

Governance of the Moon and other celestial bodies based on a common and coordinated vision: Perspectives from developing countries.

Prof. Rosa Ma. Ramírez de Arellano y Haro

MEXICO



SCT
SECRETARÍA DE
COMUNICACIONES
Y TRANSPORTES

AEM
AGENCIA ESPACIAL MEXICANA

INDEX

1. GENERAL BACKGROUND
2. INTRODUCTION: CURRENT SITUATION
3. GOVERNANCE
4. PROPOSAL

General Background

The Moon Agreement is the last of the 5 international treaties that make up the Outer Space Law. To date, it has 18 ratifications and some signatures. None of the countries with significant technological capacities to access outer space have ratified it.

Drafted during the end of the space race between the USA and the USSR, its objective in general terms is to introduce greater details in the corpus of outer space law, about the scope and limits of the States activities in outer space that the Outer Space Treaty (OST) itself had already advanced. And in particular on the issues of non-appropriation and use of the Moon and celestial bodies, as well as the natural resources they contain, that are within the solar system.

The low acceptance of this instrument is likely to be related to two elements that it includes and that caused controversy during its negotiation:

- a) The concept of **Common Heritage of Mankind** (CHM) and
- b) The resource use regime oriented to the economic exploitation that it proposes.



- The Moon Agreement essentially arose from the work that COPUOS carried out from three initial proposals: a) USA in 1966; b) Argentina 1970, y c) USSR 1971:
- In 1971, the Legal Subcommittee of COPUOS included a new theme in its Agenda: “Matters related to the Moon” and created a working group to address it. From these works the first draft emerged in 1972, which was generally accepted, although with reservations but in relation to both the scope of its application and the concept of common heritage of humankind. Finally in 1978 Austria proposed a draft agreement that was the result of some informal negotiations that made it possible to overcome previous reservations, which paved the way for the adoption of a final draft that was presented to the United Nations General Assembly in 1979.



- The negotiation and drafting of the Moon Agreement was carried out in parallel to the negotiations of the Third Convention on the Law of the Sea (UNCLOS) or the Montego Bay Agreement, which had a decisive influence on the issue of the common heritage of mankind. Similarly, the Antarctic Treaty influenced other provisions of the Moon Agreement such as free access, demilitarization and mutual inspections. The Moon Agreement was ready for signature in December 1979 and entered into force in July 1984.
- To date, only 18 countries have ratified it and five more have signed it.

It is important to point out that the Moon Agreement is the first of the international agreements relating to outer space to include an explicit physical delimitation for its area of application:

- With celestial bodies it refers to any aggregation of matter in space that constitutes a unit, this includes: planets, asteroids, comets, moons, etc.
- The limitation to the solar system (whose limit from the scientific point of view is the Oort cloud, a light year away) from human activities makes sense in the understanding that these activities are limited to that part of the universe that human beings have discovered and know with relative certainty
- An exception is also added to the article that specifies that its scope may be limited if specific legal norms are established for any other celestial body, which, from the Moon Agreement itself, makes it more flexible to determine the status of other celestial bodies as the case and opens the door to the possibility of establishing international agreements that are oriented to space mining activities, at least in bodies other than the Moon.

- This strategy is directly related to the process that took place in the Montego Bay negotiations, during the Third United Nations Convention on the Law of the Sea (UNCLOS). To understand the meaning and scope of this expression it is necessary to analyze its inclusion in the Moon Agreement in relation to the international context of that time and in particular with the international legal context, characterized by the UNCLOS negotiations where the concept of “common heritage of mankind” was discussed and elaborated extensively.
- The 1960s and 1970s were characterized by an effort by developing countries to reach a new international economic order more favorable to their interests. The main obstacle was considered to be underdevelopment that had been induced by developed countries during the long colonization process, and from which they achieved their development in the first place. Based on this premise, the objective of developing countries was to promote an international legal regime that will validate the obligation of a transfer of technology from developed to underdeveloped countries and the development of a system that will authorize concessions on defined set of international public goods, such as the ocean floor of the oceans.



- This demonstrates that the idea of the common heritage of mankind should not be understood as a static concept, but as a dynamic concept that is subject to the interpretation that the international political context can print as well as the specific requirements of the sector.
- The Moon Agreement can be understood as a proposal to establish a regime for the **exploration** of the Moon and its natural resources, which includes some **guidelines for its exploitation** in the future.

