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The International Legal Regulation of Outer Space within the Scope of Public International Law (3)

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THE APPLICABILITY OF RULES OF INTERNATIONAL HUMANITARIAN LAW TO MILITARY  
CONFLICTS IN OUTER SPACE: LEGAL CERTAINTY OR TIME FOR A CHANGE?**Abstract**

Space has become an integral part of 21st century warfare. Today space assets are used for a variety of military purposes, such as gathering intelligence, conducting surveillance and reconnaissance, facilitating instantaneous global communication and enabling precision attack. The integration of space-based assets into ground, land and sea warfare is expected to grow, as new combat systems dependent on space capabilities are developed and an increasing number of States use space for military reasons. Ultimately, outer space might well become a battlefield, with attacks conducted by States or private individuals in, from, and within space. The risk of a conflict in space is also increased by the growing dependence of modern societies on space technologies and by the consequent need to militarily protect valuable space assets. Therefore, taking into consideration the possibility of military confrontation in outer space it is legitimate to investigate the legal regime applicable to armed conflict in and from outer space. The principles regulating the conduct and responsibilities of belligerent States, neutral States and individuals engaged in warfare are provided for in International Humanitarian Law (IHL), also called as law of armed conflict. IHL, although primary developed to govern conflict on the ground, is widely recognized by scholars and military experts as being relevant to regulate the use of force in, from and within outer space. Nevertheless, the applicability of some fundamental principles of IHL to conflicts in space, such as proportionality of attacks, military necessity, reduction or avoidance of collateral damage to the environment and to civilians or civilian objects, appears to be rather problematic due to the fragile nature of the space environment and the dual (both civilian and military) use of the majority of satellites. This fact generates uncertainty about the applicable legal rules in the event of military confrontation in outer space. Additionally, it is questionable if the UN sponsored space treaties, and in particular the 1967 Outer Space Treaty, are relevant during armed conflict. In the light of the above the present paper examines to what extent IHL principles are applicable to outer space and discusses whether these principles should be adapted to the unique characteristics of the space environment, so as to enable legal certainty and predictability of acts in the unfortunate event of a conflict in outer space.