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## THE MOON AGREEMENT AND INDIA

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### ABSTRACT

Miles away from our dear planet- Earth, in the outer space, there are a number of other planets, asteroids, celestial bodies and many more undiscovered and/ or hidden secrets that maybe productive or useful the human race. The outer space have always been a topic of curiosity, amusement and a lot more mind-tickling questions both at the national and international level. Earlier, the concern of human was only limited to exploration and findings of the space and its belongings, but with the passage of time and the emerging needs the most brainy creation of almighty i.e., human has widened its concern regarding the outer space by indulging in activities like:- exploration of the outer space, mining lunar resources, ownership of the outer space resources, establishing control over these resources, raising economic benefits from the outer space and much more. In the global aspect, the outer space missions that have been carried out till now revealed that in the outer space there is the presence of natural resources which we need and they have the potential to support the survival of life for a larger span of time. With the advancement of science and technology, the activities related to the field of outer space and its resources, are leading to significant changes in respect of extra-terrestrial exploration. Each and every field in the universe requires a mark of rules and procedures in order to be governed in accordance with and; render equitable, justifiable and peaceful way for enjoying the fruits of progress, evolution and expansion; thus, outer space and its allied activities are not an exception as regards the space laws. The interational organisations have never ceased to

bring out the standards that one needs to follow while their involvement in the outer space activities. In this aspect, international space laws are the creation of the consensus of international communities. The space activities are carried out by the States and by the private players as well. Since a decade or two, there has been increment in the activities of outer space and explorations being carried out by the commercial/ private players, globally. In the race of developed and developing space-faring nations there is often clash of interests with regard to occupation and appropriation of outer space resources. This article aims to study the Moon Agreement, its historical background, objectives, the provisions and legal status of the Moon Agreement, the Artemis Accords and India's view with regard to the Moon Treaty/ Agreement.

**KEY WORDS:-** Outer space treaty, the moon agreement, legal status, artemis accords, India's inclination.

### Introduction

Space is a place that has no boundaries or demarcations with respect to any particular State or an entity or an individual. Unless and until we encounter some other species of living beings in the outer space, we can say that we- 'the humans' are entitled to the resources of the space on an equitable basis. But it is a matter of great concern and significance that- who owns the space, the moon and other celestial bodies?; property rights of the space are conferred upon whom? and; the outer space explorations are governed by which standard rule of law?. Gradually, the space is growing into a wider domain as there is rise in the category

of actors in space ranging from- States to private companies to inter-State activities in the space, and owing to this reason there is a dire need of such an instrument(s) or legal framework or a legal regime that governs not merely the present controversies of the space but also caters to the requirement of the future of outer space, its resources and allied activities, thereby clearing the way for the States and private entities on both national and international level to explore and utilize the resources of outer space in accordance with the specified procedures of law and without restriction of any self-centered/ powerful nation or entity. Owing to the wider reach of outer space and having known the probabilities of military movements and activities in future decades, the controversies within States and between States and private companies, there is an urge to set up such a legal framework which ensures the adjunct of the rule of law even in outer space and thus protects the actors of space against establishment of monopoly and appropriation of resources of the space. An appropriate regulated framework is necessary in order to deal with the interests of all nations and to ensure that no nation is deprived of the benefits of exploration and usage of the resources existing in outer space. The Outer Space Treaty (OST) and the Moon Agreement are those two treaties which have been framed one after the other seeking to build a strong framework of rules and provisions that deal with the extra-terrestrial activities of States and non-state entities in outer space ranging from exploration, mining, extraction, and ownership.

### **I. Historical Background of the Moon Treaty**

:- The Outer Space Treaty (OST) was signed in 1967. In 1968 followed the United Nations Conference on the Exploration and Peaceful Uses of Outer Space which was convened by the UN. In order to build-up an international regime to become the torch-bearer of the laws towards the utilization of resources of outer space resources by the mankind, this conference happens to be the first in a series of

conferences that were sponsored by the UN. In the efforts to create an international legal regime with respect to outer space resources, it was only after 10 years of constant struggling and negotiations that the "Moon Treaty" came into existence in the year 1979. As per one of the Articles of the Moon Treaty, the usage of the natural resources of space must be regulated by an international legal regime which would provide for a set of better rules and procedures. Thus, the quest for this set of rules and procedures brought a number of conferences that were sponsored by the UN, but yielded no results or we can say that it brought zero consensus.

