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THE JUS AD BELLUM IN OUTER SPACE: THE INTERRELATION BETWEEN ARTICLE 103 OF THE CHARTER OF THE UNITED NATIONS AND ARTICLE IV OF THE OUTER SPACE TREATY

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INTRODUCTION

The exact content of the *jus ad bellum* in space has been the subject of much academic and legal debate since the adoption of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Celestial Bodies (the "**Outer Space Treaty**") in 1967. The main provisions in relation to use of force in space are found in Articles III and IV of the Outer Space Treaty. Contrary to common belief, however, the Outer Space Treaty does not expressly prohibit military uses of outer space. The provisions require space activities to be carried out in the interests of maintaining international peace and security, a complete demilitarisation of celestial bodies and a prohibition on the deployment and use of weapons of mass destruction in space.

The Charter of the United Nations (the "**Charter**") provides a further complication in considering the contents and effects of Articles III and IV. It is necessary, when considering the law concerning the use of force in space, to keep in mind Chapter VII and Article 103 of the Charter. Chapter VII contains the codification of the international law on the use of force, while Article 103 provides that the Charter prevails over other international treaties and conventions. Considered together with the Outer Space Treaty, these provisions have the effect of limiting and modifying the rights and obligations of States in relation to the use of force in space.

PROVISIONS OF THE OUTER SPACE TREATY

The United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) has long affirmed the principle that military uses of outer space are to be limited, more so than is the case on Earth. Consequently, the 1967 Outer Space Treaty and all subsequent treaties and General Assembly resolutions and declarations reiterate the principle that there are limitations imposed by international law on the use of outer space for military purposes.

However, the provisions are far from clear in setting out what these limitations are, as it appears to draw distinctions between outer space *sensu stricto*, or the empty space between celestial bodies, and outer space *sensu lato*, which includes both "outer space" and the celestial bodies.[1] The Outer Space Treaty appears to require different restrictions on military activities in different "parts" of outer space.

Specifically, Article IV(1) prohibits the placement of any nuclear weapons and other weapons of mass destruction in outer space. This presumably refers to outer space *sensu lato*, thus including outer space, the Moon and other celestial bodies. However, this provision, or any other, does not prohibit the stationing of any other type of weapon in outer space for military purposes, such as conventional or even laser weapons. In other words, it appears from this provision that States are entitled to use outer space for military purposes, provided that these do not involve deploying or using nuclear weapons and other weapons of mass destruction.[2]

The second paragraph of Article IV of the Outer Space Treaty, which requires the use of celestial bodies to be exclusively for peaceful purposes only, appears to apply only to the Moon and other celestial bodies and not to outer space *sensu stricto*.[3] Both the United States and the Soviet Union pointed out that, by omitting the mention of "outer space" from the peaceful purposes requirement in Article IV, the States have rejected a broad prohibition of military activities in space and restricted the requirement to celestial bodies only.[4]

Even if a broader application is inferred, the precise meaning of what "peaceful" purposes mean are by no means certain. The United States has long argued that the term "peaceful purposes" means "non-aggressive purposes" rather than "non-military purposes".[5] In other words, the Outer Space Treaty implements only the existing obligations under international law for non-aggressive use of space, but not to impose a new obligation involving the full demilitarisation of celestial bodies.[6] States are therefore free to deploy weapons, personnel, fortifications and facilities for defensive purposes.

This interpretation may be considered to be contrary to existing interpretations that are found elsewhere in international law. For example, the similarly worded Antarctic Treaty, to which the United States is also a signatory, defines "peaceful" as "non-military" and specific references to military installations are regarded as exemplificative rather than exhaustive in nature.[7] The Soviet Union, for example, takes a contrary view and argued that the Outer Space Treaty prohibits all military activities regardless of their aggressive nature, on celestial bodies.[8] By inference, the interpretation used in applying the Antarctic Treaty should therefore be equally applicable to Article IV of the Outer Space Treaty as well.

The United States is also a signatory to several nuclear non-proliferation treaties and Washington would undoubtedly consider it absurd for States to assert that their development and manufacture of nuclear weapons is for "non-aggressive" purposes only and therefore permissible under the Nuclear Non-Proliferation Treaty and other instruments. As a result, the interpretation suggested by the United States with respect to "peaceful" use of outer space may therefore be contrary to existing principles of international law.

