The Law of Armed Conflict in a Domain for Peaceful Purposes
International Humanitarian Law in Outer Space
inter arma enim silent leges
four geneva conventions + other treaties relating to the laws of armed conflict

> 1,000 treaty provisions
what they try to regulate
critical developments:

- Dunant

- Lieber
prohibition on the use of force
ihl is the only body of international law that comes into operation upon a violation of international law
Does ihl apply to outer space?
opposing views as to the applicability of ihl to activities in outer space
earlier international law applies to novel technology
Legality on the Use or Threat of Use of Nuclear Weapons (ICJ)
applicability depends on the source of the law
1907 Hague Convention respecting the Laws and Customs of War on Land

1907 Hague Convention concerning Bombardment by Naval Forces in Time of War
articles 2 and 3 of the Geneva Conventions, the two provisions defining international armed conflict and non-international armed conflict, respectively, contain express references to the “territory” of State parties.
Additional Protocol I to the 1949 Geneva Convention also refers only to conflict “on land, at sea or in the air”
views based on the *Lotus* principle – without express rules to the contrary, States are free to act as they please.
customary ihl rules on the conduct of hostilities apply regardless of methods and means of warfare
Corfu Channel: Obligation arose from “certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”
Use or Threat of Use of Nuclear Weapons

- IHL was “permeated” with an “intrinsically humanitarian character”.
- IHL “is the overriding consideration of humanity”.
- IHL “applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future”.

source of the law: e.g. use of space-based assets to cause death or injury of enemy combatants on land by treachery would be a breach of Article 23 paragraph b of the 1907 Hague Regulations
Article I Geneva Conventions: States Parties are to respect the Conventions “in all circumstances”, including in areas outside of the territory of States Parties, such as the high seas and outer space.
principles of space law relevant to the use of force
Article III Outer Space Treaty
province of mankind
peaceful purposes
freedom of exploration and use
no appropriation
applicability of international law
maintenance of international peace and security
prohibition on nuclear weapons and WMD
state responsibility
broad principles of
IHL
any actions undertaken during a conflict are done so with a minimum loss of life, a minimum standard of humanity towards wounded or captured soldiers, and a maximum possible protection of civilians who are not engaged in the conflict
the use of force during a conflict can be justified as indispensable or imperative to the direct aims of the conflict
• distinction between combatants and civilians
• distinction between military and civilian objects
  
  (a) that the object must make an effective contribution to military action, and this must be by virtue of its nature, location, purpose or use; and

  (b) the total or partial destruction, capture or neutralisation must offer a definite military advantage under the circumstances ruling at the time
force is proportionate to the aims of military necessity and that no unnecessary suffering is caused by such force.
dual-use space assets

• In general IHL, when a particular object is used for both civilian and military purposes, it becomes a military objective, even if the military use is marginal in relation to civilian use

• all reasonably foreseeable harm, including incidental civilian harm, must be taken into account
commercial satellites
Under the law of neutrality, while a State would violate its neutrality if it assists a belligerent through the provision of supplies, it is not obligated to stop or control private trade between its nationals and belligerent.
Article VI Outer Space Treaty

A neutral State would be responsible for its commercial entities and could arguably be obliged to require such entities to terminate the provision of such services.
orbital debris

• all reasonably foreseeable incidental harm must be taken into consideration under the principles of proportionality and precautions in attack
• impact the choice of means and methods of warfare, with a way to reduce the creation or dissemination of debris
environmental modification
Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques
other tensions between ihl and space law

• whether an orbit or another specific area of outer space could itself become a military objective by location
• applicability to satellite communication of Art. 8 of 1907 The Hague Convention (V) on neutral states’ obligation to restrict or provide the use of telegraphic services to all belligerents equally
• absolute liability for damages caused by space objects under the Liability Convention versus damages caused by lawful acts of war to an enemy belligerent
• ability to intern versus the obligation to return spacecraft personnel who might serve as a combatant during armed conflict
ICRC: “any hostile use of outer space in armed conflict – that is, any use of means and methods of warfare in, from, to or through outer space – must comply with international humanitarian law”
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