

SPACE LAW AND POLICY
WITH SIMULATED NEGOTIATIONS
[8]

THE MOON AGREEMENT OF 1979

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SPACE NEWS:

BBC News [23 May 2016]

India launches mini space shuttle

Since Nasa stopped its **Space Shuttle programme** in 2011, there has been strong international competition to design alternative reusable spacecraft. Such vehicles could significantly cut the cost of space exploration. India has been putting substantial research and resources into its space programme.

A **Mars orbiter** launched in 2013 is its most high-profile space venture to date. It hopes to launch a full-scale reusable shuttle within a decade.

<https://www.youtube.com/watch?v=6Pn6-EON-Hs>

THE MOON AGREEMENT OF 1979

AGREEMENT GOVERNING THE ACTIVITIES OF STATES
ON THE MOON AND OTHER CELESTIAL BODIES

1. OVERVIEW

- ✓ The 5th international agreement negotiated in UN
- ✓ Adopted **by consensus** in UNCOPUOS as well as the UNGA Resolution 34/68, opened for signature in 1979, entered into force in 1984
- ✓ Not ratified by major spacefaring states due to

the concept of **Common Heritage of Mankind (CHM)**

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(Its concept is not clarified in the agreement)

Drafted in parallel to the negotiations of the Third Law of the Sea Conference

→ similar discussion took place (i.e. **Article 136 of the UNCLOS** declaring

“the **deep seabed** and its resources to be the CHM”)

→ affecting to the CHM in the Moon Agreement

→ also influence by **the Antarctic Treaty of 1959**

(free access, demilitarization and mutual inspections)

1. OVERVIEW

◆ Influenced by the US-USSR Cold War

after the Cuban missile crisis in 1962, negotiations between US and USSR led to arms control, extending into outer space (particularly to protect astronauts).

→ **The Limited Test Ban Treaty of 1963** prohibits nuclear testing in outer space

◆ “Space Race” in the drafting process

① Lunar 1 (USSR) and Pioneer 4 (US) had already performed a flyby of the Moon.

② On 20 July 1969, Neil Alden Armstrong (US) landed on the Moon

◆ Status of the Agreement

States Parties: Austria, Australia, Belgium, Chile, Kazakhstan, Lebanon, Mexico, Morocco, The Netherlands, Pakistan, Peru, Philippines, Uruguay

Signatory countries: France, Guatemala, India, Rumania

2. PREAMBLE

Noting the achievements of States in the exploration and use of the Moon and other celestial bodies,
Recognizing that the Moon, as a natural satellite of the Earth, has an important role to play in the exploration of outer space,

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Determined to promote on the basis of equality the further development of cooperation among States in the exploration and use of the Moon and other celestial bodies,

Desiring to prevent the Moon from becoming an area of international conflict,

Bearing in mind the benefits which may be derived from the exploitation of the natural resources of the Moon and other celestial bodies,

→ Neither artificial space objects nor space debris are included.

3. ARTICLE I: THE SCOPE OF APPLICATION

1. The provisions of this Agreement relating to the Moon shall also apply to other **celestial bodies within the solar system, other than the Earth**, except insofar as **specific legal norms** enter into force with respect to any of these celestial bodies. 

→ specific norms formulated are prioritized when formed (asteroid?)

2. For the purposes of this Agreement reference to **the Moon shall include orbits around or other trajectories to or around it**. 

3. This Agreement does not apply to **extraterrestrial materials** which reach the surface of the Earth **by natural means**.

→ × meteorite 

→ ○ natural resource taken from asteroid by artificial means

✂ asteroid mining: <https://www.youtube.com/watch?v=erF17yO9VsE>

4. ARTICLE VI AND X: EXPLORATION VS. SPACE BUSINESS

1. [...] freedom of scientific investigation on the Moon [...]

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2. In carrying out scientific investigations [...] **the States Parties shall have the right to collect on and remove from the Moon samples of its mineral and other substances**. Such samples shall remain at the disposal of those States Parties which caused them to be collected and may be used by them for **scientific purposes**. States Parties shall have regard to the desirability of making a portion of such samples available to other interested States Parties and the international scientific community for scientific investigation. States Parties may in the course of scientific investigations also use mineral and other substances of the Moon in quantities appropriate for the support of their missions.

3. States Parties agree on the desirability of exchanging scientific and other personnel on expeditions to or installations on the Moon to the greatest extent feasible and practicable

Article X:

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1. States Parties shall adopt all practicable measures to safeguard the life and health of persons on the Moon. For this purpose they shall regard any person on the Moon as an **astronaut** within [OST, RA, LA].

2. States Parties shall offer **shelter** in their stations, installations, vehicles and other facilities to persons in distress on the Moon.

