

A Manual in International Law Applicable to Military Uses of Outer Space: An International Collaboration to Bring the Past into the Future

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There exists a sharp contrast between the expanding uses of outer space and the rate at which the legal regime governing such uses has developed. Activities in outer space are governed by the 1967 *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* (Outer Space Treaty), a framework that is dated and not sufficiently robust to address current challenges. There is accordingly a need for an interpretation of the law which will bring the regulation of uses of outer space into the present and beyond.

The Manual in International Law Applicable to Military Uses of Outer Space (MILAMOS) is being drafted by an international group of subject-matter experts in areas such as military law, space law, international law, and international humanitarian law (IHL). The project's aim is similar to that achieved by the Harvard Manual on International Law Applicable to Air and Missile Warfare, the San Remo Manual on International Law Applicable to Armed Conflicts at Sea and the Tallinn Manuals on the International Law Applicable to Cyber Conflicts and Operations. These manuals were drafted with a view to restating IHL in order to provide guidance on the respective situations they cover.

Much like the other manuals, the MILAMOS does not purport to create binding rules; rather, it constitutes an authoritative reference for the application of international law to military activities in outer space. The non-binding nature of the forthcoming Manual implies that a certain degree of State endorsement will be necessary. To be sure, the effectiveness of instruments or guidelines cannot be measured solely on their associated levels of compliance; other factors, such as the progressive ideas they encompass, should also be taken into account. This said, disregard for the law applicable to outer space can lead to significant implications for the welfare of populations worldwide.

The Outer Space Treaty prohibits the conduct of non-peaceful operations in of outer space. Such a prohibition is consistent with one of the Outer Space Treaty's foremost principles, namely, "the common interest of all mankind in the progress of the exploration and use of outer space for

peaceful purposes.”¹ Military activity can leave unexploded weapons in outer space, which increases the debris in outer space. The debris renders outer space more vulnerable and consequently more difficult to safeguard. In this respect, when considering that Article 1 of the Outer Space Treaty states that “[t]he exploration and use of outer space [...] shall be the province of all mankind,”² the MILAMOS represents a crucial initiative to encourage States to limit harmful impacts on outer space that interfere with other States’ freedom to use and explore it, as detailed in Article 9.

It will be interesting to see how some principles of international law on the use of force, including self-defence and proportionality, will be interpreted in the MILAMOS. Further, under IHL, civilians and civilian objects may not be targeted for attack. Yet, several countries’ space programs promote the dual-use of space assets. Due to the reliance of armed forces on outer space technology for a number of applications pertaining to intelligence, communications, and navigation, etc., enemy forces would gain a military advantage by targeting objects which facilitate such activities. How would the fact that some of these assets are also used for civilian purposes affect their classification under IHL? And, could excluding dual-use assets from the definition of “legitimate target” encourage states to engage in practices that would metaphorically-speaking be comparable to the use of human shields in urban warfare?

One perceived drawback of the MILAMOS project is that it does not appear to consider the need to clarify how the law should apply to non-State actors (NSAs), which are now understood to be subjects of international law. If one of the purposes of the MILAMOS is to “contribute to the progressive development of international law,”³ it would be advisable for the project to attempt to detail the obligations of NSAs with respect to the use of outer space. Now, in part due to the democratization of satellites, commercial use of space far surpasses public use, and the risk of NSAs using space technology is real. For this reason, the international law implications of their use of outer space for the conduct of hostilities should be addressed, and not solely through the lens of the attribution of their acts to a State.

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¹ *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*, 18 UST 2410, 610 UNTS 205, 6 ILM 386 (1967), preamble.

² *Ibid*, at Article 1.

³ McGill University, *Manual on international Law Applicable to Military Uses of Outer Space*, 2017, online: McGill University <<https://www.mcgill.ca/milamos/about>>.