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THE INTERPRETATION OF GENERAL INTERNATIONAL LAW IN SPACE SCENARIO:
NECESSITY AND URGENCY — TAKING THE APPLICATION OF THE DISTINCTION
PRINCIPLE UNDER IHL AS AN EXAMPLE

Abstract

The process of PAROS is widely recognized to be divided into two distinct camps: the so-called soft law approach and the hard law one. In fact, the interpretation of *lex lata*, particularly the applicability and application of general international law, emerges as a pressing issue for delegations to discuss in the context of PAROS. Lacking common understandings of *lex lata*, it could lead to misperceptions and miscalculations among the powers.

The military use of space has grown more confrontational, exhibiting emerging trends such as civil-military integration, joint operation and the involvement of commercial space in others' armed conflicts. The risk of confrontation and conflict in outer space is rising. However, the existing General International Law (GIL), i.e., the International Humanitarian Law (IHL) was primarily developed in traditional areas of armed conflict and lacks specific rules directly applicable to space. The present paper thereby exemplifies the application of the principle of distinction, a fundamental principle of IHL, in the assumed space armed conflicts, aiming to foster a balance between reservations grounded in national strategic imperatives and international humanitarian concerns. It tends to establish a basis for states to seek common understandings regarding the interpretation of GIL in space, and further to avoid exacerbating the risks of misunderstanding, misperception and prevent space armed conflicts.

It first briefly introduces the process of PAROS and recognizes the challenges to break the ice, subsequently points out that the interpretation of *lex lata*, including GIL, might serve as a compromised approach for both Camps. Secondly, it takes the application of the distinction principle of IHL in space as an example and analyses the challenges brought two aspects: dual use of space objects and limited means of space warfare. Finally, this paper provides corresponding recommendations, for instance, to establish the principle of urging "reverse distinction", to restrict certain services in specific zones. It also proposes the principle of absorption, namely a space object's military use will take precedence over its civilian use, and rendering the entire object as a military target. Hopefully, this paper can serve as useful reference for delegations to clarify their legal positions in the context of the interpretation of *lex lata* in space scenarios and to find a way out from the dilemma of the process of PAROS.