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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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THE SCOPE OF APPLYING THE PRINCIPLE OF THE MILITARY OBJECTIVE TO A SPACE OBJECT IN ARMED CONFLICT

Abstract

The dual-use nature of space technology raises a question whether or not it is possible to distinguish civilian objects from military objects in space activities during armed conflict. The terms related to military objects are found in Article IV (2) of the Outer Space Treaty of 1967. It prohibits the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies, while allowing the use of military personnel for scientific research or for any other peaceful purposes. The same wording is found in Article 3 of the Moon Agreement of 1979. The difference between the two treaties is that the latter allows the use of any equipment or facility necessary for peaceful exploration and use of the Moon. From these provisions, it seems feasible to distinguish civil from military in case of conflict on the Moon and other celestial bodies. However, it leaves vagueness in terms of space objects including space stations in Earth's orbit.

In theory, space objects are potentially vulnerable to any kind of attack if they are recognized as "military objectives" functioning during armed conflict. In 1977 the principle of the military objective was codified in Article 52(2) of Additional Protocol I of the Geneva Convention of 1949 and has become customary international law for armed conflict at sea, on land or in the air. The term "military objectives" is defined as "[. . .] those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." In addition, the ICRC commentary refers to the objectives as something visible and tangible so that it can include space objects. The definition is also found in several subsequent instruments such as Additional Protocols II and III, Annexed to the 1980 Conventional Weapons Convention, and the second protocol to the Cultural Property Convention.

Taking into consideration that space-based infrastructure is used for civil and military application at the same time, in peacetime as well as in wartime, the author explores the possibility of outlining the scope of the principle in terms of space activities during armed conflict.