

IISL / ECSL Space Law Symposium  
'The Moon Agreement Revisited: The Road Ahead'  
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# The Legacy of the Moon Agreement, Revisited: Context, Opportunities and Risks



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The views expressed in this presentation are done so in my private capacity and do not reflect the position or views of the Australian Government or any of its Agencies

# The Moon Agreement: Context



**1970s →**

- Existing geopolitical tensions
- Period of decolonization (under UN Charter)
- Concurrent discussions regarding the law of the sea
- Reaffirmation of important principles including 'non-appropriation'
  
- Anticipation of future 'benefits' from 'exploitation' of the natural resources of Moon (and other celestial bodies) (Preamble par. 5)
  - But how? → regime under the Moon Agreement
  - Not a matter of immediate urgency at the time

**Now →**

- Renewed and more immediate interest in this issue due to emerging technology

# Exploiting Natural Resources of Outer Space



- ❑ Non-appropriation – OST Art II / Moon Agreement Art 11(2)
  - important 'non-colonization' principle
  - proactive rule to minimise risk of conflict
    - not introduced with resource exploitation in mind but now ...
    - ... relevant in discussions concerning future resource exploitation (including for non-State entities)

*[outer space, including] the Moon [and other celestial bodies,] is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means*

- ❑ Other 'natural resources' of outer space
  - Pragmatic application within Multilateral context
    - Geostationary Orbit

# The Opportunity: Using the Moon Agreement Review Process to encourage a Multilateral Regulatory Regime



Article 18  
Parties can  
convene a  
conference to  
'review' the Treaty

- Flexibility as to implementation of Art 11(5)
  - 'Any relevant technological developments'
  - Any 'result' may not exactly reflect Art 11(5)
- Opportunity to get 'everyone in the same room'
  - Input from States Parties and observer States
  - A platform from which to progress?



What would/could an  
'International Celestial  
Bodies Authority' look  
like?

- form / structure?



What conditions  
would/could be  
stipulated for any  
'licence to exploit'?

- environmental safeguards
- 'royalties'? – to whom and how distributed?
- transfer of rights?
- technology transfer?

# The Risk



Will States agree on a framework for a Regulatory Regime?  
If so, on what basis?  
Applicability of fundamental principles underpinning Moon Agreement?



Impact of national regulation in the absence of an international agreement / Multilateral regulation based on consensus?



**Worst case scenario - a potential challenge to the rationale underlying non-appropriation in its original and fundamental sense?**

# Joint Statement by 7 State Parties UN Doc. A/AC.105/C.2/L.272 (2008) (par. 7(e))

“...It is remarkable that the Moon Agreement does not propose a closed and complete mechanism. Rather, it adopts an intelligent approach, leaving to the States involved at the time when the exploitation of the natural resources of celestial bodies becomes feasible the responsibility for defining, setting up and implementing such a regime, in accordance with the principle of common heritage of mankind and other principles of outer space law...”

**“Such a regime should be established and implemented by taking into account simultaneously the relevant political, legal and technical facts, possibilities and requirements existing at that time...”**

**“In that respect, the Moon Agreement constitutes a proactive instrument for achieving consensus among all States, taking into account the interests of developing countries. The Moon Agreement does not preclude any modality of exploitation, by public or private entities, or prohibit the commercialization of such resources, provided that such exploitation is compatible with the principle of a common heritage of mankind”**

# Crystal Ball Gazing: An Optimist's View



Avoiding the potential for any  
conflict in space

→ Multilateral cooperation  
involving States / UNCOPUOS  
will be key to ensure the  
interests of every stakeholder

The world has changed  
significantly since 1979  
Now the 'faintly possible'  
may become 'highly  
probable'

Fundamental issues:  
\* how do we view space?  
\* how *should* we view  
space?

The Moon Agreement  
→ A catalyst for  
Multilateral  
cooperation, either  
from 'within' or under  
a new widely agreed  
framework