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# **THE MOON AGREEMENT IN THE CONTEXT OF INTERNATIONAL SPACE LAW: A CRITICAL REVIEW**

AUTHORED BY - MUTHU MEENA K

## ***Abstract***

Agreement Governing the Activities of States on the Moon and other Celestial Bodies, shortly known as the Moon Treaty or the Moon Agreement, was drafted by the Legal Subcommittee of the United Nations Office for Outer Space Affairs from 1972 to 1979. As a document that was enacted in 1979, it still remains as a significant piece of legal framework in the realm of international space law. The Moon Treaty was opened for signature at New York on 18<sup>th</sup> December, 1979. The impact created by this treaty has however been subject to debate and scrutiny over the past few decades. This agreement was adopted by the United Nations General Assembly after a resolution of 34/68 was passed. It came into force in July of 1984 after the fifth country, Austria ratified the agreement. This agreement mostly reaffirms and elaborates a bunch of provisions from the Outer Space Treaty. This paper aims to thoroughly analyse the Moon Treaty from legal, economic, and environmental perspectives. It also delves into the historical background and the evolution of the treaty and the significance that it holds in the world currently.<sup>1</sup>

## **INTRODUCTION**

Since the beginning of time, the people belonging to the human race have always been the ones to go out of their ways to explore what is beyond the planet earth. Anything and everything in this world, or beyond this world, is always governed by its own rules. Following the enactment of the Outer Space Treaty, there followed the enactment of many such treaties, and one of them being the Moon Treaty. The Moon Treaty is an international agreement which has been signed by many countries all across the world. The treaty aims at governing the activities conducted by the state parties on the moon, and other celestial bodies that are beyond the earth. The primary and the most significant objective of the Treaty is to promote the peaceful exploration of the moon and other such trajectories around it, and to make sure that such explorations benefit all the countries and all of mankind. The Treaty was proposed by the United Nations in

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<sup>1</sup> Marko, D. E. (1992). A kinder, gentler Moon Treaty: a critical review of the current Moon Treaty and a proposed alternative.

1979 and came into force on 1984 after Austria became the fifth country to ratify the agreement. The Treaty is majorly based off the principles of international cooperation, peaceful use, and the equitable distribution of resources. The Moon Treaty has established how the Moon and its resources are open for all of mankind to explore, and the benefits out of such exploration shouldn't just benefit a few countries, but them all. The Treaty also prohibits many activities such as the placing of nuclear weapons, any other weapons that are capable of mass destruction or laying off military bases in the moon. All the states parties are obliged to take measures which protect the moon's environment thereby also avoiding harmful contamination of the moon.

The freedom to scientifically explore the moon is vested with all the states parties, provided that they carry out all of their activities in accordance with the principles of international law.<sup>2</sup>

## **HISTORICAL BACKGROUND**

Humans have always been keen to explore the universe that lays beyond planet earth. Along with the exploration and utilization of the outer space comes the unprecedented challenges, that are not only related to technology and its advancements, but also in the field of law, ethics and governance. There are numerous legal instruments which govern all activities space related, and one such legal document which hold a significant position is the Moon Agreement which was adopted by the United Nation's General Assembly in 1979. The Moon Agreement, formally known as the "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies" is an international treaty, with its primary objective set on to establish a proper legal framework, in order for the safe and peaceful exploration and use of the outer space, which includes the moon and other celestial bodies. After being adopted by the United Nations General Assembly in 1979, the treaty ultimately entered into force on July 11<sup>th</sup>, 1984. After the Outer Space Treaty of 1967 came into force, the Moon Treaty was enacted as a follow-up treaty, which laid down some ground rules with regard to the functioning of astronauts on the moon and prohibited a few activities such as the placing of nuclear weapons, or weapons which are capable of mass destruction. The Moon Treaty was built upon based on the principles that were laid down in the Outer Space Treaty, and makes an extension in order specifically address the issues related to the Moon and other celestial bodies.

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<sup>2</sup> Van Bogaert, E. (1981). THE MOON TREATY: ACHIEVEMENTS AND FUTURE PROBLEMS.

