



International Space Station (ISS) Agreements to Artemis Accords: a quantum leap

By
Andre Farand

Key points to be addressed

- The Artemis Accords are proposed, from the start:
 - ✓ in a **publicly-available presentation** by NASA to other space agencies;
 - ✓ took the form of a **listing of generally-worded principles, being a mix of pre-existing and widely accepted norms** of international space law **and additional norms tailored specifically for lunar exploration** activity;
 - ✓ were presented as a **prerequisite for the conduct of lunar exploration** cooperation with NASA, with no clear indication, however, on the way forward for their bilateral formalisation;
- NASA's **proposal for Artemis Accords is significantly at variance with the usual prudent approach in the conduct of international relations** among spacefaring nations, as evidenced in the negotiation of the ISS Agreements;
- The **ISS Agreements**, or the underlying provisions and principles, **still constitute the mainstay for establishing**, between NASA and the other ISS cooperating agencies, **agreements governing their cooperation on different components of the NASA Artemis Program**;
- It remains to be seen **how much the process to finalise the Artemis Accords will borrow from the wealth of experience** gained over 40 years of ISS negotiations.



The ISS Agreements and Artemis Accords: different nature/approaches

- The ISS Agreements (Intergovernmental Agreement (IGA) + 4 Memorandums of Understanding (MOUs)) and the proposed Artemis Accords are quite different in their nature, and this appears to justify different approaches for their conclusion:
 - The ISS IGA, and also the MOUs:
 - ✓ **are binding international agreements**, generating rights and obligations for their signatories;
 - ✓ **have been developed over prolonged periods of negotiations**, conducted primarily at the level of Ministries of Foreign Affairs, and also at agency level for MOUs, and
 - ✓ **have been drafted with particular care**, among other things to be consistent with the respective treaty and ratification practices of the Governments concerned;



The ISS Agreements and Artemis Accords: different nature/approaches

- The **IGA was subject to ratification** by each signatory State, a requirement to enter it into force; and a number of States (Canada, Germany, France) **incorporated the full text of the IGA in their respective internal legal orders**;
- A clear **distinction was made between the topics** falling under the purview of either the States (the IGA outlining top level principles applying to the ISS cooperation) or the cooperating agencies (the MOUs detailing the actual ISS elements to be provided);
- The IGA preamble already recalls – and thus make them applicable to the Cooperation - the 1967 Outer Space Treaty and the other main UN-developed space Conventions;



The ISS Agreements and Artemis Accords: different nature/approaches

- The **proposed Artemis Accords put forward** – so as to create a shared vision for principles – **topics related to the implementation and furtherance of concepts** already contained, or alluded to, in the 1967 Outer Space Treaty;
- Executing bilateral Artemis Accords is presented as a **prerequisite for any interested international space agencies to join NASA in the Artemis Program**; these agencies are indirectly tasked with the responsibility **to take steps for the corresponding State(s) to exercise jurisdiction** over «private sector players conducting missions and operations in cislunar space»;
- ✓ the invitation is not limited to existing ISS partnership; will the conclusion of **Artemis Accords be combined with elements of “quid pro quo”** in terms of agreed role for space exploration activities?
- ✓ **tangible sense of urgency in NASA’s presentation of 15 May 2020**: difficult to reconcile with the inherent lag time of treaty-making practice, as exemplified in ISS Agreements negotiations;
- ✓ the lines between the respective State-level and agency-level responsibilities **have been significantly blurred**; this is particularly sensitive for Europe;



Artemis Accords considerations

The denomination “Artemis Accords” used by NASA calls for the following remarks:

- The **Artemis Program is the NASA program** devoted to lunar exploration with three key components: the Space Launch System rocket, the Orion capsule, and the lunar-orbiting Gateway space station (the Gateway); the **other partners have their own programmes** devoted to space exploration;
- The use of “**Accords**” would normally refer to a set of commitments from States, contained in an international agreement concluded in accordance with applicable practices of the States concerned, generating rights and obligations at international law;
- In the case of the “Artemis Accords”, there are signs that **a formal binding international agreement is not what the U.S. administration is looking for**:
 - ✓ the proposal is submitted by NASA to other space agencies;
 - ✓ there is a perceived sense of urgency because of the expected landing of humans on the moon by end 2024; the treaty route for finalising the Accords is not practical;
 - ✓ the executive branch of the U.S. Government regularly makes non-legal “political” agreements with foreign entities, such agreements carrying significant moral and political weight for the parties;

ISS Agreements: mainstay of Artemis program-related cooperation

- The **Orion capsule**, a key component of the Artemis programme, is:
 - ✓ on the critical path for NASA's Artemis 1 (in 2021), Artemis 2 (in 2022 or 2023) and Artemis 3 (bringing back humans on the moon in 2024) flights;
 - ✓ equipped with the European Service Module (ESM), ESA's contribution to NASA's Orion spacecraft, which will provide electricity, water, oxygen and nitrogen, as is designed to maintain the spacecraft at the right temperature and on course;
- The ESA-developed ESM 1, and additional ESMs, are **contributed pursuant to dedicated "Implementing Arrangements" concluded between NASA and ESA** pursuant to the ISS ESA/NASA MOU.
- The corresponding **barter arrangements enabling ESA to compensate the partnership** – through NASA - for the European Partner's share of ISS common operations costs accruing over agreed periods, are explicitly encouraged in the ISS Agreements.



