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

Author: Mr. OLUSOJI NESTER JOHN

African Regional Center for Space Science and Technology Education in English (ARCSSTE-E), Nigeria

Mrs. Victoria Morenike John-Olorioke

Obafemi Awolowo University, Nigeria

Mrs. Lami Ali-Fadiora

African Regional Centre for Space Science and Technology Education in English, Nigeria

Mrs. Ololade Olateru-Olagbegi

Adekunle Ajasin University Akungba-Akoko, Nigeria, Nigeria

Mr. Olaposi Adedolapo Olaseeni

Obafemi Awolowo University, Nigeria

Ms. Joan Ogongo

Egerton University, Kenya

Dr. Adesina Coker

Obafemi Awolowo University, Nigeria

Ms. Funmilayo Erinfolami

African Regional Center for Space Science and Technology Education in English (ARCSSTE-E), Nigeria

PRACTICAL APPLICATION OF JUS IN BELLO AND JUS AD BELLUM TO THE LEGAL REGULATION OF OUTER SPACE ENVIRONMENT

Abstract

Soon after the World Wars – at the time when the use of force was lawful and Nations were not prohibited from waging war (jus ad bellum) – the international community developed a continuing interest in regulating the conduct of warfare through prescribed rules of behavior (jus in bello). Although, the use of force between States is prohibited by peremptory rules of international law today, certain exceptions like self-defence (individual or collective), Security Council enforcement measures and right to self-determination exist. More so, despite the existence of the prohibitions, armed conflicts still take place. Today, Nations have “development programs in directed energy and hit-to-kill mechanisms” and other space-related warfare technology, to engage terrestrial targets from space. This is for the purposes of protecting their territories, sovereignty and superiority. The legality of fighting an armed conflict through outer space is a matter to be examined in this work, having regards to international space law. The core focus of the paper is on these International humanitarian law rules which govern the legality of the use of force by Nations (jus ad bellum) and regulate the actual conduct of war once the use of force begins and has attained a reasonable level of intensity (jus in bello), and their practical application to the unique environment of outer space. It gives a brief discussion on jus ad bellum and jus in bello. It talks about the legal regulation of outer space as it relates to armed conflict and its intersection with the two principles. The duties of space-faring belligerent Nations towards non-combatant civilians and civilian objects in outer space and on Earth are also analyzed. The work concludes with some recommendations.