On the other hand, if Article IV imposed obligations beyond its literal meaning, it is difficult to see why the framers of the Outer Space Treaty had chosen to use such specific and restrictive language in the wording of Article IV. If Article IV is intended to imply a broad demilitarisation of outer space, it is unlikely that it would have made specific references to weapons of mass destruction or to have confined the peaceful purposes requirement to celestial bodies only.

Consequently, it is clear that the most appropriate interpretation of Article IV is in fact the literal one. In other words, States are required to observe the prohibition on the deployment and use of force on celestial bodies and the total prohibition on the deployment and use of nuclear weapons and other weapons of mass destruction anywhere in outer space. However, there are no prohibitions on the deployment and use of conventional arms in outer space

sensu stricto as imposed by Article IV of the Outer Space Treaty and subsequent international space law instruments. This is, of course, provided they are not used in a way in contravention with existing legal principles or against the interest of maintaining international peace and security, as required by Article III.

In fact, the terms of Article III lend further support to the view that Article IV should be read literally rather than to infer a broad demilitarisation of outer space. Article III provides that space activities are to be carried out "in the interest of maintaining international peace and security". Conducting activities in the interest of maintaining international peace and security often involves the use of force, as illustrated by the jurisprudence over the content of Articles 39 and 42 of the Charter.

The preferred view, therefore, is that Article III requires activities in space to be conducted in accordance with international law, especially the interests of maintaining international peace and security, with caveats on such activities imposed by the effects of Article IV. With this context in mind, the next step is then to explore the effects of Article 103 of the Charter, the content of the rights and obligations under Chapter VII and how they interact with Articles III and IV of the Outer Space Treaty to impose restrictions on the use of force in outer space.

EFFECT OF ARTICLE 103

Article III of the Outer Space Treaty states that space activities must be conducted in accordance with international law and the Charter. As a result, it is clear that space activities are governed not only by the principles of the Outer Space Treaty and subsequent instruments but also the existing principles of public international law that generally govern the activities of and the use of force by States on Earth.

It has commonly been accepted that the Charter now provides the authoritative principles of law in relation to the use of force on Earth. It is pertinent, therefore, to consider the application of Article 103 of the Charter. Article 103 states that:

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

This is further reinforced by the 1980 Vienna Convention on the Law of Treaties, which provides that later treaties prevail over earlier ones except for the application of Article 103 of the Charter.[9] One issue that may affect the application of Article 103 is whether the provision to be overridden by Article 103 may be a codification of a *jus cogens* principle of custom. If that is the case, it is generally accepted that States cannot contract out of *jus cogens* and corresponding obligations. There is some support for the view that the obligations of Articles III and IV of the Outer Space Treaty, regardless of their exact contents and effects, are *jus cogens*. However, the fact that the Charter prevails over all other treaties and the acceptance by all States of the legal effects of Chapter VII on the use of force by States suggest that Chapter VII may have acquired the status of *jus cogens* as well.

While it is clear from a literal reading of Article 103 that the Charter takes precedence over any other treaty, there are two other important points to take into consideration. Firstly, Article 103 provides only for obligations and not rights under the Charter to prevail over other treaties. Consequently, if a treaty revoked a right provided under the Charter, a State cannot rely on Article 103 to continue asserting that right. Secondly, Article 103 deals only with obligations arising under the Charter and, as a result, it is unclear whether it would apply to an obligation arising from the exercise of a power or the discharge of a function under

the Charter, such as a decision of the General Assembly or the Security Council.[10] In other words, Article 103 may not require a State to carry out an act in contravention of an applicable treaty provision if the requirement arose from a resolution rather than the Charter itself.

In considering the effects of Article 103 on United Nations decisions, there are three types of decisions that may be made by the United Nations or its principal organs:

1) decisions that are externally binding on States that did not participate in making the decision;

2) decisions that are internally binding on the United Nations only but have external effects; and

3) external decisions that are not binding but in certain circumstances would have binding effect.[11]

Under the Charter, the only externally binding decisions of the United Nations are decisions of the Security Council that are concerned with the maintenance of international peace and security pursuant to Chapter VII.[12] As the obligation to observe such decisions arise directly from Articles 25 and 48 of the Charter, it is an obligation to which Article 103 would have application, as supported by the requirements of Article III of the Outer Space Treaty.

