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THE INTERACTION OF THE LAW OF ARMED CONFLICT WITH OUTER SPACE

Abstract

The idea of sovereignty has traditionally been the mainstay of jus ad bellum in international law. The right of every nation to protect its existence; mainly manifested by territorial sovereignty, forms the seed of jus ad bellum, which states the reasons, whereby the act of war can be justified. The devastation caused by the European wars in the nineteenth century, led to the crystallisation of the complementary principle of jus in bello, which sought to limit the devastation caused by armed conflict. These two legal principles together comprised the law of war or armed conflict as it has come to be enshrined in public international law.

The principle of jus ad bellum, which has retained its traditional form for more than two centuries has undergone through considerable amount of change since the latter part of the twentieth century. The primary reason for that has been the opening of outer space as the final frontier. Along with the other human endeavours, the human laws and legal structures too have journeyed to outer space.

The journey of international armed conflict law in outer space has just begun. This is due to the simple fact that the existing regime of international armed conflict law came into being as a result of prior instances of war, which involved many nations and caused extensive loss of human life and property. In the case of outer space, there have not been any instances of armed conflict which has outer space as its theatre of action. The development of legal regimes or frameworks, whether international, regional or national have been in response to actual events which have led to significant consequences.

In the first part, this paper seeks to examine the emerging issues and trends within the nascent field of armed action in outer space, by examining the legal nature of possible belligerents, non combatants and any assets which may be present in any theatre of armed conflict in outer space. In the second part, the paper examines the possibilities under which any entity, whether a state or non-state actor could be justified in initiating an act of armed conflict in outer space. In the third part, this paper examines the possible legal restrictions which may be placed on the actions of combatants involved in armed conflict in outer space, an application of the principle of jus in bello to outer space.