



Some Legal and Factual Considerations about the 1979 UN Moon Agreement

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Status

- adopted by UNGA Resolution 34/68
- 13 States parties, 4 States signatories to this day
- entered into force on July 11, 1984

Key Provisions

Two types of provisions in the Moon Agreement:

- recalling and adapting principles from the 1967 UN Outer Space Treaty;
- providing specific principles, rules, procedures applicable to activities on Celestial Bodies

Scope and Definition

- Celestial Bodies = celestial bodies of the Solar System
- including their orbits
- excluding the Earth
- “**celestial bodies**” not defined
 - > reference to astronomy (size, trajectory, etc. – cf. Fasan/IISL 1964)

General Principles

- Compliance with international law
- Prohibition of weapons of mass destruction / nuclear weapons
- Province of all mankind / Non Appropriation(*)
- Cooperation + Mutual Assistance
- Freedom of scientific investigation
- Non Contamination
- Placing of facilities, equipment, personnel
- Non Interference
- International Responsibility / Liability
- Adherence by intergovernmental organisations

Specific Provisions (1)

- Use for exclusive peaceful purpose (Art. 3.1)
- Prohibition of threat, hostile act
(Art. 3.2 French reservation – not in force: interpretation as application of general international law)
- Prohibition of military and weapons-related activities
(Art. 3.4)

Specific Provisions (2)

- Sharing of information on the mission and of scientific results (Art. 5.1)
 - mission > 60 days: report/30 days
 - mission > 6 months: significant results
 - + access to samples (Art. 6.2 - ! French translation)
 - + possibility of scientific reserve areas (Art. 7.3)
- Discovery of ALF or dangerous phenomena for human life: immediate report to UNSG (Art. 5.3)

Specific Provisions (3)

- Notification of placement or use of radioactive materials on Celestial Bodies (Art. 7.2)
- Non-interference principle and mechanisms (consultations) for ground and underground activities and settlements (Arts. 8, 9 and 15)
- Jurisdiction on registered facilities, on vehicles (assimilation to space objects) and on their personnel

Specific Provisions (4)

Common Heritage of Mankind (Art. 11):

- No common definition under international law (cf. 1982 UNCLoS)
- Regime to be established allowing the exploitation of Celestial Bodies' natural resources

Resources Exploitation (1)

Moon Agreement: only instrument featuring the term “*exploitation*” of outer space resources

Specified Purposes (Art. 11.7)

1. orderly and safe development of resources;
2. rational management of those resources;
3. expansion of opportunities of use;
4. equitable sharing of the benefits (considering interests of **developing countries** and **pioneer States**)

Resources Exploitation (2)

Exploitation and Non-Appropriation

The Non-Appropriation Principle is provided by the 1963 UNGA Resolution, the 1967 Outer Space Treaty, the 1979 Moon Agreement and, arguably, by international customary law

“The United States rejects any claims to sovereignty by any nation over outer space or celestial bodies, or any portion thereof [...]” (emphasis added)

(US National Space Policy, 2006)

Resources Exploitation (3)

Various Considerations

- Exploitation of consummable space natural resources: only considered by the Moon Agreement as compatible with the non appropriation principle
- Condition: international regime granting individual rights in compliance with the enunciated purposes
- Nothing excludes private enterprise from such a regime (to the contrary)
- Need to regulate such an exploitation and its impact on global economy

Conclusion

The Moon Agreement :

- may seem utopist because of the concept of Common Heritage of Mankind;
- is the only existing treaty addressing the possibility of exploitation of Celestial Bodies' mineral resources;
- offers a framework for possible solutions with regard to such an exploitation;
- identifies the ultimate purposes of such an exploitation taking into account its impact on global economy (new raw material in huge quantity with new applications – technological revolution?)

What is the alternative?