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Chapter 27

The Moon Agreement Forty Years Later*

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Abstract

After the previous adoption of the Outer Space Treaty, the Astronaut Rescue Agreement, the Liability Convention and the Registration Convention, the Moon Agreement was concluded in 1979. This was of course preceded by the 1969 Apollo 11 Moon landing—as well as the following Apollo lunar missions. Mention should also be made of the Soviet Lunokhod missions of the 1970s. The Moon Agreement was elaborated on by the Legal Subcommittee from 1972 to 1979. It was adopted by the General Assembly in 1979. Unlike the previous treaties, however, the Moon Agreement has not found widespread acceptance. It was not until June 1984 that the fifth country, Austria, ratified the Agreement, allowing it to enter into force in July 1984. As of January 2018, there are only eighteen states parties to the treaty. It has not been ratified by any state that engages in self-launched manned space exploration or has plans to do so. While the Agreement reaffirms and elaborates on many of the provisions of the Outer Space Treaty as applied to the Moon and other celestial bodies, it also provides that the Moon and its natural resources are the common heritage of mankind and that an international regime should be established to govern the exploitation of such re-

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sources and share the benefits. These provisions are partly considered reasons for the reluctance by space powers to ratify the treaty and therefore its negligible effect. The paper will look at the drafting history, adoption, ratification process and the success/failure of the agreement.

I. Initial Developments

Legal questions concerning lunar exploration came up early in the history of space law making. Years of negotiations in the United Nations Committee on the Peaceful Uses of Outer Space and vigorous drafting and re-drafting of an international treaty to govern the activities of States on the Moon and other celestial bodies, culminated in the acceptance of the Moon Agreement (or Moon Treaty) by the UN General Assembly in 1979 [1].

The Moon Agreement supplemented the Outer Space Treaty and confirmed the demilitarization of the Moon and other celestial bodies as was provided for in said treaty. The Agreement also prohibited the use or threat of use of force, or any other hostile action or threat of hostile action on the Moon. The Moon was *expressis verbis* reserved for peaceful purposes [2].

II. Drafting History

The United States was among the first to give an impulse for a treaty on the exploration and use of the Moon in 1966 [3].

It began being discussed at UNCOPUOS in 1969 and the discussions would go on until 1978, when a treaty text that had been prepared by Austria and was based on earlier drafts by different states could obtain consensus [4]. Among the controversial issues were the scope of application—the Moon or the Moon AND other celestial bodies—and the regime of resource utilization [5]. The negotiations went on in parallel to the Third UN Conference on the Law of the Sea. This conference ended with the adoption of the UN Convention on the Law of the Sea in 1983 [6].

Argentina is sometimes credited with having initiated the discussion in UNCOPUOS about a treaty or agreement concerning the Moon and other celestial bodies but discussion on the topic had already been proposed by the United States in 1966 [7].

The Soviet Union submitted a draft treaty to the UN Secretary-General and requested that the development of a Moon treaty should become an item on the UN General Assembly's agenda [8]. The General Assembly then urged UN-

COPUOS and its Legal Subcommittee to prioritize the elaboration of a draft Moon treaty. The Legal-Sub-Committee therefore included a new agenda item “questions relating to the Moon” and created a working group to elaborate the matter. A draft treaty based on the working group’s results and several working papers was formulated in 1972. The following negotiations mainly had their focus on two questions: the utilization of resources and the scope of application [9]. The substance of most provisions formulated by the working group was not disputed [10].

A draft agreement was finally submitted by Austria in 1978. This draft was the outcome of informal negotiations and cleared the way for the adoption of a final draft. This final draft was submitted to the General Assembly in 1979 [11].

III. Early Draft Proposals

US President Lyndon B. Johnson sought discussions in the UN framework to achieve an international accord on the Moon and other celestial bodies in 1966. The American ideas were set out in a letter of Ambassador Arthur Goldberg to the chair of UNCOPUOS. This letter contained twelve essential elements to be included in an eventual celestial bodies treaty. A draft “Treaty Governing the Exploration of the Moon and other Celestial Bodies” was attached to the letter [12].

This draft treaty repeated many provisions of the draft Outer Space Treaty. And it particularly highlighted the importance of the freedom of exploration and use and scientific investigation of celestial bodies—thereby focusing on the prohibition of stationing weapons of mass destruction, as well as other military installations on the Moon and other celestial bodies [13].

