

**RULES OF THE ROAD FOR  
THE ECONOMIC EXPLORATION OF SPACE:**

**A DECLARATION OF PRINCIPLES AND PROPERTY RIGHTS  
(Legal, Institutional, Space Property and Enterprise Issues)**

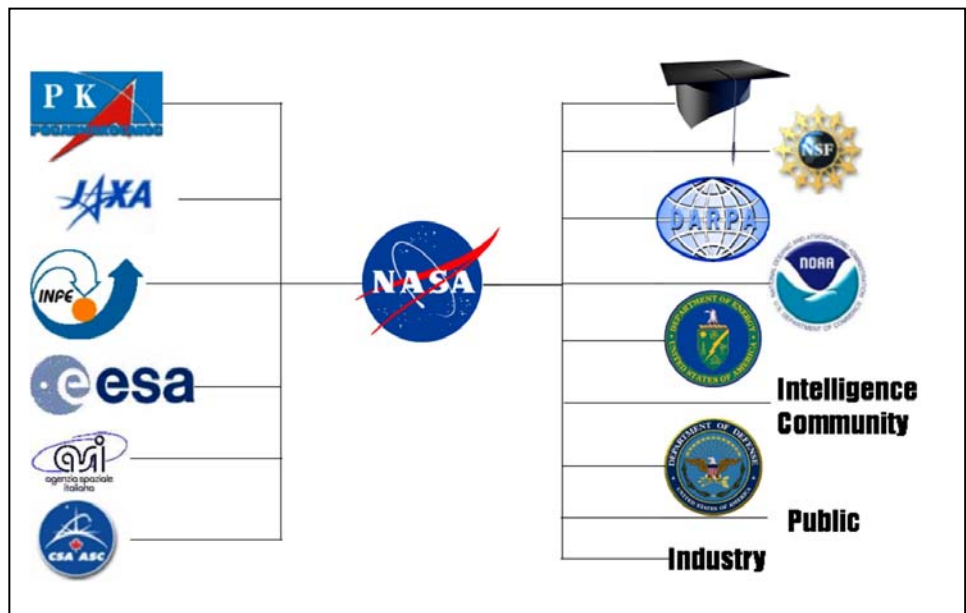
*“Wherever possible the private sector [should] be given the task of providing specified services or products in Space, and be free to determine the most cost-effective ways to satisfy those requirements . . . “*

**Pioneering the Space Frontier  
Report of the National Commission on Space, p. 11  
Chaired by Thomas O. Paine  
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**BACKGROUND:** The most challenging – and in some ways the most important – part of our renewed journey into Space will be a clear, simple statement of principles that guide U.S. and worldwide policy as to the role of enterprise, risk taking, costs and rewards when pursuing ventures in Space, be these of nations or of private enterprise, of explorers or merchants, of innovators or service providers.

Over the decades an impressive regime of international cooperation in Space exploration and the uses of Space has developed – some through explicit statutory provisions and international agreements, some by explicit or tacit understandings, some by deliberate non-specificity. In some cases, these practical steps have helped to give appropriate guidance for Space activities. In other cases, various agreements are unenforceable and have little to do with developing a regime that supports the desired role of entrepreneurs, private enterprise and innovative Space exploration.

Space activities have proceeded under defense, civil and industrial sponsorship and direction. The policies have been dominated by defense and civil considerations, rather than the private sector, as reflected by the makeup of the space interagency process summarized in



**Figure 6.1 – NASA Interagency and International Cooperation**

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Figure 6.1. But recently private industry has begun to play a much more significant – and in some cases, a dominant – role in funding the design, deployment and operation of space systems – because that course is profitable. This trend should be encouraged in the proposed effort for NASA to establish a Lunar habitat within a decade, with incentives for entrepreneurs and private enterprise.

Thus, the policies of the past – both the international ‘understandings’ and the interagency practices – need to be reviewed and updated to reflect that new reality. Such a serious updating should conform to the basic principles that have traditionally guided e.g. United States spirit and practice in exploring new frontiers, including the ideas embodied in the U.S. Constitution.

