

## ***CDI Fact Sheet: Legal Aspects Concerning the Militarization of Space\****

The law regarding military activities in outer space is an incomplete, but nonetheless impressive, patchwork of bilateral treaties, principles of customary international law as accepted by all states, and national legislation of leading spacefaring countries. This fact sheet surveys several contemporary legal instruments and assesses their contributions to the field.

### *Primary Treaties*

[UN Charter](#)

[Outer Space Treaty](#)

[Limited Test Ban Treaty](#)

[ABM Treaty](#)

### *Other Space Related Treaties*

[Rescue Treaty](#)

[Liability Convention](#)

[Registration Convention](#)

[Moon Treaty](#)

[Nairobi Convention](#)

[Hotline Agreement](#)

[Environmental Modification Convention](#)

[START I](#)

[Missile Technology Control Regime](#)

[Conventional Weapons Convention](#)

### *Domestic Laws*

[United States Domestic Law](#)

### *Primary Treaties with Implications Concerning the Militarization of Space*

United Nations Charter –

The United Nations Charter contains no explicit geographic constraints, and, as such, is fully applicable to the behavior of states in outer space. Relevant sections of the charter include:

- Article 2(4), outlining the fundamental obligations of states regarding military action, in space or elsewhere: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes on the United Nations.”
- The first-use of military power in outer space is *per-se* illegal, if undertaken without justification as outlined in the charter under Article 51 (self-defense), or unless authorized by the Security Council pursuant to Chapter VII.

### Outer Space Treaty (OST) –

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies

Signed, 1967

96 Parties (including the United States)

27 Signatories

The “Magna Carta” of outer space served as the world’s second non-armament accord, the first being the 1959 Antarctic Treaty. Its primary goal was the avoidance of colonial competition and military rivalry in space. Some relevant sections from the OST include:

- Article I stated, “The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interest of all countries.”
- Article II held that space “is not subject to national appropriation by claim of sovereignty.”
- Article IV informed states to “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.”
- Article VII outlined how a state that launches a satellite “is internationally liable for damage to another state party to the treaty or to its natural or juridical persons by such object or its component parts on the Earth, in the air space or in outer space.”

The treaty does little to define what constitutes “peaceful” utilization of space. Therefore, it implicitly allows for the following military activities:

- Objects carrying nuclear weapons or other weapons of mass destruction (WMD) can freely *transit* outer space as long as they do not orbit the Earth.
- Other non-nuclear/non-WMD weapons may be placed in orbit and used to attack targets in space or on the Earth.
- Weapons, including nuclear/WMD, may be tested in outer space.
- Countries may use satellites to perform military functions including, telecommunications, reconnaissance, and navigation.
- Nuclear powered satellites are permitted.
- There is no direct ban on non-nuclear anti-satellite or anti-missile weapons, whether space or Earth-based.

### Limited Test Ban Treaty –

The Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water

Signed, 1963

117 Parties (including the United States)

Relevant sections include:

- Under Article I, all parties undertake “to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control: in the atmosphere; beyond its limits, including outer space; or under water.”

Anti-Ballistic Missile (ABM) Treaty –

The bilateral Treaty on the Limitation of Anti-Ballistic Missile Systems Signed by the United States and Soviet Union, 1972.

Withdrawn by United States, 2002

Relevant sections included:

- Under Article V of this treaty, both parties undertook “not to develop, test, or deploy ABM system or components which are...space based.”
- Each party additionally undertook in Article XII “not to interfere with the national technical means of verification (understood to include photoreconnaissance and other satellite-based sensors) of the other party” and “not to use deliberate concealment measures which impede verification by national technical means.”

*Other Space-Related Treaties with Implications Concerning the Militarization of Space*

Rescue Agreement –

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space

Signed, 1968

88 Parties (including the United States)

25 Signatories

Relevant sections include:

- The Rescue Agreement requires that astronauts and space objects landing in foreign territory or the high seas be safely and promptly returned to representatives of their launching state.

Liability Convention –

The Convention on International Liability for Damage Caused by Space Objects

Signed, 1972

82 parties (including the United States)

26 Signatories

It provides two forms of state liability for space activities:

- Article II states, “A launching state shall be absolutely liable to pay compensation for damages caused by its space object on the surface of the Earth or to aircraft in flight.”
- And, in Article III, “In the event of damage being caused elsewhere than on the surface of the Earth to a space object of another launching state, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.”

