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WILL ARTICLE III OF THE MOON TREATY IMPROVE EXISTING LAW?:
A TEXTUAL ANALYSIS

REX J. ZEDALIS*

I. INTRODUCTION

International lawyers are becoming increasingly interested in analyzing the international legal principles designed to govern the utilization of resources on the moon and other celestial bodies by private enterprise.¹ Recently, particular attention has been devoted to the principles proposed in various provisions of the Agreement Governing Activities of States on the Moon and Other Celestial Bodies (Moon Treaty).² While the importance of analyzing these provisions of the Moon Treaty is beyond question, it would appear that, since technological developments in military weaponry capable of being used in the extraterrestrial realm (e.g., anti-satellite weapons³ and particle beam weapons⁴)

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¹. See The Role of Private Enterprise in Outer Space-International Legal Implication, 2 HOUS. J. INT'L L. 1 (1979) (presenting symposium on international legal implications of private enterprise in outer space).

². U.N. Doc. A/AC. 105/L. 113/Add.4 (1979). The Agreement was approved by the General Assembly and opened for signature on December 18, 1979, U.N. Doc. A/Res.34/68 (1979) [hereinafter cited as the Moon Treaty]. At the writing of this article it was being considered by the United States Senate under article II of the Constitution.


continue to progress at an exponential rate, an examination of the principles which affect military activities merits at least equal or even perhaps greater attention. This is especially so in view of the fact that extensive military use could disrupt activities by private enterprise. In this respect, article III of the Moon Treaty states:

1. The moon shall be used by all States Parties exclusively for peaceful purposes.
2. Any threat or use of force or any other hostile act or threat of hostile act on the moon is prohibited. It is likewise prohibited to use the moon in order to commit any such act or to engage in any such threat in relation to the earth, the moon, spacecraft, the personnel of spacecraft or man-made space objects.
3. States Parties shall not place in orbit around or other trajectory to or around the moon objects carrying nuclear weapons or any other kinds of weapons of mass destruction or place or use such weapons on or in the moon.
4. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on the moon shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration and use of the moon shall also not be prohibited.\(^5\)

Article III and the other provisions of the Moon Treaty reflect the stated desire of the drafters to "define and develop" the principles established by earlier conventions dealing with man's extraterrestrial activities.\(^6\) In particular, it would appear that article III seeks to "define and develop" the principles of article IV of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the

6. The Preamble of the Moon Treaty, supra note 2, provides in pertinent part: Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, . . . Taking into account the need to define and develop the provisions of these international instruments in relation to the moon and other celestial bodies, having regard to further progress in the exploration and use of outer space, . . .
Moon and Other Celestial Bodies (Outer Space Treaty).\(^7\) Article IV of the Outer Space Treaty provides:

States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and celestial bodies shall also not be prohibited.\(^8\)

This brief commentary examines article III of the Moon Treaty in order to determine whether, and if so, the extent to which, it actually satisfies the desire of the drafters to “define and develop” the principles enunciated in article IV of the Outer Space Treaty. This will be accomplished by indicating the limitations and ambiguities of the various principles in article IV of the Outer Space Treaty which apply to the moon and other celestial bodies and then discussing the ways in which the corresponding principles of article III of the Moon Treaty propose, or for that matter fail to secure, improvement. It should be noted that since the Moon Treaty is devoted exclusively to establishing principles which apply to the moon and other celestial bodies, as well as trajectories to or around such,\(^9\) reference to article IV of the Outer Space Treaty will not emphasize those principles applicable to outer space in general — that is, that vast area of space which exists between celestial bodies.


\(^8\) Id. at art. IV, 18 U.S.T. at 2413-14.

\(^9\) Moon Treaty, supra note 2, states at art. I(2), “For the purposes of this Agreement reference to the moon shall include orbits around or other trajectories to or around it.”
II. Denuclearization of Celestial Bodies

By the language of the first paragraph of article IV of the Outer Space Treaty, States Parties undertake, inter alia, not to “install” nuclear weapons or other weapons of mass destruction “on” “celestial bodies” or “station” such weapons in “outer space” in any other manner. The emphasized terms utilized in the first paragraph to describe the nature of the undertaking give rise to at least five basic points of interest. Each of these seems to be addressed in some fashion by article III of the Moon Treaty.

