

# The Legality Of Private Space Militarisation

Anjali Kumari

## **Abstract**

The militarisation of space is governed by treaties like the Outer Space Treaty (OST) of 1967. While the OST was successful in addressing the challenges of its time, such as banning weapons of mass destruction and promoting peaceful use of these weapons, it struggles to face the threats of the modern world—dual use technology, private enterprises, and space debris. This article highlights these limitations and call for an updated framework to address these shortcomings. It focusses on the need for collaborative and actionable regulations that encourage the peaceful use of space.

## **Introduction**

The United States (US) and Japan essentially restated and recommitted to the Outer Space Treaty (OST) in Mar 2024, when they jointly requested a United Nations Security Council (UNSC) resolution urging all countries to refrain from developing or deploying nuclear weapons in space. “Any placement of nuclear weapons into orbit around the Earth would be unprecedented, dangerous, and unacceptable,” the US said at a UNSC meeting. This was not a haphazard declaration, rather it was a marker established in response to reports—confirmed by the White House—that Russia has developed anti-satellite weapons capabilities, which it claims are comparable to systems already in use by the US.<sup>1</sup>

The use of space for military objectives, including targeting, communication, and surveillance systems, is referred to as ‘Space Militarisation’. It also includes the creation and implementation of space-based weaponry systems intended to interfere with, neutralise, or eliminate opposing space assets. Recognising the strategic advantage that comes with being able to control and access this domain, the US, Russia, and China are among the top countries that have made significant investments in the militarisation of space.<sup>2</sup> There are five international treaties and five sets of principles controlling outer space that make up the core legal foundation of space law. Furthermore, these treaties and principles are interpreted and applied by subsidiary mechanisms, such as the decisions of the United Nations (UN) General Assembly and the publications of the UN Committee for Peaceful Uses of Outer Space (UNCOPUS), in outer space. Another element of space law is customary international law.

Countries all over the world are investing heavily in the creation and procurement of space technologies connected to defence as space militarisation increases. The military space industry has expanded as a result of this increased spending, and numerous private businesses have sprung up to satisfy the demand for advanced defence technology. In many sectors, this has spurred economic expansion and innovation, but it has also raised worries about the possibility of violence and an arms race in space.

The OST of 1967<sup>3</sup>, which forbids the emplacement of nuclear weapons or other weapons of mass destruction in orbit and stresses that space should only be utilised for peaceful purposes, serves as the main framework that regulates activities in outer space. In addition to governmental actions, the treaty covers private sector operations that fall under the express purview of state responsibility. Since 'States parties bear international responsibility for national activities in outer space, including those conducted by non-governmental entities'<sup>4</sup>, according to Article VI of the OST, any private military operations carried out in space are guaranteed to be under the jurisdiction of the relevant state.<sup>5</sup>

### **Principles Governing the Outer Space Treaty**

The OST lays down the fundamental rules that regulate states' use and exploration of space. Together with these accords, the UN has produced a set of space law principles, compiled in five declarations, to govern space activities and guarantee the fair and responsible use of space resources. One important document that establishes basic guidelines for space exploration is the Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space, 1963.<sup>6</sup> This proclamation emphasises the fundamental idea of using space peacefully, which may conflict with the militarisation of space. The Broadcasting Principles of 1982<sup>7</sup> regulates the use of artificial Earth satellites for international direct television broadcasting, places a strong focus on responsible behaviour and collaboration. It can also be considered a pertinent step in developing a broader range of instruments and collaborative measures, and it can be added to the Remote Sensing Principles approved in 1986. It offers instructions for remotely monitoring Earth from orbit, highlighting the useful and peaceful uses of this technology.<sup>8</sup> Furthermore, the Nuclear Power Sources Principles, 1992, accentuates on the safety and international collaboration, which further deals with the use of nuclear power sources in space. Lastly, the Benefits Declaration, 1996, emphasises on global collaboration in space exploration for the benefit of all nations, with a special focus on developing and underdeveloped nations.<sup>9</sup>

