



THE MOON AGREEMENT AND INDIA

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ABSTRACT

From time immemorial, there have been certain subjects that have always interested the human species, and the ever-growing human creature has always tried to unwind the questions brought out by these entities. One such subject of great interest is the space. And as soon as we got ourselves evolved to this level of scientific development that we can now look deep into the mysteries of space, the human beings have never looked behind. But this surely comes along with a problem. The problem brought out by the indiscipline of our species if we are left unregulated.

To solve this problem the International Organizations have always tried to bring out some rules that define the standard operating procedures we need to follow while performing such activities. This is done by the help of space laws that have been brought out by the consensus of international communities. In this article paper, we try to study about these space laws mainly, the outer space treaty and the moon agreement. We further try to look into how India looks at these space laws, and whether we have our own specific space regulation or not. We then look at the growing private ventures and their regulations in space. And finally, it comes out to the future of space laws, with one recent regulation, Artemis Accords being discussed.

KEYWORDS: Space, Outer Space Treaty, Moon Agreement, Artemis Accords, Saudi Arabia withdrawing from Moon Treaty, Indian Space Law, Private Ventures to Space

INTRODUCTION

“Human capacity has no limits.” The capability to evolve, to master in a field and the capability and will to decipher each and everything that comes our way makes the species as the most advanced and intelligible one in the so known living world today. We, as human beings have a trait, a will to know about what is unknown, to decode something that seems fictional until the point of time, and to grasp more and more about something which has a lot more that's still unknown. One such entity is “**space**”. The subject seems ever unending as we try to dig into the secrets of the cosmos. The secrets turn out to be more and more amusing. And the efforts of Human Beings become increase intensively to tackle all the challenges that come our way.

What requires our focus is that the efforts don't disturb the existing balance that has taken care of the cosmos for billions of years and that this will to acquire the knowledge and modernising does not create a conflict between the international communities. This discipline has been sought out by the help of “**the laws on outer space**” that were brought after consensus of different international communities, organizations and authorities. There were 5 Space laws that were established between 1967 and 1984 to regulate the activities taking place in space and see that the nations are following the rules provided or not. The 5 space laws include:

- **Outer Space treaty**
- **Rescue and Return Agreement**
- **Liability Convention**
- **Registration Convention**

• Moon Treaty

Last one, the **Moon Treaty**, has been one of the most controversial ones among these space law agreements, more so because even after years of its coming into existence it has not been followed by major international entities and has failed to serve over its purpose. In the due course of this Article paper we are going to study this agreement in detail trying to figure out its flaws, its applicability in relation to India and the upcoming and recently increased private ventures to space.

I. HISTORICAL BACKGROUND: THE OUTER SPACE TREATY

The OUTER SPACE TREATY, formally "Exploration and Use of outer space, including the moon and other celestial bodies" is first of 5 treaties that were signed for the purpose of regulating the activities in outer space. It is a multilateral treaty that was opened for signature in January of 1967 in United States, the USSR, and the United Kingdom.

The negotiations for having a space law started in 1960s with the development of various space vehicles, launching of first artificial satellite by USSR took place in 1957 (SPUTNIK), followed by a great arms race of the COLD WAR. There were apprehensions in the minds of various international personalities that this could lead to increase military occupation of space and be dangerous for the existing balance of our cosmos. Thus, on 17 October 1963, the UN General Assembly adopted a resolution for prohibiting the introduction of weapons of mass destruction in outer space, and it started a series of consensus meetings and discussions for such arms control treaties. These discussions led to the consensus of international communities to adopt The Outer Space Treaty in the December of 1966, thus opening it for signatures in January 1967.

Provisions

This treaty forms the basis of international space law to regulate the activities taking place

in space. According to the United Nations Office for Outer Space Affairs (UNOOSA), some core principles of the treaty are³⁹:

- The explorations being conducted should benefit everybody and space should be the province of all mankind
- No one can claim sovereignty by national appropriation nor space can be used for placing of nuclear weapons or other weapons of mass destruction, although conventional weapons can be used
- The moon and other celestial bodies have to be used for peaceful purposes only
- States to be responsible for the space activities whether they are conducted by governmental or non-governmental entities (ARTICLE VI)
- To avoid harmful contamination of the space and other celestial bodies

Ultimately the treaty as has been followed by the Antarctic Treaty, tries to keep the space away from dangerous militarisation and prevention of conflict, but explicitly allows military personnel to be used for peaceful space projects. It bars any claims made with the purpose of establishing sovereignty and prohibits placing harmful weapons of mass destruction there.