The first point of interest concerns the language of the opening paragraph of article IV of the Outer Space Treaty and its failure to mention the moon in its prohibition of the installation of nuclear weapons or other weapons of mass destruction. Some might argue that since the Treaty mentions the moon whenever it intends a specific principle to apply to the moon, failure to make reference to it in the first paragraph indicates that the prohibition was not intended to apply to the moon. Of course in opposition to this reading it might be suggested that since the moon is a celestial body, reference to the fact that the prohibition applies to “celestial bodies” is more than sufficient to indicate that States Parties are prohibited from installing such weapons on the moon. The ramifications of either construction are hardly insignificant.

The Moon Treaty goes a long way towards eliminating potential disputes over the question of whether members of the international community are permitted lawfully to install nuclear

11. N. Matte, Aerospace Law 299 (1969). Matte, for example, states in pertinent part:

[In] accordance with the stricto sensu interpretation of the law of treaties, the fact that the expression 'the moon and other celestial bodies' is used at the beginning of the second paragraph of the same article..., might mean that the expression 'celestial bodies' when used by itself should be interpreted as excluding the moon. The result of such an interpretation would mean that the installation of nuclear weapons on the moon would be permissible.

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weapons or other weapons of mass destruction on the moon. In fact, the drafters have taken great pains to make it perfectly clear that all the provisions of the Moon Treaty, including article II(3) which contains a prohibition virtually identical to the one in the first paragraph of article IV of the Outer Space Treaty, apply to celestial bodies and the moon. This is accomplished by specifically referring to the moon in the articulation of each principle and then stating in article I(1) that "[t]he provisions of this Agreement relating to the moon shall also apply to other celestial bodies within the solar system...." (Emphasis added). Language to this effect should make it indubitably clear that the Moon Treaty prohibits the installation of nuclear weapons or other weapons of mass destruction on the moon or any other celestial body.

The second point of interest concerns the utilization of the term "install" in the first paragraph of article IV of the Outer Space Treaty to describe what States Parties were prohibited from doing with nuclear weapons or other weapons of mass destruction on celestial bodies. Since the term "install" connotes the existence of some indication of at least relative permanency, evidenced by such things as affixation, attachment, or just simple lengthy duration, it would appear that it does not cover things like the temporary placement of nuclear weapons or other weapons of mass destruction on celestial bodies. This could prove to be a significant loophole in the Outer Space Treaty as increasing visits to celestial bodies provide opportunities for tensions between nations to spread beyond our own planet.

From the language of article II(3) of the Moon Treaty, it would appear that great strides have been made in the direction of attempting to close this loophole. Article II(3) proposes to do much more than just prohibit States Parties from installing nuclear weapons or other weapons of mass destruction on celestial bodies. Specifically, article II(3) provides that States Parties shall not "place" such weapons on celestial bodies. The use of the term "place," instead of the term "install," would seem to imply that permanent and temporary affixation or at-

tachment to, as well as the most ephemeral placement of such weapons on, celestial bodies is prohibited.

The inadvertent positioning of a nuclear weapon or other weapon of mass destruction on a celestial body would not seem to be violative of article III of the Moon Treaty. The general context in which the term "place" is utilized seems to suggest that only deliberate, volitional location of such weapons on celestial bodies is prohibited. It is clear, nevertheless, that article III(3) also prohibits States Parties from orbiting such weapons around or launching them on a trajectory to or around celestial bodies. The effect of this additional prohibition should be to minimize the number of opportunities for nuclear weapons or other weapons of mass destruction to adventitiously find their way to the surface of celestial bodies.

The third point of interest derives from the language of the first paragraph of article IV of the Outer Space Treaty as simply prohibiting States Parties from installing nuclear weapons or other weapons of mass destruction "on" celestial bodies. Use of the term "on," rather than both the terms "on" and "in," provides some justification for arguing that the first paragraph prohibits the installation of such weapons only on the surface of, and not inside of, celestial bodies. However, this emphasizes the pedestrian distinction between "on" and "in" and ignores the possibility that the term "on" might simultaneously encompass what both the terms "on" and "in" encompass independently. Specifically, the language prohibiting States Parties from installing nuclear weapons or other weapons of mass destruction "on" celestial bodies may well prohibit installation "to" celestial bodies. Assuming that this is so, it would seem that the installation of such weapons is prohibited whether the installation is "to" the surface or the subsurface of celestial bodies. This reading is particularly attractive when it is recognized that the installation of nuclear weapons or other weapons of mass destruction inches below the surface of celestial bodies may well have the same consequences as installation right on the surface. Given this, it is strange to think that the drafters of the first paragraph of article IV intended to prohibit one but not the other type of installation.