#### Registration Convention –

The Convention on registration of Objects Launched into Outer Space

Signed, 1975

44 parties (including the United States)

Relevant sections include:

- Requiring each party to register with the United Nations each space object it launches, providing information on the space object’s designator, date and territory of launch, orbital parameters, and general function. As a practical matter, such registration is done in general terms, and no satellites are designated for military use.

#### Moon Treaty –

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies

Signed, 1979

10 parties (the United States has not signed)

5 Signatories

This agreement elaborates some provisions of the OST concerning the use of the moon “exclusively for peaceful purposes.” Relevant sections include:

- Article II states that on the moon, there may be no “threat of use of force or any other hostile act or threat of hostile act.”
- Article III holds that neither the moon, nor any other celestial body may be used “to engage in any...threat in relation to the Earth, the moon, spacecraft, the personnel of spacecraft or man-made space objects.”
- Article III goes on to further forbid the parties to “place into orbit around or other trajectory to or around the moon objects carrying nuclear weapons or any other kinds of weapons of mass destruction or place or use such weapons on or in the moon.”

#### Nairobi Convention –

1982 International Telecommunications Convention

Entered into force, 1984

140 Parties (including the United States)

This treaty provides the basic framework for the regulation of international telecommunications. Relevant sections include:

- Article 35 has parties pledge “not to cause harmful interference to the radio services or communications” of other parties.”
- In Article 38, however, there is a specific exemption for military activities: “Members retain their entire freedom with regard to military radio installations of their army, naval and air forces.”

### *Weapons Related Treaties with Implications Concerning the Militarization of Space*

Hotline Agreement –

The United States and Soviet Union agreed in 1963, and episodically thereafter, to establish a secure link between the two countries to facilitate communication in times of crisis.

- Beginning in 1971, each side pledged to “take all possible measures to assure the continuous and reliable operation of the communications circuits and the system of terminals.”

EnMod Convention –

The Convention of the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technologies

Signed, 1977

70 parties (including the United States)

Relevant sections include:

- Article II has parties agree not to engage in military or hostile environmental modification activities, defined as “any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.”

Strategic Arms Reduction Treaty (START) I –

The bilateral treaty on the Reduction and Limitation of Strategic Offensive Arms

Signed by the United States and Soviet Union, 1991

Relevant sections include:

- Article V.18 commits both parties “not to produce, test, or deploy...systems, including missiles, for placing nuclear weapons or any other kinds of weapons of mass destruction into Earth orbit or a fraction of Earth orbit.”

Missile Technology Control Regime (MTCR) –

## The Missile Technology Control Regime

This is a non-treaty based coalition of 33 countries, founded in 1987, devoted to restricting the proliferation of ballistic and cruise missiles and associate technology through unilateral national export controls. Relevant sections include:

- The overlap between strategic missiles and space launch vehicles forces members to make fine distinctions in order to inhibit technology transfer without hindering civilian space programs.

## Conventional Weapons Convention –

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Excessively Injurious or to Have Indiscriminate Effects Signed, 1981

Relevant sections include:

- Protocol IV, to which countries may separately adhere, was adopted in 1995. This protocol deals with laser weapons. Most of the Protocol focuses, however, upon technology designed to blind individuals.

## Domestic Laws with Implications Concerning the Militarization of Space

At least 20 countries have specific domestic legislation governing space related activities.

In the United States, several provisions directly affect military activities in space:

- In 42 U.S.C. 2451, the U.S. Congress declared that “it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.”
- 18 U.S.C. 1367 states, “Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.” The section excludes for prohibition “lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States.” It does not confer a similar exception upon the military.
- The Tsongas Amendment passed in 1983 and again in 1984, barred anti-satellite weapon tests in space unless the president provided certain certifications regarding other treaty obligations. From 1985 to 1988, Congress extended this further by prohibiting anti-satellite tests in space unless the Soviet Union tested them first.
- Congress briefly imposed a prohibition against the use of lasers to illuminate an object in orbit; this limitation expired in 1995.

- In 1997, President Bill Clinton exercised his line-item veto power to excise funding for the Army's kinetic energy ASAT missile and two other programs related to space control. Funding was later restored by the Congress.

\*Adapted from:

"The Law Regarding Military Use of Outer Space," by David A. Koplow

A Paper for a roundtable discussion

Lawyers Alliance for World Security <http://www.lawscns.org>

Space Policy Institute at George Washington University <http://gwu.edu/~spi/>

Nov. 13, 2002