CHALLENGE ⁴⁰

One challenge that has been posed in front of this treaty was by "Declaration of The First Meeting of Equatorial Countries" also called "BOGOTA DECLARATION". The eight equatorial countries to this treaty tries to establish sovereignty over those portions of the geostationary orbit that lied continuously over these nations. But due to the lack of international support the treaty was abandoned.

³⁹ THE OUTER SPACE TREATY, WIKIPEDIA (accessed on 17/03/2023 on 11:25 am), https://en.wikipedia.org/wiki/Outer_Space_Treaty

⁴⁰ THE OUTER SPACE TREATY, WIKIPEDIA (accessed on 17/03/2023 on 11:25 am), https://en.wikipedia.org/wiki/Outer_Space_Treaty

APPLICATIONS IN 21ST CENTURY

As of march 2023, the treaty has 113 parties to it with all major spacefaring nations as party to it. The treaty has served its purposes for which it was intended to, i.e., control militarisation of space, but as evolution kicked in, the challenges have increased as well as the nature of space activities, like asteroid mining, increase in private ventures to space, waste materials in space, etc., thus demanding a more robust treaty and amendments to the existing ones for keeping in track with time.

II. MOON AGREEMENT

Following the consensus that was started in the continuance of formulation the outer space treaty, there came four more treaties over the issues that were prevalent at that time regarding space activities. The last one among those came up in 1979, the Moon Agreement.

OBJECTIVES

The moon treaty, formally known as the Agreement Governing the Activities of States on The Moon and Other Celestial Bodies⁴¹ has been formulated to turn the jurisdiction of all the celestial bodies over to the participant countries that are party to this agreement. A detailed study of the 21 articles presented in the treaty give out that most of the provisions outer space treaty have been emphasized by the moon agreement, and with the objective of providing a regulated behaviour of parties in the space as well as proper and equal use of the resources that are brought out in the explorations. The treaty also calls out for having an international regime that have to be followed by the entities making it to the space for a proper rules-based society to be established and to avoid any conflict between international communities due to such explorations.

The moon treaty gives powers to the state parties by allowing them to assure that the activities of other state parties don't violate the provisions of this agreement and to seek

⁴¹ MOON TREATY, WIKIPEDIA (accessed on 17/03/2023 on 12:20 pm), https://en.wikipedia.org/wiki/Moon_Treaty

information from them regarding their activities so as to avoid any potential conflict that may occur⁴².

PROVISIONS

As has been already mentioned the moon agreement reiterates most of the provisions of the 1967 Outer Space Treaty, there have been some differences that make it staggering. Study of the articles from the two treaties highlight two major differences between these two treaties.

- The moon and its natural resources are common heritage of mankind, which finds its expression in the provisions of this agreement (ARTICLE 11.1)
- The state parties to the 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 11.5)

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Thus, these two provisions from Article 11 tell us the basic differences between the two treaties. At one place where the outer space treaty provides for space as province to all mankind, the moon agreement calls it as a common heritage to all mankind. Similarly, the moon agreement also brings out the concept of forming a legal framework to regulate all the space activities. But unfortunately, even after so many years of it coming into existence it has not been able to draw consensus among state parties for framing such a regime.

CURRENT STATUS

⁴² MOON AGREEMENT, NUCLEAR THREAT INITIATIVE (accessed on 17/03/2023 on 01:00 pm) <https://www.nti.org/education-center/treaties-and-regimes/agreement-governing-activities-states-moon-and-other-celestial-bodies-moon-agreement/>

⁴³ AGREEMENT GOVERNING THE ACTIVITIES OF STATES ON THE MOON AND OTHER CELESTIA BODIES, MCGILL. (accessed on 17/03/2023 on 06:00 pm), <https://www.mcgill.ca/iasl/research/space-law/moon-treaty>

The agreement opened for signature on 17 December 1979 and had a condition of 5 ratifications to get implemented. Although it was implemented onto the state parties to it in 1984, but what discourages is that it has not been able to draw support among international communities and those as of now it has only 18 state parties having ratified it (as of January 2022) with not a single independent space-faring nation having done so. Among these only India and France have been signatory to it, but they too didn't ratify it⁴⁴.

