

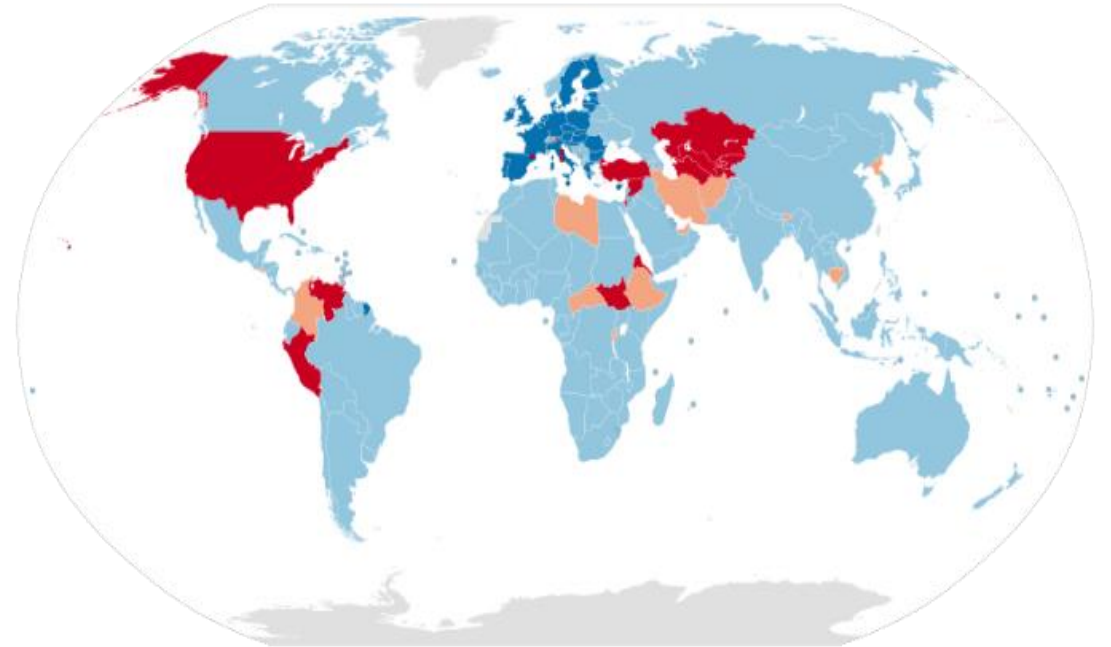
UNISPACE +50

Time for the Moon Treaty

- **Problem:** Failure of current efforts to establish international framework of laws to guide activities beyond Earth orbit
- **Proposed Solution:** Use an Implementation Agreement (IA) to enable the Moon Treaty to do so
- **Application:** The Implementation Agreement will address the concerns about the Moon Treaty raised by commercial interests and others
- **Conclusion:** Current Member States should immediately start the process of drafting the IA and the framework of laws, inviting other countries to join or be left behind without a seat at the table

Law of the Seas Implementation Agreement

- Proposed in 1982 by United Nations; not widely adopted
- Implementation Agreement addressed outstanding concerns
- Entered into force in 1994
- Currently 157 Member States
- 29 entities have signed exploration/exploitation contracts



Concern: Lack of Property Rights

- Moon Treaty: “Natural resources *in place*” shall not “become the property” of any governmental or non-governmental entity.
- Once resource removed, can be owned, sold, etc.
- Need to grant permission to extract resources from *in situ*
- “Priority Rights” for specified time and location for exploration and extraction (e.g., Hague International Resource Group)
- Implementation Agreement should specify that Agency shall grant such rights, so long as not interfering with other activities or violating public policy concerns

Concern: Government-Owned “Enterprise”

- Original “Enterprise” of Law of the Seas was a government-owned entity that would acquire and distribute resources
- Implementation Agreement limited Agency to collecting revenues, using them for administration and to mitigate losses by countries impacted by deep-sea mineral mining
- IA for Moon Treaty should likewise specify no government enterprise
- Policy: If an activity in space is commercially viable, then private enterprise should be allowed to do it

Concern: Protection of Intellectual Property

- Does the Moon Treaty require sharing of all intellectual property with developing nations?
- Implementation Agreement for CLOS requires countries to obtain patented technology on the free market
- IA for Moon Treaty should likewise require licensing of technology, but at fair price
- Exceptions would be made for national security technology that is forbidden from export