Even though the General Assembly and the Economic and Social Council may make decisions with dispositive force and effect on the external relations of States, they are not decisions that are externally binding.[13] Similarly, a Security Council resolution not made pursuant to Chapter VII would have the same effects. As there is no obligation directly under the Charter for States to comply with such decisions, Article 103 would arguably have no application on any obligation that may be imposed on States arising from such internal decisions.[14]

The final category of decisions includes General Assembly resolutions or those of other organs that contain declarations of legal principles concerning a particular aspect of international activities. In space law, the legal principles concerning remote sensing is an example of such resolutions.[15] These decisions are not binding but, if accepted by the States concerned, it may be considered to be the codification of existing custom or the creation of new custom by simultaneous state practice or, at the very least, *opinio juris*. In other words, the resolution itself is not binding and creates no obligation except for the customary principles contained therein.

As Article 103 deals only with conflicts between obligations arising from the Charter and treaties and not between custom and treaties, there can be no application of Article 103. This is consistent with the view that States can contract out of customary principles by the adoption of treaties unless the principles are *jus cogens* and therefore the resulting *erga omnes* obligations must be observed regardless of the intention and consent of the States involved.

It can be seen from this that Article 103 requires States to observe their obligations:

- directly arising from the provisions of the Charter; or
- binding decisions of the Security Council in relation to international peace and security,

over and above their obligations in subsequent treaties, such as the Outer Space Treaty. In order to analyse the content of the *jus ad bellum* in space, it is therefore essential to consider not only the content of Articles III and IV of the Outer Space Treaty but also the extent of any obligations that arise under the United Nations Charter to which Article 103 may have application.

PROHIBITING THE USE OF FORCE

Article 2(4) of the Charter provides that States are to refrain "from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". This principle has been found by the International Court of Justice to be *jus cogens* and binding on all states as a customary norm.[16]

This blanket prohibition on the use of force is not without exceptions. Under Chapter VII of the Charter, the Security Council may authorise the use of force "to maintain or restore international peace and security" if there is a "threat to the peace, breach of the peace, or act of aggression" for which economic and trade sanctions would be inadequate. Further, Article 51 provides that there is an inherent right by States to use force for individual or collective self-defence "until the Security Council has taken measures necessary to maintain international peace and security".

There have been some instances since the creation of the United Nations where this principle appeared to have been breached or, in other words, there have been several occasions where the operation of Article 2(4) may have been invoked. For example, the ultimatum issued by France and the United Kingdom to Egypt and Israel in 1956, demanding a cease-fire within twelve hours, would be a "threat of force". In 1960, the Soviet Union issued the warning that any unauthorised flights over Soviet territory will result in the bases where the planes flew from being attacked. When Iraq positioned artillery and tanks near its border within range of Kuwait, the United Kingdom stated that to be a "threat to Kuwait and a breach of the provisions of the Charter".[17] It should be noted that the legality of the Persian Gulf War and the NATO attack on Yugoslavia have remained the subject of intense academic debate. In all these cases, it is arguable that such acts, would be in contravention of the Charter if they were not conducted with the authority or approval of the Security Council.

Then there is the qualification that the use of force is only prohibited where it is conducted "against the territorial integrity or political independence of any State". This may be seen as a limiting factor in the prohibition on the use of force. In this way, a distinction can be drawn between annexations or permanent occupations, which infringe the territorial "integrity" of a State, and trespassing, which infringes the territorial "inviolability" of a State. In the *Corfu Channel* case, the United Kingdom argued that Operation Retail, in which the Corfu Channel, located in Albanian territorial waters, was swept for mines after a British ship was damaged, "threatened neither the territorial integrity nor the political independence of Albania".[18]

Brownlie argued against such a limited approach as, in his view, "it is difficult to accept a 'plain meaning' which permits evasion of obligations by means of a verbal profession that there is no intention to infringe territorial integrity".[19] In his view, this provision must be read with the totality of the sovereign rights of a State in regard to its territories.[20] Harris suggested that the territorial integrity issue is irrelevant as the last clause of Article 2(4) amounts to a total prohibition on the use of armed force.[21] This is because one of the Purposes of the United Nations is to "maintain peace and security" and consequently any form of use of force, regardless of whether it infringes the integrity of a State or otherwise, is contrary to the Purposes and therefore in contravention of Article 2(4) of the Charter.

