CONTEMPORARY DOCTRINE OF SELF-DEFENSE IN OUTER SPACE LAW

Professor S. Bhatt
Formerly Professor of Space Law, and
Honorary Professor of International Law
School of International Studies
Jawaharlal Nehru University, New Delhi – 110067
Adviser, United Nations (ICAO)
Commentator to UNISPACE III Conference, Vienna, July 1999
Post-Doctoral Fulbright Fellow, School of Law, Dallas,
Texas, USA 1969-70

Abstract

This paper analyses the contemporary law on self-defense contained in the UN Charter Article 51, as also in air and space law from the Chicago Convention of 1944 and the Outer Space Treaty of 1967. It takes into account the events of global terrorism ever since 9/11, 2001 attack in New York and its impact on global security and self-defense.

CHAPTER VII OF UN CHARTER

Chapter VII of the UN Charter contains Articles 39 to 54 relating to threats to the peace, breaches of the peace, and acts of aggression. Article 39 provides that the Security Council shall determine the existence of any threat to the peace etc. and make recommendations in accordance with Articles 41 and 42 to restore peace and security. Article 41 provides for measures not involving the use of armed force and involves interruption of economic relations. Article 42 is called for when Article 41 does not help and the use of air, sea, or land forces is necessary by the members of the United Nations. However, Article 51 of the Charter says that nothing in the present Charter shall impair the inherent rights of individual or collective self-defense if an armed attack occurs against a member of the UN, until Security Council has taken measures for maintaining peace and security.

The Charter provisions for self-defense were drafted in 1945; much before space exploration began in 1957. Even during 1945-57, there were varying interpretations of the use of force in self-defense. To safeguard national security, scholars and nations debated whether a pre-emptive strike is a legal course of self-defense when a war or an armed conflict is imminent, and a country cannot wait for an armed attack to occur first. In the case of nuclear weapons, some countries have adopted "No First Use" doctrine while some say that a pre-emptive strike is necessary for self-defense. A massive retaliation by a second counter strike in self-defense can deter a potential aggressor. The USA relied on the latter doctrine against

former USSR during the Cold War period. The threshold was crossed when both super powers had massive weapons stockpile.

Use of Force In Air Law

Modern air law is based on the Chicago Convention of 1944. The objectives of ICAO are to ensure safe, economic and orderly movement of global aviation. The sovereignty over air space rests with the superjacent State. The Convention was amended to include Article 3 bis to avoid the use of force against a civil aircraft after a civil aircraft was shot down by former USSR forces when it strayed by mistake into its territory. Today, however, this doctrine of no use of force against a civil aircraft is open to new ideas and action. As we know civil aircrafts were hijacked and used in 9/11 attack in New York. The US was forced to use military aircraft to intercept civil aircraft to safeguard its security against terrorist attacks. The terrorists originated from Afghanistan. Thus US has redrawn its self-defense doctrine to use force which includes a pre-emptive strike where there is a threat to US security from terrorism. India has made a similar pronouncement, as France and some other countries have. The use of force against civil aircraft is now a subject involving the security interests of States for self-defense.

Space Law And Self-Defense

Space law is a part of international law and the UN Charter. Space is geographically an earth-space arena, as Professor Myres McDougal and Professor Ivan Vlasic described in their treatise on Law And Public Order In Space published in 1963. The Outer Space Treaty is the Charter for outer space law. It does not permit militarisation of outer space, nor the orbiting of nuclear weapons in the orbit of earth. It does permit the use of military craft and personnel for the scientific exploration and uses of outer space. The doctrine of self-defense in armed conflict becomes urgent for examination of scholars and nation States.

Major Goals of Space Exploration

It may be recalled that space exploration has given many substantial benefits to the world society. The UNISPACE III Conference by the UN in July 1999 was a landmark occasion and a great step to harvest the economic and scientific uses for the developing and the developed countries. The conference promoted international cooperation which has become a grand norm of space law for States. In the abovementioned UN Conference many States and international organizations have come forth with the major goals of space exploration.

The International Society for Photogrammetry and Remote Sensing has 167 member societies and organizations for advancement of knowledge, research, development and education in photogrammetry, remote sensing and spatial information sciences, to help well-being of humanity and sustainability of environment. The International Organization of Space Communication has been working since 1971 to develop world communication.

