

Study of the drafting history of the Moon Agreement

IISL/ECSL Space Law Symposium 2019
The Moon Agreement Revisited: The Road Ahead

Irmgard Marboe, University of Vienna
Vienna – 1 April 2019

Overview

- **Historical Background and context**
- **Draft documents and controversial issues 1966-1978**
- **Final negotiations in 1978 and 1979**



Historical Background

- **“Space Race” between the US and the USSR**
 - “Soft landings” on Moon by USSR in February and by US in May 1966
- **Arms control efforts**
 - Limited Test Ban Treaty 1963
 - Anti-Ballistic Missile Treaty 1972
 - Strategic Arms Limitation Treaty 1972
- **Outer Space Treaty 1967**
 - Banning weapons of mass destruction in Earth orbit and on celestial bodies
 - Use of the Moon for “exclusively peaceful purposes”

Context

- Proposal by Malta to the UN General Assembly on 1 November 1967:
 - The seabed and the ocean floor beyond the limits of national jurisdiction be declared the “common heritage of mankind”
- Statement of Argentina in the UNCOPUOS Legal Subcommittee in 1967:
 - “Mankind” as a new subject of international law to which outer space appertains
- UN GA Declaration of Principles Governing the Sea-Bed and the Ocean Floor 1970
- Third UN Conference on the Law of the Sea 1973-1982
 - The “Area” and its resources are the “common heritage of mankind” (Art. 136 UNCLOS)
- Declaration for a “New International Economic Order” in UN GA in 1974

Draft Treaty by the United States 1966

- **Draft Treaty Governing the Exploration of the Moon and Other Celestial Bodies**
 - Annex to a letter from the Permanent Representative of the USA addressed to the chairman of UNCOPUOS
 - Repeats many provisions from the draft OST
 - Focuses on freedom of exploration and scientific investigation
 - Prohibits stationing of weapons of mass destruction, as well as other military installations, on the Moon and other celestial bodies
 - UN Doc. A/AC.105/35, Annex I, 16 September 1966

Working papers by Argentina and others 1969

- **Working papers and proposals submitted in UNCOPUOS in 1969**
 - Argentina, 13 June 1969
 - Argentina and Poland, 27 June 1969
 - Argentina, France and Poland, 1 July 1969
- **Rules governing human activities on the Moon and other celestial bodies**
- **Utilization of resources**



Draft Treaty by Argentina 1970

- **Draft Agreement on the Principles Governing Activities for the Use of the Natural Resources of the Moon and Other Celestial Bodies**
 - Focus on the legal status and the exploitation of the “natural resources of the Moon and other celestial bodies”
 - They shall be the “common heritage of all mankind”
 - Legal system applicable to natural resources used in their place of origin “shall be distinct from that applicable to those brought to Earth for use”
 - Benefits obtained shall be made available to all peoples without discrimination of any kind
 - UN Doc. A/AC.105/C.2/L.71 and Corr.1, 23 June 1970
 - Supported by numerous States, including the United States



Draft Treaty by Soviet Union 1971

- **Draft Treaty Concerning the Moon**
 - Letter from the Minister of Foreign Affairs of the Soviet Union to the UN Secretary General
 - UN Doc. A/8391, 4 June 1971
 - Requested the inclusion of an agenda item addressing the development of a Moon treaty
 - Did not cover celestial bodies other than the Moon
 - Neither the surface nor the subsoil could become the property of States or anybody else
 - “Common heritage of mankind” not taken up

Agenda Item and Working Group

- **“Questions relating to the Moon”**
 - New agenda item of UNCOPUOS Legal Subcommittee in 1972
 - Working Group established
- **First draft presented in 1972**
- **Agreement on several articles in 1973**

Controversial issues

- **Scope of agreement**
 - Moon and other celestial bodies?
- **Natural resources**
 - Legal status – Common heritage of mankind?
 - Benefit sharing?
 - Moratorium?

Final negotiations in 1978 and 1979

- **Agreement Governing the Activities of States on the Moon and other Celestial Bodies**

- Working paper submitted by Austria
 - UN Doc. A/AC.105/218, Annex I, Report of Chairman of WG I, Appendix, 13 April 1978
- Result of informal negotiations

- **Compromise found**

- Article 11 declares the Moon and its natural resources as the “common heritage of mankind”
- Which “finds its expression in the provisions of this Agreement, in particular in para. 5 of this Article” (Amendment by Brazil)
- International regime be elaborated in the future, as exploitation becomes feasible

Adoption and Entry into Force

- **Agreement Governing the Activities of States on the Moon and other Celestial Bodies**
 - Approval by all 47 members of UNCOPUOs in 1979
 - Adopted by UN General Assembly by consensus on 5 December 1979
 - Opened for signature on 18 December 1979
- **Entry into force**
 - 30 days after the date of deposit of the fifth instrument of ratification
 - Article 19 Moon Agreement
 - 11 July 1984