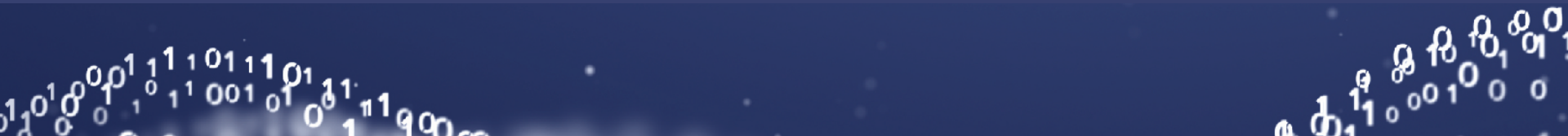


NAVAL WAR COLLEGE

The involvement of outer space in armed conflicts – what law applies?

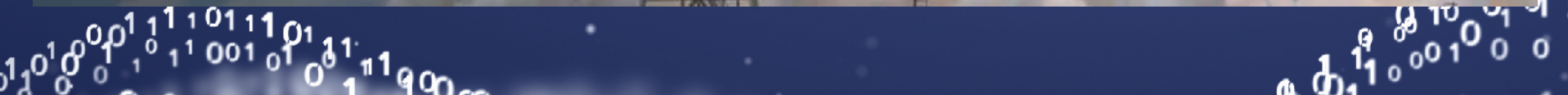
Frans G. von der Dunk



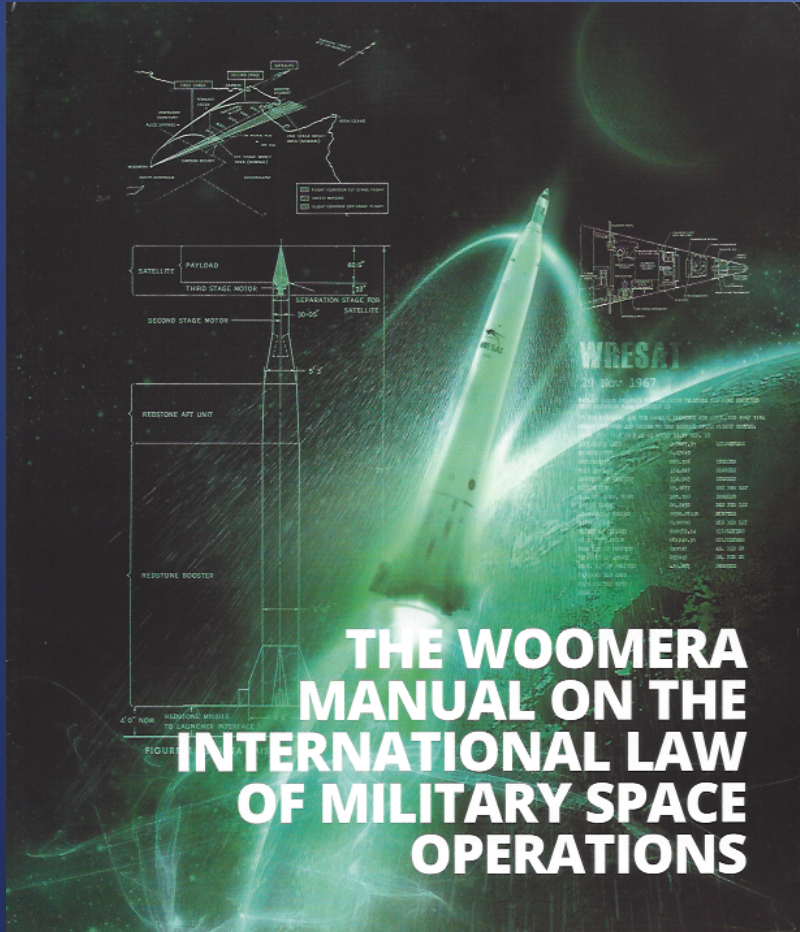
#3THINGS



SPACE RACE AND FIST FIGHT!



What rules apply?



- **Overarching question:**
What international law would apply in case of *armed conflicts* involving *outer space* and/or (partially) fought out in *outer space*?

'Outer space law'

- 'All law of major & direct relevance to space activities'
 - 1967 Outer Space Treaty
 - Ratified by 109 States, signed by 23 more
 - Includes all major spacefaring nations
 - Generally considered customary international law
 - Three major implementing treaties
 - 1968 Rescue & Return Agreement
 - 1972 Liability Convention
 - 1975 Registration Convention
 - Other key legal regimes
 - ITU Constitution, Convention & Radio Regulations
 - 1963 Partial Test Ban Treaty...

