

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

Application of space law to cyber activities (4)

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APPLICABILITY OF THE INTERNATIONAL SPACE LAW REGIME TO CYBER ACTIVITIES:
WHEN IS A CYBER ACTIVITY ALSO A SPACE ACTIVITY?

Abstract

When are cyber activities also space activities? To answer that question, it is necessary to consider the relevant language contained in the space treaty regime, including the Outer Space Treaty, the Registration Convention, and the Liability Convention. This paper contends that cyber activities do not rise to the level of space activities unless they involve the use of a space object launched by the relevant entity. The language used is relevant entity rather than relevant State, given that if the hacking or interference is conducted against a satellite from the same State as the entity, there would be no recourse under international law or the international treaty regime because it would be considered a domestic issue. Additionally, it is unreasonable to hold a State to the same level of responsibility for cyber actors as space actors under Article VI of the Outer Space Treaty. Cyber actors can operate clandestinely and anonymously with only a computer and an internet connection, while space activities inherently involve the launches of objects into space which can be easily monitored even by amateur observers. That being said, if an entity were to use its own space-based assets to conduct a cyber-attack on another space object, it would rise to the level of a national (space) activity under Article VI of the OST, but may or may not cause damage to the second space object within the meaning of the Liability Convention. This paper will analyze when State responsibility under Article VI or the Liability Convention may be applicable to such cyber activities. Finally, this paper argues that States have a higher level of responsibility under the space treaty regime with regard to safeguarding the command and control, particularly maneuvering, capabilities of the space objects they launch against cyber threats. While stealing, jamming, or spoofing the transfer of data can cause myriad problems, the maneuvering capabilities of satellites enable satellites to be used to interfere with other States' space objects and/or to cause damage to them within the meaning of the treaties. Thus, for a State to act responsibly under Article VI and with due regard under Article IX, and to avoid incurring liability under the Liability Convention due their fault in failing to protect such capabilities, States must use due diligence in protecting access to satellite maneuvering capability.