Concern: Public Policy Regulations

- Must follow regulations developed under Article 11
- Must follow requirements for “national” activities in rest of Treaty: peaceful purposes; protecting the environment (including protecting historical legacies, such as early Moon landing sites); allowing free access to all areas by other parties; honoring the Rescue Treaty; informing the public of its activities and any significant discovery, including “any phenomena . . . which could endanger human life or health, as well as of any indication of organic life”
- Private enterprise should not view as burden, but as a way to fulfill obligation to share benefits with less developed nations

Concern: Fees, Royalties, Taxes

- Implied authority to collect fees, “common heritage of mankind”
- Fees for use of “commons” customary on Earth
- CLOS IA: Fees can be assessed to pay for administrative costs and to reimburse countries adversely affected by deep sea mining.
- Flat fee up front or percentage of profit from initial sale (VAT); operators get to choose which method; business expense
- Moon Treaty IA: collection of fees to cover administrative costs is a ministerial act; collection of fees for anything else is discretionary, requiring approval of Member States

Concern: Decision-Making Process

- Moon Treaty does not detail any decision-making process for creating framework of laws, determining fees, etc.
- CLOS IA establishes Assembly (all Member States), an Executive Council of 36 members (representing five defined subgroups), and a Finance Committee chosen by the Council
- Issues of substance can be passed by two-thirds vote of Council or Assembly, but all financial actions must start with Finance Committee, which requires consensus
- Moon Treaty IA must detail a similar decision-making process
- Defers some money issues while allowing Treaty to take force

Concern: Settlements

- Moon Treaty does not mention settlements, only government-operated “stations”. Implementation Agreement should clarify:
- Settlements can be authorized under Article 11 as an “exploitation” of resources, similar to commerce but with own regulations
- Priority rights of settlers would be very similar to “ownership” of real estate on Earth
- Initially governed by laws of country of origin, but not colonies
- Settlements could apply for recognition as independent, sovereign nations using current procedures

Concern: Terraforming

- Moon Treaty prohibits “disrupting of existing balance”
- Implementation Agreement: Contained settlements neither “harmful” nor “adverse”, can be approved as a ministerial act
- Terraforming, by definition, will “disrupt the existing balance” of a celestial body’s environment
- Can only be done after extensive consultation with, and approval by, the Assembly of Member States
- With all due respect to those brave enough and resourceful enough to attempt terraforming, they cannot do so on their own authority

Concern: Individual Rights

- Moon Treaty and Outer Space Treaty: States Parties shall retain jurisdiction and control over their personnel
- Possible conflict with Universal Declaration of Human Rights, e.g., right to seek asylum
- Implementation Agreement: “Nothing in this Treaty or Agreement shall be interpreted to deny any individual the rights guaranteed under the Universal Declaration of Human Rights”

Benefits for Humanity

- Tapping the creativity, talent, and resources of free enterprise
- Sharing of information; access to technology; mutual assistance at times of need; protection of the celestial environment (including historical/cultural legacy sites); protection of individual rights
- Decision-making process that addresses public policy concerns while providing a sustainable legal framework for space commerce.
- Bringing nations together: “To promote on the basis of equality the further development of co-operation among States”

The Challenge of Nationalism

- United States and others unilaterally grant property rights to any national who gets to resource first – act of sovereignty?
- “Space Force” created to protect a country’s economic interests: “Space is a warfighting domain . . . The next battlefield”
- “First-come, first-served doctrine” creates “de facto monopolies”
- “Creeping colonization . . . denying access to space for others”
- Choice between international cooperation and nationalist conflict

The Mission

- Space inspires humanity's dreams (e.g., Galileo, Sputnik)
- 1968: Our view of the world changes (overview effect)
- War, violence, and neglect destroy hope, create cynicism, crush the spirit
- Our mission is nothing less than to restore that hope, create "shining city on the hill"



Conclusion: The Way Forward

- Current Member States of the Moon Treaty must begin process of drafting Implementation Agreement and creating framework of laws
- Invite non-member countries to join and have a seat at the table or be left behind
- Authorize funding for administrative costs; defer action on other monetary issues to decision-making process
- Overview Through Time: A Rare Moment in History