The European Space Agency has following major goals as stated in the Conference of observation and analysis of earth systems of atmosphere, oceans, land and their complex interactions; Global Navigation Satellite System; Global Information Infrastructure; basic space sciences, and international cooperation. The UNITAR has major goal to monitor environments for decision-making of Agenda 21. The Economic and Social Commission for Asia and Pacific has emphasis on Space Application and Sustainable Development (See UNISPACE III A/CONF. 184/AB/IGO/4). India has taken a lead in this region to bring application of space to the people at large. The INTELSAT has promoted the use of frequency spectrum and geostationary orbit. It has helped in deregulation and globalisation of economies and services (A/CONF.184/AB/IGO/5). The IMO has benefited much by observation of satellite data. The FAO uses space exploration in environmental monitoring, and global information and early warning system for emergency affecting growth of crops. This is done by remote-sensing, or the use of new technology for rapid growth of food-cultivation and new seeds (A/CONF.184/AB/IGO/7). Indeed a perspective of subjects discussed in the present 57 IAF on "Bringing Space Closer to People" provides a glimpse of new knowledge for mankind. It includes the use of nuclear power systems in space, social benefits of space spin-off, space tourism, for which many spaceports are coming up as in Dubai etc., space and global security, policies for new era in space, new commercial opportunities in space, legal aspect of space transportation (we seem to be very close to the era of aerospace transport of passengers and cargo world over), and expansion of knowledge for world society. Professor Stephen Hawking has in his book 'A Brief History of Time' stated that 21st century scholars view all knowledge in one perspective. Besides, the growth of a biologist view of the world was provided by the UNESCO Conference in 1971 on the 10th death anniversary of Einstein and biologist Chardin. The above Conference under Julian Huxley also made a case for the integration of all knowledge for the human benefit that Einstein and Justice Holmes have been recommending.

New Global Evolution

Thus the world society today is in a new period of integration and evolution. There have been some major ideas and changes introduced in the structure of world society that include the space exploration since 1957, the environment revolution since 1972 Stockholm Declaration, the de-regulation and globalization in air law since the De-regulation Act of USA in 1978 and the integration of global economy by WTO that has produced an interdependent world society. The major concerns of States is for welfare economics for which Professor Amartaya Sen, the Noble Laureate has invited world attention.

Clash of Civilizations And Armed Action In Space: The Shape of Things

The 9/11 event of 2001 in New York has produced global changes

indeed. Professor Samuel Huntington from Harvard has brought forth a book earlier on 'The Clash of Civilizations And the Remaking of World Order' in 1996. Armed conflict in space law is to be seen in the totality of global order which according to Huntington is experiencing in recent period a clash of civilizations based on a conflict of cultures. In fact outer space law is closely watching the political dialogue on the clash of cultures. President George Bush of USA has to a very large extent responded to this world challenge after terrorists' attacks in New York. At home, he has announced the home guard movement for national security. Externally, he has made the pre-emptive strike a national policy against a foreign country that trains terrorists against USA. He has declared that global freedom and democracy are important parameters for peaceful world order. He has also sought international cooperation with India, China, former USSR, EU and countries in Asia, Africa and in the Middle East. President Bush has achieved a large measure of success in creating international cooperation to fight and control global terrorism which is number one threat to world peace. Thus the comity of nations through the UN and by individual efforts of States are controlling global terrorism. Thus self-defense in outer space is based on new cooperation among States against global terrorism. Outer space is being used to monitor terrorist training camps. US is using air power to control terrorism in Afghanistan and Iraq. Major powers are engaged to control the spread of nuclear weapons to countries especially in the Middle East where terrorism has created armed conflicts. It is therefore in the interest of Collective Self-defense of States that space law should promote international cooperation for control of global terrorism. Then alone will follow freely many scientific and social benefits to mankind by space applications.

It is seen, however, that the use of force for self-defense has to be based on the doctrine of proportional use of force and not on massive weapons for destruction. Professor Myres McDougal from Yale Law School has strongly recommended the doctrine of proportional use of force for self-defense. The use of nuclear weapons from outer space, or from any source, is not permitted under international law. These weapons are against all laws of war and are a threat to the survival of mankind. Hence their proliferation in the hands of terrorists, States who cannot handle them with responsibility, has to be stopped. Articles 41 and 42 of UN Charter can be applied to stop States to produce such weapons of mass destruction. This has become the collective responsibility of all States. The US and other allied States are pursuing above legal measures to secure a peaceful world. These are measures for collective self-defense as provided under the UN Charter.

India has moved on to control terrorism on the cultural front as well. Even USA and other major powers have agreed to avoid a clash of civilizations and promote a multi-cultural heritage of world society. India is a multi-cultural country. Many other countries have now major pockets of composite culture. Unity in diversity is a global doctrine.

Global federalism helps to ensure diversity of cultures. Professor Huntington also feels that a war will not result because of a clash of cultures. The problems of world society, he says, are due to global corruption, inadequate governance, lack of moral standards, and resulting terrorism. In any case, we cannot afford a global war based on a clash of civilizations. The world has moved so much for a single civilization based on the attractions of a variety of cultures. We are living in a unified world order based on the rule of law. No religion doubts this thesis. Nevertheless, States need vigilance and cooperation to weed out the virus of terrorism. India is experimenting a new life-style based on the combination of ideas of West and East. A stable world order is likely to rest on freedom, democracy, cultural tolerance and multi-cultural global civilizations. Eminent anthropologist, Margaret Mead has said that all of mankind belong to one species, called Homo Sapiens, and the diversity of cultures helps promote unity of mankind. The world is increasingly realizing this thesis for common survival of mankind. The environmenting problems of this planet further call upon all States and peoples to live in harmony and peace. This concept of unity in diversity of mankind has been forged by space law and space benefits. That is why the IAF has this theme for the 57th Conference in Spain in 2006 – Bringing Space closer to people.

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