This is where the Argentine proposal becomes significant. A “Draft Agreement on the Principles Governing Activities for the Use of the Natural Resource of the Moon and Other Celestial Bodies” was proposed by the Argentine delegate Aldo A. Cocca. The Argentine proposal got support from the US [14].

While the US submission focused on the freedom to explore and use the Moon and other celestial bodies, as well as environmental concerns and the question of claims of sovereignty and ownership, the Argentine proposal principally and exclusively focused on the exploitation of lunar resources [15].

IV. The Final Treaty

The final provisions of the Moon Agreement are the same as they are in the other UN space law treaties. It is, however, noteworthy that only the Registration Convention and the Moon Agreement included Arabic as authentic language. The inclusion of Arabic was done on the behest of Austria [16].

The Moon Agreement's text was adopted by the UN General Assembly in resolution 34/68 on December 5, 1979, opened for signature on December 18, 1979, and entered into force on July 11, 1984, thirty days after the fifth instrument of ratification was deposited (by Austria) [17].

The Moon Agreement's regulations are often very remindful of the Antarctic Treaty and the UNCLOS seabed regime [18].

V. The Moon Agreement in Brief

The Moon Agreement does not contain a list of definitions, nor does it introduce new terminology [19].

The Moon Agreement is the only UN space treaty that defines its scope of application. Art. 1 MOON defines the treaty provisions as applying to:

- the Moon;
- other celestial bodies within the Solar System (other than Earth);
- orbits or trajectories around the Moon [20].

Principally speaking, the Moon Agreement applies to asteroids, comets, planets and their moons. This may also have certain repercussions for any asteroid mining plans [21].

The Moon and other celestial bodies are to be used for exclusively peaceful purposes. These include the prohibition of:

- the threat or use of force;
- the placement of weapons of mass destruction within the territorial scope of application of the treaty;
- any weapon testing on the Moon (and other celestial bodies);
- the establishment of military bases, installations and fortifications;
- the conduct of military maneuvers [22].

The agreement prohibits the establishment of military bases, installations, and fortifications on the Moon as well as the testing of any type of weapons, and the conduct of military maneuvers on the Moon. But the use of military personnel for scientific research or for any other peaceful purposes is not forbidden. Nor is the use of any equipment or facility necessary for peaceful exploration and use of

the Moon prohibited. The employment of military personnel and/or hardware is also allowed [23].

The Moon Agreement reinforces the freedom of exploration, freedom of use and freedom of scientific investigation. The latter explicitly contains the right of States Parties to collect and remove samples of minerals and other substances from the Moon and other celestial bodies [24].

The Moon Agreement evokes Art. I Outer Space Treaty by referring to the Moon as the “province of all mankind” [25].

Other articles deal with landing and launching, personnel, vehicles, installations and free access by States Parties to the latter on the Moon [26].

Planetary protection is also dealt with in the agreement [27].

Art. 11 MOON is considered the treaty’s pivotal and most controversial provision declaring the Moon (and other celestial bodies) and its natural resources the “common heritage of mankind”—a concept that is neither clearly defined nor uniformly understood. It is also used in other public international law contexts such as the Antarctic Treaty [28].

The most controversial and contested part of the article is the provision for an equitable sharing by all states parties in the benefits derived from those resources, with special consideration for the interests and needs of developing countries and the effort of those countries which have contributed to the exploration of the Moon [29].

Most commentators consider this the main reason for the low number of ratifications—especially by major spacefaring powers.

VI. History Marching On

After having been finalized in 1979 and, after satisfying the condition requiring five ratifying states, the Moon Agreement entered into force for the ratifying parties in 1984. As of January 2018, eighteen states are parties to the treaty, seven of which ratified the agreement and the rest acceded. Four additional states have signed the agreement but did not ratify it. The L5 Society and others successfully opposed ratification of the treaty by the United States Senate [30].

Although additional ratifications did happen and continue to happen on occasion (the most recent being Armenia in 2018) the Moon Agreement seems to have effectively failed—especially due to its de facto rejection by the major space powers. This seems even more obvious in light of the new plans for activities on celestial bodies and given the current geopolitical climate.

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