As a result, the use of force can be legally justified under the Charter only where:

1) it is intended and restricted to individual or collective self-defence;

2) it is mandated by a decision of the Security Council under Article 42 of the Charter; or

3) in humanitarian intervention, which is a somewhat controversial justification for the use of force.[22]

Careful analysis of the events since 1945 involving the use of force may well find that this principle is honoured more in its breach than its observance. It does not, however, alter the balance that use of force on Earth is only permitted in those three situations.

It is clear that humanitarian interventions, as a unilateral act without reference to the Charter, cannot attract the application of Article 103. As a result, the conduct of humanitarian intervention operations must respect the limitations imposed by Article IV of the Outer Space Treaty or, namely, the prohibition on weapons of mass destruction and the demilitarisation of celestial bodies. It is difficult to see, in any event, how humanitarian interventions would be affected, presently or in the future, by the limitations imposed by Article IV.

In the case of use of force for self-defence or Security Council mandated actions under Articles 41 and 42 of the Charter, it is important to consider to the application of Article 103 on those specific provisions in Chapter VII of the Charter.

ARTICLE 51: SELF-DEFENCE

Article 51 recognises the inherent right in law of individual or collective self-defence where an armed attack takes place "until the Security Council has taken measures necessary to maintain international peace and security". This doctrine has arguably justified the use of force against Iraq in the defence of Kuwait, even though at the time the armed attack was already complete.[23]

It is interesting to note that Article 51 of the Charter considers collective self-defence to be a right rather than an obligation, as one would have considered collective security to be the responsibility of all States rather than a "right" to be exercised. It may been seen that the States have completely surrendered their sovereignty in relation to the use of force to the Security Council and, as a result, collective self-defence has become a "right" to use force outside the authority of the Security Council.[24] In other words, the "obligation" of collective security is given effect by the other provisions of Chapter VII and the authority under Article 42 and, as a result, all that remains is a "right" to use force in self-defence outside the realm and authority of the Security Council.

Consequently, it is clear that Article 103 would have no application on Article 51 as it applies only to obligations and not rights. The right of a State to use force in self-defence in outer space, therefore, would have to respect the limitations imposed under Article IV of the Outer Space Treaty. From the discussion above, Article IV would not prevent the use of force by States in space, provided it did not involve the deployment or use of weapons of mass destruction and did not involve the use of celestial bodies. States are nevertheless required to observe the same obligations in relation to the *jus ad bellum* and *jus in bello* in space as it does on Earth, as Article III of the Outer Space Treaty applies existing principles of international law on activities in outer space.

ARTICLE 41

Under Article 41, the Security Council can decide on the "complete or partial interruption of economic relations and of rail, sea, air, postal, *telegraphic, radio and other means of communication*" to restore international peace and security.[25]

The Security Council can make a binding decision that communications links with a particular State are to be interrupted. Such a decision would amount to a binding obligation on all States and one that Article 103 would apply. As a result, the States may be required to take steps to ensure that communications with that State is interrupted. These steps would be limited to

internal ones as Article 41 would not authorise a State to take external steps to disrupt another State's link and communications that amounts to use of force. This is analogous to shipping links, where each State would be required to ensure that no shipping under its flag reached the target State but cannot undertake a naval blockade or to arrest or attack ships destined for the target State. Similarly, a State can act to interrupt or interfere with satellite communications pursuant to a resolution made under Article 41 of the Charter, but it cannot destroy the communications satellite itself.

For example, in Resolution 221 of 1966, the Security Council determined that supplies of oil from tankers calling at the port of Beira constituted a threat to the peace and called upon both Portugal and the United Kingdom to take action to prevent oil from reaching Southern Rhodesia.[26] This was considered to be action taken by the Security Council under Article 42 rather than Article 41 as it involved the use of military force to undertake a blockade that is excluded from the authority of Article 41.

