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The Moon Agreement – Perspective from Developing Countries

José Monserrat Filho

Brazilian Association of Air and Space Law (SBDA)
Brazilian Society for the Advancement of Science (SBPC)
Rio de Janeiro, Brazil

"What was most significant about the lunar voyage was not that men set foot on the Moon, but that they set eye on the Earth."

Norman Cousins (1912-1990),
American editor and political essayist.

My approach is more historical and political than legal, as the Moon Agreement seems to be today mostly a political question.

The current plans to return to the Moon, this time to use and exploit the lunar resources *in situ*, call for a return to the Moon Agreement.

It is a unique experience of an international effort to regulate human settlement on a celestial body.



Developing countries had a special link with the Moon Agreement in the process of its drafting, as well as in its final approval, in 1979.

The Moon Agreement was discussed, negotiated and approved during the 1970s in the Legal Subcommittee of COPUOS.

At that time, the developing countries played an important role in the UN debates and had some influence on certain international affairs.

The UN General Assembly adopted the Moon Agreement by consensus.

It occurred, in great extent, thanks to the political mobilization and the diplomatic efforts of the developing countries.

During the 1970s, a large coalition of developing countries for the first time in history proposed to the United Nations the creation of a new international economic order to stimulate development of all countries, and in this way to overcome the huge inequalities existing in the world – a problem that still challenges the international community.

These ideas inspired some key elements of the Moon Agreement.

The debates on the Moon began late in the 1960s with a focus on the concern about the escalating race to the Moon shown by the USA and USSR, and its political and military implications.

However, the Moon Agreement in its final form reflected, on some essential issues, the expectations of developing countries.

Developing countries introduced the principle of equitable sharing of benefits from the exploitation of the natural resources of the Moon and other celestial bodies.

“It is the most important and innovative provision of the Moon Agreement.” *(Ram Jakhu)*

In July 1970, the Argentinian delegate, Prof. Aldo Armando Cocca, backed by Egypt, India and the USA, presented the first draft agreement on the use of the natural resources of the Moon.

Its Article 1^o proclaimed: "The natural resources of the Moon and other celestial bodies shall be the common heritage of mankind" (CHM).



**Argentina also proposed
these two Articles:**

**# “The benefits obtained from the use of
the natural resources of the Moon and
other celestial bodies shall be made
available to all peoples without
discrimination of any kind.”**

“In distributing such benefits, account shall be taken of the need to promote the attainment of higher standards of living and conditions of economic and social progress and development, pursuant to Article 55 (a) of the Charter of the UN, in the light of the interests and requirements of the developing countries and the rights of those undertaking these activities.”

**Article 55 (a) of the UN Charter
is the basis of the Law of
Development, which has been
defended by the developing
countries since the 1960s.**



In April 1972, Egypt and India proposed an article on natural resources of the Moon, supporting the CHM principle, as well as the concept of “sharing benefits”.

The mobilisation in favor of such ideas began to increase among not only the developing countries but also the developed world.

Sweden's Ambassador considered the concept of the CHM as part of the much more larger problem of turning the exploration and the exploitation of outer space from its present unilateral or bilateral course into an international undertaking with tangible UN involvement.

Bulgaria, India, Egypt, Nigeria and Mongolia were members of an active Working Group concerned the scope of the Moon Agreement, the lunar missions, and the use of the Moon's natural resources.

In 1974, they suggested a conference to implement an international regime to govern the exploitation of the lunar resources.

It is important to note that the CHM principle was the primary cause for the prolonged negotiations from 1970 to 1979 leading to the Moon Agreement.
(Harold Bashor)

It is remarkable that the USA used to support the CHM doctrine, while the USSR opposed vehemently such a principle.

In consequence, the USSR became increasingly isolated in the debates on this issue, and the USA became closer to the developing countries.

It was not until 1979 that space powers, the USSR and USA, agreed on the inclusion in the Moon Agreement of the CHM, "a principle with language very favourable to developing countries". (*Harold Bashor*)

“The Moon Agreement contains a 'balance of interests' of the space powers (which would be engaged in the exploration and eventual exploitation of natural resources of the Moon) and those of the rest of international community.”

(Ram Jakhu)

“An attempt to reach a generally acceptable compromise was made by joining the confirmation of the freedom of scientific investigation, and the exploration and use the Moon as a right of all States, with the stipulation to establish an international regime governing the exploitation of the natural resources of the Moon, as such exploitation is about to become feasible.” *(Vladimir Kopal)*

This international regime should include rules relating to an “equitable sharing by all States Parties in the benefits derived from those (lunar) resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the Moon”.

“It is impossible to predict whether the nature and scope of the future regime governing activities on the Moon would be based exclusively on the current Moon Agreement or on a new agreement.” *(Ram Jahku)*



“Whatever the substance of the future lunar regime, it should include the principle of CHM. If the principle of CHM could be retained in the Law of the Sea Convention, there is no logical reason for excluding this principle from the future legal regime to govern the exploitation of the natural resources of the Moon and other celestial bodies.” *(Ram Jakhu)*

"The International Institute of Space Law (IISL) is of the opinion that a specific legal regime for the exploitation of such a (lunar) resources should be elaborated through the UN, on the basis of present international space law, for the purposes of clarity and legal certainty in the near future."

(Statement of the Board of Director, approved by consensus on March 22, 2009)

Is the Moon Agreement part
of the basis of the present
international space law?

Of course, it is.

Ram Jakhu often
recommends:

“All States should ratify
the Moon Agreement
as soon as possible.”

Are the developing countries mobilized today to sign and ratify the Moon Agreement as they were in the 70's for approval by COPUOS and by the UN General Assembly?

No, they are not.

But the political strength of developing countries – after more than 20 years of weakness – seems to emerge again, appraised and put in motion by the so-called emergent countries, like China, India, Brazil, Argentina, South-Africa, among others.

The world is moving toward a new global geo-political scenario.

Maybe it will bring us a trully new and sound regulation to govern the human activities on the Moon on a fair and sustainable basis in this extremely dangerous XXI Century.

But are we mobilized for that?



**Thank you for your
kind attention.**