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An Interpretation of the Outer Space Treaty after 40 Years

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Abstract

The 40 years since the entry into force of the Outer Space Treaty have borne witness to the exponential growth in the scope of space activities and the crucial role of space law-making. In this context, the paper presents a theoretical, methodological and practical study of the 1967 Outer Space Treaty (OST) and its interpretation as the most significant international agreement regarding outer space activities. The paper takes into account the general rules for the interpretation of treaties of public international law as set out in Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT). At the same time, the peculiarities in the interpretation of the Outer Space Treaty are the focus of the paper. Against this background, the author presents the case for a comprehensive commentary on the written norms of space legislation and the related State practice.

„Perhaps the future will find this treaty an awesome document indeed. Perhaps not. Perhaps in the end it really depends not on the letter, but on the spirit of the law."
(T. R. Adams, 1968)[1]

Introduction

The starting point for any interpretation of international treaties is the Vienna Convention on the Law of Treaties (VCLT) of 1969[2], its rules being supplemented by case law of the International Court of Justice (ICJ) and other international tribunals.

In terms of space law-making, the criteria established by the Vienna Convention on the Law of Treaties and the relevant case law have to be viewed within the specific context of space law as a particular branch of public international law. The increased scope of space activities raises the question of the actual value of, for example, the legislative history in the interpretation of space law in general, and especially the OST. Moreover, rules of customary international law as evidence of state practice may concur to the written norms of space law. Further, in light of the increasing volume of space legislation at the national level, the position and influence of the public international law framework on the creation of such national space legislation must be

analysed. It is only at the end of such examination that one comes closer to answering the question of whether the letters of the Outer Space Treaty or its spirit prevails after 40 years of its existence.

Interpretation of Treaties in General Public International Law

In international law, there are three basic approaches to treaty interpretation.[3] While one focuses on the actual text of the agreement (objective approach), the second centres on the intention of the parties adopting the agreement (subjective approach), and the third one emphasises the object and purpose of the treaty against which the meaning of any particular treaty provision should be measured (teleological approach).[4]

Articles 31 *et seq.* of the Vienna Convention on the Law of Treaties (VCLT) of 1969[5] comprise aspects of all three approaches. The rules laid down by the Convention are only binding on the States parties to the Convention, however, unless they constitute written norms of customary international law. The fundamental rules for interpretation are set out in Article 31 VCLT, which at the same time reflects customary international law. Case law provides further guidelines regarding the rules laid down in the Vienna Convention on the Law of Treaties.

As the general rule, Article 31 (1) VCLT stipulates that *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*

Before considering the single elements reflected in this provision, it should be noted that treaties always have to be interpreted in *good faith*, as is also emphasised by Article 31 (1) VCLT.[6]

1. Literal interpretation ("ordinary meaning")

As becomes clear from Article 31 (1) VCLT, the treaty text and the ordinary meaning of its terms are the starting point in any treaty interpretation. This undoubtedly reflects the prevailing opinion in international law.[7]

To that end, the Permanent Court of International Justice (PCIJ) stated as early as in 1925 that it was "a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd."[8]

Similarly, the International Court of Justice (ICJ) in the *Competence of the General Assembly for the Admission of a State to the United Nations* case noted that in the interpretation and application of treaty provisions effect should be given to them in their natural and ordinary meaning in the context in which they occur.[9] It also stated that, "(w)hen the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning."[10]

According to Article 31 (4) VCLT, *"A special meaning shall be given to a term if it is established that the parties so intended."* Since that might include derogation from the ordinary meaning of a term, the standard of proof would seem to be rather high. The mere fact that one party uses the particular term in a particular manner thus isn't sufficient.[11]

2. Systematic interpretation (context)

The aforementioned already indicates that the context also plays a major role in treaty interpretation. The ordinary meaning of a word may be quite difficult depending on the context in

which it is used. Such systematic interpretation in a narrow sense, taking into account the context of the relevant text, can be said to be universally accepted in international law.[12]

As was held by the ICJ, "context" includes the preamble and annexes of the treaty as well as any agreement or instrument made by the parties in connection with the conclusion of the treaty.[13]

Article 31 (2) VCLT confirms this view and specifies that the context *"shall comprise, in addition to the text, including its preamble and annexes:*
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

The Vienna Convention on the Law of Treaties does go further, however, in that Article 31 (3) VCLT provides that there shall also be taken into account, together with the context,
"(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties."

