

ABSTRACT PAPER

Some Legal and Factual Considerations about the 1979 UN Moon Agreement

*Symposium IISL/ECSL at the occasion of the 48th session
of the UNCOPUOS Legal Sub-Committee*

by Jean-François Mayence, LL.M.
Belgian Federal Office for Science Policy,
Lecturer at Katholieke Universiteit Leuven

March 2009

The presentation addressed the status and the content of the 1979 UN Moon Agreement, recalling it has been adopted by a UNGA Resolution, has entered into force on July 11, 1984 and counts 13 States parties in March 2009.

It distinguished two types of provisions:

1° those provisions reiterating principles already stated by the 1967 UN Outer Space Treaty (and, previously, by the 1963 UNGA Resolution on Principles applicable to Outer Space);

2° those provisions specific to the Moon Agreement, either because they provide a further level of detail applicable to Celestial Bodies, or because they provide for new principles or rules which are not foreseen by any other space treaty.

Before reviewing those provisions, the notion of Celestial Body needs to be clarified: no legal definition is given by the Moon Agreement or space law in general, except the facts that the celestial bodies in question must belong to our Solar System, that they include their respective orbits. Reference can be made to astronomy and several elements of definition already identified by doctrine (i.e. IISL Report 1964/Fasan mentioning the size and the trajectory as possible parameters).

General principles applicable to the Celestial Bodies

All major principles of Outer Space law are applicable to the Celestial Bodies, either according to the Outer Space Treaty's provisions, or according to the Moon Agreement:

- 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 organizations.

Specific provisions applicable to the Celestial Bodies

The prohibition of military activities on the Celestial Bodies and their use for exclusively peaceful purposes constitute a restriction with regard to the general prohibition of weapons of mass destruction in outer space. The prohibition of threat or any hostile act seems to go further than the general principles of international public law. However, a French reservation (not in force as long as France has not become a party to the Moon Agreement) considers that prohibition as a simple recall of the peaceful settlement of dispute principle.

The Moon Agreement organises a detailed regime for the sharing of data resulting from the exploration of the Moon, taking into account the duration of the mission. It allows access to collected samples for scientific purposes only. It foresees immediate notification to the UN Secretary General in case of discovery of alien life form or threat for the human life.

The Moon Agreement requires notification in case of use of nuclear power sources and calls for consultations when needed, in order to avoid possible interference between activities on the ground surface or under the surface of the Celestial Bodies.

The Moon Agreement provides for the extension of national jurisdiction to facilities (incl. ground stations and assets) registered by States parties (note that such a regime is foreseen by Article VIII of the Outer Space Treaty with respect to space objects. Other treaties, notably the 1959 Antarctic Treaty, miss such a regime of extra-territorial jurisdiction on fixed assets).

Finally, the major specificity of the Moon Agreement remains in its Art. 11 qualifying the Celestial Bodies' natural resources as the Common Heritage of Mankind. This notion is also featured by the 1982 Montego Bay Convention on the Law of the Sea (Part XI) but with a different content. Actually, the Moon Agreement is limited to the qualification of that regime and to the enunciation of the purposes which should conduct the elaboration of the future exploitation regime.

Exploitation versus Non-Appropriation

The Principle of Non-Appropriation, meaning that no State can extend its sovereignty on outer space, on part of it or on its natural resources, has for consequence that no

ownership rights can be claimed by individuals on the basis of national law. This results in some doubt about the actual possibility to economically exploit outer space's resources, especially those which are limited or consumable.

This principle is simply recalled by the Moon Agreement but finds its origin in the 1963 UNGA Resolution on Principles applicable to Outer Space, in the Outer Space Treaty and, arguably, in international customary law. Therefore, if natural resources from Celestial Bodies cannot be appropriated at some point and, therefore, be exploited on basis of national law, the only remaining solution is the setting-up of an appropriate international regime, just as we know it in the international law of the sea. And that's precisely what the Moon Agreement foresees.

The Moon Agreement is the only space law instrument that features the notion of "exploitation" of space resources. Such exploitation must respond to the following purposes:

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**).

Apart from that, States parties are free to define the most appropriate exploitation regime which would allow an intelligent, equitable and profitable exploitation of those resources. It must be noted that, just like as it is foreseen by the 1982 Montego Bay Convention (Part XI), private enterprise and commercial venture do have a key role to play in the implementation of such a regime. The collective role of States, possibly through the establishment of an *ad hoc* intergovernmental organization, should focus on the necessary regulation of the system in order to make it meet the purposes enunciated by the Moon Agreement. But the development of industry of various sectors (transformation, manufacture, high tech, services, etc.) in all nations certainly remains the most natural way of meeting the Moon Agreement ultimate goal: the universal, sound, responsible and equitable profit from the Celestial Bodies' natural resources.

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