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The relationship of international humanitarian law and territorial sovereignty with the legal regulation of outer space (2)

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SPACE LAW AND THE JUS AD BELLUM: RELEVANCE OF THE NOTIONS OF AGGRESSION
AND SELFDEFENCE IN OUTER SPACE

Abstract

Although law related to outer space is often designated by "space law", it is, as a set of norms defined in international treaties adopted in the frame of the United Nations, an integral part of public international law. Therefore, it is not doubtful that space activities are not only regulated by the treaties explicitly applicable to outer space but also by the whole set of legal instruments adopted within the UN, i.e. the UN Charter, other treaties, General Assembly resolutions as well as customary law. Public international law related to the jus ad bellum applies in particular to activities that take place, fully or partly, in outer space. This article aims at examining in particular in what extent two of the core notions of the jus ad bellum, i.e. the notion of aggression and the notion of self-defence, may be applied in the frame of space activities. The definition of aggression has been addressed by UN General Assembly Resolution 3314 (XXIX) but does not address space activities as such. Self-defence has been foreseen by article 51 of the UN Charter but its modalities are still mostly defined by case-law and so far, not a single case has concerned space activities. Despite the lack of reference to space activities and space objects in the legal instruments related to jus ad bellum and the lack of elements thereof in the decisions of the UN Security Council and the International Court of Justice, it is undeniable that any use of armed force against a space object, as well as any use of force performed by a space object whatever its target, should trigger the application of these instruments. This article will examine on the one hand the elements justifying the application of jus ad bellum to space activities and space objects and on the other hand will focus on the modalities of application of this legal framework, in particular self-defence, taking into account the unique environment, scientifically speaking, of outer space and the very particular technical nature of space activities.