In formulating such new ‘rules of the road’ for renewed Space enterprise, it is instructive to consider some of the most remarkable passages in human thought, written by a refugee from National Socialism, a guest of British hospitality in London in 1942. Of particular note are the concluding remarks by Friedrich Hayek in his "The Road to Serfdom," written in exile in London on the foundation of free societies. These remarks addressed to his host country, England, on the inherent dangers of totalitarianism, whether national or socialistic or both, are timeless and should be heeded as various U.S. authorities consider the policy issues of Space enterprise today. (pp.177f):<sup>1</sup>

*"The purpose of this book has not been to sketch a detailed programme of a desirable future order of society. If with regard to international affairs we have gone a little beyond its essentially critical task, it was because in this field we may soon be called upon to create a framework within which future growth may have to proceed for a long time to come. A great deal will depend on how we use the opportunity we shall then have. But whatever we do, it can only be the beginning of a new, long, and arduous process in which we all hope we shall gradually create a world very different from that which we knew during the last quarter of a century. It is at least doubtful whether at this stage a detailed blueprint of a desirable internal order of society would be of much use - or whether anyone is competent to furnish it. The important thing now is that we shall come to agree on certain principles and free ourselves from some of the errors that have governed us in the recent past. However distasteful such an admission may be, we must recognize that we had before this war once again reached a stage where it is more important to clear away the obstacles with which human folly has encumbered our path and to release the creative energy of individuals than to devise further machinery for 'guiding' and 'directing' them -*

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<sup>1</sup> Europeans, including Hayek, all too easily overlook that these same ideals were the foundation of the 18th century American revolution and the VIRGINIA DECLARATION OF RIGHTS of 1775 in particular, drafted by Messrs. Mason and Lee and recognizing the Pursuit of Property Rights specifically, adopted by Mr. Jefferson a year later in drafting the Declaration of Independence and ultimately included in the U.S. Constitution. The spiritual roots of these ideas can be traced, beyond John Locke, well back to scholastic thought, including the idea of the social contract foundation of all Government powers and the role (preference) of private property over common property. (Thomas Aquinas, Duns Scotus, and Marsilius of Padua - who would extend the social contract foundation even to matters of theology (c.1270 - 1342).

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*to create conditions favorable to progress rather than to 'plan progress'. The first need is to free ourselves of that form of contemporary obscurantism that tries to persuade us that what we have done in the recent past was all either wise or inevitable. We shall not grow wiser before we learn that much that we have done was very foolish.*

*"If we are to build a better world we must have the courage to make a new start - even if that means some 'reculer pour mieux sauter'. It is not those who believe in inevitable tendencies who show this courage, not those who preach a 'New Order' which is no more than a projection of these tendencies of the last forty years, and who can think of nothing better than to imitate Hitler. It is indeed those who cry loudest for the New Order who are most completely under the sway of the ideas which have created this war and most of the evils from which we suffer. The young are right if they have little confidence in the ideas that rule most of their elders. But they are mistaken or misled when they believe that these are still the liberal ideas of the nineteenth century, which in fact the young generation hardly knows. Though we neither can wish, nor possess the power, to go back to the reality of the nineteenth century, we have the opportunity to realize its ideals - and they were not mean. We have little right to feel in this respect superior to our grandfathers; and we should never forget that it is we, the twentieth century, and not they, who have made a mess of things. If they had not yet fully learned what was necessary to create the world they wanted, the experience we have since gained ought to have equipped us better for the task. If in the first attempt to create a world of free men we have failed, we must try again. The guiding principle, that a policy of freedom for the individual is the only truly progressive policy, remains as true to-day as it was in the nineteenth century."*

Had England only listened to Hayek: let us not fail in Space, where the stakes, one may dare say, are much larger.

The need to revisit, reformulate and innovate Space Policy to conform to new opportunities and capabilities is a paramount requirement, not only for the U.S. and other Space Faring nations, but for all free market nations worldwide. This is necessary to assure substantial, productive and profitable (i.e. beneficial) uses of the vast investments made to-date by various governments, often with no regard nor incentive as to any practical uses.

