

OST, Article IV

States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the Moon and other celestial bodies shall also not be prohibited.

Concluding Remarks

As far as the legality of ASAT weapons is concerned, the interaction among Space Law, International Law and Humanitarian Law, as has been presented in this paper, leads us to the following conclusions:

1) Although General Assembly Resolution 1348(XIII) recognized, back in 1958, as a common aim (of mankind) “that outer space should be used for peaceful purposes only”, Art. IV(2) of the Outer Space Treaty established said principle only partially, with respect to the Moon and other celestial bodies. Consequently, any deployment or testing of ASAT weapons in conformity with the OST will be lawful at the level of Space Law.

2) A lawful, according to Space Law, ASAT operation, must be further assessed in the light of the Art. 2(4) of the UN Charter and the prohibition of the use of force, which is a fundamental precept of General International Law and constitutes a *jus cogens* norm. As no derogation is permitted from such a norm, the use of an ASAT weapon would be only in conformity with International Law as an act of self-defense, according to Art. 51 of the Charter and the customary principles of necessity and proportionality. The latter could be compromised in case that the ASAT attack creates large amounts of space debris.

3) Finally, any use of ASAT weapons legally justified as an act of self-defense has to be in conformity with the Humanitarian Law principles of distinction and proportionality. Once more, “chirurgical” ASAT operations destined to “blind” the target satellite or to interrupt its operation without destroying it have more chances to pass the “legality test”.

4) It seems, on the basis of the above, that debris mitigation constitutes a decisive factor in order to assess the degree of lawfulness of ASAT operations: As space debris can develop tremendous velocities, even very small pieces can severely endanger satellites and other space objects, thus rendering any ASAT hit “disproportionate”.

Thus, it could be said that the legality of the use of ASAT weapons in International Law and in Space Law is assessed in relation to three interacting legal regimes, which finally lead, in time of peace as well as in time of armed conflict, to the old but precious “proportionality test”.