

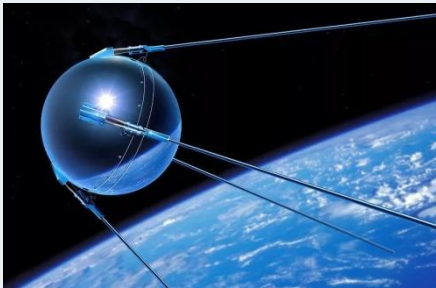
# Application of International Humanitarian Law to Outer Space: Existing Approaches and Challenges



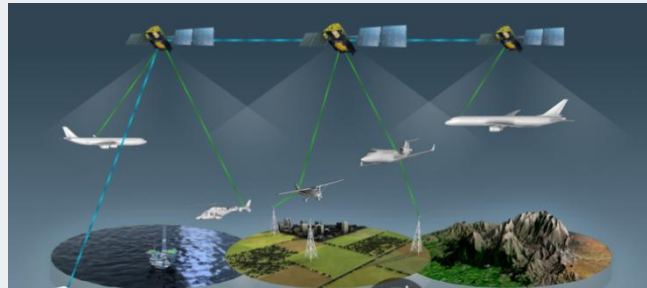
16 March 2018, Moscow

## From the launch of the first satellite to dependence on outer space

1957



Present days



[Foreseeable] future



## Peaceful uses of outer space in the interests of humankind



*"Life shows that outer space will be explored not by some supermen, but by common people"*  
(Yuri Gagarin)

*"I do not know if I have proved this to everyone, but I definitely proved this to myself: we are not chained to this planet"*  
(Neil Armstrong)



## Could conflicts spread to outer space?

*"My new national strategy for space recognizes that **space** is a **war-fighting domain** just like land, air and sea. We may even have a **Space Force**"*

Donald Trump, US President, 14 March 2018

[https://www.washingtonpost.com/news/speaking-of-science/wp/2018/03/13/trump-floats-idea-of-space-force/?utm\\_term=.3602a72b1000](https://www.washingtonpost.com/news/speaking-of-science/wp/2018/03/13/trump-floats-idea-of-space-force/?utm_term=.3602a72b1000)



President Donald Trump arrives speaks to service members at Marine Corps Air Station Miramar, Tuesday, March 13, 2018, in San Diego. (AP Photo/Evan Vucci) (Copyright 2018 The Associated Press. All rights reserved.)

*«The war in outer space is coming?»*

Defence24, Poland, 7 February 2018  
<http://www.space24.pl/nadchodzi-wojna-w-kosmosie-chiny-i-rosja-zagrozeniem-dla-amerykanskich-satelitow>

*«Tomorrow there will be  
a war in outer space»*

Le Figaro, France, 12 January 2018  
<http://www.lefigaro.fr/international/2018/01/11/01003-20180111ARTFIG00328-demain-la-guerre-dans-l-espace.php>

*«How Russia and China  
would wage war against America»*

The National Interest, USA, 15 May 2017  
<http://nationalinterest.org/blog/the-buzz/how-russia-china-would-wage-war-against-america-kill-the-20658>

*«Space Warfare: no longer  
just science fiction»*

The Trumpet, USA, 4 August 2016  
<https://www.thetrumpet.com/14087-space-warfare-no-longer-just-science-fiction>

## Possibility of military uses of outer space

*Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967*



Provides for:

The use of outer space for ***peaceful purposes***, and the use of the Moon and other celestial bodies ***exclusively for peaceful purposes***.



Prohibits:

Placement of ***nuclear weapons*** and ***weapons of mass destruction*** in outer space; use of the Moon and other celestial bodies for ***military purposes***.



Allows:

Placement and use of ***conventional weapons*** in outer space; use of ***military personnel*** for scientific research and other peaceful purposes; ***other military activities*** not directly prohibited by international law.



Therefore:

Military uses of outer space ***are not prohibited***; while the rules governing such activities ***are not stipulated***.

## Dangers of legal uncertainty

The lack of clear rules for military uses of outer space presents risks for both States' and commercial space activities



- **rights and obligations of States** related to military uses of outer space are not determined
- **limitations** of permissible military uses of outer space are not placed
- cases of use of **private space infrastructure** by States for military purposes are not regulated



- **no guarantees** for the protection of private space infrastructure in the event of a military conflict in outer space
- the circumstances under which it is **permissible to seize** and/or **destroy** private space infrastructure used for both civilian and military purposes are not set (provision of services to the armed forces, presence of a military hosted payload, etc.)