CURRENT SITUATION

1. Lunar exploration is witnessing an ever-faster proliferation of planned mission led by governmental and commercial stakeholders. In 2022 alone, more than six missions, from government and private industries, are planned to be launched to reach the lunar surface and/or the cislunar space. In 2023 and later years the rate of launches to the Moon will increase.
2. The growing interest in the Moon and specific areas such as the Lunar south pole highlight the need to create coordination mechanisms that allow a peaceful and sustainable exploration of the Moon. These mechanisms should be suitable for balancing the interests of diverse stakeholders (private and governments) and guaranteeing the full achievement of the freedom of exploration, use, access, and scientific investigation of the lunar and cislunar space for all countries in the world.

3. If these discussions are not initiated in a timely manner there is the risk either of unwanted accidents, like possible damage to spacecrafts landing in close proximity of each other or generation of debris in lunar orbit that could create risk to future missions and limit the sustainability of lunar exploration, as it has been for the Earth orbits.

4. Developing countries should play an important role in the consensus building for the lunar coordination as they may not be ready at this time to be directly involved in the planned lunar missions, but their interest must be considered.



SCT
SECRETARÍA DE
COMUNICACIONES
Y TRANSPORTES

AEM
AGENCIA ESPACIAL MEXICANA

GOVERNANCE

- The theme of the Conference is "United Nations/Chili Conference on Space Law and Policy: GOVERNANCE AND LEGAL PERSPECTIVES OF SPACE ACTIVITIES IN EARTH ORBIT AND BEYOND.
- The word GOVERNANCE has always disturbed me. My first reference is the STATE. Why? the State is composed according to traditional legal theory in: Government, population and territory. The term government means: the set of organs and institutions that control and administer the power of the State. In other words, the Government is the authority that directs, controls and administers the state apparatus.

- There is an obligatory reference that I reproduce in some of its parts: Origins of the McGill Global Spatial Governance Study coand derived from the so-called Montreal Declaration on Global Governance from the Second Conference chaired by Professor Ram Jakhu and Dr. Joseph Pelton , they asked the Institute of Air and Space Law of McGill University in Montreal, Canada, to initiate, compile and disseminate an international interdisciplinary study examining the drivers of space regulations and standards.
- Several conferences followed and from there the topic of GLOBAL SPACE GOVERNANCE STUDY (GSG) emerged and ultimately studies on the subject of different qualities participated and their work is reflected in the book GOVERNANCE OF GLOBAL SPACE: PROPOSED KEY ACTIONS with the authorship of Professor Ram and Jakhu and Dr. Joseph Pelton.

- I will not give a lecture on everything mentioned in the book, but the link for your reference is: <https://www.mcgill.ca/iasl/gsg> BUT the point I must refer to is that the word governance is NOT the appropriate one when we refer to the "occupation" of the Moon and other celestial bodies.
- The RECOMMENDABLE thing to do is to negotiate and elaborate regulations on the basis of COORDINATION and COOPERATION, which will bring together a normative corpus that allows all the developed and developing/emerging countries an orderly COEXISTENCE.



PROPOSAL

I. Mexico welcome the creation of the Working Group on Space Resources, at the 60th session of the Legal Subcommittee, under the agenda item entitled “General exchange of views on potential legal models for activities in the exploration, exploitation and utilization of space resources” as indicated in A/AC.105/1243 paragraph 255.

II. Nonetheless, the magnitude of the issues relating to the exploration and use of lunar and cislunar space is far greater than the use of space resources alone. Some of the more urgent considerations include, but are not limited to, information-sharing, the establishment of safety zones, debris mitigation, environmental and heritage preservation, interoperability, sustainability, coordination between scientific and commercial endeavors, and more.



III. The existing permanent agenda item “Space Exploration and Innovation” already provides a good place to initiate the discussion of Lunar Coordination mechanisms

IV. The Delegations are inviting Member States to approve the inclusion, under the agenda item “Space Exploration and Innovation”, of a new yearly agenda sub-item, related to Coordination for Sustainable Lunar Activities in 2023 at the 66th COPUOS, session. This is in view of the urgency of the issues indicated above and given the interlinked complex technical and legal considerations.

RECOMENDATIONS

- MEXICO intends to present jointly with Romania, before the UNOOSA, COPUOS Executive Secretariat, a CRP document with the OBJECTIVE of proposing the inclusion of a new Agenda sub-item in the next meeting of the 65th Session of the Committee on the Peaceful Uses of Outer Space (COPUOS) under the following agenda item: **Space Exploration and Innovation.**
- The justification derives from the fact that it is INDISPENSABLE to review and discuss, NOT the governance but rather **COORDINATION AND COOPERATION** that will contribute to the establishment of a consensual order, given the advent of many already scheduled missions.