THREATS AND CHALLENGES

"Saudi Arabia withdraws from the moon treaty."⁴⁵ And this makes the first withdrawal from the already struggling moon agreement. Before discussing over the threats of today it is important to understand the formulation of the moon agreement. The consensus on such a treaty was in the focus from 1969 as an agenda of the COPUOS (United Nation Committee on Peaceful Uses of Outer Space). According to the declassified United States National Reconnaissance Office papers, moon treaty was no more than a means of occupying the time of COPUOS meetings, led by USSR and supported by the United States, both of those who didn't become the signatories of this treaty afterwards⁴⁶.

As the two super powers of space at that time chose to stay away from ratifying this treaty it was difficult for other nations to accept this.

Second and more robust reason of its practical irrelevance comes out of its failure in establishing the international regime that has been asked for in ARTICLE 11.5. as has been mentioned by professor Michelle Hanlon, in the

interview with filling-space.com⁴⁷, there have been many challenges to the moon treaty leading to its lack of acceptance and implementation. Calling the celestial bodies as common heritage to mankind and also not being able to bring consensus over legal framework have led to its failure in today's world. He says that although we get many lessons from the treaty but unfortunately the treaty ultimately needs to be discarded away with some more robust mechanism to be brought that incorporates the modern challenges of space as well.

III. INDIA AND THE SPACE LAWS

India has always been a responsible nation in the world always striving for maintaining peace in various situations and avoiding conflicts with other international communities. We have always been ahead in following the international treaties and obligations as well, as has been provided in our constitution under DPSPs⁴⁸. This makes it interesting to look at the policy-makers view regarding following of international space laws, especially the MOON AGREEMENT. India has been a signatory the treaty, being one of the two major space-faring nation to sign this treaty, the other one being France, but still after years of signing we have not ratified the treaty thus we don't make a party to this treaty thus not obligated to follow its provisions.

Talking about our space law, it is unfortunate to mention that even after being one of the major space-faring currently we still don't have a space law to regulate the activities legally, although the government has its monopoly in India's space sector which it exercises via Indian Space Research Organisation (ISRO)⁴⁹. After a number of requests from private sectors to

⁴⁴ supra note 3

⁴⁵ SAUDI ARABIA WITHDRAWS FROM MOON TREATY, AUSTRALIA BROADCASTING COMPANY (accessed on 17/03/2023 on 09:25 pm), <https://www.abc.net.au/news/2023-01-13/saudi-arabia-withdraws-from-moon-treaty/101854570>

⁴⁶ THE MOON AGREEMENT: HANGING BY A THREAD? MCGILL (accessed on 17/03/2023 on 09:40 pm), <https://www.mcgill.ca/iasl/article/moon-agreement-hanging-thread#:~:text=Before%205%20January%202023%2C%20no,those%20treaties%20%2D%20the%20Moon%20Agreement.>

⁴⁷ WHAT IS MOON TREATY AND IS IT STILL USEFUL? FILLING SPACE, (accessed on 17/03/2023 10:05 pm), <https://filling-space.com/2020/01/17/what-is-the-moon-treaty-and-is-it-still-useful/#:~:text=The%20intent%20of%20the%20Moon,regime%20to%20go%20vern%20such%20use.>

⁴⁸ INDIA CONST. art. 51

⁴⁹ AKSHITA TANDON, SPACE LAWS IN INDIA, LEGAL SERVICE INDIA (accessed on 18/03/2023 10:00 am), [https://www.legalserviceindia.com/legal/article-9212-space-laws-in-india.html#:~:text=Indian%20Space%20Laws,Space%20Research%20Organisation%20\(ISRO\).](https://www.legalserviceindia.com/legal/article-9212-space-laws-in-india.html#:~:text=Indian%20Space%20Laws,Space%20Research%20Organisation%20(ISRO).)

open up space sector for these entities no major changes were made by the government, and the space sector is still controlled majorly by Department of Space, by Department of Atomic Energy till 1972. The reluctance can be attributed to two major reasons, first being earlier we didn't have a space sector to invest in space. Secondly, we didn't have such a robust space plan earlier. But this has changed now, thus a need to recognise anew space law is knocking at the doors of policy makers, one of them being the ongoing consultations over space activities bill, 2017⁵⁰.