Applying Article 41 to outer space would mean that, when required, States would have to take steps to ensure that no transmissions from ground segments within their control are relayed through satellites to the target State. It would also mean that satellites registered to other States would similarly be required to cease transmissions to the target State. Such actions would not contravene Article IV of the Outer Space Treaty and, as a result, it would not be necessary to invoke Article 103 of the Charter for such actions to take place. In the case of satellites registered to the target State, Article 41 would not provide the legal authority for the Security Council to require disruptions or interference with the transmissions of those satellites, as it would amount to a use of force by the interfering States.

It is interesting to note that Article 41 does not allow the Security Council to provide for the interruption of space transport or launch activities by other States. This may be the result of the framers of the Charter not anticipating the advent of space activities or it was never intended for the Security Council to have power to interrupt or prevent space activities under Chapter VII. This is difficult to accept because, if the threat or breach to the peace is the proliferation of weapons in space undertaken by a particular State, the Security Council would be powerless to make any decisions pursuant to Article 41 for the prevention of launch activities from taking place. If Article 41 impliedly permits such interruptions or interference, these acts would be carried out by States in the interest of maintaining international peace and security and, provided they are done without the use of weapons of mass destruction, would not contravene the provisions of the Outer Space Treaty.

ARTICLE 42

Article 42 of the Charter provides that the Security Council may decide on the use of force if actions taken under Article 41 are inadequate to restore international peace and security. Traditionally, it has been observed that Article 42 was the only provision in the Charter that allows the Security Council to "take action by air, sea or land forces" where necessary to maintain or restore international peace and security.[27] However, the International Court of Justice had taken a contrary view in the *Certain Expenses of the United Nations* case.[28]

In any event, it is important to note that Article 42 authorises States only to undertake measures by air, sea and land forces "as may be necessary to maintain or restore international peace and security". As a result, there is clearly no mention of operations in space or measures taken by space forces in Article 42. Of course, there is no reason why a State cannot use the authority provided by the Security Council under Article 42 to use force in space by

"land" or "air" forces, though this would appear to be contrary to the literal meaning of "air, sea or land forces" in the provision.

There are clearly two perspectives on the content of this limitation in relation to the authority of Article 42 in space. Firstly, it could be seen as limiting the scope of the authority given to the Security Council only to use of force by terrestrial forces and, consequently, the Security Council has no authority to require military action in space. If applied literally, this would mean that the total ban of military force in space, so eagerly sought after by some framers of the Outer Space Treaty, would be achieved, as the only use of force allowed in outer space would have been for self-defence under Article 51 of the Charter. It would also mean that there would be no conflict between Article 42 of the Charter and Article IV of the Outer Space Treaty that would allow Article 103 to permit the use of force on celestial bodies when required to do so under Article 42 of the Charter.

Secondly, it can be pointed out that the first satellite in space was not launched for another fourteen years after the Charter entered into force. As a result, it can be argued that the drafters of the Charter simply did not anticipate the possibility of military combat in space, even though they had intended for the Security Council to be able to decide on the use of all forms of military force.

There is no reason why the scope of Article 42 cannot be altered by consistent and uniform practice by States on the Security Council and, as a result, the Security Council may find itself having the authority to require military actions in space.[29] In any event, such a decision by the Security Council would clearly fall under the scope of Article 103, effectively overriding the provisions of Article IV of the Outer Space Treaty to the extent that force may be used on celestial bodies and may involve the use of weapons of mass destruction.

On the other hand, it should be observed that Article 42 provides for action by "air, sea or land forces" where, if it had intended to mean all "military forces", it would have specified accordingly. Conversely, it can also be suggested that no other forces existed at the time and that the framers had intended to specify all three armed forces for the sake of completeness.

The only remaining argument that is apparent on this subject is that the prohibition of military use of outer space may be a *jus cogens* principle that would prevail over the United Nations Charter or any other treaty. This would be supported by the consistent language of General Assembly resolutions relating to the exploration and use of outer space to be limited to "peaceful purposes" only. However, as discussed above, the provisions of the Charter may have acquired the status of *jus cogens* as well.

