Study of the drafting history of the Moon Agreement

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The Moon Agreement Revisited: The Road Ahead

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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
  - 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
    - 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
  - 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