The concept of conflict in international humanitarian law for armed conflicts in space

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Space Wars?

• Weaponisation, militarisation and the peaceful purposes clause .... And yet...

• Space weapons systems – kinetic anti-satellite (ASAT), co-orbital ASATS, electromagnetic pulse (EMP) and radiation weapons, cyber & laser capabilities

• Growing acceptance that wars will be fought to, from or in/through space, perhaps even as a warfighting domain.

• There is a need for guidance as to the legal framework applicable and some rules.
Application of IHL

• The law of armed conflict “applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present, and those of the future”

  ~ ICJ, Nuclear Weapons Case, para 86

• “States ...shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations...”

  ~Art III, Outer Space Treaty (OST)

• “In cases not covered by ... international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”

  ~Art 1(2) API, Martens clause
General principles - Distinction

- **Basic rule**
In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Art 48, Additional Protocol I

- **People** – astronauts/military personnel: combatants or ‘envoys of mankind’
- **Objects** – defined term in IHL & a binary definition. No such thing as a dual-use object in IHL
Distinction and objects

**Military Objectives**

Objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

~Art. 52, API

**Civilian Objects**

- Civilian objects are all objects which are not military objectives
- Presumption of civilian status in case of doubt

**Specifically protected objects:**

- Cultural property
- Indispensable to the survival of the civilian population
- Natural environment
- Works and installations containing dangerous forces
- Military medical units
General principles - Proportionality

• **Basic rule**
  An attack which is expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be **excessive** in relation to the concrete and direct military advantage anticipated.

• **Examples:** GNSS/GPS – Military object BUT huge civilian use
  E.g. incl. civilian navigation systems (maritime, aviation & land transport), packet timing for internet communication, global financial systems, water supply infrastructure, health services, energy production etc.
General principles - Precaution

• In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

• Specific rules regarding:
  • verification of targets,
  • selection of means and methods,
  • obligation to refrain, cancel or suspend attacks,
  • warnings,
  • selection of targets.

• In the space context this may mean choosing cyber means rather than kinetic ASATs, selecting specific transponders rather than the whole satellite.
The MILAMOS Project

• **Our mission**
  To develop, within a period of three years, a manual that objectively articulates and clarifies existing international law applicable to military uses of outer space, including the conduct of hostilities in outer space and military activities in periods of tension.

• **Our vision**
  To contribute to a future where all space activities are conducted in accordance with the international rules-based global order, without disrupting, and preferably contributing to, the sustainable use of outer space for the benefit of present and future generations of all humanity.

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