What comes to mind is not dissimilar to the situation in the Colonies over 200 years ago. With the opening of the vast new territories West of the Appalachians, who and how should one decide on property and property rights – some abstract entity in distant London or the people who dared to go out and open up these new spaces for civilization? What is needed is an application of these same principles of homesteading and property rights that guided our forefathers then: the **Principles of the U.S. Constitution applied to a Declaration of Independence to and in Outer Space.**

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A new Space Doctrine is needed along with any decision to establish the first permanent outpost on the Moon, assuring thereby the High Frontier for Space Enterprise. Critical amongst these principles – which should be established as a matter of statutory rights – are the indicated in the following proposed draft “Statement of Principles of Space Enterprise.”

Obviously this draft Declaration can be improved upon, but the core principles expressed herein have to be part of any such new Declaration – without which Space enterprise for sure will be destined to fail: we might as well burn our Space ships – just as the Chinese bureaucracy did in 1423 and let the ‘barbarians of Space’ visit us.

**Absent such a Declaration of Rights: why should we have spent our precious resources to go West into the new territories; why would we have set out for Oregon and the Pacific? Indeed, why now risk our treasure on Space Exploration and Enterprise?**

Hopefully, the United States will not repeat the mistake of the Chinese World Empire of the 15<sup>th</sup> century – and leave the ‘new territories’ to others to explore and develop.

### **PROPOSED DRAFT STATEMENT OF PRINCIPLES FOR SPACE ENTERPRISE A Declaration of Space Property Rights and Independence (Williamsburg, Virginia)**

Whereas the United States started at the shores of the James River at Jamestown some 400 years ago as a privately funded expedition of uncertain prospects under the auspices of James I, King of England and claimant to the rule of France, Portugal and Spain;

Whereas the United States has been founded on a set of well understood principles fundamental to the pursuit of property [Virginia Declaration of Rights, 1775] and the freedom of man and

Whereas these principles have served the United States and the community of free nations (the “Undersigned”) well over centuries past

Whereas, in addition, the very discovery and development of the Americas were founded on the principles of the freedom of the seas, including the freedom to appropriate land and resources unclaimed or unused by others

We, the Undersigned, hereby declare:

**(1) FREEDOM OF NAVIGATION** – The new "Sea of Space" shall be open for anyone to navigate in and to undertake whatever enterprise in analogy to the Freedom of the Seas; the Undersigned, including the United States, shall not agree to or be party to any treaty, policy, regulation or understanding that limits this freedom in whatever form; We

see no difference between the Open Seas of Earth and the 'Open Seas of Space' and hence no new principles have to be invented or agreed to that would limit such freedom of navigation and enterprise - for whatever purpose.

**(2) THE RIGHT TO PRIVATE PROPERTY** – Private property is fundamental to the pursuit of enterprise, investment, exploration and freedom of man, be it on Earth or in Space; the Undersigned, including the United States, shall not agree to or be party to any treaty, policy, regulation or understanding that limits any property rights to land, resources, services, data or other economic and intellectual commodities in Space or derived from Space. In particular, the Undersigned want to re-affirm that nothing in the 'Outer Space Treaty' prohibits or contradicts full, unencumbered private property rights by any citizen of Earth, nor any and all uses of such property for whatever private or public gain. This all the more so as 'private property' is the foundation of all free societies and has existed throughout known history at least since the inception of agriculture 5,000 or more years ago, as exemplified in the Code of Hammurabi of 1780 B.C. On the other side 'national' (State, Federal) property rights are a rather recent artifact promoted by the French revolution, giving rise to 'nationalism' and 'socialism' with a concurrent notion that such 'nations' are free to steal or infringe on any such private property. The devastating consequences of these artifacts, when combined, were seen in the 20<sup>th</sup> century. Specific provisions in the Constitution of the United States prohibit any 'taking' of such private property by government(s) without due compensation, hence the United States can be no party to any treaty or agreement that directly or indirectly were to lead to such a 'taking' – a clear violation of explicit constitutional provisions.

