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Ever since the launching of space vehicles became a practical reality, the question of who would gain ownership of the moon and planets has been a concern. Although only a dozen people have ever set foot on the moon, and the last team of Apollo astronauts landed there in the winter of 1972, the moon suddenly has become the object of a heated debate on earth. The "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies" (the Moon Treaty) is now open for signature.[1] The process of formulating a treaty on the moon began with a 1970 Argentinian proposal to the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) entitled "Draft Agreement on the Principles Governing Activities in the Use of the Natural Resources of the Moon and Other Celestial Bodies."[2] During the following years, much time and effort was spent by lawyers and diplomats from many nations on its further elaboration. On December 5, 1979, the General Assembly approved the Moon Treaty and asked the United Nations Secretary-General to open the agreement for signature and ratification.[3]

The Moon Treaty is an attempt to codify principles of international law well in advance of the time when competition for wealth on the moon becomes feasible. It invokes general principles of international law and the United Nations Charter for guidance on space activities.[4] The agreement is based on the concept that the moon and its natural resources are the common heritage of mankind and are not subject to national appropriation by any claim of sovereignty.[5] Although it calls for the establishment of an international regulatory regime to create and oversee an equitable system for granting all nations equal rights to resources and products developed from space exploration,[6] commercial lunar exploration is not yet feasible. Thus, the Treaty has been drafted only as a statement of general principles, and is only the first step in a two stage process. The details of an international regulatory regime will be the focus of the second effort, which is not likely to be articulated until well after the year 2000. As do the Law of the Sea Treaties, the Moon Treaty promises

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1. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *adopted by* the General Assembly on Dec. 5, 1979; text at annex to G.A. Res. 34/68, U.N. Doc. A/Res/34/68 (1979) [hereinafter cited as Moon Treaty].

2. Draft Agreement on the Principles Governing Activities in the Use of the Natural Resources of the Moon and Other Celestial Bodies, U.N. Doc. A/AC.105/C.2/L.71 and Corr. 1 (1970).

3. Moon Treaty, note 1 *supra*.

4. *Id.* art. 2.

5. *Id.* art. 11, ¶¶ 1-4.

6. *Id.* art. 11, ¶ 5.

to define the legal consequences of lunar exploration well before the technology is available. Inherent in this promise is the inevitable conflict between the freedom of scientific exploration and exploitation for the common benefit of mankind. In its attempt to assure that future exploration of space will be for the benefit of all, the Moon Treaty may well inhibit the future development of the space technology that is necessary for future exploitation. Despite this gloomy note, it is in the interest of the United States to ratify the Treaty to assure its position in the negotiations regarding the coming international regulatory regime for the exploration and exploitation of space.

There are many benefits to be realized from the exploration and exploitation of the moon. Research is continuing regarding the development of new materials in space and the future uses of raw materials that do not originate on earth. For example, the moon is believed to contain high concentrations of titanium and aluminum which could be used as thermal shielding and construction materials for huge earth-orbiting satellites to capture solar energy.[7] This idea is attractive because of the low "escape velocity" of the moon when compared with earth, as well as the advantages offered for materials fabrication in the low-gravity, high-vacuum conditions of outer space.[8] But the moon is not only valuable for its mineral and other resources, for it may provide a platform for future scientific and military activities. These activities could be immeasurably profitable to whatever country held sovereignty. The freedom of scientific investigation is expressly affirmed in the Treaty.[9] The collection of samples is free and the samples remain under the guard of the state which has collected them.[10] States also may use their samples in quantities appropriate for the support of their missions.[11] The vagueness of these freedoms is evidence of the reluctance of the drafters of the Treaty to formulate a specific answer concerning the precise meaning of nonappropriation of the natural resources of these areas.

The Treaty also provides that the use of force on the moon is prohibited.[12] This provision must, however, be viewed in light of the fact that the United Nations Charter allows the use of force in certain specific situations.[13] Furthermore, notwithstanding the fact that military bases, installations, and fortifications are prohibited, the use of military personnel for scientific research or other peaceful purposes is allowed.[14] Forbidden weapons include only nuclear weapons and other weapons of mass de-

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7. TIME, Mar. 24, 1980, at 47; SCIENCE NEWS, Mar. 1, 1980, at 135; CHEMICAL AND ENGINEERING NEWS, Aug. 29, 1977, at 20-22; AVIATION WEEK & SPACE TECHNOLOGY, Sept. 19, 1977, at 9.

8. TIME, Mar. 24, 1980, at 47.

9. Moon Treaty, *supra* note 1, art. 6, ¶ 1.

10. *Id.* art. 6, ¶ 2.

11. *Id.*

12. *Id.* art. 3, ¶ 2.

13. *See, e.g.*, U.N. CHARTER art. 51.

