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Author: Ms. Jiaying Yu
The University of Hong Kong, Hong Kong, jyyu@connect.hku.hk

LUNAR MISSIONS TREATY REGULATION: PROPOSING A REVISED OR AN ALTERNATIVE
MOON AGREEMENT

Abstract

Lunar missions began during the Cold War, and the world is now witnessing another round of intense competition in lunar exploration. The Moon is valuable in scientific research and utilization for its strategic position and various natural resources. The United States and China are now the most advanced in lunar exploration, and Russia, the European Space Agency, Japan, India and Israel have successfully launched lunar missions. The current legal framework regulating lunar exploration is the UN space treaties series supplemented by non-legally binding instruments regarding space activities. However, the ambiguity in treaty articles and the weak implementation of soft law negatively affect the peaceful use of outer space. The 1979 Moon Agreement is the only legally binding instrument attempting to provide a holistic and detailed legal framework for lunar exploration, but it has failed because of the lack of acceptance of its articles, with no primary space-faring states joining it. Following the Moon Agreement, the main sources of law have been soft law, and its non-binding nature allows states to observe the norms voluntarily. Therefore, a legally-binding instrument is needed to provide a safer and more predictable environment for lunar exploration and exploitation, whether through revising the Moon Agreement or drafting a new treaty.

This paper will first analyze the necessity of a treaty regarding lunar exploration and exploitation by examining the current legal framework. While the ambiguity and applicability of the 1967 Outer Space Treaty indicate a gap between the law and lunar missions, treaty law can provide more effective regulation through its binding nature compared with soft law. Then, the paper will analyze the reasons behind the Moon Agreement's failure. The controversial Common Heritage of Mankind concept and the incomplete legal regime for future lunar resource utilization reveals the imbalance of interests between space-faring and non-space-faring states, which should be appropriately addressed in the proposed treaty. Finally, the feasibility of revising the Moon Agreement or a new lunar exploration treaty concluded through the COPUOS mechanism will be discussed.