Whatever possible confusion exists on the question of
whether the Outer Space Treaty prohibits States Parties from installing nuclear weapons or other weapons of mass destruction below the surface of celestial bodies, the position of the Moon Treaty is impeccably clear. Article III(3) proposes to prohibit States Parties from placing such weapons "on" as well as "in" celestial bodies. In doing so it averts a whole plethora of disputes that would inevitably arise out of attempts to emplant such weapons below the surface of celestial bodies on the basis that such efforts are not explicitly prohibited by the Outer Space Treaty. The addition of language making it clear that States Parties are prohibited from emplanting such weapons below the surface of celestial bodies is a major improvement on the Outer Space Treaty.

The fourth point of interest deals with the failure of the first paragraph of article IV of the Outer Space Treaty to establish a comprehensive prohibition relating to the entire spectrum of possible activities involving nuclear weapons or other weapons of mass destruction. Specifically, though the second sentence of the second paragraph of article IV of the Outer Space Treaty prohibits the testing of such weapons on celestial bodies, and the first paragraph of article IV prohibits the installation of such weapons on celestial bodies, there is nothing in the first paragraph which prohibits the operational "use" of such weapons once positioned on celestial bodies. As a result, one might argue that once such weapons are positioned on celestial bodies, nothing in the first paragraph prohibits a State Party from operationally using them. It seems, however, a distention of logic to imagine that the drafters of the Outer Space Treaty intended consciously to prohibit installation and testing of nuclear weapons and other weapons of mass destruction, but not their actual operational use. This is particularly apparent when it is recognized that as compared to use, testing and installation are hardly monumental events.

The failure of the Outer Space Treaty to prohibit the operational use of nuclear weapons or other weapons of mass destruction is corrected by article III(3) of the Moon Treaty. More precisely, article III(3) proposes to make it perfectly clear that States Parties to the Moon Treaty agree to go beyond the circumscribed commitment of the first paragraph of article IV of
the Outer Space Treaty and obligate themselves not to “use” such weapons on or in celestial bodies. Since article III(4) of the Moon Treaty explicitly prohibits the testing of all weapons, the prohibition of “use” would seem indubitably to be directed at operational use. Furthermore, it would appear that the prohibition of “use” is designed to encompass actual detonation and not the use accompanying manipulative posturing for some international political or military advantage. The latter type of use would seem to be adequately addressed by the prohibition against placing such weapons on celestial bodies. Article III(3) thus spans the entire range of activities from momentary placement or installation on or in, to use on or in celestial bodies.

The fifth and final point of interest concerns the interpretation of the first paragraph of article IV of the Outer Space Treaty as not prohibiting States Parties from placing nuclear weapons or other weapons of mass destruction in orbit around celestial bodies, including the moon. It cannot be denied that the language of the first paragraph lends itself to just such a construction. Although the first paragraph purports to prohibit States Parties from orbiting such weapons, the language refers only to the orbiting of the “Earth” and says nothing of the orbiting of celestial bodies. Indeed, when the first paragraph specifically refers to celestial bodies, it simply does so in the context of obligating States Parties to refrain from installing such weapons on celestial bodies.

Though there is a certain amount of merit to this interpretation of the first paragraph of article IV of the Outer Space Treaty, in view of the language in that same paragraph by which States Parties undertake not to “station” nuclear weapons or other weapons of mass destruction in “outer space” in “any other manner,” it could be argued that the placing of such weapons in orbit around any celestial body is prohibited.

14. Moon Treaty, supra note 2 and accompanying text of art. III(3).
15. Id.
16. For this view, see Zedalis and Wade, supra note 3, at 461.
After all, celestial bodies are enveloped by outer space and an orbit in such area could well be viewed as a stationing in "any other manner." Nevertheless, since the term "station," even though modified by the phrase "any other manner," seems to connote at least some recurrence of an activity, there is enough ambiguity to suggest that perhaps the prohibition is not designed to proscribe a single orbit of a celestial body, but rather only a series of recurring single orbits or continual orbiting.