5. ARTICLE III: "PEACEFUL PURPOSES"

1. The Moon shall be used by all States Parties **exclusively for peaceful purposes**. 
2. **Any threat or use of force or any other hostile act or threat of hostile act on the Moon is prohibited. It is likewise prohibited to use the Moon in order to commit any such act or to engage in any such threat in relation to the Earth, the Moon, spacecraft, the personnel of spacecraft or manmade space objects.**
3. States Parties shall not place in orbit around or other trajectory to or around the Moon objects carrying nuclear weapons or any other kinds of **weapons of mass destruction** or place or use such weapons on or n the Moon.
4. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on the Moon shall be forbidden. The use of military personnel for  scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration and use of the Moon shall also not be prohibited.

◆ Article III of the Moon Agreement vs. Article IV of the Outer Space Treaty of 1967

Q. Conventional weapons?

Q. Any difference in "exclusively for peaceful purposes" in MA and OST?

6. ARTICLE XI: CHM

1. The Moon and its natural resources are the **common heritage of mankind**, [...]

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2. The Moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means.

3. **Neither the surface nor the subsurface of the Moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person.** **The placement of personnel, space vehicles, equipment, facilities, stations and installations on or below the surface of the Moon, including structures connected with its surface or subsurface, shall not create a right of ownership over the surface or the subsurface of the Moon or any areas thereof.** The foregoing provisions are without prejudice to the international regime referred to in paragraph 5 of this article.

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4. States Parties have the right to exploration and use of the Moon without discrimination of any kind, on the basis of equality and in accordance with international law and the terms of this Agreement.

7. ARTICLE XI (5): INTERNATIONAL REGIME

“States Parties to this Agreement hereby undertake to establish an **international regime**, including appropriate procedures, **to govern the exploitation of the natural resources of the Moon** as **such exploitation is about to become feasible**. This provision shall be implemented in accordance with article 18 of this Agreement.

→ Article XVIII

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“ [...]at the request of one third of the States Parties to the Agreement and with the concurrence of the majority of the States Parties, convene a conference of the States Parties to review this Agreement [...]”

→ In the drafting process, US opposed to the establishment of international regime.

due to the lack of both US and USSR ratifications, the effectiveness of the MA had been low.

→ Purpose of int'l regime: **1) orderly and safe development; 2) rational management of resources**

3) expansion of opportunities in the use of natural resources

4) equitable sharing of benefits derived from natural resources

→ However... In Dec. 2015, US created a national space law over asteroid resource

8. CASE STUDY: ASTEROID MINING BUSINESS BY US

H.R.2262 - U.S. Commercial Space Launch Competitiveness Act

“ § 51303. Asteroid resource and space resource rights

“A United States citizen engaged in commercial recovery of an asteroid resource or a space resource under this chapter shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use, and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States.”

A pink speech bubble with a white border containing the word "check" in white lowercase letters.

Q. Is it against the Principle of Non-Appropriation of outer space?

Q. What are international obligations of US in terms of asteroid resource?

8. CASE STUDY: ASTEROID MINING BUSINESS BY US

◆ Definitions

“Asteroid resource”: a space resource found on or within a single asteroid

“Space Resource”: an abiotic resource (without life) in situ (in place) in outer space

→ however, no means to verify

check

“U.S. Citizen”:

(A) individual who is a **U.S. citizen**

(B) entity organized or existing under laws of U.S. or a States; or

(C) entity organized or existing under the laws of a foreign country

if the **controlling interest** (as defined by the Secretary of Transportation) is held by an individual or entity described in (A) and (B).

8. CASE STUDY: ASTEROID MINING BUSINESS BY US

Q: Can the US entitle private entities to own and sell Asteroid resources?

① Article 27 of the Vienna Convention on the Law of Treaties

“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.”

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② Article 2 of the Outer Space Treaty of 1967

“Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”

As both ①② are customary international law, the US lacks a legal basis for licensing them.

According to US space law professor: “This Act is still open to change.”

SPACE LAW AND POLICY OF ESA AND EU

PRESENTED BY MR. AURELIEN TIELEMAN

SIMULATED NEGOTIATION

Time Table:

16:00 ~ 16:15 Group Discussion

16:15 ~ 16:35 Presentation

THEME

“WHAT ARE CHALLENGING ISSUES IN SPACE COOPERATION IN THE ASIA-PACIFIC REGION?”

While EU that has [European Space Agency](#), Asia-Pacific region has no regional space agency.

In the present, there are two separate models of international cooperation

in Asia-Pacific region: [APSCO](#) and [APRSAF](#).

Please identify what are obstacles in A-P region to establish regional space agency and how to realize it.

TEAM **A**



TEAM **B**



TEAM **C**



END