3. Subsequent practice

The practice subsequent to the conclusion of a treaty is a widely recognized means of interpretation,[14] which is reflected by Article 31 (3) (a) and (b) VCLT. Apart from its significance regarding treaty interpretation, such subsequent practice may also go further and actually amend the legal relations between the parties established by the treaty in question.[15] In so far, subsequent practice may have a dual role. Only the former shall be the focus of this examination, however.

In order to provide a legitimate means of interpretation, subsequent practice must be relatively uniform and accepted by the parties.[16]

4. Teleological interpretation ("object and purpose")

Article 31 (1) VCLT also refers to the object and purpose of a treaty as means for treaty interpretation. Against the background of this provision and several decisions of international courts and tribunals, the importance of the object and purpose of a given treaty in its entirety as well as of individual treaty clauses in treaty interpretation can be regarded as rather undisputed.[17]

Therefore, it is widely accepted that where the object and purpose of a treaty are specified in the text concerned, any interpretation of such text should contribute to the achievements of these aims (teleological in a narrower sense).[18]

There is no accepted rule of teleological interpretation in a broader sense, however. An interpretation that would give a treaty text the most extensive possible meaning and effect is neither recognized nor acceptable in international law.[19]

In this respect, the ICJ in the *Interpretation of Peace Treaties* case[20] has made it clear that the principle of effectiveness could not be used to attribute to the treaties in question a meaning which "would be contrary to their letter and spirit". Nevertheless, the principle of effectiveness "has an important role in the law of treaties."[21] It becomes relevant so as to give effect to the provisions in accordance with

the intentions of the parties and in accordance with the rules of international law.[22]

More generally, in the *Eritrea-Ethiopia Boundary* case the Tribunal emphasised that the elements contained in Article 31 (1) VCLT were guides to establishing what parties actually intended, or their "common will".[23] Insofar the principle of "contemporaneity" is relevant, i.e. a treaty should be interpreted by reference to the circumstances prevailing when the treaty was concluded.[24] Nevertheless, the ICJ has noted that this does not prevent it from taking into account "the present-day state of scientific knowledge, as reflected in the documentary material submitted to it by the parties" when interpreting a treaty.[25] Similarly, the ICJ held in the *South West Africa/Namibia* case that "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation."[26]

Moreover, the ICJ has made it clear that the process of treaty interpretation "is a judicial function, whose purpose is to determine the precise meaning of a provision, but which cannot change it".[27]

As has been shown, the text, the context including any *subsequent agreement or practice* relating to the treaty, and the object and purpose of a treaty are the primary means and the most important elements in treaty interpretation.[28] Nonetheless, they may not always lead to clear results.

5. Supplementary means of interpretation

In order to confirm the meaning resulting from the application of Article 31 VCLT, or to determine the meaning when the interpretation according to Article 31 VCLT either leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable, recourse may be had to supplementary rules for interpretation as laid down in Article 32 VCLT. These supplementary means of interpretation include the *preparatory work* of the treaty and the *circumstances of its conclusion*.[29] Yet, the ICJ has emphasised that "interpretation must be based above all upon the text of the treaty".[30] Also, according preparatory work an important status in treaty interpretation would be hardly reconcilable with the importance widely acknowledged regarding subsequent state practice.[31]

6. Multi-lingual treaties

Where a treaty is authenticated in more than one language, Article 33 (1) VCLT provides that *"the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail."* According to Article 33 (2) VCLT *"A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree."*

Moreover, Article 33 (3) VCLT contains the presumption that *"[t]he terms of the treaty ... have the same meaning in each authentic text."*

And finally, Article 33 (4) VCLT stipulates that *"[e]xcept where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted."*

Official or unofficial translations of a treaty which are not authentic can by no means be authoritative under

international law. They may nonetheless have considerable weight in the internal order of the State concerned.[32]