Article III(3) of the Moon Treaty eliminates any potential controversy over this matter by prohibiting States Parties from placing such weapons in "orbit" around celestial bodies, including the moon. In addition, article III(3) goes much further than the first paragraph of article IV of the Outer Space Treaty and prohibits States Parties from placing such weapons in some "other trajectory to or around" celestial bodies. It would appear that the effect of this latter provision is to proscribe activities such as the launching of nuclear weapons from a location other than a celestial body, if directed at some target on a celestial body, and the placing of nuclear weapons in outer space above the surface of a celestial body in a trajectory that does not result in the completion of one full orbit. Like the other proposal in article III(3) of the Moon Treaty to prohibit the "use" of nuclear weapons or other weapons of mass destruction on celestial bodies, the language of article III(3) covering the "orbit" of and "other trajectory to or around" celestial bodies is a vast improvement on the Outer Space Treaty.

III. USE OF CELESTIAL BODIES FOR OTHER TYPES OF MILITARY ACTIVITIES

As can be seen, article III(3) of the Moon Treaty is a substantial improvement on article IV of the Outer Space Treaty. What follows will indicate that the same cannot be said with respect to the language in article III(1) of the Moon Treaty which obligates States Parties to utilize celestial bodies, including the moon, only for purposes which are peaceful.

18. Moon Treaty, supra note 2 and accompanying text of art. III(3).
19. Id.
1. "Peaceful Purposes": Traditional Views

Article III(1) provides that States Parties shall use all celestial bodies, including the moon, "exclusively for peaceful purposes." The use of identical language in the second paragraph of article IV of the Outer Space Treaty to describe a similar obligation has created considerable controversy over the years with respect to the nature of the normative standard which "peaceful purposes" prescribes. Two schools of thought have emerged with respect to this matter, both attempting to discern the nature of the standard by examining other provisions of the Treaty. One school of thought contends that the requirement to use celestial bodies exclusively for peaceful purposes simply prohibits the conduct of activities of an aggressive nature. The second school goes further and suggests that such a requirement proscribes the conduct of all activities of a military nature, whether or not such activities are aggressive.

Setting aside for the moment any discussion of the impact on this controversy of the language in article III(2) of the Moon Treaty, it would appear that the same arguments adduced with respect to the meaning of "peaceful purposes" as used in the

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20. Moon Treaty, supra note 2 and accompanying text of art. III(1).
second paragraph of article IV of the Outer Space Treaty can easily be advanced with respect to that term as used in article III(1) of the Moon Treaty. Take, for example, the arguments made by those who insist that "peaceful purposes" simply prohibits activities of an aggressive nature. Specifically, it is claimed that since the opposite of peaceful in the common vernacular is aggressive—not military—the term "peaceful purposes" as used in the second paragraph of article IV of the Outer Space Treaty must be viewed as going no further than establishing an international legal standard prohibiting the use of celestial bodies for activities of an aggressive nature. Additionally, it is claimed that since neither international law nor the United Nations Charter purports to prohibit every activity of a military nature, reference in article III of the Outer Space Treaty to the applicability of international law and the United Nations Charter to celestial bodies necessarily means that "peaceful purposes" must be read as prohibiting nothing more than activities of an aggressive nature. Those who advance these arguments recognize, nevertheless, that the language in the second sentence of the second paragraph of article IV departs slightly from this general rule by prohibiting the establishment of military bases, installations and fortifications, as well as the testing of any type of weapons and the conduct of military maneuvers, even though these particular activities may not actually be aggressive.

Both of the above arguments seem to apply equally when attempting to determine the meaning of "peaceful purposes" as used in article III(1) of the Moon Treaty. More precisely, there is no reason to think that the common understanding of the opposite of peaceful has changed in recent years from aggressive to military. In fact, given the centrality of the notion of

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"peaceful purposes," it seems that if the common understanding had changed the drafters of the Moon Treaty would have attempted to capture the change by explicitly defining the term. Similarly, article II of the Moon Treaty, just like article III of the Outer Space Treaty, applies international law and the United Nations Charter to celestial bodies.\textsuperscript{28} As a result, if these sources of international jurisprudential principles indicate that "peaceful purposes" as used in the Outer Space Treaty must be read as simply prohibiting activities of an aggressive nature, it would seem that they should have the same affect on "peaceful purposes" as used in article III(1) of the Moon Treaty. Article III(4), which prohibits the establishment of military bases, installations and fortifications, as well as the testing of any type of weapons and the conduct of military maneuvers,\textsuperscript{29} is nothing more than the equivalent of the second sentence of the second paragraph of article IV of the Outer Space Treaty and should be attributed no other significance.

