

58th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

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

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ENVIRONMENTAL PROTECTION AS A LIMITATION TO THE USE OF FORCE IN OUTER SPACE

Abstract

The use of force in international relations is banned in international law; there are only two exceptions (self-defense and authorization by the Security Council of the United Nations). In the space context, it is increasingly recognized that there is a need to enhance transparency and mutual trust in order to avoid and mitigate tensions among States in the utilization of outer space. However, the possibility of an armed conflict extending into outer space cannot be completely ruled out. Satellites may be affected by a military confrontation, which can result in a massive degradation of the outer space environment. Their physical damaging or destruction causes the generation of a high number of space debris thus threatening the long-term usability of outer space. The destruction of the Fengyun-1C satellite bears witness of this damage potential.

International humanitarian law, the *ius in bello*, limits the negative effects of an international armed conflict. It protects persons and bans certain means and methods of warfare etc. Based on the recognition that armed conflicts cannot be completely excluded from international relations, its ultimate aim is to at least reduce human suffering. This includes the protection of the natural environment as part of the livelihood of mankind. Articles 35 and 55 of the First Additional Protocol to the Geneva Conventions and the Environmental Modification Convention are pertinent to limiting the negative effects of military conduct to the environment.

Against this background, the proposed contribution seeks to examine whether, and will eventually argue that, the environmental protection provisions of international humanitarian law have, in fact, a limiting effect on the conduct of military operations in outer space. While it is clear that the *ius in bello*, as part of international law, generally applies to space activities, a number of questions needs to be examined in order to understand how and in what circumstances it applies in the outer space context. Among them is the question of whether satellites can be qualified as legitimate military targets, at all. Another relates to the qualification of outer space as a part of the human environment that is protected under international humanitarian law.

The analysis aims to consider possible new normative developments in the scope of the International Law Commission; the Commission currently reviews the topic 'Protection of the Environment in Relation to Armed Conflict'.