## PURPOSE AND OBJECTIVES

The main objective of the Moon Treaty is to establish a proper legal framework, which protects peaceful exploration and the possible exploitation of the Moon and the other celestial bodies around it. One of the central purposes of the Moon Treaty is to make a declaration that the Moon and its resources are a common heritage which can be explored and used by all of mankind. This principle emphasizes on the fact that the exploration and use of the Moon should be carried out in a way that it benefits all of the nations around the world, and should not result in the unilateral appropriation of its resources by one country alone. The treaty also seeks to establish a regulatory framework for the conduction of activities on the moon, which includes the exploration, exploitation and the utilization of its resources. It ensures that all such activities are carried out in a way that it is consistent with the principles of international law and respects the interest of all countries. Just like the Outer Space Treaty of 1967, the Moon Treaty also aims to promote the peaceful exploration and use of the outer space, including the Moon and other celestial bodies.<sup>3</sup>

Besides from promoting such things, the treaty also prohibits certain activities on the Moon which could possibly be harmful to the life on earth. The Moon Treaty recognizes the important role in protecting the lunar environment and requires every state to take measures to prevent the moon and other celestial bodies from being contaminated. This includes the measures to be taken by each of the contracting state to decrease the potential impact that the human activities on the moon will have on its environment. Another one of the major principles based on which the Moon Treaty has been formed is the principle of equitable sharing. The benefits that have been incurred by the exploration and use of the outer space resources should be shared equally among all the states, within the international community, in particular with developing countries and countries which do not have the technological capability to engage in space exploration of their own. Overall, the objective of the Moon Treaty is to promote among the states, international cooperation in the exploration and use of outer space, and to ensure that such activities are conducted while being consistent with the principles of international law and also taking into consideration the interest of all nations, and to protect the Moon and its environment, and the celestial bodies surrounding it for the future generations.

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<sup>3</sup> Gorove, S. (1974). Property rights in outer space: Focus on the proposed Moon Treaty.

## STRUCTURE OF THE PAPER

This research paper aims at providing a detailed analysis of the Moon Treaty, while exploring its important provisions, criticisms surrounding it, and the implications that need to be imposed for future space exploration. It aims at assessing the treaty's historical context, examine its effectiveness in addressing the raise in contemporary challenges, propose a few recommendations for the betterment.

### BRIEF OVERVIEW OF THE MOON TREATY

The Moon Treaty emerged in the middle of broader international space law framework, with other treaties in place, such as the Outer Space Treaty of 1967 and the Rescue Agreement of 1968. The Moon Treaty was adopted by the General Assembly in 1979 with its main aim as to supplement and expand the already existing space law principles in order to address the new challenges posed by the lunar environment along with its exploration and exploitation.

The Moon Treaty consists of several key provisions, one of them being the principle of the common heritage of mankind, which states that the Moon and its resources are a common heritage to all of mankind, and that the Moon cannot be appropriated by one state alone, thereby completely prohibiting the any claim of sovereignty over the moon by a particular state. It also establishes the principles on which it is based, one of them being the freedom of exploration and use. Additionally, it also prohibits the placing of nuclear weapons, and weapons of mass destruction on the Moon, and imposes a duty on all the contracting states to take the necessary measures to protect the lunar environment.<sup>4</sup>

While the Moon Treaty is very much similar to the Outer Space Treaty, however, it has introduced novel concept and principles which particularly address the Moon and the activities conducted on it. Unlike the Outer Space Treaty, the Moon Treaty has not been widely ratified, making it an agreement to which only a small number of states are a party to.

### AN ANALYSIS OF THE KEY PROVISIONS

The Moon Treaty has three main objectives to fulfil:

1. Recognizing that the Moon as a natural satellite of the earth, and has an important role to play in the exploration of the Outer Space.

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<sup>4</sup> Wilson, J. R. (1990). Regulation of the Outer Space Environment Through International Accord: The 1979 Moon Treaty.

2. Promoting further development of co-operation among States when it comes to the exploration and use of the Moon and other celestial bodies.
3. Preventing the moon from becoming an area of international conflict.

***Common Heritage of Man Kind*** – Article 3 of the Moon Treaty states that the Moon shall be used by all the States who are a party to the agreement, exclusively for peaceful purposes. Article 4 of the of the Moon Treaty states that the exploration and use of the Moon is open to all of mankind, and activities conducted on the Moon shall be carried out for the benefit and interest of all the countries, irrespective of their degree of economic or scientific development.

***Freedom of Exploration and Use*** – The Moon Treaty further affirms the principle of freedom of exploration and use, emphasizing on how the Moon and its resources can be freely accessed by all the countries around the world and their nationals. The objective of such a provision is to prevent the unlawful appropriation of the Moon and its territory by individual states, and to promote international cooperation among states in the exploration and utilization of Moon and its territory.

***Ban on Weaponization*** – Positioning weapons of mass destruction on the moon is forbidden, which is one of the Moon Treaty's noteworthy clauses. This attempts to maintain the moon as a peaceful and cooperative area for scientific inquiry and exploration, reflecting the larger idea of demilitarization in space. But putting this ban into practice and keeping lunar operations from becoming militarized are extremely difficult tasks, especially without efficient monitoring and verification systems.