7. Further rules of interpretation

Sometimes, further dogmatic rules are invoked for treaty interpretation. Albeit these might be additional tools in legal reasoning, they are not widely recognized as principles of treaty interpretation.[33]

Interpretation of other documents

Apart from treaties, other texts of legal relevance in international law may require interpretation. The most prominent examples are resolutions of international organizations. Even though there are no general rules and principles for the interpretation of such texts, any interpretation thereof should take into account the intention of the authors and the proper meaning of the text as legitimately understood by third parties.[34]

Interpretation of the Outer Space Treaty (OST)

Each branch of the law has an inherent structure and special features, which are of primary importance for the principles and rules of interpretation. This is in particular true for the interpretation in the field of international law, which is based on the sovereignty and equality of States.[35] This particularity of international law has led to the aforementioned established rules of treaty interpretation.

Yet even in the field of international law, there may be differences as to the importance of one or the other rule of interpretation. This is especially true for space law as a specific branch of international law. As opposed to most fields of international law, space law did not follow the technological developments slowly but rather was created rather quickly in order to provide a certain legal framework for space activities.[36]

Space law in this respect is also remarkable in that it developed at a time when the only actors in outer space were States. Today, however, the commercial use of outer space has come to make one of the biggest parts of space activities, and private companies are participating in these activities as major players.

So, not only has space law from the outset been a field of international law with some peculiarities which by themselves would have made an impact on the means used for interpretation. Instead, there have been major changes during the 40 years of existence of the first and major international treaty of space law, the Outer Space Treaty of 1967.[37]

Applying the General Rules of Interpretation to the OST

As the first multilateral space convention, the Outer Space Treaty of 1967 established a basic framework for the international regime in outer space. In the following, the criteria for treaty interpretation outlined above shall be examined in the perspective of this piece of international law-making as the *magna carta* of space law.

1. Literal interpretation ("ordinary meaning")

With 17 Articles, 13 of which contain substantial provisions, four containing provisions concerning administrative matters such as entry into force, ratification etc., the Outer Space Treaty is a rather short document. Quite a few of its provisions contain fairly ambiguous or unclear wording, however.

At first glance irritatingly, for instance, the subject matter *per se* that is to be governed by the Treaty, "outer space"

is not defined in the Treaty. A certain area far enough from Earth is clearly understood from the ordinary meaning of the term as "outer space". Especially due to the problem for natural science to establish where exactly outer space begins, the classification of the area between 84 and 110 km above the Earth's surface as either outer space or airspace remains unclear, however.

The Outer Space Treaty contains many other terms that are ambiguous in that their ordinary meaning may be difficult to establish, e.g. "exploration and use", "for the benefit and in the interest of all countries", and "province of all mankind" in Article I (1) OST.

Similarly unclear is the ordinary meaning of the words used in Article II OST, according to which "outer space "is not subject to national appropriation by claim of sovereignty, ... or by any other means".

Moreover, the ordinary meaning of the term "peaceful purposes" as contained in Article IV (2) OST poses some difficulty.

Further wording that has not an entirely clear ordinary meaning is that of "astronauts" and "envoys of mankind" (Article V (1) OST), "national activities in outer space" and "the appropriate State" (Article VI OST). But also the terms "State ... that ... procures the launching" (Article VII OST), "jurisdiction and control", "objects launched into outer space" (Article VIII OST), "principle of cooperation and mutual assistance", "with due regard to the corresponding interests of all other States Parties to the Treaty" (Article IX OST) have caused problems in their literal interpretation.

It would go beyond the scope of this paper to analyse these provisions separately and in detail. Instead, it shall suffice here to state that their ordinary meaning is difficult to assess and has also caused difficulties in their interpretation. Quite a lot of the provisions of the Outer Space Treaty thus require recourse to additional means of interpretation.

2. Systematic interpretation (context)

First, the context of these terms could lead to some clarification as to their meaning. Whereas the terms used in the Outer Space Treaty clearly have to be seen in the context of the provisions of the Outer Space Treaty themselves, further guidance as to their context may be deduced from the Treaty's Preamble.

