

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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THE DEVELOPMENT OF SPACE WEAPONS IN THE FRAMEWORK OF INTERNATIONAL
HUMANITARIAN LAW

Abstract

Technological advancement in the field in outer space, particularly in the military environment, compels international lawyers to carry forward the debate addressing the legal aspects of the use of space weapons. It is fair to say that, in spite of the multiple efforts and proposals submitted to the different institutions involved in this question, the international community seems unable to agree on binding rules on the matter, in the short term. In these circumstances it is opportune to follow technological development in light of the current law. To this end it appears useful to examine the implications of these weapons from the standpoint of the principles underlying International Humanitarian Law (IHL).

This paper intends to evaluate the general principles of this branch of international law having in mind Articles III and IV of the 1967 Outer Space Treaty among which, the principle of proportionality and discrimination, may shed some light on the controversy over the various types of weapons, their evolution and production. When examining the different category of weapons from this optic it follows that no clear answer may be given to the problem as each of these cases trigger different points of contention, with a diversity of possible solutions. In some cases it may be concluded that the use of the weapons in question in outer space should be considered in breach of international law given their harmful effects on the space environment. In others, conversely, we may find these technologies are able to contribute to a better compliance with the principles of IHL.