Notwithstanding the logical similarities between the Outer Space Treaty and the Moon Treaty, article III(1) need not be read as establishing a standard which simply prohibits activities of an aggressive nature. Indeed, the principal argument advanced for demonstrating that "peaceful purposes" as used in the Outer Space Treaty prohibits all activities of a military nature can be made with facility comparable to that which is evident in making the argument that it prohibits only activities of an aggressive nature. Specifically, some have pointed out that, in view of the obligation stated in article I(1) of the Outer Space Treaty to use celestial bodies for "the benefit and in the interests of all countries,"\textsuperscript{30} the term "peaceful purposes" in the

\begin{footnotesize}
\begin{itemize}
\item[28.] Moon Treaty, \textit{supra} note 2 art. II provides:
All activities on the moon including its exploration and use, shall be carried out in accordance with international law, in particular the Charter of the United Nations, and taking into account the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1979, in the interest of maintaining international peace and security and promoting international co-operation and mutual understanding, and with due regard to the corresponding interests of all other States Parties.
\item[29.] Moon Treaty, \textit{supra} note 2 and accompanying text of art. III(4).
\item[30.] Note 39, \textit{infra} and accompanying text of art. I(1) of the Outer Space Treaty.
\end{itemize}
\end{footnotesize}
second paragraph of article IV should be read as establishing a standard prohibiting all activities of a military nature, whether or not such activities are aggressive. The quintessence of this position is that activities of a military nature cannot be in the benefit and in the interests of “all” countries since, as an inescapable operational fact, the immediate objective sought to be obtained by such activities neither benefits nor serves the interests of the country, or group of countries, against which the activities are directed. Given the fact that article IV(1) of the Moon Treaty also obligates States Parties to use celestial bodies, including the moon, for the “benefit and in the interests of all countries,” it would appear that one could contend that that phrase has a similar effect on “peaceful purposes” as used in article III(1).

2. Article III(2): Attempt At Clarification

The drafters of the Moon Treaty were undoubtedly aware of the controversy concerning the meaning of “peaceful purposes” as used in the Outer Space Treaty. Indeed, they apparently sought to offer some explication with respect to “peaceful purposes” in the Moon Treaty by prohibiting, in article III(2), the threat or use of “force” or “any other hostile act” on any celestial body, as well as the “use” of any celestial body for the commission of any threat or act in relation to the earth, the moon, spacecraft, personnel of spacecraft, or any man-made space object. Both the scope of applicability of this provision and its substantive meaning deserve consideration.

A. Scope

Before determining whether the language of article III(2) serves to foreclose controversy over the meaning of “peaceful

31. See Markoff, Disarmament and “Peaceful Purposes” Provision in the 1967 Outer Space Treaty, 4 J. SPACE L. 3, 7 (1976) (observing that military activity is actually or potentially violent and therefore contrary to “peaceful purposes”).

32. Moon Treaty, supra note 2, art. IV(1) provides:

The exploration and use of the moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries irrespective of their degree of economic or scientific development. Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living, conditions of economic and social progress and development in accordance with the Charter of the United Nations.

33. Moon Treaty, supra note 2 and accompanying text of art. III(2).
purposes" in the Moon Treaty, it would appear profitable to briefly examine the areas covered by the prohibition itself. Of particular interest is whether the prohibition includes the threat or use of force or any other hostile act conducted below the surface of celestial bodies. This issue arises because the explicit language of the opening sentence of article III(2) simply prohibits the threat or use of force or any other hostile act "on" celestial bodies and says nothing about those conducted "in" celestial bodies. The fact that other provisions of the Moon Treaty, such as article III(3), are, by their explicit terms, designed to apply to activities conducted "on" as well as "in" celestial bodies would seem to preclude one from arguing, as was done earlier with respect to the Outer Space Treaty's prohibition on the installation of nuclear weapons, and other weapons of mass destruction, that the term "on" also encompasses the concept of "in."

The failure in the first sentence of article III(2) to explicitly prohibit the threat or use of force or any other hostile act "in" celestial bodies may lead some to insist that it is permissible to conduct such activities below the surface of celestial bodies. There is some reason, however, to argue that perhaps one need not read article III(2) quite so literally. Specifically, it can be suggested that, notwithstanding both the failure of the first sentence to mention the term "in" and the inability to argue that the term "on" encompasses the concept of "in," the second sentence of article III(2) serves to prohibit the threat or use of force or any other hostile act below the surface of celestial bodies by prohibiting the "use" of celestial bodies for the commission of any threat or use of force or any other hostile act in relation to the earth, spacecraft and their personnel, man-made space objects, and other celestial bodies. Reference to the earth, spacecraft, personnel of spacecraft, man-made space objects, and celestial bodies exhausts all objects that might be affected by the prohibited activity. The term "use" would seem to include the performance of prohibited activities by represent-

34. Id.
35. Moon Treaty, supra note 2 and accompanying text of art. III(3).
atives of States Parties while situated somewhere "on" or "in" a celestial body.