The Moon Treaty came into effect in 1984 post fulfillment of the condition of being ratified by 5 States and became effective for those States only that ratified it. At present there are 18 States that have become the parties to the treaty and out of these 18 States there are only 7 States that have ratified the Treaty but the other 11 States simply acceded.

In July, 1980, S. Neil Hosenball who was one of the favoring team of the treaty, in the Subcommittee on Science, Technology and Space in the US that conducted the hearings on the topic of the Moon Treaty, made efforts to convince the Committee with regard to the point that US should ratify the Moon Treaty but failed in his attempt. On the other hand, Leigh Ratiner argued in the opposition team. Then in June, 2018, in order to bring out a consensus regarding legal regulatory framework for the exploitation, exploration, control and ownership of the resources of the outer space the United Nations Committee on the Peaceful uses of Outer Space (COPUOS) conducted a meeting and again it emerged as a failed attempt owing to S. Neil Hosenball's decision which stated that finalizing of the legal framework must be done only after the establishment of the ease of utilizing resources of the outer space.

### **II. The Moon Treaty, 1984**

:- An agreement was presented by the members of the UN in December, 1979 and it was supposed to be a modified version of the Outer Space Treaty (OST) which would fill in the gaps or the loopholes of the Outer Space Treaty. The agreement known as- The Moon Treaty/ The Moon Agreement, also formally known as the- Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, was created with a view to establish a framework which would regulate the exploitation of the Moon as well as other celestial bodies in the outer space. This multilateral treaty provides the jurisdiction of celestial bodies to those States that are parties to the Treaty.

#### **A. Provisions:-**

Almost similar to the OST, the Moon Treaty lays down in its Articles that the Moon and other celestial bodies are to be utilized for providing benefit to all the mankind and must not be restricted to that particular nation/ State which has invested its efforts in it. Further, the Articles of the Treaty provides:-

1. ban on testing of weapons;
2. ban on the use of celestial bodies for military purposes;
3. -ban on changing the natural balance of celestial bodies with regard to their environment;
4. -any sort of scientific research regarding sustainable outer space development must be shared at the global level;
5. -organized and safer utilization of natural resources; etc.

#### **B. Objective:-**

It was noted that since the 1967 Outer Space Treaty was signed, technologies and society evolved, requiring a redefinition of the rights and responsibilities of citizens and governments alike in the use and development of outer space. The primary stated objective of the 1979 Moon Treaty is "to provide the necessary legal principles for governing the behavior of states, international organizations, and individuals who

explore celestial bodies other than Earth, as well as administration of the resources that exploration may yield". It proposed to do so by having the state parties produce an "international regime" that would establish the appropriate procedures<sup>21</sup>.

#### **C. Legal Status of the Moon Treaty:-**

As regards the legal status of this treaty, be it the States or private entities or the individual, none of them would be able to claim anything because the treaty has reiterated the point of prohibiting the sovereignty of any of the part of space and this is the reason why a large number of nations have not signed the treaty. As far as the fact of ratification is concerned the Moon Treaty remains non-ratified by a greater number of those nations which have self-launched spaceflight abilities. Being capable of self-sufficient human spaceflight India is the only nation that signed the treaty but has yet not ratified it.

#### **D. Artemis Accords:-**

It is an agreement between the government of the US and the governments of the rest of the nations that participate in this program, and is of a non-binding nature. Also, it is a multilateral agreement with a target of widening the exploration activities of space. In the present, the Accords have been signed by 23 nations. The Accords give a proper lay-out for moving forward by cooperating in exploration and exploitation of Moon and other celestial bodies in the outer space. The main purpose of Artemis Accords is to deal with implementing the significant mandates that are provided under the Outer Space Treaty.