According to the Preamble, States were *"inspired by the great prospects opening up before mankind as a result of man's entry into outer space"*. Moreover, the Preamble recognizes *"the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes"*. This may be referred to when interpreting Article I OST, which uses similar language. However, the Preamble does not provide further guidance as to the meaning of the terms "common interest of mankind", "exploration and use", "outer space" and "peaceful purposes", albeit it does emphasise that freedom of exploration and use does not exist unlimited but is restricted by the requirement of "peaceful purposes" (cf. Articles I, IV OST).

What can also be found in the Preamble is that *"the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development"*. Also this part of the Preamble is linked to Article I OST and may thus be to some extent useful in its interpretation.

Furthermore, the Preamble clearly states that it is desired *"to contribute to broad international cooperation in the*

scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes", at the same time *"(b)elieving that such cooperation will contribute to the development of mutual understanding and to the strengthening of friendly relations between States and peoples"*. These aims may contribute to the interpretation of Articles I, IX, and X OST, but moreover it provides the broader context for pretty much all of the Outer Space Treaty's provisions since it reflects the spirit of the Treaty as a document to enable and enhance cooperation between States in their space activities.

Additionally, the Preamble makes explicit reference to UNGA resolution 1962 (XVIII)[38], UNGA resolution 1884 (XVIII)[39], and UNGA resolution 110 (II) of 3 November 1947.[40] The drafters of the OST finally were convinced that the OST would *"further the purposes and principles of the Charter of the United Nations"*. This objective is reflected in Article III OST, the interpretation of which may thus be inspired by that provision of the Preamble.

Whereas the Preamble thus may indeed provide further guidance as to the interpretation of the Outer Space Treaty's substantial provisions in that it may help concretize the context of the provisions, it does not provide major new impetus for their interpretation. Nevertheless, it should definitely be taken into account when interpreting the Outer Space Treaty.

3. Subsequent practice

Depending on the term in question and the provision in which it is being used, further agreements have been concluded between the States parties to the Outer Space Treaty that have an impact on their interpretation. In this respect, the *Astronauts Agreement of 1968*[41] has further concretized Article V OST, the *Liability Convention of 1972*[42] has elaborated on the subject matter of Article VII OST, the *Registration Convention of 1975*[43] has further detailed the subject matter of Article VIII OST, and the *Moon Agreement of 1979*[44] has specified the rules governing the Moon – and celestial bodies, as is widely acknowledged. It should be noted, however, that the Moon Agreement so far has only received 13 ratifications[45] and thus cannot be said to be universally accepted between all States Parties to the Outer Space Treaty.[46] Moreover, four "declarations and legal principles", i.e. resolutions of the United Nations General Assembly (UNGA), reflect a subsequent practice of States: the *Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting*[47], the *Principles Relating to Remote Sensing of the Earth from Outer Space*[48], the *Principles Relevant to the Use of Nuclear Power Sources in Outer Space*[49], and more recently the *Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries*[50]. Furthermore, it was only in late 2004 that the UNGA adopted a resolution on the "*Application of the concept of the 'launching State'*"[51].

Obviously, these documents may only provide guidance to the relevant subject matters that they refer to. Depending on the provision of the Outer Space Treaty in question, however, further treaties and resolutions dealing with specific issues, such as e.g. nuclear power sources, and concluded between the parties of the Outer Space Treaty are important in interpreting these aspects of the Outer Space Treaty.

Moreover, about 20 countries by now have their own national space

legislation or at least some national legislation applicable partially to outer space. Most notably, for instance, the Australian Space Activities Act of 1998 after an amendment in 2002 stipulates that the term "launch" means to launch or attempt to launch the object into an area beyond the distance of 100 km above sea level. Whereas a single State itself cannot define a term of international law by itself, such interpretation may well be at least considered when interpreting the term "outer space" as used in the Outer Space Treaty.

4. Teleological interpretation ("object and purpose")

Further guidance as to the terms of the Outer Space Treaty may be drawn from the Treaty's object and purpose. These must be viewed in the light of the developments leading to the conclusion of the Outer Space Treaty.