Core principles space law

- Freedom of activity for States = baseline
- Absence territorial sovereignty in outer space
- Treatment astronauts as 'envoys of mankind'
- State responsibility for private space activities
- Liability for damage caused by space objects
- Registration space objects launched
- Due regard for interests other States
- Compliance with ITU regime for frequencies

◀▶ *Armed conflicts in space?*

- Space activities to promote international peace & security; application UN Charter
- No orbiting / stationing weapons of mass destruction in outer space
- No military activities on celestial bodies
- No nuclear explosions of any kind in outer space

'Law of armed conflict'

- 'All law of major & direct relevance to armed conflicts, when & how they may be fought'
 - Reality of armed conflicts ◀▶ desire to limit their occurrence & their disastrous effects = limiting the legitimate context use of force (*ius ad bellum*) & legitimate use of force itself (*ius in bello*)
 - *Includes 'law of neutrality'*
 - Exclusion of certain categories of arms & limitation of others (possession but esp. use)
 - Many sources (treaties & customary international law) & many principles, rules, rights & obligations

◀▶ *Armed conflicts in space?*

- Most LOAC is domain-specific
 - *E.g.* Hague V on land; Hague XIII on sea
- ◀▶ No space-specific LOAC (yet)
- Some non-domain-specific LOAC
 - *E.g.* UN Charter obligations, general principles international law & underlying principles LOAC (e.g. proportionality & military necessity)

Space law *versus* LOAC...

- Space law?
 - Belligerents would have to treat military astronauts of opponents as 'envoys of mankind'
 - Belligerents would have to pay for damage caused to opponents' space objects
 - ▶ *Absurd results...*
- Law of armed conflict?
 - Belligerents can attack any legitimate opponent's space objects regardless of down-the-line damage
 - Belligerents can militarize celestial bodies
 - ▶ *Space law a dead letter...*

How to solve the conflict? (1)

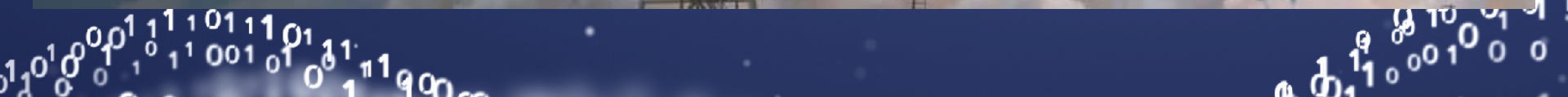
- UN Charter, Art. 103: Charter = *lex superior*
 - Allows use of armed force between States in two sets of circumstances, as exceptions to default prohibition Art. 2(4)
- Vienna Convention on the Law of Treaties, Art. 32(b): 'Manifestly absurd/unreasonable result' ► reinterpretation treaty clauses

Towards a solution? (1)

	Belligerent	
Belligerent	Non-domain-specific LOAC – otherwise space law	

#3THINGS

**SPACE RACE
AND FIST
FIGHT!**



How to solve the conflict? (2)

- Vienna Convention on the Law of Treaties,
Art. 34: *Pacta tertiis nec prosunt nec nocent*

Towards a solution? (2)

	Belligerent	Third State
Belligerent	Non-domain-specific LOAC – otherwise space law	
Third State		Space law

Core LOAC on neutrality

- Distinction belligerents & neutral States
 - Rights of belligerents *vis-à-vis* neutral States & *v.v.*
 - Protection various categories of *persons* involved in conflicts
 - Protection various categories of *assets* involved in conflicts

What *is* ‘neutrality’ / a ‘neutral’?

- Hague Convention V:
 - ‘Desirous of defining the meaning of the term “neutral”’ (Preamble) ... *!?!*
 - Focuses on *neutral persons* (Arts. 16-18)
- Hague Convention XIII:
 - ‘Relations between neutral Powers and belligerent Powers’ (Preamble)
 - ‘It is, for neutral Powers, an admitted duty to apply these rules impartially to several belligerents’ (Preamble)
- ▶ *No definition of ‘neutrality’ / ‘neutral State’*

Reimagining 'neutrality'

- **'100% neutrality is utopian'**



- Neutral States have 'bundle of rights' in armed conflicts
 - May lose a number of 'sticks' from it if not behaving as a 'perfect' neutral without thereby becoming allies or belligerents themselves
 - LOAC determines those rights in quite some detail – but mostly in domain-specific manner ◀▶ *need to sort out non-domain-specific ones to apply also to outer space*

Towards defining 'neutrality'

- 'Neutrality':

- 'Refusal to take part in a war between other powers' (Merriam Webster)
- 'Non-participation in conflict & non-discrimination between belligerents' (Major Wolff)
- 'The attitude of impartiality adopted by **third States** towards **belligerents**' (Prof. Von Heinegg)

- ▶ 'Neutral States':

- 'States that choose not to participate on behalf of either party to [a] conflict' (Prof. Von Heinegg)

Towards defining 'neutrality'

- 'Neutrality':
 - 'Ref'

In other words:

With respect to any armed conflict, a **neutral State** is any State not itself a party to it = **third State** also not subject to any pactum tertiis & its rules

to participate on behalf of
'conflict' (Prof. Von Heinegg)

Towards a solution? (3)

	Belligerent	Third State = Neutral
Belligerent	Non-domain-specific LOAC – otherwise space law	Protection third-State rights under space law less non-domain-specific LOAC rules on neutrality as per bundle-approach
Third State = Neutral	Protection third-State rights under space law less non-domain-specific LOAC rules on neutrality as per bundle-approach	Space law

We're working on it ...