14. Moon Treaty, *supra* note 1, art. 3, ¶ 4.

struction; conventional weapons are seemingly allowed.[15] However, it must also be borne in mind that other provisions insist on cooperation and assistance on the earth and the moon.[16] The Treaty grants states freedom to pursue their activities in the exploration and use of the moon by landing their personnel, space vehicles, equipment, facilities, and station installations anywhere on or below the surface of the moon, without interference with the activities of other states on the moon.[17] If one state has doubts about the correct application of the Treaty by another state party, consultation between states concerning the peaceful utilization of the moon is contemplated.[18] However, there is no provision for a compulsory judicial forum; it is left to the Secretary-General of the United Nations to ensure that these consultations become effective.[19] The state which has launched persons, structures, or other installations on the moon retains jurisdiction and control over them, and the extent of international responsibility is not defined.[20]

The likelihood is that these vague principles will inhibit the development of space technology. Space enthusiasts call the Moon Treaty a harbinger of doom for free enterprise and for America's future on the moon. Part of this opposition stems from language that attempts to protect the interests of countries that do not yet have the technology to share in the exploitation of whatever extraterrestrial resources may turn out to be available and worthwhile. The crux of the matter seems to be the phrase in Article XI declaring that the moon and its resources are "the common heritage of mankind." The conflict parallels the decade-long debate over the seabed mining provisions in the Law of the Sea Treaties. Some elements in the industrialized nations are unwilling to share the riches of the seabed with less developed countries. Thus, there is decreased financial incentive and increased financial insecurity. Since similar problems could arise in fledgling space industries, some are fighting ratification of the Moon Treaty by the United States.

One of the Treaty's most visible and vocal foes is Leigh S. Ratiner, a Washington, D.C. lawyer who represented companies interested in mining manganese nodules from the ocean floor. He says the "common heritage" phrase is a bad one "even though I helped originate it." The problem, he says, is that "most of the world feels it means 'common property,' which cannot be disposed of without common consent."[21] Echoing Ratiner, Houston space lawyer Arthur Dula says: "Resources that are owned by everybody are developed by nobody. Free enterprise institutions simply cannot make significant investments in space while they are under the

15. *Id.* art. 3, ¶ 3.
16. *See id.* arts. 2; 4, ¶ 2; 5; 13-15.
17. *Id.* art. 9.
18. *Id.* art. 15, ¶ 2.
19. *Id.* art. 15, ¶ 3.
20. *Id.* art. 12, ¶ 1.
21. SCIENCE NEWS, Mar. 1, 1980, at 135.

threat of suit over treaty terms or ex post facto appropriation of their investments by a nebulous future international regime."[22] United Technologies Corporation, on February 14, 1980, became the first company to denounce the Treaty when it placed large advertisements in the Washington Post and several New England newspapers. Under the headline, "Stranglehold on the Moon," the company called for an effort to

> head off this Third World drive to frustrate America's hard-won technological supremacy. The draft agreement would have the effect of imposing an indefinite delay on commercial development of space at a time when the United States is a world leader in space technology. . . . [I]f the draft treaty stands up in Congress, American inventiveness and enterprise would be shut off from the industrialization of space.[23]

Proponents of the Treaty argue that the ban on unilateral claims implied in the "common heritage" phrase is already covered by the 1967 Treaty on the Peaceful Uses of Outer Space, which the United States has signed.[24] Though the Moon Treaty states that no part of the moon can become the exclusive preserve of any single country or organization, it does not forbid mining or exploration there. It stipulates only that such activities come under a still undefined "international regime," presumably to be worked out at some future conference only when exploitation is about to become feasible. Thus, nothing in the Moon Treaty calls for a moratorium while such an international regime is being set up. Treaty proponents say the Moon Treaty would obligate the parties only to *work* toward defining the regime and getting it established, but not that they *succeed* in setting one up. Without these rather minimal restrictions in the Moon Treaty, the potential would exist for other far fetched schemes that could be far more restrictive. Thus, a future regime that reasonably assures that the exploration and exploitation of the moon will be able to proceed subject to rational regulations is in the best interest of the United States. Such a regime should be sought even if it means a further deferral of the date exploitation would commence. The advantages of ratification of the Moon Treaty closely parallel those of the Law of the Sea Treaty: (1) it would avoid the potential conflict of a wide-open race to exploit the moon; (2) it would multilateralize the giving of aid, ensuring that other developed and rapidly developing states contributed their fair share along with the United States, the Soviet Union, and Western Europe; and (3) it would establish an international administration capable of forming the self-supporting, independent nucleus of an international re-

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22. SCIENCE, Nov. 23, 1979, at 915; TIME, Mar. 24, 1980, at 47.

23. *As reported in* BUS. WEEK, Mar. 10, 1980, at 39; *see also* SCIENCE NEWS, Mar. 1, 1980, at 135.

24. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205.

gime to protect the freedoms of the moon beyond national jurisdiction.[25] Finally, the failure to provide greater certainty and predictability in space relations could lay the foundation for future space-related difficulties for the United States. Efforts to achieve multilateral solutions for a number of issues might be frustrated, with prejudice to the chances of achieving needed multilateral agreements in such areas as the sea, Antarctica, energy, food, and the environment.

Nearly ten years has elapsed since Argentina put forward its draft agreement on principles governing activities in the use of the natural resources of the moon. This draft was submitted to the United Nations at a moment when Neil Armstrong's first footsteps on the moon led humanity to believe that his memorable trip would shortly be followed by numerous others, opening up the possibility of an early colonization of the moon. But almost one decade after the introduction of the draft treaty, the exploration and exploitation of the moon has not advanced as was hoped, or feared, at the end of the 1960's. Interest in space during the 1970's was reoriented from theoretical achievements and activities towards those of a more concrete and easily beneficial nature, such as earth-orbiting satellites. Thus, it is interesting that the moon should now be considered in terms of the legal consequences of possible occupation by man, at a moment when technology has not permitted human beings to envisage its practical utilization.

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25. *See* Franck, Kennedy & Trinko, *An Equitable Regime for Seabed and Ocean Subsoil Resources*, 4 DEN. J. INT'L L. & POL'Y 161 (1974).