

55th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)  
Nandasiri Jasentuliyana Keynote Lecture on Space Law & 4th Young Scholars Session (1)

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REGULATING MILITARY USE OF NEAR SPACE: ANALOGY TO THE LAW OF THE SEA?

**Abstract**

As a technical rather than legal term, “near space” refers to the area sandwiched between the highest altitude at which conventional aircraft could operate and the closest point to the Earth of orbiting satellites. The many advantages of near-space assets, such as low cost, survivability, responsiveness, flexibility and persistence, have drawn intense attentions from States for its military implications. As the use of near space for military purposes becomes technically feasible, contention is deemed to intensify as to the legal status of this area and its applicable law, primarily due to the long-standing lack of a clear boundary between air space and outer space.

This paper studies the regulation of possible military activities in near space under international law, to the extent of both *lex lata* and *lex ferenda*. Section 1 is a brief introduction of possible military assets to be deployed in near space, and their features, in light of ongoing research and development activities. Section 2 studies the law applicable to military activities in near space, between air law and outer space law or a *sui generis* regime, based on treaty interpretation. Section 3 explores the questions whether and how the law of the sea, in particular the regimes of territorial sea and exclusive economic zone, provides any helpful reference to the regulation of military activities in near space.