### **International Law Legal Framework**

As demonstrated by Article I of the OST<sup>10</sup>, which implies that UN General Assembly resolutions and OST principles have a customary nature, the existing outer space law is based on the idea of global public interest. These include the following—space should not be appropriated; states should be sovereignly equal in space; space should be used freely; nuclear weapons and other weapons of mass destruction should not be installed or used in space; and space should be recognised as the 'Province of mankind'. The concept of using space for peaceful purposes is another essential component of customary international law.<sup>11</sup> This principle actively discourages any hostile or military endeavours while highlighting the importance of non-aggression and non-militarisation, as well as the necessity of using space for the cooperative and peaceful well-being of all nations.

The question of private militarisation is complicated by the fact that many space technologies have multiple uses. The distinction between military and civil use is blurred by the ease with which technologies created for peaceful purposes can be modified for military use. Commercial satellite systems, for example, may offer major benefits in military operations, including the ability to target and conduct reconnaissance. The goals and obligations of commercial operators in space are called into question by this dichotomy from a legal and moral standpoint. As these businesses usually don't have the same level of control as government agencies, there is a much higher chance of abuse or unforeseen effects in an unregulated setting.<sup>12</sup>

### **Military Space Activities**

Since 1957, when the first artificial satellite Sputnik-I was launched, significant advancements have been made in space exploration. Tension and conflict could occur as space technology continues to advance and more nations acquire new capabilities in space, especially with regard to military applications. Space has always been used for military objectives—early space-age armies used space technologies for reconnaissance, intelligence gathering, and surveillance. Space has developed into a unique strategic area as it increasingly becomes essential to military operations, making them prone to being potential targets.

Some contend that a space war is unavoidable as a result of this shifting environment, raising concerns among countries looking to safeguard their space resources and endangering those of their enemies. This increased rivalry raises the possibility of tensions and conflicts in space, which calls for the urgent need for new laws that can effectively handle emerging issues and players. Notwithstanding the successes, the space activity regulation structure has not kept up with developments. It is crucial to understand that although space is outside of state sovereignty and is not under national authority, it should not be viewed as a lawless frontier.

After witnessing the unpredictable consequences of early space-age weapons tests, the US and the Soviet Union agreed that self-control was essential to ensuring that space would continue to be available for their respective goals. The moon and all other celestial bodies in space should be used 'Exclusively for peaceful purposes', according to Article IV of the OST, which was added as a result of this recognition (Treaty on the Principles Governing, 1967).<sup>13</sup> In space law, the widely accepted idea of peaceful uses of space—which are described as 'Non-military' and 'Nonaggressive'—is regarded as a component of customary international law.

### **Legal Military Framework**

In the ever-evolving field of space exploration, efforts are being undertaken to create legal frameworks for military activities in space. The Woomera Manual on the International Law of Military Space Operations is a noteworthy effort in this regard, as it is a thorough manual that outlines the legal concepts that regulate military operations in space. Characterised by its methodology, the Woomera Manual handles important space legal concerns, like what constitutes 'Outer Space' and what constitutes

'Peaceful Purposes'.<sup>14</sup> Its main goal is clarifying the application of treaty law and customary international law for space operations. Its objective is to promote peace and security in space by offering decision-makers engaged in space activities through clear and thorough recommendations. Its format promotes international uniformity and clarity by reflecting national military manuals and improving its usefulness as a point of reference for military operators and decision-makers.<sup>15</sup>

It has been crucial in developing national manuals and the norms of engagement for several states. But there are also disagreements on the function and significance of such a manual, which begs the important question—do these initiatives limit or legitimise war? Concerns regarding the possible difficulties a manual would present in this area, where activities are required for peaceful purposes, are especially relevant.<sup>16</sup>

