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


«The war in outer space is coming?»

Defence24, Poland, 7 February 2018


«Tomorrow there will be a war in outer space»

Le Figaro, France, 12 January 2018


«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

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_.

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_MILAMOS_  
Ram Jakhu, Director, MILAMOS Project  
Рам Джаху, Директор проекта MILAMOS  
Elina Morozova, Expert, International Space Law Group  
Элина Морозова, Эксперт, Группа по международному космическому праву
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: Duncan Blake
(2014, Master of Laws thesis at the McGill Institute of Air and Space Law)

Founding Institutions: McGill University
University of Adelaide

Launch of the project: October 2016

Expected project timeline: 3 years

Collaborating Institution: University of Exeter

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

**Editorial Committee**
(key body responsible for overseeing the work of all three groups and final text of the Manual)

- **International Space Law Group**
  (military uses of outer space in times of peace: for States’ defense and security, etc.)

- **International Law on the Use of Force Group**
  (*jus ad bellum* – military uses of outer space in periods of rising tensions, hostile activities in outer space)

- **International Humanitarian Law Group**
  (*jus in bello* – military uses of outer space in times of armed conflicts)

**Group of Technical Experts**
(advisory support to the groups)

**Observers**

**Independent experts**
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:

**Ram Jakhu**  
Director: MILAMOS Project  
Former Director: Institute of Air and Space Law  
Professor, Faculty of Law  
McGill University, Montreal, Canada  
ram.jakhu@mcgill.ca

**Elina Morozova**  
Expert of the MILAMOS Project  
International Space Law Group  
Intersputnik International Organization of Space Communications, Moscow, Russia  
morozova@intersputnik.com
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