

National Center for Remote Sensing, Air and Space Law

Informational resources on the legal aspects of human activities using aerospace technologies

Law and Conflict in Space

P.J. Blount

© 2009



Two Concepts

- Jus ad Bellum
 - Law governing the Use of Force
- Jus in Bello
 - Law of International Armed Conflict, or
 - International Humanitarian Law, or
 - Operational Law, but not
 - Rules of Engagement
- Law of War?



Jus ad Bellum

- Conflict in Space: is it even legal?
 - It depends on what side your on



Jus ad Bellum

- Peaceful Purposes
 - OST Art. IV: only applies peaceful purposes to the Moon and other celestial bodies
- Does it apply to the rest of space?
 - International customary law



Jus ad Bellum

- What does peaceful purposes mean?
 - Non-aggressive v. non military
 - The Soviet shift
 - New Japanese law
- OST Art. III
 - Incorporates International law and the UN Charter into Space Law
 - “international peace and security”



Jus ad Bellum

- Aggression
 - Article 2(4) of the UN Charter
 - No use of force against territorial integrity, political independence, or in a manner inconsistent with the charter
 - The Definition of Aggression (UNGA Res. 3314)
 - Adds sovereignty
- Legal Use of Force
 - UNSC sanctioned
 - Self Defense



Jus ad Bellum

- **UNSC Sanctioned**
 - Must be explicit
 - North Korea example
- **Self Defense**
 - UN Charter Article 51
 - inherent right + armed attack
 - Anticipatory
 - Based on inherent right
 - Immediate, necessary, and proportionate
 - Preemptive?



Jus ad Bellum

- Peaceful purposes
 - Nonaggressive +?



Jus in Bello

- Applies no matter who uses force first
- Goals
 - Protect civilians
 - Make war more humane
- Application applies to soldiers in the field of battle



Jus is Bello

- Targeting
- Weapons limitations
- Enhancing the goals of international humanitarian law
- And others



Jus in Bello

- Targeting
 - The process through which objectives are selected for attack and desired effects are determined based upon a stated mission, force posture and capabilities, aerospace doctrine, plans, concepts of operations, and target intelligence (USAF Pamphlet 14-10 – Intelligence Targeting Guide)
- Two questions to be addressed
 - Is the target prima facie legal?
 - Are the effects from a successful attack legal?



Jus in Bello

- Discrimination
 - Can only attack military objectives
 - Nature, location, purpose, or use “make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definitive military advantage.” (AP I)
 - If its not a military objective it’s a civilian object – illegal target



Jus in bello

- Indiscriminate attacks
 - Not directed at a specific military objective
 - Employ a method or means of combat which cannot be directed at a specific military object
 - Those which employ a method or means of combat the effects of which cannot be limited as required by international law



Jus in Bello

- Verification of a target
 - Must make sure that the target is a military objective
- Space problems
 - Satellite surveillance is difficult, and verifying that a satellite is what a state claims that it is difficult
 - This is the major stumbling block in the negotiation of an arms control agreement



Jus in Bello

- Target verification
 - Registration Convention?
 - Only requires very basic facts
 - Launching State, designator, date and territory of launch, basic orbital parameters, and general function and description
 - “Spacecraft engaged in practical applications and uses of space technology such as weather or communications”
 - Landsat 7
 - And USA-193



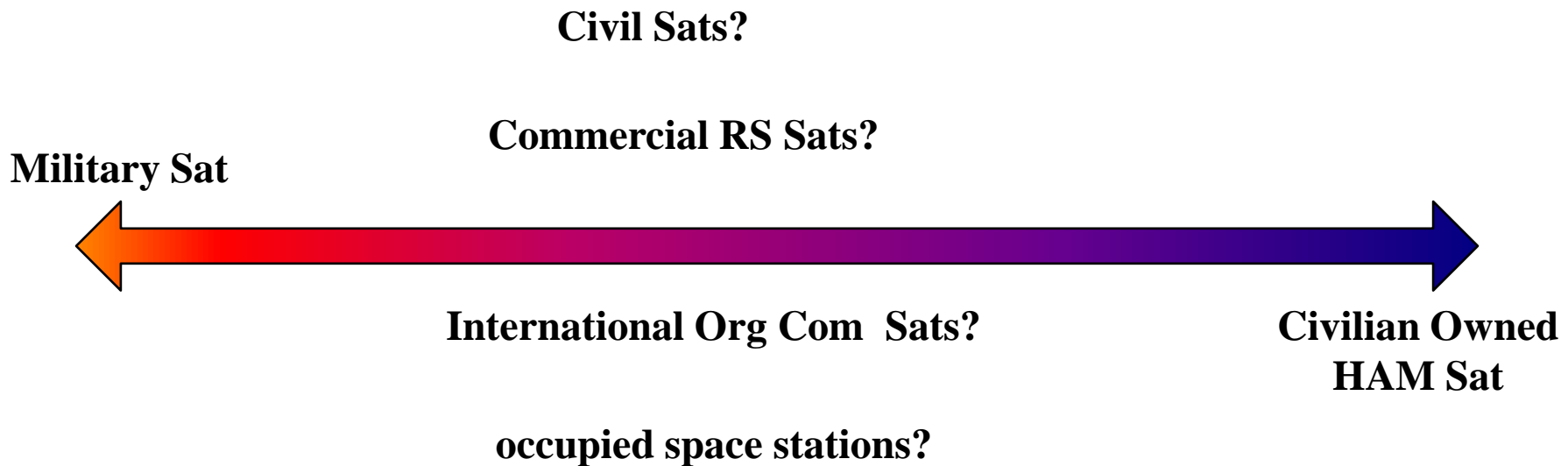
Jus in Bello

- Satellite Tracking Databases
 - Predominant source for these is U.S. data
 - Problematic for other Nations
 - Iridium 33 & Cosmos-2251
- Outside intelligence



Jus in Bello

- Types of Targets: Must be a military Objective



Jus in Bello

- Indiscriminate Attacks
 - Attacks must employ a method or means of combat the effects of which cannot be limited as required by international law
 - Space Debris
 - FY-1C as a model for the potential of an attack to create space debris
 - Space Debris would put civilian satellites at risk
 - sea mines as an analog



Jus in Bello

- Indiscriminate Attacks
 - No long term, widespread or severe damage to the environment
 - AP I & ENMOD



Jus in Bello

- **Satellites can enhance a State's ability to comply with LOAC**
 - Navigation systems lead to more precision targeting
 - RS systems lead to better verification of the status of a potential target
- **Results in better compliance with the law**
 - In fact the law may require states with such capabilities to use them in order to reduce human suffering



Thanks!

Shameless Plug:
<http://rescommunis.wordpress.com>

&

I've got Space Law CD's

