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SPACE LAW AND MILITARIZATION: AN INDUCTIVE APPROACH TO THE BOUNDARY
PROBLEM

Abstract

A thorough look at over half a century's worth of debate on the question as to the legal boundary between airspace and outer space brings to light that the question has hitherto been approached mainly from a theoretical angle, with authors drawing inspiration either from legal doctrine, be it general international law, maritime law, international space law and national space laws, or from certain scientific criteria. The mere fact that the question persists is sufficient proof that these approaches have lacked, if not in scientific merit, at least in federating appeal to the primary actors in the debate.

This paper is an attempt to remedy some of that controversy in an inductive, bottom-up manner. It is part of a larger PhD project which understands the air-space boundary primarily as the locus of several interesting conflicts of laws. Based on a selection of three of these conflicts of laws that are dependent in one way or another on a legal boundary between airspace and outer space, the project examines the need for and nature of a suitable boundary criterion. The three case studies selected for this approach are military use of outer space, commercial use of outer space and space tourism, and industrial exploitation of outer space. The present paper first presents the general setup of the research project; it then treats the case of military use and militarization of space in greater detail. This case presents an interesting conundrum of international space law, international humanitarian law and the laws of war, all of which depend - for their respective applicability - on the relevant boundary criterion used.