The Artemis Accords that potentially poses a challenge to the Moon Treaty were signed by the representatives of the national space agencies of eight countries in October, 2020. The drafters of the Accords are NASA and the US Department of State. The President of the US- Donald Trump while signing of the Artemis

<sup>21</sup> [https://en.wikipedia.org/wiki/Moon\\_Treaty](https://en.wikipedia.org/wiki/Moon_Treaty)

program, led to the release of an executive order i.e., “Encouraging International Support for the Recovery and Use of Space Resources” which laid down that unlike the provisions of the Moon Treaty, for the US the perspective of outer space as a “global common” has no significance and thus the order states that Moon Treaty is not a successful attempt.

### III. The Moon Agreement and India:-

The problem with the Moon Agreement lies in Article 4.1 which says that “the exploration and use of the Moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic and scientific development.” This can be interpreted to mean that if you are a signatory to the agreement, you shall share the fruits of your efforts on the Moon with everybody, whereas if you are not a signatory you won’t have to do so<sup>22</sup>.

US, through NASA, has proposed its own international protocols, called Artemis Accords “to establish common set of principles to govern the civil exploration and use of outer space”, which is open for international space agencies to sign on<sup>23</sup>.

Given these developments, it is time for India to immediately announce its withdrawal from the redundant Moon Agreement,” says Giri. Rather than be a signatory to a treat that most space-faring nations have not signed on, India must make pragmatic collaborations<sup>24</sup>.

### Conclusion

The assumption that the Moon Treaty is not legally effective owing to the reason that some powerful nations did not ratify or became signatories to the treaty is partially correct. There are several loopholes in the Moon

Agreement that need to be looked into and the most important is to devise a legal framework to define the standards of dealing with the moon, the celestial bodies, and all the objects and resources of the outer space, but only if the framers want to provide a strong and valid stand to the Moon Treaty. Undoubtedly, the Articles of this agreement list out several constructive and sustainable ways regarding the engagement of the States, individuals and private companies with the outer space and its resources. But drawing a parallel line to these positive points the concepts like:- “common heritage of mankind” and “no claim” render the Moon agreement to be less supported and more criticized. Thus, a developing nation like India and any other developing or developed nation of the world would restrain themselves from ratifying such treaties or agreements that have a weaker stand with respect to the sustainable future development of the outer space in context with the States, or the private players.

### References

- (1) David Everett Marko, Starkman & Magolnick, P.A., “A Kinder, Gentler Moon Treaty: A Critical Review of the Current Moon Treaty and a Proposed Alternative”, Vol. 8, Issue:- 2, Journal of Natural Resources & Environmental Law.
- (2) M. Ramesh, 9<sup>th</sup> Jan., 2022, <https://www.thehindubusinessline.com/news/science/why-india-should-exit-the-moon-agreement/article62212510.ece>.
- (3) [https://en.wikipedia.org/wiki/Moon\\_Treaty](https://en.wikipedia.org/wiki/Moon_Treaty).
- (4) Ishita Das, “Bringing a Piece of Moon to Your Honey: The Legal Challenges Relating to Mining of the Lunar Resources”, 19<sup>th</sup> October 2020, Indian Journal of Air and Space Law.
- (5) Rishabh Pillai, “India: Outer Space Treaty: Exploitation of Extra-Terrestrial Bodies and Acquisition of Land in Outer Space”, 4<sup>th</sup> April, 2022, <https://www.mondaq.com/india/contracts-and-commercial-law/1179162/outer-space-treaty-exploitation-of-extra-terrestrial-bodies-and-acquisition-of-land-in-outer-space>

<sup>22</sup> M. Ramesh, 9<sup>th</sup> Jan., 2022, <https://www.thehindubusinessline.com/news/science/why-india-should-exit-the-moon-agreement/article62212510.ece>

<sup>23</sup> M. Ramesh, 9<sup>th</sup> Jan., 2022, <https://www.thehindubusinessline.com/news/science/why-india-should-exit-the-moon-agreement/article62212510.ece>

<sup>24</sup> M. Ramesh, 9<sup>th</sup> Jan., 2022, <https://www.thehindubusinessline.com/news/science/why-india-should-exit-the-moon-agreement/article62212510.ece>