ISS Agreements: mainstay of Artemis program-related cooperation

- In March 2020, **the Gateway**, once referred to as «the linchpin» of the Artemis Programme, **has been taken off the critical path for NASA's return to the moon in 2024** for a number of reasons, including budget-related ones; as a result, the development period for the Gateway will be stretched considerably, and its content modified;
- Starting in November 2019, NASA and each of the other ISS partners were progressing significantly in the **negotiation of a series of bilateral MOUs sketching out their respective roles and responsibilities** in a cooperation devoted to the development of the Gateway; the objective, endorsed by all agencies, was to **conclude the MOU negotiation by the end of the first semester 2020**;
- A NASA official stated that the **objective was to extend**, through reference in the Gateway MOUs, the **application of relevant ISS IGA provisions to the execution of the Gateway** cooperation, possibly through the use of the provisions on “evolution” contained in Article 14 of both the IGA and the MOUs.



ISS Agreements: mainstay of Artemis program-related cooperation

- **Extending the application of the IGA**, which addresses ISS-related matters exclusively under the remit of States, to Gateway cooperation is **particularly challenging for the eleven IGA signatory States** forming the ISS Partner (strict delimitation of competence);
- In December 2019, the **European Partner States revitalised their IGA Coordinating Committee (IGA-CC)**, hosted at ESA, and since then held several meetings to examine different approaches that could be considered to accommodate the application of IGA provisions to the Gateway;
- At its Council meeting of 24 June 2020, **ESA approved the draft Memorandum of Understanding with NASA concerning Cooperation on the Civil Lunar Gateway**;
- **The initial steps of the Gateway MOUs will be devoted to a detailed definition of the contributions actually retained for the cooperation**, similar to the situation created for with the three 1985 ISS detailed definition MOUs (NASA with agencies of Europe, Japan, and Canada);
- After the conclusion of the MOU, the **IGA-CC will have the challenging task of establishing an appropriate intergovernmental legally binding framework for multilateral cooperation beyond Earth orbit**, in good time before the launch of the ESA-provided Gateway elements.



Considerations on the way forward

- The proposed Artemis Accords:
 - ✓ address **topics having already been covered by State-level commitments** made in the framework of United Nations through outer space-related Treaties, Agreement and Conventions concluded in the 1960's and 1970's; **no need to repeat these commitments** at the same level and risk the distortion of these commitments;
 - ✓ contain, **envisaged as a clarification of existing State-level obligations**, newly-formulated norms of international space law which **may not be entirely endorsed at this stage by all spacefaring nations**, and primarily by ISS Partner States, and are still subject to further exchange of views at the legal sub-committee of COPUOS;
- Could the Artemis Accords negotiations **be inspired** by the discussions, albeit in a more focussed and result-oriented way, of the draft International Code of Conduct for Outer Space Activities, originally proposed by the European Union and which:
 - ✓ seek to set norms and shape behavior in outer space for the mutual benefit of all countries;
 - ✓ is voluntary, non-binding (soft law) and open to all states;
 - ✓ is intended to enhance transparency and confidence building measures between countries;



Considerations on the way forward

- The difficulty will reside in **having the detailed wording of the Accords** – which shall be the same for all Accords - **widely accepted by the interested agencies** (original signatories) and by those other agencies that may want to accede to that instrument at a later stage (e.g.: International Charter on Space and Major Disasters);
- The Accords can be bilateral instruments, but **have to be finalised multilaterally** by those agencies interested at this stage;
- The **content of the Accords clearly falls within the competence of States**; if space agencies are called to conclude the Accords, then steps will have to be taken to make sure **the corresponding State(s) is/are in full agreement with the content** – this is particularly crucial for the European Partner States (acting through the IGA-CC?);
- State's competence is obvious when considering the **need to incorporate at national law level the commitments subscribed** within the Artemis Accords, so as to make them opposable to third parties (private sector entities conducting space activities);
- The “quid pro quo” for concluding Artemis Accords will be the opportunity to enter into cooperation with NASA for moon exploration activities; **is the mere opportunity enough** or would actual commitments on specific activities be required to entice agencies to sign up.