

What is a Celestial Body? M.L. Hanlon¹, University of Mississippi (mlhanlon@olemiss.edu) and David A. Epstein².

Introduction: Article II of the Outer Space Treaty states that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means. The United States has signaled, through its national law and through development and execution of the Artemis Accords, that it interprets Article II to mean that utilizing resources extracted from space, including the Moon and other celestial bodies, and allowing its nationals is permissible. As of April 12, 2022, 17 other nations have signed the Artemis Accords indicating their agreement with this interpretation. However, this understanding just scratches the surface of the implications and meaning of Article II. Deconstructing the language of Article II suggests that it may have truly been intended to restrict national – versus private – appropriation. Moreover, as we consider space with far more knowledge than we had in the 1960s, when the Outer Space Treaty was negotiated, we must consider what is meant by the term “celestial body.” On the one hand, the language of the Article suggests that nothing in space, including an orbital slot, or even the energy generated by our sun, may be “appropriated.” Yet it would be absurd to apply that literal a meaning to Article II. In the same vein, we must consider the concept of a “celestial body.” Are parties to the Outer Space Treaty obligated not to “appropriate” any even miniscule speck of cosmic dust? If the resources contained in a so-called “celestial body” are extracted to the point where the celestial body disappears, does that cross a threshold into appropriation? This presentation suggests that we need to carefully consider the implications of Article II and the various ways it can be interpreted. It will review the history of Article II as well as the concepts of the terms “space” and “celestial bodies” and challenge participants to apply a common sense threshold to the meaning of both the terms “celestial body” and “space” within the context of Article II.

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