At the time of the elaboration and conclusion of the Outer Space Treaty, the Cold War was still raging, and the Soviet Union and the U.S. were fighting over superiority in space. The execution of the Soviet *Luna* programme and the U.S. *Surveyor* programme had rendered the landing of man on the Moon almost possible, at the same time creating the danger of related outer space conflicts.[52] It was obvious at the time that a basic set of rules to govern activities in outer space would be indispensable in the interest of all mankind.[53] Against this background, it becomes clear for instance that the Treaty's major objectives were the prevention of territorial conflicts as well as an arms race in outer space.

5. Supplementary means of interpretation

Preceding the Outer Space Treaty, the *Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space*[54] laid down fundamental rules for space activities. Moreover, UNGA resolution 1721 (XVI) of 1961 on "*International Co-operation in the Peaceful Uses of Outer Space*" was a further stepping stone towards the Outer Space Treaty.

It is helpful, however, to also take recourse to the preparatory works relating to the immediate drafting of the Outer Space Treaty itself. The discussions in the various fora do in some respect provide guidance as to the meaning intended for a certain term.

6. Authoritative languages

Article XVII OST declares the Chinese, English, French, Russian and Spanish texts of the Treaty equally authentic. According to Article 33 (1), (2) VCLT, these texts are thus equally authoritative.

Changes in the interpretation of the OST during the 40 years of its existence

A lot has happened since the coming into force of the Outer Space Treaty in 1967. Vast improvements have been made technologically, but also the political landscape has undergone major change. In the latter respect, the conflict between the two former world powers has given way for a world still dominated by one "super power", yet soon to be challenged by new major players and soon-to-be world powers such as China. Moreover, it is by no means only States anymore that participate in space activities. Instead, space activities are increasingly performed by private entities. It is widely accepted, however, that their States of nationality still remain the linkage in that they authorize, supervise and control such space activities and are the ones primarily

liable for any damage caused by space objects.

As becomes clear, there has thus been a major change in contemporaneity which also needs to be taken into account in any interpretation of the Outer Space Treaty, going beyond the scope of the subsequent practice as indicated above.

Conclusion

It has been shown that the text, the context including subsequent state practice, and the object and purpose of a treaty are the primary means and the most important elements in treaty interpretation. They are supplemented by the preparatory work and the circumstances of the conclusion of a given treaty.

Applying these means of interpretation to the Outer Space Treaty will help interpret and clarify the meaning of some of its terms and provisions. However, other provisions of the Outer Space Treaty until today remain to a large part ambiguous due to difficulties in their interpretation. This is also reflected in the large amount of scientific literature that can be found on certain aspects of the Outer Space Treaty, the discussions dating back to the early days of the Treaty.

Whereas undoubtedly a considerable body of scientific literature on their interpretation does exist, it is rather scattered and refers to certain aspects and provisions of the Treaty at one time only. A comprehensive commentary on the Outer Space Treaty, taking account of the problems regarding the interpretation of the various treaty provisions against the background of the changed landscape, would thus be of great value.

I would like to make the modest comment that such a commentary will be published by the Institute of Air and Space Law of the University of Cologne in cooperation with the German Aerospace Center (DLR), and with the help of a wide range of international authors in the field of space law. The Cologne Commentary on Space Law (CoCoSL) aims to provide a critical and scientific commentary by the international space law community on forty extremely successful years of space law-making.

Coming back to the initial question regarding the letter and spirit of the Outer Space Treaty, it can be clearly answered in the affirmative that the Treaty indeed is an "awesome document" which has remained practicable until today. Nevertheless, its letter must be viewed against its spirit, which has to quite some extent changed throughout the 40 years of the Treaty's existence.

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1 *T. R. Adams*, The Outer Space Treaty: An Interpretation in the Light of the No-Sovereignty Provision, Harvard International Law Journal, 1968, p. 157.

2 Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty *Series*, vol. 1155, p. 331.

3 *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (839).

4 *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (839) with further references.

5 Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty *Series*, vol. 1155, p. 331.

6 *S. Hobe/O. Kimminich*, Einführung in das Völkerrecht, Tübingen/Basel 2004, p. 216; *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1422).