The only other kind of "use" that could possibly be affected by the language is the use of celestial bodies themselves to perform a prohibited activity; that is, for instance, physically moving a portion of a celestial body in the direction of someone in order to threaten or inflict injury. It is doubtful that the drafters had such a literal and simplistic meaning of the term "use" in mind. It would appear most accurate, therefore, to view the term "use" as covering the performance of prohibited activities occurring anywhere on or in celestial bodies.

B. Substantive Meaning

The prohibition of the threat or use of "force" in the first sentence proscribes exertions of physical power or other forms of stress against another state. It is doubtful, however, that this prohibition alone is sufficient to resolve the controversy over the meaning of "peaceful purposes." Nothing should be more axiomatic since dispute continues over the meaning of "peaceful purposes" as used in the Outer Space Treaty. Such disagreement endures even though article III of the Outer Space Treaty\textsuperscript{36} declares that the provisions of the United Nations Charter, including article 2(4),\textsuperscript{37} which explicitly prohibits the threat or use of force by one state against another, applies to each and every celestial body.

Given this, the only language in the first sentence of article III(2) which might help elucidate the parameters of "peaceful purposes" is that prohibiting "any other hostile act." It would seem safe to assume that since the term "hostile act" follows

\begin{footnotesize}
\begin{enumerate}
\item Outer Space Treaty, supra note 7 art. III states:
States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.
\item U.N. Charter art. 2(4) states, "All members shall refrain in their international relations 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."
\end{enumerate}
\end{footnotesize}
the conjunctive "or," it is intended to proscribe something con-
tradistinct from and less egregious or ominous than a threat or
use of force. Of course, this does not necessarily indicate that in
order to be consonant with the prohibition of "any other hostile
act" the term "peaceful purposes" must be read as prohibiting
the greatest possible amount of military-like activities. To the
contrary, the ambiguity inherent in the term "hostile act" would
seem to permit "peaceful purposes" to be read expansively or
narrowly. In this respect, it might be argued that the
term "hostile" is synonymous with the term "aggressive" and
that in prohibiting "any other hostile act" the first sentence of
article III(2) means that "peaceful purposes" must be seen as
simply prohibiting activities of an aggressive nature. However,
as incredulous as it might seem, another argument might be
that all activities of a military nature are almost by definition
hostile and that, therefore, the prohibition of "any other hostile
act" means that "peaceful purposes" must be viewed as pro-
hibiting all activities of a military nature.

Absent any explicit definition of the term "hostile act," it
would seem near impossible to state categorically which of
these two suggested constructions is accurate. The ineluctable
fact of the matter is that by prohibiting the threat or use of
"force" or "any other hostile act," the Moon Treaty has done
precious little to once and for all "define and develop" the con-
cept of "peaceful purposes"; a concept first applied to the ex-
traterrestrial realm by the Outer Space Treaty of 1967. Any suc-
cessful effort to clarify this concept would seem to require a
prohibition immensely more explicit than that appearing in the
first sentence of article III(2).\textsuperscript{38} If the objective of the members
of the international community is to prohibit all activities of a
military nature, then the language of prohibition should track
that of article I(1) of the Antarctic Treaty of 1959.\textsuperscript{39} On the
other hand, if the objective is simply to prohibit activities of an

\begin{footnotesize}
\begin{itemize}
\item[38.] Moon Treaty, supra note 2 and accompanying text of art. III(2).
\item[39.] Multilateral Antarctic Treaty, December 1, 1959, 12 U.S.T. 794, T.I.A.S.
No. 4780, 402 U.N.T.S. 71. Art. I(1) provides, "Antarctica shall be used for peaceful pur-
poses only. There shall be prohibited, inter alia, any measures of a military nature, such
as the establishment of military bases and fortifications, the carrying out of military
maneuvers, as well as the testing of any type of weapons."
\end{itemize}
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aggressive nature, the language of prohibition should perhaps consist of two elements: one explicitly prohibiting aggressive or hostile activities; and another modifying that prohibition by specifically stating that nothing in the instrument is designed to prohibit other activities merely because they are of a military nature. Though there may be dispute as to whether a particular activity should be considered aggressive or hostile, the intention to avoid prohibiting an activity simply because it is of a military nature would be unequivocally stated.

