

60th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Current Developments in Space Law (5)

Author: Prof. Jack Beard
University of Nebraska, College of Law, United States

OLD RULES AND A NEW LOOK AT LEGAL CONSTRAINTS ON ARMED CONFLICT IN SPACE

Abstract

Author: Jack M. Beard, Assistant Professor, University of Nebraska College of Law, Space, Cyber and Telecommunications Law Program

Although states are obligated to use space for only “peaceful purposes,” the prevailing interpretation of this phrase has left space open to diverse and ever-expanding military activities. Satellites and other objects in space which are essential to many modern military operations make it likely that a state with sufficient capabilities will seek to neutralize or destroy the military assets of an adversary during a major armed conflict on earth.

No prohibitions or restrictions are imposed by any international agreement on specific military activities in space, with the exception of particular military activities on the moon and other celestial bodies and the deployment or use of weapons of mass destruction. International law does, however, apply in space and it includes long-established rules of International Humanitarian Law (IHL). Although many military operations on earth have become dependent on satellite transmissions, no precedent exists for the application of IHL rules in space since fortunately no armed conflict has occurred there to date. One cardinal IHL rule is the principle of distinction or discrimination which requires military forces to attack only military objectives and not civilians or civilian objects. Proportionality is a closely related principle which requires states to refrain from a particular type of indiscriminate attack, i.e., one that is directed at a legitimate military objective but may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated.

Although space was a pristine environment in the early era of space exploration, it is now a domain populated by satellites that serve both essential military and civilian functions for an increasingly technological society on earth. Destruction of these satellites — either directly by anti-satellite weapons or indirectly by the creation of destructive clouds of debris — may now have legal implications that were unimaginable sixty years ago. This paper takes a new look at old IHL rules and argues that civilian infrastructure on earth has become so fundamentally dependent on satellites (particularly GPS satellites) that the destruction of some satellites in an armed conflict may now constitute excessive and legally unacceptable harm to the civilian population or otherwise amount to a prohibited, indiscriminate attack under the IHL framework.