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Author: Prof. Maureen Williams
Chair, ILA Space Law Committee, UK & UBA, Conicet, Buenos Aires, Argentina,
maureenw777@yahoo.co.uk

THE CONTROVERSIAL RULES OF INTERNATIONAL LAW GOVERNING NATURAL RESOURCES
OF THE MOON AND OTHER CELESTIAL BODIES

Abstract

In 2010, at the 53rd Colloquium on the Law of Outer Space (IISL, Prague), the present writer addressed the shortcomings of the Moon Agreement and reasons for the fragile support from the international community to this instrument. Indeed its provisions are open to a wide range of interpretations, some of them highly controversial. In some countries a general feeling appears to indicate that the 1967 Outer Space Treaty (OST) is sufficient to govern these matters today, and that there are no valid reasons to ratify the Moon Agreement which fails to resolve the points of contention and bridge the gaps left by the 1967 OST.

In 2015 this discussion continues and, far from beginning to see daylight, ideas -let alone innovative suggestions- remain immersed in a penumbra of doubt. In the meantime, space technology is growing exponentially.

This article explores the current situation on the basis of new discoveries and programmes in progress on the Moon and Mars. It includes, among others, issues surrounding possible rights of property in those areas, the legal status of natural resources and the very thorny question of asteroid mining in light of contemporary international law.

Moreover this paper will analyse, in new light, the longstanding debate surrounding the scope and implications of Article 11.1 of the Moon Agreement which –unlike the title of this Agreement- leaves out all reference to ‘other celestial bodies’ when providing that the moon and its natural resources are the common heritage of mankind. In fact, so does Article 14 of this Agreement, when addressing international responsibility, and confines its meaning to activities on the moon alone.

Finally, the conflicting views concerning the reach of Article 11.5 of the Moon Agreement shall be examined with a view to establishing what does this provision really imply in today’s international settings when speaking of the establishment of an international regime to govern the exploitation of the natural resources of the moon as such exploitation is about to ‘become feasible’. This provision lends itself to a myriad of debatable interpretations.