7 *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

8 *Polish Postal Service in Danzig* case, PCIJ Series B, No. 11, p. 39.

9 ICJ Reports, 1950, pp. 4 *et seq.* (8); 17 ILR, p. 326 (328).

10 ICJ Reports, 1950, p. 4 *et seq.* (8).

11 The *Eastern Greenland* case, PCIJ Series A/B, No. 53, 1933, p. 49; the *Anglo-French*

Continental Shelf case, Cmnd 7438, p. 50; 54 ILR, p. 6.

[12] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

[13] *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (840). *US Nationals in Morocco* case, ICJ Reports, 1952, p. 176 (196).

[14] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1421).

[15] *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (841) with further references.

[16] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1421).

[17] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

[18] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

[19] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

[20] ICJ Reports, 1950, p. 221 (226-230).

[21] The *Fisheries Jurisdiction (Spain v. Canada)* case, ICJ Reports, 1999, p. 432 (455).

[22] *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (842) with further references.

[23] Decision of 13 April 2002, para. 3.4, http://pca-cpa.org/upload/files/EEBC-3.pdf (date of access: 26.08.2007). Reference is made to Lord McNair in the *Argentina/Chile Frontier* case, 38 ILR, p. 495 (530).

[24] *M. N. Shaw*, International Law, Cambridge 2003, p. 838 (840); *Cameroon v. Nigeria*, ICJ Reports, 2002, para. 59.

[25] *Botswana/Namibia*, ICJ Reports, 1999, p. 1045 (1060).

[26] ICJ Reports, 1971, p. 16 (31).

[27] See e.g. the *Laguna del Desierto* case, 113 ILR, p. 1 (44).

[28] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1420).

[29] Article 32 VCLT.

[30] The *Lybia/Chad* case, ICJ Reports, 1994, p. 6 (22).

[31] *Supra*, 3.; see *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1421).

[32] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1422).

[33] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1421).

[34] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416 (1423).

[35] *R. Bernhardt*, Interpretation in International Law, in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Volume II (1995), p. 1416.

[36] *N. Jasentuliyana*, Manual on Space Law, Vol. I, 1979, p. xi.

[37] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, opened for signature on January 27, 1967, and entered into force on October 10, 1967.

[38] Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted by the United Nations General Assembly on 13 December 1963.

[39] Adopted by the United Nations General Assembly on 17 October 1963.

[40] Which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression; the Preamble makes clear that the resolution is applicable to outer space.

[41] Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, opened for signature on 22 April 1968, entered into force on 3 December 1968.

[42] Convention on International Liability for Damage Caused by Space Objects, opened for signature on 29 March 1972, entered into force on 1 September 1972.

[43] Convention on Registration of Objects Launched into Outer Space, opened for signature on 14 January 1975, entered into force on 15 September 1976.

[44] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, opened for signature on 18 December 1979, entered into force on 11 July 1984.

[45] Status as of 1 January 2007, http://www.unoosa.org/oosa/en/SpaceLaw/treaties.html (date of access: 31.08.2007).

[46] Cf. *M. Benkö/K.-U. Schrogl*, The UN Committee on the Peaceful Uses of Outer Space Adoption of a Resolution on Application of the Concept of the "Launching State" and Other Recent Developments", ZLW 2005, p. 57 (64).
[47] UNGA res. 37/92 of 10 December 1982.
[48] UNGA res. 41/65 of 3 December 1986.
[49] UNGA res. 47/68 of 14 December 1992.
[50] UNGA res. 51/122 of 13 December 1996.
[51] UNGA res. 59/115 of 25 January 2005. For an analysis, see *M. Benkö/K.-U. Schrogl*, The UN Committee on the Peaceful Uses of Outer Space Adoption of a Resolution on Application of the Concept of the "Launching State" and Other Recent Developments", ZLW 2005, pp. 57 *et seq*.
[52] *I. Herczeg*, Problems of Interpretation of the Space Treaty, 1968, p. 98.
[53] *I. Herczeg*, Problems of Interpretation of the Space Treaty, 1968, p. 98.
[54] UNGA res. 1962 (XVIII) of 13 December 1963.