3. Right of Self-Defense

Apart from what has already been stated, it might be suggested that “hostile act” was included in order to make it clear that nothing in article III prohibits States Parties from using force in self-defense. This suggestion requires that the term “hostile” be read as synonymous with the term “offensive.” While such a reading is not particularly unpalatable, it would seem to create unnecessary problems.

Initially, such a suggestion would appear to preclude one from arguing that a conjunctive reading of the first and second paragraphs of article III produces a standard which simply prohibits activities of an aggressive nature. This is so because if such a reading is accurate then there would be no need to use language directly or indirectly reserving the right of self-defense. More specifically, since acts of self-defense are, by definition, defensive rather than aggressive, they would necessarily be left unaffected by a standard which prohibited only activities of an aggressive nature. Furthermore, such a suggestion would also leave the door open for the contention that since article IV of the Outer Space Treaty does not contain similar language, it fails to contemplate States Parties being entitled lawfully to exercise the right of self-defense. It would seem, however, that any such contention is patently erroneous.

40. Such a provision might provide:
1. The moon shall be used by all States Parties to the Treaty exclusively for peaceful purposes. There shall be prohibited all activities of an aggressive [or hostile] nature.
2. Nothing in the foregoing provision shall be construed to prevent the conduct of other activities merely because they are of a military nature.
Regardless of whether or not an international convention purports to reserve the right of States Parties to use force in self-defense, that right remains intact. Similarly, regardless of how restrictively the military provisions of a particular convention are read, States Parties are clearly entitled to undertake activities of a military nature for purposes of self-defense. There are, in essence, three reasons for this position.

First, the right of self-defense is recognized as "inherent." As such it is an inborn, innate, natural, inalienable right which exists from the instant every sovereign state is conceived. Being inalienable, it would seem that in the present decentralized state of the international law decision-making process neither its existence nor its exercise can be denied by convention or otherwise. Second, the inherent nature of the right means that it need not be explicitly mentioned in every international convention purporting to affect the use of military force in order for it to be reserved. If this were not so, the unscrupulous would, as pointed out, indeed suggest that the right does not exist under conventions failing to somehow reserve it. This would subject the very survival of some states to the thoroughness of international diplomats. Finally, and of paramount importance, if it is said that either the failure to reserve the right or a restrictive reading of the terms of a convention impairs the ability of States Parties to lawfully take up arms to protect themselves, then it is clear that those nations interested in securing an advantage at the expense of another may be in-

41. U.N. Charter art. 51 provides in pertinent part:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs ..., until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken ..., in the exercise of this right of self-defense shall be immediately reported to the Security Council. ...

42. See 1928 U.S. FOREIGN REL., I at 36-37 states with respect to the Kellogg-Briand Treaty and self-defense:

Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.
duced to commit acts of aggression against those which will refrain from defending themselves because of a sense of responsibility towards their international commitments. The effect of this would be to undermine the very objective of international law — to establish a decision-making process which promotes the peaceful resolution of competing claims and preserves the sovereign equality, political independence, and territorial integrity of all states. Given the undesirability of such a result, any reading which calls into question the exercise of the right of self-defense must be rejected.

III. Conclusion

Article III of the Moon Treaty attempts to “define and develop” the principles stated in article IV of the Outer Space Treaty. Such an objective is deserving of praise given the increasing potential for military utilization of celestial bodies which contemporary developments in technology portend. In some respects article III has succeeded in fully accomplishing its objective, while in others its success appears to be much more modest. Specifically, the provisions of article III of the Moon Treaty designed to denuclearize celestial bodies are a vast improvement on those portions of the first paragraph of article IV of the Outer Space Treaty applicable to celestial bodies. The provisions which govern all other types of military activities, however, do not improve on the corresponding provisions in the second paragraph of article IV of the Outer Space Treaty quite as much. The most noticeable shortcomings in this respect are the failure to definitively resolve the question as to the meaning of “peaceful purposes,” and the uncertainty as to whether States Parties are prohibited from undertaking the threat or use of force or any other hostile act below the surface of celestial bodies.