On balance, there does not appear to be any overwhelmingly persuasive argument to tilt the balance between the "legalistic" interpretation of Article 42 on the one hand and the "pragmatic" interpretation on the other. In the field of space law, such a divide has grave consequences as it would dictate the ability of States to use military force in space, when supported by the Chapter VII mandate of a Security Council decision. However, this uncertainly is unlikely to be resolved without some practice of the Security Council in the decades to come.

THE DUST SETTLES: *JUS AD BELLUM IN SPATIALIS?*

It would be difficult to specify the exact content of the *jus ad bellum* in space without clarifying the mandate of Article 42 in relation to use of military force in space. However, it is possible to consider the law as it would be in the context of the two possible interpretations and examine the different resulting implications.

Celestial Bodies

In relation to use of force on celestial bodies, the prohibition of non-peaceful use contained in Article IV would apply unless there is a conflicting obligation under the Charter. It is clear that the right of self-defence provided under Article 51 would not extend to celestial bodies. States would be allowed to take action permitted under Article 41 on celestial bodies provided they did not amount to use of force that would have nevertheless contravened existing principles of international law.

With the legalistic interpretation of Article 42, the Security Council would not have authority to require the use of force by States in space, including celestial bodies. As a result, there would be no conflict between the Charter and Article IV (2) of the Outer Space Treaty that would have permitted Security Council-authorised use of force on celestial bodies.

With the pragmatic interpretation of Article 42, it would be open to the Security Council to authorise the use the force in space and on celestial bodies. As States are required under Articles 25 and 48 of the Charter to implement decisions of the Security Council, Article 103 would operate to allow States to use military force on celestial bodies, despite the prohibition contained in Article IV(2) of the Outer Space Treaty. Presumably such authority would permit the use of weapons of mass destruction as well, unless there is a *jus cogens* principle to the contrary that would prevail over the United Nations Charter.

Outer Space

In relation to use of force in outer space, either in Earth orbit or in other parts of the Solar System, Article IV(1) requires only that weapons of mass destruction are not deployed or used in space. In other words, there is no prohibition under the Outer Space Treaty of the deployment or use of military force in outer space. Article 51 of the Charter would allow States to use force for self-defence in outer space provided that such use of military force is necessary and proportionate to the armed attack.[30] In other words, there is no reason why force cannot be used in space if it is necessary and proportionate to respond to an armed attack that took place on Earth.

In relation to the authority to use force under Article 42, the legalistic approach would mean that the Security Council has no legal authority to permit or require the use of military force in space. As a result, the use of force in space would be limited to the context of self-defence. Under the pragmatic approach, the Security Council would again be able to permit or require the use of military force in space under Article 42 of the United Nations Charter.

CONCLUSIONS

It is clear from the above analysis that the limiting provision of international law on the use of military force in outer space is not Article IV of the Outer Space Treaty but Chapter VII of the United Nations Charter as it is the case on Earth. The use of force in space is limited by the permissive provisions of Chapter VII, namely Article 42 in relation to actions mandated or authorised by the Security Council and Article 51 in relation to acts of self-defence.

In order to provide for a definitive *jus ad bellum* in space, it would be necessary to clarify the appropriate interpretation to be placed on the authority of the Security Council under Article 42 in regard to outer space. Such a clarification can be achieved only by the creation of a *jus cogens* principle on the prohibition of military force, or an amendment to the Charter to either expressly include or exclude the use of space forces under Articles 42 and 51. Until either development takes place, however, one would have to be content with the thought that the intended prohibition of military use in space is far from being

realised by the provisions of the Charter and the Outer Space Treaty.

Notes

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[1] Outer Space Treaty, Art. IV.

[2] Cheng, *The Legal Status of Outer Space and Relevant Issues: Delimitation of Outer Space and Definition of Peaceful Use* (1983) 11 J. SPACE L. 89 at 102.

[3] Markov, among others, holds the opposite view: see Markov, *The Juridical Meaning of the Term "Peaceful" in the 1967 Space Treaty* (1969) 11 PROC. COLL. L. OUTER SPACE 30.

