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

Author: Prof. Bin Li  
Beijing Normal University, China

## ON THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW IN OUTER SPACE

**Abstract**

International humanitarian law (IHL) should not be misunderstood as “terrestrial” law. Firstly, there is not such commonly accepted idea of “terrestrial law” within the field of international law. Distinguishing international law into “terrestrial” and “non-terrestrial” fields is embraced neither by mainstream doctrine nor by state practices. Secondly, the conception of IHL as “terrestrial” law is misleading to the extent that it excludes in principle the applicability of such law through betraying its underlying rationale and normative values. Thirdly, there are no substantial barriers impeding the applicability of the key principles of jus ad bellum and jus in bellum in the environment of outer space, given that those principles impose legal obligations which target the subjects implicated in hostility, their conducts and the effect of those conducts. The environment or the physical context where such conducts take place or legal subjects operate should not be the factor which determines the applicability of IHL. However, the main issue of the applicability of IHL in outer space is how to qualify that outer space regulation or operation is genuinely connected to the state of hostility or armed conflict. In fact, the relatively remote and less clear link between space activities and hostile conducts may raise doubts on the applicability of IHL in outer space. It is thus necessary to define the standard or clarify the relevant rules for determining that a space operation constitutes warfare conduct. If the standard on the determination of a space operation as warfare conduct, then a minimum requirement of neutrality should be satisfied following the good faith principle, i.e., space regulation or operation, as far as its effect is concerned, should not substantially contribute to the military tension, hostility or armed conflict.