

# Space weaponization

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# Outline

- ▶ Sources of International law
- ▶ Existing legal framework
- ▶ Avoiding the current WMD legal approach
- ▶ Proposed legal solution



# Sources of International Law 1/2

- ▶ **Article 38 (1) – Statute of the International Court of Justice**

- ▶ The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- A. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

- B. international custom, as evidence of a general practice accepted as law;

- C. the general principles of law recognized by civilized nations;

- D. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.



# Sources of International Law 2/2

- ▶ United Nations Security Council Resolutions ?
- ▶ United Nations General Assembly Resolutions ?



Existing legal framework

1 / 9

None?



# Existing legal framework

2/9

Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies (Outer Space Treaty)

*Recognizing* the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,



# Existing legal framework

3/9

Outer Space Treaty:

Article IV

States Parties to the Treaty 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 shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.



# Existing legal framework

4/9

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Article 35.

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is **not unlimited**.
3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause **widespread, long-term and severe damage to the natural environment**.



# Existing legal framework

5/9

Protocol I

Article 55.

PROTECTION OF THE NATURAL ENVIRONMENT.

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. **This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.**

2. Attacks against the **natural environment** by way of reprisals are prohibited.



# Existing legal framework

6/9

Further prohibition against “widespread, long-term and severe damage to the natural environment” in:

- ▶ Convention on Certain Conventional Weapons - Preamble
- ▶ Statute of the International Criminal Court - Article 8(2)(b)(iv)
- ▶ African Convention – Article XV



# Existing legal framework

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- ▶ Customary International Law
  - ▶ United Nations General Assembly Resolutions
- ▶ General Principles of Law



# Existing legal framework

8/8

## United Nations Security Council Resolutions

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.



# Existing legal framework

9/9

- ▶ United Nations General Assembly Resolutions
  - ▶ Instant Customary International Law
  - ▶ Encourage or recognize the importance of peaceful uses of outer space, peaceful exploration, scientific cooperation, etc.



# Current legal approach to WMDs

- ▶ Chemical Weapons Convention – Article 1

- ▶ Each State Party to this Convention undertakes in any circumstances:
  - ▶ (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer directly or indirectly chemical weapons to anyone
  - ▶ (b) To use chemical weapons
  - ▶ (c) To engage in any military preparations to use chemical weapons
  - ▶ (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention

- ▶ Biological Weapons Convention – Article 1

- ▶ Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain....



# Current legal approach to WMDs

- ▶ Treaty on the Non-proliferation of Nuclear Weapons – Articles I & II

- ▶ Nuclear-weapon States
- ▶ Non-nuclear-weapons States

UNSCR 1540, FATF, Country specific UNSCRs, unilateral sanctions

- ▶ Treaty on the Prohibition of Nuclear Weapons (not in force) – Article 1

- ▶ Each State Party undertakes never under any circumstances to:
- ▶ ...
- ▶ ...



# How to avoid repetition

Universally applicable & non-discriminatory regime



# Proposed legal solution

- ▶ Annex to the Outer Space Treaty
  - ▶ Declaring the outer space as Weapon-Free-Zone
  - ▶ Specifically addressing the issue at hand with text similar to:
    - ▶ Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain space weapons
  - ▶ Withdrawing the possibility for State Parties to it to withdraw from the treaty (Article XVI)
- ▶ UNSCR
- ▶ UNGAR
- ▶ “Space weapons” ?