

SELECTED LEGAL CHALLENGES RELATING TO THE MILITARY USE OF OUTER SPACE, WITH SPECIFIC REFERENCE TO ARTICLE IV OF THE OUTER SPACE TREATY

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SUMMARY

Since the end of the Second World War the potential use of outer space for military purposes persisted to be intrinsically linked to the development of space technology and space flight. The launch of the first artificial satellite, Sputnik 1, by the USSR in 1957 made Western states realise that a surprise attack from space was a real possibility, resulting in the so-called "space-race" between the USA and the USSR. During the Cold War space activities were intrinsically linked to the political objectives, priorities and national security concerns of the USA and the Soviet Union. After the Cold War the political relevance and benefits of space continued to be recognised by states. In view of the recent emergence of new major space powers such as China, the focus has again shifted to the military use of outer space and the potential that a state with advanced space technology may use it for military purposes in order to dominate other states. Article IV of the *Outer Space Treaty* prohibits the installation of nuclear weapons and weapons of mass destruction in outer space and determines that the moon and other celestial bodies shall be used for peaceful purposes only. Due to the dual-use character of many space assets, the distinction between military and non-military uses of outer space is becoming increasingly blurred. This article discusses a number of legal challenges presented by article IV of the *Outer Space Treaty*, relating specifically to the term *peaceful*, the distinction between the terms *militarisation* and *weaponisation* and the nature of a *space weapon*. It is concluded that article IV is in many respects outdated and that it cannot address the current legal issues relating to the military use of outer space. The legal vacuum in this area may have grave consequences not only for

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maintaining peace and security in outer space, but also on earth. Consequently, an international dialogue on the military uses of outer space should be facilitated under the auspices of the UNCOPUOS to address these uncertainties as a matter of urgency. Although it is agreed with the proponents of a hard law approach that a legally binding instrument should be adopted to regulate the military use of outer space, it is submitted that, as an interim measure, soft law guidelines should be developed to provide a framework for the eventual creation of a consolidated and binding legal instrument on all aspects relating to the use of outer space.

KEYWORDS: aggression, militarisation; *Outer Space Treaty*, peaceful purposes; satellite; self-defence; soft law; space debris; space security; space weapon; use of force; weaponisation