

## BRIEF OVERVIEW OF LAW REGULATING MILITARY ACTIVITIES IN OUTER SPACE

### The United Nations (UN) Charter 1945<sup>1</sup>

The applicability of the UN Charter to outer space is affirmed by Article III of the Outer Space Treaty<sup>2</sup>, which calls upon states parties to the Treaty to carry out activities in the exploration and use of outer space “in accordance with international law, including the Charter of the United Nations”.

Article 2(4) of the Charter states that all members shall refrain from the “threat or use of force”. Whether this blanket prohibition of force or threat of force implies that any plans to introduce weapons into outer space would in itself be considered a threat of force, and whether it also prohibits the deployment of weapons directed from space to targets on earth are open questions.

Article 51 of the Charter recognizes the inherent right to individual or collective self-defense “if an armed attack occurs”. In the view of some authorities, Article 51 limits the exercise of the right of self-defense to situations where “armed attacks” have occurred, rather than against those which may be in the making, that is “anticipatory self defense”.<sup>3</sup>

### Partial Test Ban (PTB) Treaty, 1963<sup>4</sup>

Chronologically speaking, the PTB Treaty of 1963 is the first international legal regulation of a military use of outer space. The Treaty was elaborated between 1958 and 1962, with negotiations eventually being conducted in the Eighteen Nation Disarmament Committee (ENDC). Lack of progress in this forum led to private negotiations which resulted in the Treaty.

Article I stipulates that each state party undertakes “not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control: (a) in the atmosphere; beyond its limits, including outer space; or underwater, including territorial waters or high seas...”. An argument could even be made that subsequent state practice (i.e. restraint from conducting atmospheric tests) has transformed this obligation into a rule of customary international law.

The treaty establishes several significant implications for space. First, while the treaty prohibits all nuclear detonations in space, even those that may have value for military or scientific purposes, it does not regulate detonations of a non-nuclear nature such as those pertaining to conventional, biological, chemical or high energy laser weapons. Second, because the treaty prohibits “any nuclear weapon test explosion, *or any other nuclear explosion*” [emphasis added]

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<sup>1</sup> Can.T.S. No.7. Opened for signature 26 June 1945; entered into force 24 October 1945.

<sup>2</sup> See this Chapter I, p. 13.

<sup>3</sup> See Kittrie, N.N., “Aggressive Uses of Space Vehicles-The Remedies in International Law” in, Proceedings of the 4<sup>th</sup> Colloquium of the International Institute of Space Law of the International Astronautical Federation, 1960, 198, at 204. (Hereinafter cited as the IISL Coll.); De Saussure, H. & Reed, W.D., “Self-Defense – A Right in Outer Space”, 7 A.F.J.A.G. Rev.40 (1965).

<sup>4</sup> The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, 480 U.N.T.S. 43. Opened for signature 5 August 1963; entered into force 10 October 1963.