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CYBERATTACKS AND THE NEED FOR A NEW LEGAL REGIME

Abstract

Malicious use of the internet is wide-spread; cyberattacks (such as espionage or ransomware) can be found all over the Earth. Such attacks can also be used for warfare. Recently, cyberattacks have entered outer space. This raises the question: 'To which extent are cyberattacks performed with a 'peaceful purpose' under the Outer Space Treaty (OST) and regulated ex Article VI OST?' It is important to establish whether a legal framework is applicable to space cyberattacks or to determine that they are in lawless territory, in which case new legislation is needed. The methodology includes a literature review to give an overview of the OST by analysing legal texts and literature. To determine the application of the OST to cyberattacks, various situations will be assessed, including (governmental) cyberattacks (possibly for warfare), and such attacks originated from space directed to Earth and vice versa.

The travaux préparatoires of the OST clarifies that space should solely be used for 'peaceful purposes'. However, it does not clarify what this notion entails. Two lines of argument exists. The first argues that both 'non-militarisation' and 'non-aggressive' activities are prohibited. The second claims that 'non-aggressive' activities are allowed. Yet, the meaning remains unclear.

Article VI OST deals with States' international responsibility of national space activities. However, assessing the sentence '(1) national activities (2) in (3) outer space' is not a clear-cut task.

1. It is clear that governmental and non-governmental activities fall within the scope of Article VI OST, thus cyberattacks are included too.
2. The notion 'in' is not as straightforward as it seems. Two readings exist. The first regards activities to be performed in space, if it occurs there entirely. The second views any activity intentionally and predominantly directed to space to have occurred therein. The latter concept broadens the scope of the OST.
3. The ambiguity of the notion 'outer space' goes back to the question of delimitation between air space and outer space, which remains unresolved between the spatialist and functional approach.

Whether cyberattacks are allowed under the OST depends on their purpose and the interpretation of Article VI. Based on this Article, States have adopted legislation on their international responsibility. Though the UN General Assembly has adopted Resolution 68/74 to provide States guidelines, differing national legislation are possible. Given the rise of cyberattacks and the legal uncertainties, a new international legal regime should be adopted. This regime should, at least, take a clear view on the ambiguities as described above. This paper will address which views should be taken to successfully regulate space cyberattacks.