***Environmental Protection*** – In order to protect the lunar ecosystem from detrimental intervention, governments are required by the Moon Treaty to take precautions against the disturbance of natural habitats and the introduction of pollutants onto the moon. This clause highlights the significance of exercising responsible stewardship in lunar exploration and resource exploitation and reflects the expanding understanding of the possible environmental effects of human activity in space.<sup>5</sup>

The effective use of these environmental protection measures is still up for discussion, though,

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<sup>5</sup> O'Brien, D. (2020). Legal support for the private sector: An implementation agreement for the moon treaty.

especially in light of new technological developments and industrial operations on the moon.<sup>6</sup>

***Resource Exploitation and Ownership*** – The way in which the Moon Treaty handles resource extraction and ownership rights is arguably one of its most controversial features. The treaty does not directly address the question of property rights or ownership of extracted resources, even though it states that the use of lunar resources should benefit all of humanity. Potential stakeholders, especially private enterprises and investors, are concerned about the legal framework governing lunar mining activities and the preservation of property rights as a result of this ambiguity.

## CRITICISMS OF THE MOON TREATY

***Lack of Major Power Ratification*** – The Moon Treaty is often criticized for not having been ratified by the main space-faring countries, such as China, Russia, and the United States. These nations, who have substantial interests in lunar exploration and resource exploitation as well as advanced space capabilities, have declined to sign the treaty out of fear that it will have an adverse effect on their space programs and national interests. The Moon Treaty's ability to effectively regulate activity on the moon is seriously jeopardized in the absence of cooperation from these important parties.

***Ambiguities and Legal Uncertainties*** – The Moon Treaty's implementation and enforcement have been hampered by its ambiguities and legal difficulties, which have drawn criticism. For instance, there are unclear procedures for enforcing the treaty's clauses governing resource exploitation and the common legacy of humankind, as well as for resolving disputes. Potential investors and other stakeholders are now hesitant to participate in lunar operations that are subject to treaty regulations because of the uncertainty this has generated.

***Conflicts with National Interests*** – The Moon Treaty is also criticized for what is seen to be a clash between state interests and the regulation of resource extraction and ownership rights. Many nations see the treaty's limitations on resource extraction as incompatible with their strategic and economic goals, particularly those with aspirations for lunar exploration and advanced space capabilities. States looking to protect their national interests in space and maintain their sovereignty over lunar resources have resisted the treaty as a result.

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<sup>6</sup> Mau, S. D. (1984). Equity, the Third World and the Moon Treaty

*Economic and Commercial Concerns* – Economic and commercial viewpoints have also criticized the Moon Treaty, mainly because of how it will affect the private sector's participation in lunar activities.

Aware of the potential economic benefits that come with using lunar resources, private businesses and investors have voiced reservations regarding the treaty's limitations on property rights and profit-sharing plans. The commercial sustainability of lunar companies governed by the Moon Treaty remains dubious in the absence of clear legal frameworks and incentives for private sector participation.

### **IMPLICATIONS FOR FUTURE SPACE EXPLORATION**

Due to the shortcomings and criticisms of the Lunar Treaty, there is increasing interest in studying alternative methods of lunar management. These ideas range from a single government agreement to multiple foundations serving different purposes and interests.<sup>7</sup>

For example, concepts such as the Artemis Accords aim to create a framework for collaboration and cooperation in lunar exploration while providing flexibility in implementation and implementation. play an important role. Although the Moon Treaty has struggled to gain international recognition, the international community agrees on the importance of cooperation in addressing the challenges and opportunities in space.

By encouraging cooperation and collaboration between states, international organizations and private organizations, new solutions can be produced to complex problems such as management's respect for governance, environmental protection and problem solving. Implications for the private aviation industry.

Although the Moon Treaty provides opportunities for cooperation and innovation in areas such as scientific research, technological development and infrastructure investment, there are obstacles to private sector participation, especially in terms of providing resources.

The private sector can influence the future of space management and ensure the safe use of space by partnering with stakeholders and helping to shape the role of the right space. Keep track with flexible and advanced management and maintenance.

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<sup>7</sup> Menter, M. (1979). Commercial space activities under the Moon treaty.

The future of landscape management will require ongoing communication, collaboration, and creativity to solve problems about reducing waste in space, managing orbital collisions, and the ethics and consequences of space exploration. Create a strong and balanced workplace management system by learning from past experiences and leveraging the benefits of integration, transparency and stability.