## Launch of the MILAMOS Project

Author of the idea:	<b><i>Duncan Blake</i></b> (2014, Master of Laws thesis at the McGill Institute of Air and Space Law)
Founding Institutions:	<b><i>McGill University</i></b> <b><i>University of Adelaide</i></b>
Launch of the project:	October 2016
Expected project timeline:	3 years
Collaborating Institution:	<b><i>University of Exeter</i></b>
Administrative support, organizing issues, secretariat:	McGill University



## The mission and value of the MILAMOS Project

### Mission:



To develop a manual that objectively ***articulates and clarifies existing international law*** applicable to military uses of outer space in times of peace, in periods of rising tensions, and in times of armed conflicts

### Value:



The Manual can become a ***subsidiary means for the determination of rules of law*** as "the teachings of the most highly qualified publicists of the various nations" (Article 38 of the Statute of the International Court of Justice)



The Manual will become a ***useful handbook*** for a wide audience – from students of specialized universities and academia to government officials, including politicians, diplomats, and the military



## Main issues of the MILAMOS Project

Military uses of outer space are regulated by the norms of:

General  
International Law

International  
Space Law

International Law  
on the Use of Force

International  
Humanitarian Law

Simultaneous application often leads to **legal issues** and **conflicts of laws**.

- ? *What norms are applied to cases of military uses of outer space in times of peace, in periods of rising tensions, and in times of armed conflicts? Which body of law is considered *lex specialis*?*
- ? *Which procedure of attributing the conduct of governmental agencies and non-governmental entities to a State applies in determining the responsibility for the military uses of outer space (general or under article VI of the 1967 Outer Space Treaty)?*
- ? *Is it allowed to capture astronauts participating in hostilities, taking into account the obligations to return them to the launching authority under the 1968 Rescue Agreement?*

## Organizational Structure



## Examples of the MILAMOS rules

### Editorial Committee:

- *Military uses of outer space*

### International Space Law Group:

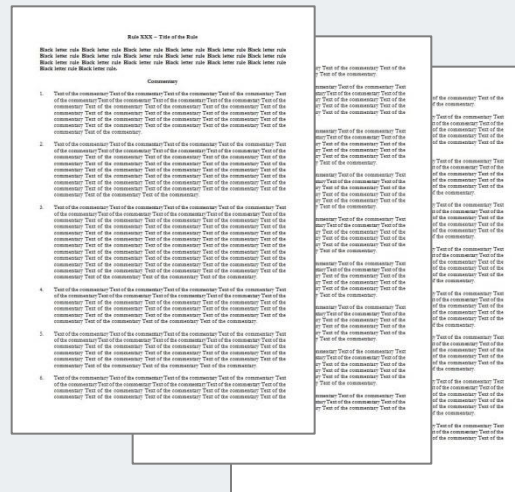
- *Application of international law to military uses of outer space*
- *Use of outer space for peaceful purposes*
- *Responsibility for national space activities*
- *Responsibility related to space activities of international organizations*
- *Use of weapons in outer space*

### International Law on the Use of Force Group:

- *The principle of non-interference*
- *Use of force*

### International Humanitarian Law Group:

- *International armed conflicts*
- *Non-international armed conflicts*
- *Individual criminal responsibility*
- *Perfidy*



## Past meetings



***October 2016***

Inaugural Plenary

***Montreal (Canada)***

***February 2017***

First Workshop

***Adelaide (Australia)***

***June 2017***

Second Workshop

***New Delhi (India)***

***October 2017***

Third Workshop

***Colorado Springs (USA)***

***February 2018***

Fourth Workshop

***Montreal (Canada)***



## Withdrawal of partners from the MILAMOS Project

- Changes: In February 2018, the ***University of Adelaide*** and the ***University of Exeter*** withdrew from the MILAMOS Project
- Causes: Different views on the objectives of the project, primarily on the content of the Manual: former partners plan to focus on conflicts in outer space, to ensure that Manual is practically applied by those who work "in the field"
- What's next? ***McGill University*** will continue the implementation of the MILAMOS Project with the involvement of new partners
- New partner: Institute of Air and Space Law of the ***University of Cologne***



## Principles for further work on the MILAMOS Project

- (1) **Broad scope of the Manual** that will include rules applicable in times of peace, in periods of rising tensions, and in times of armed conflicts
- (2) **Focus on *lex lata***, not on *lex de ferenda* – an objective description of existing international law, but not subjective ideas on what the law should become in the interests of military uses of outer space
- (3) The Manual will be based on ***primary sources of international law***; legal theories, philosophical ideas, secondary sources of law are not used in formulating rules
- (4) The Manual will be drafted by a ***balanced team of experts***, including civil and military specialists from around the world
- (5) ***A broad target audience*** – from students of specialized universities and academia to government officials, including politicians, diplomats, and the military

## New opportunities for collaboration

With regard to the accession of ***Russian organizations*** to the MILAMOS Project, the participation of ***Russian experts*** in drafting rules or as observers, holding meetings in Russia:

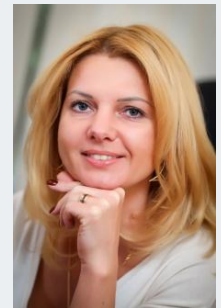


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