

58th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Interactive Presentations (IP)

Author: Ms. Yu Fu
China University of Political Science and Law, China, fuyu0816@cupl.edu.cn

“HARMFUL INTERFERENCE” IN OUTER SPACE UNDER IHL.

Abstract

This paper will address the present challenge of “harmful interference” with outer space activities in both peacetime and war under IHL. It will be focusing on the relationship that “harmful interference” has with “space weapons”, “self-defense”, “armed attack”, and “use or threat of force”.

Although no normative definition of “harmful interference” is concluded, “[t]he expression ‘harmful interference’ was created to cover all space activities capable to produce damage, deactivate or destroy any satellites and other spacecraft.”

(1) The relationship between “harmful interference” and “space weapon” in OST.

Article IV of OST is the core principle prohibiting the placement of space weapon in outer space. However, the difficulty in defining “space weapon” is the key barrier of space arms control. The prohibition of “harmful interference” is designed to take into account the multi-purpose of nature of many space technologies. However, clear delimitation of “space weapon” and “harmful interference” is still needed.

(2) The relationship between “harmful interference” and UN Charter. Space activities that concerned with interpretations of “threat or use of force” in Article 2(4), “armed attack”, and permitted parameters in response to the “harmful interference” that constitute a threat under Article 51 of UN Charter, fall within the framework of IHL.

First, state practice reveals that use of certain dual-use non-kinetic weapons are treated as a use of force under Article 2(4). Thus criterion is required to establish whether a new technology applied in outer space has become a form of warfare.

Second, although self-defense is valid for outer space, a lawful and fair character of self-defense is not defined. At present, both in peacetime and in war, international law does not provide clear normative guidelines for states that seek to respond to hostile operations that pose threats to space activities. Considering the expensive and destructive character of using self-defense, persistent damage caused by self-defense activities, other space faring countries being subject to the damage, and space security being so vulnerable, conditions and limitations on recourse to self-defense in outer space is urgently needed.

Third, since self-defense can only be exercised against a state when the conduct can be attributed to a state, and such conduct constitutes an “armed attack”, then what standard should be applied to determine whether a conduct of non-state actor can be attributed to a state? And what is the threshold of “armed attack” in outer space?