REGARDING MOON AGREEMENT: Years have gone by and India has still not ratified the agreement, furthermore there have been questions of practical relevance of this agreement in the modern world. Many scholars have debated that India should now opt out of the moon agreement. Saudi Arabia has already shown a path towards this by withdrawing from the moon agreement. As Dr Chaitanya Giri in his interview with thehindubusinessline, says that India should formally exit the moon treaty as it has a serious problem with it because it allows to share the fruits of exploration and results of the space activities with all the parties regardless of what their scientific development is⁵¹.

PRIVATE SPACE VENTURES

As we see an increase in investments in space with the investors realising the wholesome benefits that can be rendered via this activity, the question that pops up is that how can these private investors, who work majorly for the profits, be regulated to fulfil the obligations of the space law that is in force. Modernisation and advancements in science has brought with it the realisation that cosmos is a storehouse of bulk of energy and resources that can be used by us and this has led to starting activities like asteroid mining, etc.

In the interview of Professor Michelle Hanlon that has been quoted above, he explains that while the moon agreement has seemed discouraging to individuals and has practically failed, but in principles it never denies mining of resources from the space, or private ventures to space⁵². It just asks for working towards this field according to an international regime made via consensus of international communities. Although as the moon treaty has been unable to drive these communities towards this goal, there have been various space policies established by major space-faring nations that regulates these activities on a national level. Nevertheless the moon treaty can be seen as a steppingstone towards formation of a new treaty that can provide for these goals more procedurally than its predecessor could do.

IV. WAY FORWARD

In the due course of this Article it has been discussed that how the treaty that was brought with pomp and splendour for regulating the space, especially moon, has been rendered practically irrelevant in the world today, due to lack of support. But failure of this treaty can be surely seen as a way forward to the formulation of something better. Something that incorporates not only the old school issues of space but is in stride with the modernisation that is taking place due to advancing science and technology.

One solution to this appears in the **Artemis Accords** of the United States of America. It is not quite surprising that Saudi Arabia became the first nation ever to exit the moon treaty, just six months after it signing these Artemis Accords⁵³. The accords⁵⁴ were signed as a vehicle to successfully complete the Artemis programme, and it allows other states to become a part of it and to cooperate for the programme by signing the accords on a voluntary basis. The main provisions of the accords are to achieve the objectives of space law treaties like outer space

⁵⁰ Id at 8

⁵¹ WHY INDIA SHOULD EXIT THE MOON AGREEMENT, THE HINDU BUSINESS LINE (accessed on 18/03/2023 09:00 am) <https://www.thehindubusinessline.com/news/science/why-india-should-exit-the-moon-agreement/article62212510.ece>

⁵² supra note 9

⁵³ supra note 8

⁵⁴ WHAT ARE THE ARTEMIS ACCORDS? SPACE.com (accessed on 18/03/2023 08:00 pm), <https://www.space.com/artemis-accords-explained>

treaty, rescue agreement, etc. These accords have provided for a suitable and modern alternative for the moon agreement and as of date it has **23 parties to it**. Thus, moving forward such partnerships and agreements can be looked as a potential solution to establish a rule-based framework in the outer space sector.

CONCLUSION

This article proves it conclusively that although the world has respected and followed the space law treaties for years, especially the outer space treaty, but some flaws have always caught their eyes, thus leading to failure of some of them and their provisions, like that in the moon agreement. It also draws out that we are at a stage where we need to rethink and bring over a more holistic and robust approach to deal with the modern space issues that come our way, Artemis Accords being the first step towards such a consensus. Thus, the international communities need to sit together and bring in the discussion to a fruitful end to succeed in regulating and preventing the cosmos together.

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