories."[299] As a result of this status, the Greenlandic authorities gained control over the nation's primary natural resource: fishing.[300] Despite its withdrawal from the EU, Greenland obtained free

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294 Greenland Home Rule Act, *supra* note 292.

295 Alexandra Cyr, *La politique du Groenland et sa quête d'autonomie* [*Greenland's Politics and its Quest for Autonomy*], CONSEIL QUEBECOIS D'ETUDES GEOPOLITIQUES [CQEG] (Mar. 30, 2021), https://cqegheiulaval.com/2021/03/30/la-politique-du-groenland-et-sa-quete-dautonomie/ [https://perma.cc/ZEW8-Y6TN] (Can.).

296 *Id.*

297 Samuel Touron, *23rd February 1982: The Day Greenland Left the European Union*, NEW FEDERALIST (June 23, 2021), https://www.thenewfederalist.eu/23rd-february-1982-the-day-greenland-left-the-european-union?lang=fr [https://perma.cc/37F2-VPDS].

298 *Id.*

299 *See* Consolidated Version of the Treaty on the Functioning of the European Union arts. 198, 204, annex II, Oct. 26, 2012, 2012 O.J. (C 326).

300 *Id.*

European market access for its products, which is crucial for its economy.[301] One could imagine the autonomy of "countries and territories beyond space" including this economic independence, an essential aspect of sovereignty, especially for states.

2. *Tribal Autonomy: The Comarca of San Blas in Panama*

Certain indigenous communities in Panama have self-government.[302] This is the case of the San Blas, an autonomous territory managed by the Kuna indigenous community along the coast of Panama.[303]

The Kuna territory is neither a province nor a department of Panama. It is a comarca, which is to say, a region in its own right.[304] The main political institution of Guna Yala is the General Congress, which approves or rejects development projects.[305] Article 12 of Law No. 16 stipulates that indigenous lands cannot be allocated to anyone who does not belong to the Guna communities unless two different congresses have approved the allocation.[306] We could imagine a similar process being established for natives of space via congresses that would approve or reject projects related to the territories corresponding to the celestial body.

Through Law No. 16, the Republic of Panama recognizes the existence and jurisdiction of the Guna General Congress and those of other indigenous congresses and tribes.[307] Additionally, it recognizes indigenous traditional authorities and the organic charter

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301 *Id.*

302 *See Les San Blas : géographie, histoire et culture* [*The San Blas: Geography, History and Culture*], TOUTPANAMA (Sept. 3, 2021), https://www.toutpanama.com/article/les-san-blas-geographie-histoire-et-culture [https://perma.cc/9Z8R-SAWQ].

303 *Kuna Yala*, NARANJO CHICO, KUNA / GUNA YALA, https://sanblaskunayala.com/narasgandup/?lang=en [https://perma.cc/6K9D-BR2Q] (last visited Dec. 20, 2022).

304 *See No. 16 (por la cual se organiza la Comarca de San Blas)* [*On the Organization of the Comarca of San Blas*], GACETA OFICIAL (Apr. 7, 1953), https://www.gacetaoficial.gob.pa/gacetas/12042_1953.pdf [https://perma.cc/8KA4-WGCT] (Pan.).

305 Antencio López, *Gunayala Dice "No" a REDD+* [*Gunayala Says "No" to REDD+*], AMANECER INDÍGENA (June 11, 2013), http://amanecerindigena.blogspot.com/2013/06/gunayala-dice-no-redd.html [https://perma.cc/8SN5-877R] (Pan.).

306 *No. 16*, *supra* note 304, art. 12.

307 *Id.*

of the community of San Blas.[308] Governmental autonomy for a people in space could pass through an autonomous jurisdictional institution allowing it to judge local affairs based on legislative autonomy. Article 13 states that the Guna state recognizes the existence of the Guna General Congress so long as it is compatible with the constitution of the Republic.[309] Traditional Guna institutions are structured around communities and village leaders, and the local assembly is responsible for the economic and administrative affairs of the community.[310] In this way, people in space could benefit from administrative and political authorities based on an agreement with a terrestrial state.

