

BOFAXE

KEEPING IT CLEAN – Part 1

ON THE PROHIBITION ON THE USE OF FORCE IN AN ASAT CONTEXT

On March 27th, India successfully tested an anti-satellite (ASAT) missile against one of its own test satellites, creating a cloud of space debris which might collide with the International Space Station (read more [here](#)). Since ASAT weapons are ultimately designed to be used against satellites of other states, scenarios in which space debris is caused through international hostilities become more realistic. As the conflict in the Indo-Pakistani Kashmir region [recently reignited](#) with new military force, a scenario in which India targets a Pakistani satellite is no longer a matter of pure fiction. This Bofax is part one of a two-part series dealing with selected issues revolving around the use of ASAT missiles against satellites of other states. The first Bofax assesses, if the prohibition on the use of force could be violated in such scenarios. The second Bofax will reflect on the protection of outer space as part of the environment under outer space law and international humanitarian law (IHL).

Given the rising risk of ASAT missiles targeting satellites of other states, it should be clarified if the prohibition on the use of force applies in that context. Until now it has mostly been discussed how international law deals with force from space against earth-based targets. The question of how to assess force directed against objects in space is rarely considered (read more [here](#)). [Article 2\(4\) UNCH](#), which codifies customary international law and is generally considered to constitute *ius cogens*, states that “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 other manner inconsistent with the Purposes of the United Nations“. The prohibition was included in the UNCH to protect the sovereignty of states, which is often considered to be limited to the state's own territory. Today a more modern understanding of the prohibition on the use of force going beyond state territory is derived from the last part of Article 2(4) UNCH, which focusses on the question, whether or not a use of force can be reconciled with the "Purposes of the United Nations". These are defined in i.a. [Article 1\(1\) UNCH](#) as the maintenance of international peace and security as well as prevention and removal of any threats to this peace. Attacks against objects of another state are threats to international peace and thus attacks against another state's satellites in a forceful manner would fall within the scope of prohibited force under the UNCH.

The fact that the notion of prohibited force limited to a state's territory does not fully reflect a modern understanding of the term, is also evident in the handling of the prohibition regarding ships. Although ships are not state territory, attacks against them in international waters can still constitute a violation of state sovereignty, as international law subjects ships to the sovereignty of the flag state. Doing so for satellites would require a similar nexus as between ships and their flag states. This nexus could arguably be provided by the registration of space objects by the launch state, as called for by [Article II \(1\)](#) of the Convention on Registration of Objects Launched into Outer Space (Registration Agreement). The launch state is defined in [Article I a\)](#) as the state which launches or procures the launching of a space object or the state from whose territory or facility a space object is launched. While it could be argued that ships are only subjected to state sovereignty due to a state's jurisdiction over the crew, unmanned objects such as drones are considered suitable targets for unlawful force as well in order to protect state sovereignty and to guarantee the right of self-defence (read more [here](#)). The same interests exist with regard to satellites.

Further, [Article III](#) of the Outer Space Treaty requires states parties to use outer space in accordance with the UNCH in the interest of maintaining international peace and security. This maintenance is a purpose of the United Nations, which Article 2(4) UNCH pursues. In conclusion, the use of ASAT missiles against satellites of other states can violate the prohibition on the use of force.