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LEGAL ACCEPTABILITY OF ANTI-SATELLITE WEAPONS: A CHANGING CONCEPT

**Abstract**

When mankind realised the benefits of the space, they resolved that outer space should be treated as the province of all mankind, used for peaceful purposes and the arms race on earth should not be extended to outer space. The Declaration of Legal Principles on Outer Space 1963 states in its preamble that the space is to be used for 'peaceful purposes' and declared that it should be used for the 'benefit and interests of all mankind'. The same was adopted in the Outer Space Treaty 1967 in its Article 1 and preamble. Article IV of the Treaty provides that a ban on nuclear weapons and weapons of mass destruction (WMD) in outer space including celestial bodies. It also prohibits any type of weapon in Moon and other celestial bodies and mandates that they are to be used exclusively for peaceful purposes. Thus, technically, the Treaty does not prohibit anti-satellite weapons (ASAT) which are not nuclear weapons and WMDs.

It has been pointed out several times since the treaty came into force that Article IV has a lacunae and several jurists have read the prohibition on ASAT in the treaty through liberal interpretation of its preamble and Article 1. However, equally vocal has been the line of thought, that since Article IV does not prohibit such weapons in outer space, it is permitted and only Moon and celestial bodies are to be used 'exclusively for peaceful purposes'.

Thus, the lacuna in the Treaty is to be filled in by 'customary law'. State practices have shown that ASAT has been developed by states like USA and China and it has triggered other states to develop ASAT facilities for self-defence. China's ASAT test by destroying its own space object in 2007 has been subjected to heavy criticism by the international community but no effective punitive measures were taken for this 'outrageous' step as technically, there was no violation of the Outer Space Treaty. The existing space law was also not reformed since then, though more than four years have passed. By not taking any action against China and the USA, the States have acquiesced that possessing ASATs is not violative of *lex spacialis*. Thus, it seems that there is an emerging law that lays down that possessing ASAT is not violative of international law unless it is used for destruction of international property and derogative of Article 2(4) of the UN Charter.