

60th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
9th Nandasiri Jasentuliyana Keynote Lecture on Space Law and Young Scholars Session (1)

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DISARMAMENT IN OUTER SPACE: BANNING ASAT WEAPONS WITH SOFT LAW?

Abstract

The purpose of this article is to clarify the possibility of the legal regulation of the Anti-Satellite (ASAT) weapons with soft law regimes. It researches three main topics through examination of international law materials and UN documents, mostly from Conference on Disarmament (CD). Based on the researches, it is concluded that regulation of ASAT weapons with soft law is possible, by establishing a reporting and consulting institution in implementing the soft law. It has been fifty years since the Outer Space Treaty entered into force, and the challenge to the discipline created in the last fifty years may result in an obstruction to stable and peaceful use of outer space. Chinese ASAT experiment in 2007 showed a threat to the current discipline, as spread of ASAT weapons is one of the most critical issues which should be considered to be regulated. However, it still remains to be appropriately regulated. Firstly, this article briefly explains that the contemporary peaceful use of outer space is threatened by space debris, especially the ones caused by ASAT weapon experiments which reaches over 4500 debris. Secondly, it mentions that the space assets such as satellites are becoming more valuable target for countries with ASAT capability. At third, it clarifies how the effort of making a new treaty on disarmament in outer space has failed by examining the past treaty proposals discussed in the CD. The past discussion in the CD showed that the description of each conceptual terms failed to reach an agreement, for example what kind of aspect would the term "ASAT weapons" include. Simultaneously, the ideological friction between the US and the USSR / Russia had been another important element of the failure. The failure of new treaties brought another concept of soft law as a part of Transparency and Confidence Building Measures (TCBM). By reviewing four documents; Space Debris Mitigation Guidelines on COPUOS, International Code of Conduct, Guidelines for the Long-term Sustainability of outer space activities, and the Report of the Group of Governmental Experts, this article shows that the ASAT regulation can be achieved by soft law. Although these documents are not legally binding, it is possible to give them regulatory effect if there is a reporting and consulting institution established for their certain implementation and conflict resolution.