With regard to the Gunas, two institutions govern all the communities: (1) the General Congress of Guna Culture, whose main objective is to preserve and transmit the cultural heritage of the Guna, and (2) the General Congress, which deals with economic, political, administrative, and judicial matters.[311] The latter is the central government institution, chaired by three great chiefs from different regions of the Guna territory, with each local community having representatives.[312] Accordingly, self-government in outer space could use this kind of "decentralization" model if the territory were substantial.

The Guna national government is represented by an appointed official who can approve its decisions or veto them.[313] The government official is usually a Guna chosen from three candidates nominated by the General Congress.[314] A self-governing indigenous people in space could legally exist if the external right of self-determination were transferred from Earth to the people concerned through a system of indigenous approval and veto voting.

V. Conclusion

Given our journey since first encountering the literature on the right to self-determination, space law, bundles of statutes, and the fractured conception of humans in space, we would like readers to

308 *Id.*

309 *Id.* art. 13.

310 *Id.*

311 *No. 16*, *supra* note 304, art. 1.

312 *Id.* arts. 3-6.

313 *Id.* arts. 7-9.

314 *Id.* arts. 4-7.

consider reading this article as an introduction to a research agenda and an invitation to grasp the intellectual and political challenges of political sovereignty in space.

While space is currently considered based on a single prohibitive legal status—Earth's legal point of view—the development of space activities risks altering the scale of measurement. At the same time, questions dealing with the notion of national sovereignty have been explored little or not at all. This article distinguishes between the zone of the "Greater Earth,"[315] which would remain under the power of control and jurisdiction of the states of registration, and outer space, which is far from Earth's gravitational field and thus escapes its power of control and jurisdiction. Thus, by distinguishing between the onboard personnel attached to the "Greater Earth" and its legal and political influence and the "envoys of humanity," presented as astronauts detached from this influence, part of the doctrine would open the way to a plurality of legal statutes in space law.

Continuing the reflection on the foundations of a plurality of human statutes and the possible forms of sovereignty in space by mobilizing the approach of the bundles of statutes raises numerous significant issues. Outer space could benefit from the same doctrinal work by imagining it as endowed with several legal statutes. However, by combining the rules of the right to self-determination with those of space law, it would be possible to lay the groundwork for a plural national sovereignty through prohibitions concerning terrestrial states and openings for new peoples.

Nevertheless, taking up the securities and criteria characteristics of the spirit of the legislator concerning the right to independence, new peoples of space should respect a series of criteria manifested by the fact of being outside the "Greater Earth" and, de facto, outside of any terrestrial political or legal control. Accordingly, the legal status of celestial bodies would no longer be considered only under the unique lens of *res communis* and could become open to habitation projects amidst the cosmos.

Commonly described as a functional law, space law would take a completely different turn, putting the human being at the heart of its functioning mechanics, making it a standard of "human law."

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315 Arthur Woods, *The Greater Earth System*, GREATER.EARTH, https://greater.earth/GEO_DOCS/the_greater_earth_system.php [https://perma.cc/9HRU-MCFY] (last visited Dec. 20, 2022).

This humanization of space law would coincide with a broadening of the right to self-determination, removing the notion from its reductive designation as the "right to decolonization." In this way, the right to self-determination could represent an international custom outside of any colonial context, making it a "human right."

National sovereignty in space has been neglected by jurists or left in the hands of those who have made it a determining tool of absolute prohibition. Today, the interpretation of states takes precedence over this doctrinal interpretation, and the development of an application framework is long overdue. Therefore, space law is interpreted in the states' favor and is in the process of enabling space resources to be made private property. This same prohibition, which was for a long time considered by legal theory as a public good, is by its nature inappropriate. A specific part of the doctrine has established a new way of thinking about the status of humans in space, while, at the same time, the United States has opened the way to a particular form of property in space. Current efforts aim to exceed these accomplishments.

We hope to have provided the first elements of an analysis making it possible to lay the foundations of future research programs on the institutional and legal foundations of sovereignty in space based on bundles of statutes, which will be likely to nourish the development of an alternative thought regarding space law appropriate for the twenty-first century.