The Undersigned see no difference between activities of free men on Earth and in Space and in particular reaffirm the right to private property of any and all means in the pursuit of exploration, science, production and commerce to be inalienable and fundamental to such freedom.

To the extent that the Undersigned de-facto or unwittingly may have been a party to different understandings in various treaties, these understandings shall henceforth be declared null and void and unconstitutional to the extent that they infringe on such property rights.

**(3) SPACE HOMESTEADING RIGHTS** – To foster the early and broadest possible exploration of Space and use of its vast resources the Undersigned hereby proclaim Space Homesteading rights whereby - in analogy to the Homestead Rights of the Tyrol and Homesteading Principles proclaimed by the United States - vast territories and resources were opened to development for the benefit of all people and world markets.

The Undersigned will recognize the appropriation by actual use of any surface and underlying mineral and resource rights by any person exercising physical control and use on the Moon or on any other Celestial body, with the size of homesteading rights to be determined for each of these bodies separately, based on generally established and agreed upon economically viable areas. Asteroids, meteorites and Space debris can be

appropriated in *toto* if they can be moved and relocated for economic use (whaling analogy).

Such Homesteading rights are granted to any person that takes physical possession of such surface or object, by himself or through ventures financed by him at his risk and benefit and actual use of such property is made. The property rights have to be exercised through use within 25 years of such initial delineation and control - or revert to Unclaimed Space status.

Lands and resources claimed as private property in Space under the Homesteading principle by US persons shall be subject to the rights and obligations of the United States constitution.

**(4) LOW COST ACCESS TO SPACE FOR PRIVATE ENTERPRISE** – Based on the principle that Government is formed to serve the individual, his rights, pursuit of freedom and property, the Undersigned Government(s) will henceforth make available at additive costs any facilities, services, hardware and intellectual Government rights in the pursuit of private Space enterprise.

By 'additive costs' are meant the costs added by each specific private activity to Government Space program, project or facility costs, and proven by Government to have been added by those specific activities to any one annual government budget appropriation. Similar access will be granted to any other free market nation that grants similar rights and access to its facilities and which participates in significant co-operative programs in Space with the Undersigned Space Faring nations.

**(5) COMPETITION** – Earth and Space are best served by open competition of ideas and enterprise in free markets, so that the best may succeed. Consonant with this premise the people of the United States and those of all the other Undersigned will pursue their goals and interests in Space as they see fit: 'anticipatory' regulations, license requirements, laws and other provisions that stifle enterprise in open markets shall not apply. This all the more so as the Outer Space Treaty specifically prohibits the extension of national sovereignty into Space, including the power of taxation.

Nor is the exploration and use of Space served by 'co-ordinated' or 'co-operative' programs for the sake of co-ordination or co-operation, if such programs were to deter or stifle competition and enterprise by any nation and its people. After all, Spain and Portugal did not set out jointly to open the world for Europe. And the Soviet Union did not set out jointly with the United States to launch the first satellite or the first man into Space. Nor did President Kennedy set out to put man on the Moon and return him to Earth by the end of the 1960's jointly with the Soviet Union. Duplication - if any - is a low price to pay for diversity of enterprise and freedom in Space.

**(6) EXERCISE OF RIGHTS AND CLAIMS** – Consonant with the positive principles of international law, the Undersigned shall claim and recognize property rights in Space only to the extent that such rights are vested in persons that control or provide services,

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resources, land or goods anywhere in Space. The Undersigned will not recognize any claims or rights based on abstract, theoretical notions of others that would infringe in any way on free enterprise by the Undersigned or any person of mankind or other civilizations yet to be encountered.

***We cannot foresee the ingenuity that companies, established or entrepreneurial, will bring to the building of new industries in the 21<sup>st</sup> century based on the Highway to Space. Nor can we know the individuals whose names will rank with Douglas, Boeing, Sikorsky, and the other pioneers of the aeronautical industry. But looking back for analogies, we know that one of America's heroes, Charles Lindberg, practiced the skills of piloting in heavy weather, prior to his Atlantic crossing, by flying the U.S. mail.***

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**Dr. Thomas O. Paine, Chairman, 1986, p. 21**