## CASE STUDIES AND ILLUSTRATIONS

### **Artemis Accords: A New Paradigm?**

The Artemis Accords, initiated by NASA in 2020, represent a new paradigm for international cooperation in lunar exploration. By establishing principles for responsible behavior in space, including the protection of heritage sites and the sharing of scientific data, the accords aim to facilitate cooperation among space-faring nations and commercial partners. While not legally binding, the accords provide a framework for coordinating activities and resolving disputes in a manner consistent with international law and norms.<sup>8</sup>

### **Lunar Mining Ventures and Legal Challenges**

The emergence of lunar mining ventures, driven by advances in technology and increasing demand for rare earth elements and other resources, has raised legal and regulatory challenges. Questions regarding property rights, environmental impact assessments, and liability for damages remain unresolved, creating uncertainties for investors and stakeholders. By addressing these legal challenges through international cooperation and dialogue, it is possible to create a more predictable and conducive environment for private sector involvement in lunar activities.

Environmental Preservation Initiatives Efforts to preserve the lunar environment and protect its unique features, such as impact craters and lava tubes, have gained momentum in recent years. Initiatives such as the Lunar Heritage and Preservation Act seek to designate certain areas of the moon as protected sites, similar to national parks on Earth. By recognizing the cultural, scientific, and aesthetic value of these sites, it is possible to promote responsible behaviour and sustainable development in lunar exploration and exploitation.

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<sup>8</sup> Kim, H. T. (2006). A Study on the Meaning and Future of the Moon Treaty.

## **PROSPECTS FOR REVISION OR REPLACEMENT**

### **Reforming the Moon Treaty**

While the Moon Treaty has faced significant challenges in achieving widespread ratification, there remains a possibility for reform and revision to address its shortcomings and ambiguities. By engaging with stakeholders and incorporating lessons learned from other space treaties and agreements, it is possible to update the treaty to better reflect contemporary realities and promote international cooperation in lunar governance.

### **Crafting New International Agreements**

Alternatively, the international community may explore the possibility of crafting new agreements or frameworks specifically tailored to address the unique challenges and opportunities of lunar exploration.

These agreements could build upon existing principles of space law while incorporating innovative approaches to resource management, environmental protection, and dispute resolution. By engaging with a diverse range of stakeholders, including space-faring nations, private companies, and civil society organizations, it is possible to develop consensus-based solutions that promote the peaceful and sustainable use of lunar resources.

### **Bridging Gaps between Stakeholders**

Ultimately, the future of lunar governance will depend on the ability of stakeholders to bridge gaps and find common ground on key issues such as resource exploitation, environmental protection, and dispute resolution. By fostering dialogue, collaboration, and trust-building measures, it is possible to overcome differences and build a more inclusive and resilient framework for governing activities on the moon and other celestial bodies.

## **SUMMARY OF FINDINGS**

The Moon Treaty remains a significant yet controversial instrument in the field of space law, with its provisions and principles shaping debates and discussions on the governance of lunar activities. While the treaty has faced criticism and challenges in achieving widespread ratification, it has also stimulated dialogue and engagement on key issues such as resource exploitation, environmental protection, and international cooperation.

## RECOMMENDATIONS FOR FUTURE ACTION

Moving forward, it is imperative for the international community to continue exploring innovative approaches to lunar governance that promote inclusivity, transparency, and sustainability. This may involve reforming existing treaties, crafting new agreements, or establishing cooperative frameworks that accommodate diverse interests and objectives. By working together, stakeholders can overcome challenges and seize opportunities to advance the peaceful and responsible exploration and exploitation of the moon.

## CONCLUSION

Treaty's legacy may be marked by its limited ratification and effectiveness, it nonetheless serves as a valuable foundation for ongoing discussions and initiatives in the field of space law. Its principles of common heritage, freedom of exploration, and environmental protection remain relevant in the context of contemporary challenges and opportunities in space exploration.

As humanity embarks on ambitious missions to return to the moon and establish a sustainable presence beyond Earth, it is essential to draw upon the lessons learned from past experiences and engage in constructive dialogue to address complex legal, ethical, and technical issues.

By upholding the spirit of cooperation, collaboration, and responsible stewardship, it is possible to realize the full potential of lunar exploration for the benefit of all humanity.

In conclusion, the Moon Treaty represents a landmark effort to establish a comprehensive legal framework for governing activities on the moon and other celestial bodies. While its effectiveness has been limited by challenges such as lack of ratification and legal ambiguities, it continues to shape discussions and initiatives in the field of space law. Moving forward, it is imperative for the international community to build upon the principles and objectives of the Moon Treaty while exploring innovative approaches to address emerging challenges and opportunities in lunar exploration and exploitation. By working together, stakeholders can ensure that the exploration and utilization of the moon contribute to the collective benefit of present and future generations, while upholding principles of peace, equity, and sustainability in outer space.