Appendix

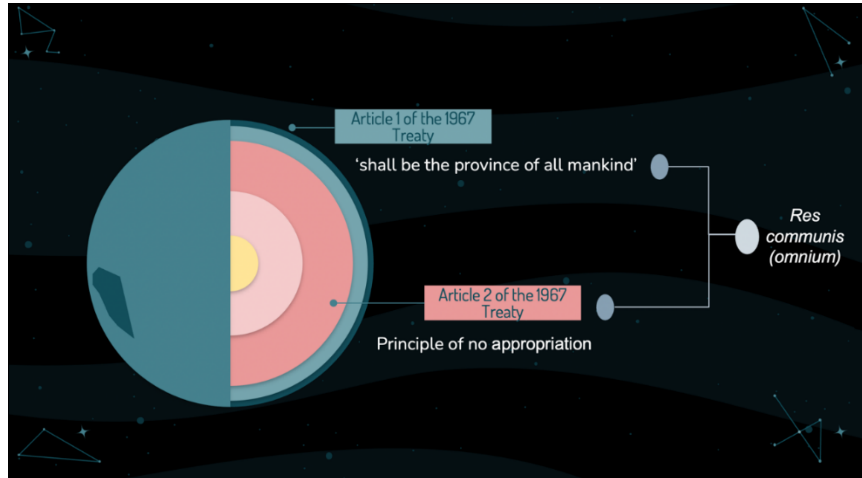

Figure 1: Legal status of outer space before 2015

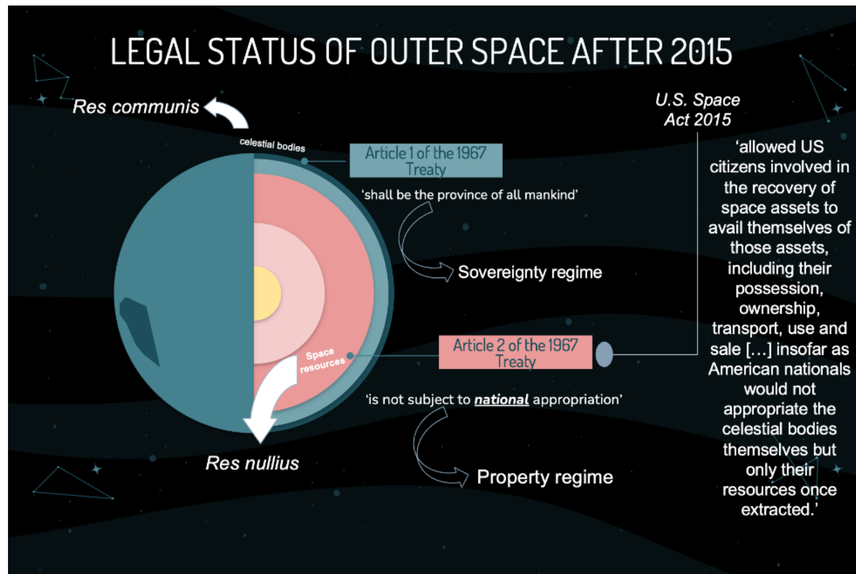

Figure 2: Legal Status of Outer Space After 2015

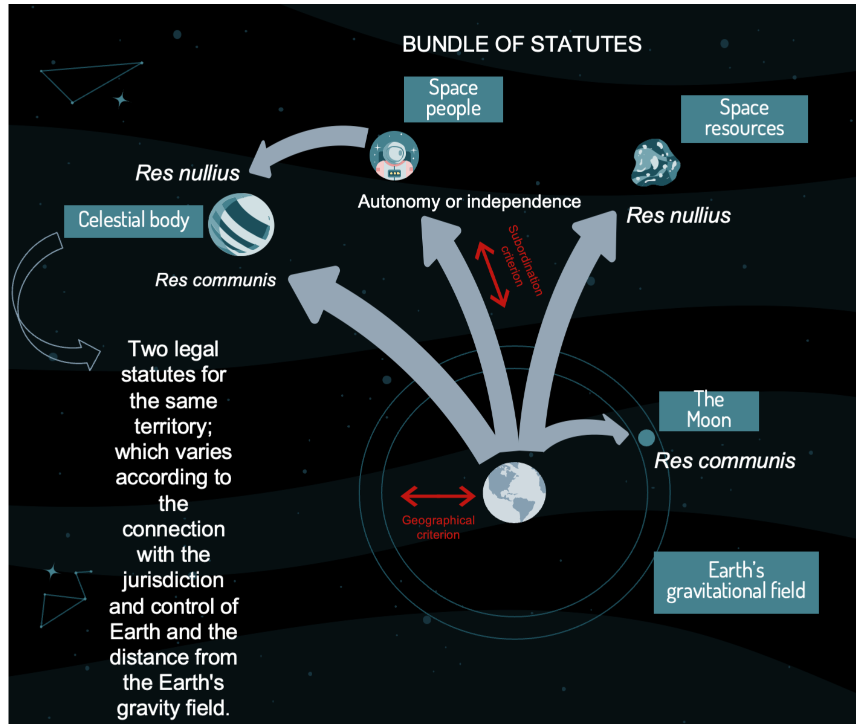

Figure 3: Legal Construction of the Bundle of Statutes

Position	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's gravitational field	✓	✓	✗
Subordination criterion: Beyond Earthly control and jurisdiction	✓	✓	✗
Sovereignty status	*Independent or autonomous*	*Res nullius*	*Res communis*

Table 1: Bundle of Statutes Associated with Position

Mars position	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's	✓	✓	✗

gravitational field			
Subordination criterion: Beyond Earthly control and jurisdiction	✓	✓	✗
Sovereignty status	*Independent or autonomous*	*Res nullius*	*Res communis*

Table 2: Bundle of Statutes Associated with Positions Relative to Mars

Moon position	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's gravitational field	✗	✗	✗
Subordination criterion: Beyond Earthly control and jurisdiction	✗	✗	✗
Sovereignty status	*Depends on the state of registration*	*Res communis*	*Res communis*

Table 3: Bundle of Statutes Associated with Positions Relative to the Moon

Moon colonization	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's gravitational field + Resolution 1541	✗	✗	✗
Subordination criterion: Beyond Earthly control and jurisdiction + Resolution 1541	✗	✗	✗
Sovereignty status	*Depends on the state of registration*	*Res communis*	*Res communis*

Table 4: Bundle of Statutes Associated with the Colonization of the Moon

Mars colonization	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's gravitational field + Resolution 1541	✓	✓	✗
