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IS CURRENT INTERNATIONAL HUMANITARIAN LAW SUFFICIENT TO REGULATE A
POTENTIAL CONFLICT IN OUTER SPACE?

Abstract

In the world that is becoming ever more reliant on space assets, "space war" scenarios can no longer be confined solely to the realms of science-fiction - in the modern world, outer space as a contested domain is becoming an ever more possible reality. The shift of key military, civil and commercial enablers, such as communications and navigation, into the space domain has significantly increased the potential military advantage of engagement in the outer space arena. Additionally, the rapid technological advances of the last 50 years has led to an expansion of the methods by which belligerent actions can be carried out in the space environment. Taking these two elements together, there is need to examine whether the legal frameworks that are currently in place are suitably applicable, comprehensive and implementable in event of a conflict in outer space.

The potential impacts of a space conflict on the long term sustainability of the space environment have been given renewed prominence in light of the 2007 testing of a kinetic anti-satellite weapon and the recent collision between the Iridium 33 and Cosmos 2251 satellites, both of which created long lasting debris in orbit. These occurrences have highlighted the impact space debris may have on space assets, civil and military alike, and have engendered a recognition of space debris as a pressing concern for future space activities.

This paper will analyze the existing body of International Humanitarian Law with primary focus on the Geneva Conventions of 1949, the body of international law relating to outer space and other bodies of law dealing with conflict and international commons. These international legal instruments will be assessed against the unique characteristics of the space environment and space conflict and an analysis will be made as to whether or not legal lacunae exist.

This paper focuses solely on the suitability and applicability of jus in bello norms applicable to space. Jus ad bellum norms are not dealt with as it is considered that the debate as to whether or not outer space should remain unweaponized and preserved as a sanctuary solely for peaceful uses is a polemic which often stalls effective examination of the legal hypothetical of space conflict. The paper will close with a discussion on the value of attempting to close any such lacunae for the international policy perspective, highlighting the role of international law as a reflection of international policy.