[4] See the testimony of Ambassador Goldberg in TREATY ON OUTER SPACE: HEARINGS BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS (1967) 90th Cong., 1st Sess. 22 at 59; and the statement by the Permanent Representative of the Soviet Union in SUMMARY RECORD OF THE U.N. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (1966) U.N.Doc.A/AC.105/C.2/SR.66 at p. 6. See also Lay and Taubenfeld, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE (1970), at p. 97; and Christol, THE MODERN INTERNATIONAL LAW OF OUTER SPACE (1982), at pp. 29-30.

[5] TREATY ON OUTER SPACE: HEARINGS BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS, *supra* note 4, at p. 59; and Christol, *supra* note 4, at pp. 29-30.

[6] Charter of the United Nations, Art. 2(4).

[7] Antarctic Treaty (1959) 402 U.N.T.S. 71, Art. I.

[8] Russell, *Military Activities in Outer Space: Soviet Legal Views* (1984) 25 HARV. INT'L. L. J. 153 at 161; Piradov (ed.), INTERNATIONAL SPACE LAW (1976); and Christol, *supra* note 4, at pp. 28-29.

[9] Vienna Convention on the Law of Treaties (1980) 1155 U.N.T.S. 331, Art. 30.

[10] Lauwaars, *International Law: The Interrelationship between United Nations Law and the Law of Other International Organisations* (1984) 82 MICH. L. REV. 1604 at 1606.

[11] Lee, *The United Nations: From Peacekeeping Success to Peace Enforcement Failures* [2000] AUST. INT'L. L. J. 180.

[12] Charter of the United Nations, Arts. 25 and 48.

[13] *Certain Expenses of the United Nations (Article 17 Paragraph 2 of the Charter)* [1962] I.C.J. Rep. 151 at 163.

[14] Lauwaars, *supra* note 10, at 1607.

[15] Principles Relating to Remote Sensing of the Earth from Outer Space (1986) 41 U.N. G.A.O.R. Supp. 20 (U.N.Doc. A/41/20).

[16] *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits)* [1986] I.C.J. Rep. 14.

[17] Sir David Hannay, U.N. Doc S/PV.3431 (16 October 1994), pp. 11-12.

[18] *Corfu Channel Case (United Kingdom v Albania) (Merits)* (1949) Pleadings, Vol. III, p. 296. The Court did not refer to this particular submission.

[19] Brownlie, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963), pp. 267-268.

[20] This view is supported by the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.

[21] Harris, CASES AND MATERIALS ON INTERNATIONAL LAW (5th ed., 1998), p. 866.

[22] *Ibid.* See also Simma, *NATO, the UN and the Use of Force: Legal Aspects* (1999) 10 EUR. J. INT'L. L. 1; Cassese, *Ex iniuria ius oritur: Are We Moving towards International Legitimisation of Forcible Humanitarian Countermeasures in the World Community* (1999) 10 EUR. J. INT'L. L. 23; and Reisman, *Unilateral Action and the Transformations of the World Constitutive Process: The Special Problem of Humanitarian Intervention* (2000) 11 EUR. J. INT'L. L. 3.

[23] Kelsen, THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS (1951), at p. 792; and Bowett, SELF-DEFENCE IN INTERNATIONAL LAW (1958), pp. 216-218.

[24] Halberstam, *The Right to Self-Defence Once the Security Council Takes Action* (1996) 17 MICH. J. INT'L. L. 229 at 248. After all, as Halberstam stated at 248, "it is difficult to believe that some 180 states would have agreed to give up the most fundamental attribute of sovereignty, the right to use force in self-defence, to an international body and particularly one like the Security Council."

[25] Emphasis added.

[26] Security Council Resolution 218 (1966), S.C.O.R., 21st year, RES. & DEC., p. 5.

[27] See Kelsen, supra note 23, at pp. 744-745.

[28] It can also be based on the consent of the Congolese Government or Art. 51 of the Charter: *Certain Expenses of the United Nations*, *supra* note 13, at 167.

[29] See, for example, Art. 27 of the Charter; and Kelsen, *supra* note 23, at pp. 239-244 and Wolfrum and Philipp, UNITED NATIONS: LAW, POLICIES AND PRACTICE (1995) at pp 1404-1405.

[30] Bowett, UNITED NATIONS FORCES (1964), p. 54.