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PLAYING DEFENSE: STATES' RIGHT TO SELF-DEFENSE IN SPACE

Abstract

"The only rules that really matter are these: what a man can do and what a man can't do." Captain Jack Sparrow

Over the last few decades the term 'infrastructure' has assumed a wider meaning than merely physical structures essential for the operation of a society. Space assets are increasingly tied to services that are essential or critical to life today, making them an integral part of national/international infrastructure. The dependence on space assets, is the very reason why they are an attractive target to adversaries; this, is consequently a national security vulnerability that necessitates a State to defend itself.

In such times, States have the challenge of striking a balance between their commitment to international laws, and protecting their space assets and interests in space activities from adversarial or hostile action. Should an attack on a space asset occur, what would be considered a proportional response? How far can a State go to exercise its right of self-defence under Article 51 of the UN Charter, in space? These questions are certainly not new, nonetheless, at a time when States are considering creating military forces to protect their interests in space, it is urgent that these questions are addressed to ensure the continued use of space, peacefully for the benefit of all man-kind.

While the call for new rules in space deserves much attention, there is also an imperative need to revisit the existing framework of international laws pertaining to space and international State behaviour. Article IV of the Outer Space Treaty states that 'The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes', leaving to interpret the implications of, for example, on-orbit weaponization for self-defense. Further, Article IV prohibits the use or placement in space of 'nuclear weapons or any other kinds of weapons of mass destruction'. However, there is ambiguity in the definition of these terms. In space, shards of debris or electronic signals can also be weapons of mass destruction.

This paper will delve into the scope of self-defense in space, particularly on what constitutes an armed attack, what will be considered proportional response, explore the possibilities of redefining 'weapons' in space taking into account the most recent technological capabilities, and in that light evaluate the impact of steps taken by a few States (Russia, China, USA, and Japan), in defending their national interests in space.