

On counterproductive nature of consideration of the applicability of international humanitarian law (IHL) to outer space activities

1. IHL has effect (to the extent applicable) wherever there is an armed conflict, including outside national jurisdiction. However, discussing IHL applicability within the mandate of the UN Open-Ended Working Group (OEWG) established by UN General Assembly resolution 76/231 "Reducing space threats through norms, rules and principles of responsible behaviours" would automatically mean recognising the admissibility of an armed conflict in outer space. Acceptance of this starting point creates for the states a political and legal paradigm that runs counter to the basic principles of space exploration, primarily international community's orientation towards exploration and use of outer space in the interest of maintaining international peace and security and promoting international international cooperation and understanding.

IHL is a set of treaty and customary norms governing the means and methods of warfare, aimed at protecting victims of an armed conflict. The key principles of IHL include the distinction between combatants and individuals, who do not participate in military operations, between military and civilian facilities and infrastructure, as well as proportionality, prohibition of indiscriminate and disproportionate attacks, obligation to take all precautions to avoid collateral damage to civilian population, or, at least, to minimize such damage. With this in mind, it is correct to talk about the applicability of IHL in relation to areas in which active military operations are possible.

2. The common interest of all humankind in the progress of exploration and use of outer space exclusively for peaceful purposes in accordance with the acknowledged principles and norms of international law, the desire to facilitate to broad international cooperation in both scientific and

legal aspects of exploration and use of outer space for peaceful purposes are enshrined in the preamble of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 1967 (hereinafter “the Outer Space Treaty”).

In accordance with its Article IV, the States Parties "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 should be used exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, tests of any type of weapons and conducting military manoeuvres on celestial bodies are banned. At the same time, that Article allows the use of military personnel for scientific research or any other peaceful purposes. The use of any equipment or means necessary for the peaceful exploration of the Moon and other celestial bodies is authorised.

Thus, the so-called partial demilitarisation regime is established for outer space (the ban is related to WMD placement), while the Moon and celestial bodies are completely demilitarised. Some States abuse the absence of formal ban fixed in international law, in particular in order to justify the admissibility of emergence of a conflict in outer space, and hence the need to discuss the applicability of IHL norms.

The interest of States in preservation of outer space for exploration and use for exclusively peaceful purposes is enshrined in a number of underlying international space law treaties, as well as annually adopted on Russia's initiative UNGA resolutions "No first placement of weapons in space" (NFP) and “Further practical measures for the prevention of an arms race in outer space” (FPM on PAROS).

The resolution on NFP, in particular, focuses on the paramount importance of "strict compliance with the existing legal regime providing for

the peaceful use of outer space." It recognises that the legal regime by itself does not guarantee prevention of an arms race in outer space, and hence there is the need to strengthen such a regime. It urges States, especially space-faring nations, to consider the possibility to make a political commitment not to be the first to place weapons in outer space. Every year over 120 States vote for the resolution.

32 States, including Russia, have taken their corresponding commitment on NFP. All CSTO¹ Member States joined the said commitment in 2005. The CSTO Member States' Permanent Representatives to the UN reaffirmed the commitment to not being the first to place weapons in outer space in their statement "On the Support of the Multilateral Initiative on No First Placement of Weapons in Space" in 2019.

The resolution on the FPM on PAROS proclaims "a historic responsibility of all States to ensure that the exploration of outer space is carried out exclusively for peaceful purposes for the benefit of mankind".

Obviously, such a widespread support of the idea not to place weapons in outer space in order to prevent an arms race and remove thereby a serious threat to international peace and security is not compatible with the launch of discussions on the applicability of IHL to outer space as far as the latter implies admissibility of conducting active combat operations there.

3. Those who advocate extending IHL to outer space are active in circulating the idea that since military activities in outer space are not comprehensively regulated by the international law it opens up the possibilities for conducting combat operations in outer space. And if that being the case, IHL is needed to regulate the consequences of some military conflicts in outer space. Such a message is beneath criticism. Adding IHL to regulating outer space activities in effect would open a Pandora's Box and send a false signal to the

¹ Collective Security Treaty Organization

international community on a war in outer space as a certain possibility while the entire international legal toolbox on that track aims at preventing conduct of combat operations in outer space.

4. The Russian Federation proceeds from the inadmissibility of conflicts in outer space in principal as bearing a serious existential threat to all humankind. We call upon all UN Member-States to focus their efforts on comprehensive strengthening both WMD and conventional arms non-proliferation regimes in outer space in order to fulfill the PAROS objectives.