

International Humanitarian Law: Is It Sufficient for Space Environment?

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- International Law 101
- Foundations
- Jus ad bellum/ jus in bello
- General Principles
- The Application to Space
- Conclusions

- Treaties
 - Legally binding
 - Consent to be bound
- Customary International Law
 - 2 conditions :Opinio Juris (belief that something is a law);Widespread State Practice
- Soft Law
 - Guidelines etc.
 - Evidence for Custom
- Concept of Enforcement in International law
 - Enforcement is not a central part of the international legal regime
 - Not because the law is weak but because the concept doesn't really work given the nature of the field
 - Less conventional 'sticks'

- No concept of war in space
 - no treaties establishing specific jus in bello principles for space combat
- No specific ‘territorial’ limitation to the application of the jus in bello principles.
 - The laws and customs of war apply both to the area where the hostilities actually take place, as well as the broader areas that are in some way affected by the hostilities
- Space is militarized, is it weaponised?

- Jus ad bellum – transition from peace to war
 - UNC Art. 2(4) (refrain from threat or use of force), 51 (recognizing inherent right of self-defense – individual or collective)
 - Questions that arise
 - What is use of force?
 - Note UNC Art. 42 and 51 – exceptions
 - nuclear weapons advisory opinion → use of force = use of weapons
 - What is territorial integrity?
 - Oil Platforms Case – is court interpreting armed attack as having to be against the territory
 - » If so, problem in space as space objects are technically outside the territory of any state

- Jus in bello
 - Law of armed conflict, international humanitarian law
 - Human rights tied to jus in bello through ICJ cases
 - 1996 advisory opinion on use of nuclear weapons
 - Noting that the threat or use of a nuclear weapon should comply with the requirements of international law relating to armed conflict, particularly the principles of international humanitarian law

Generally five principles

- Necessity – only military objective targeted
- Distinction – combatants and non-combatants, those things protected and those that are not
- Proportionality – subset of distinction – incidental and collateral damage, the effective military contribution, is not grossly disproportionate to the civilian casualty
- Humanity – does this apply in the indirect form?
- Chivalry - no perfidious action leading to a reliance on IHL.

- Necessity
 - Earth and ground concerns
 - » How to balance the military worth of Earth vs. space
- Distinction
 - » Is this also relevant to space assets given the limited number of humans in space?
- Proportionality
 - Can we quantify the value and magnitude of the role of space resources in human activity?
- Humanity – requires dignity of human beings
 - Relevant indirectly?
- Chivalry - is it relevant to the space environment?
 - SSA?

- The impact to the space environment
 - E.g. space debris
- The impact of the loss of space resources on Earth based population
 - Not only direct but indirect effects central to understanding potential space conflict

- Crucial to begin academic and political thinking process on this issue
 - Through discussion, legitimacy?
- Importance of legal parameters, should the global community find itself in a space conflict situation
- Key to bear in mind that space is truly global environment with profound national security implications
 - As a result, importance to approach such a question from a multilateral standpoint.