Subordination criterion: Beyond Earthly control and jurisdiction + Resolution 1541	✓	✓	✗
Sovereignty status	*Independent*	*Res nullius*	*Res communis*

Table 5: Bundle of Statutes Associated with the Colonization of Mars

Distant celestial body	**Space people**	**Celestial body**	**Earth**
<u>Geographical criterion</u>: Distance from Earth's gravitational field + Resolution 2625	✓	✓	✗
<u>Subordination criterion</u>: Beyond Earthly control and jurisdiction + Occupation leading to internal rights violation	✓	✓	✗
Sovereign status	*Independent*	*Res nullius*	*Res communis*

Table 6: Bundle of Statutes associated with the Occupation of a Celestial Body Far from the Earth

Independence	**Space people**	**Celestial body**	**Earth**
<u>Geographical criterion</u>: Distance from Earth's gravitational field + Resolution 1514 or 2625	✓	✓	✗
<u>Subordination criterion</u>: Beyond earthly control and jurisdiction + Resolution 1514 or 2625 + the 2007 Declaration	✓	✓	✗
Sovereign status	*Independent*	*Res nullius*	*Res communis*

Table 7: Bundle of Statutes Associated with the Independence of the Indigenous Peoples of Space

Self-determination	**Space people**	**Celestial body**	**Earth**
Geographical criterion: Distance from Earth's gravitational field + the 2007 Declaration	✓	✓	✗
Subordination criterion: Beyond earthly control and jurisdiction + Articles 4 and 5 of the 2007 Declaration + transfer of the external right to self-determination	✓	✓	✗
Sovereign status	*Autonomous*	*Res nullius*	*Res communis*

Table 8: Bundle of Statutes Associated with the Right to Self-Government Granted to Indigenous People in Space

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