## **Conclusion**

International law, national security, and commercial interests in space are all intricately entwined in the problem of private space militarisation. Even if current accords, such as the OST, clearly restrict weapons of mass destruction and affirm the peaceful use of space, they fail to sufficiently address the growing role of commercial organisations in military operations outside of Earth's atmosphere. The legal structure controlling outer space must change to appropriately take into account the rapid commercialisation of space and technological improvements.<sup>17</sup>

Historically, states have been held responsible by international law for the actions of private organisations operating under their control. However, the application of accountability for militaristic operations is complicated by the vague meaning of 'National Activities' in relation to private space endeavours. The need for thorough rules is growing, as private enterprises are more involved in creating technology that can be used for both military and civilian purposes. Such laws must strike a balance between the need to stop an arms race that would endanger international security and the justifiable interests of business and space exploration.<sup>18</sup>

In order to proceed, an international team must work together to develop a legally enforceable framework that specifically tackles the repercussions of private military endeavours in space, along with procedures for enforcement and compliance. This would include updating the tenets of current treaties to take into account modern circumstances, especially the subtleties of dual-use technologies and the complications brought about by private actors.<sup>19</sup>

To maintain the notion of outer space as the shared legacy of humanity, the international community must take urgent action to guarantee that space continues to be a place for peaceful collaboration rather than a battlefield for conflicting interests. Therefore, it is essential to close the loopholes in international space law in order to promote peace and security on Earth as well as in space.<sup>20</sup>

## Endnotes

<sup>1</sup> 'Joint Statement on Behalf of the United States and Japan on the Draft Security Council Resolution on Weapons of Mass Destruction in Outer Space', *United States Mission to the United Nations*, 19 Apr 2024, <https://usun.usmission.gov/joint-statement-on-behalf-of-the-united-states-and-japan-on-the-draft-security-council-resolution-on-weapons-of-mass-destruction-in-outer-space/>

<sup>2</sup> 'Space Militarization and Its Impact on the Space Economy', *New Space Economy*, 31 Mar 2023, <https://newspaceconomy.ca/2023/03/31/space-militarization-and-its-impact-on-the-space-economy/>

<sup>3</sup> '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)', *United Nations Office for Outer Space Affairs*, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html>

<sup>4</sup> Ibid

<sup>5</sup> 'Outer Space Treaty-UNOOSA', *UNOOSA*, 2 Jul 2024, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html>.

<sup>6</sup> 'Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space', *United Nations Office for Outer Space Affairs*, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/travaux-preparatoires/declaration-of-legal-principles.html>

<sup>7</sup> 'Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space', *United Nations General Assembly*, A/RES/1962(XVIII), 13 Dec 1963, <https://digitallibrary.un.org/record/41084?v=pdf>

<sup>8</sup> 'Space Law Treaties and Principles-UNOOSA', *UNOOSA*, 16 Dec 2024, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html>

<sup>9</sup> 'Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries', *United Nations Office for Outer Space Affairs*, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/principles/space-benefits-declaration.html>

<sup>10</sup> Ibid

<sup>11</sup> 'International Space Law: Treaties & Agreements-LibGuides', 24 Sep 2024, <https://law-hawaii.libguides.com/spacelaw>

<sup>12</sup> Jennifer El-Fakir, 'Problems with Enforcing International Space Law on Private Actors', 2 Jun 2020, <https://www.jtl.columbia.edu/journal-articles/problems-with-enforcing-international-space-law-on-private-actors>

<sup>13</sup> Ibid

<sup>14</sup> 'Outer Space-UNODA', *UNODA*, 2013, <https://disarmament.unoda.org/topics/outerspace/>

<sup>15</sup> 'Outer Space and Use of Force', *UNIDIR*, 7 Sep 2024, [https://unidir.org/wp-content/uploads/2024/09/UNIDIR\\_Outer\\_Space\\_and\\_Use\\_of\\_Force.pdf](https://unidir.org/wp-content/uploads/2024/09/UNIDIR_Outer_Space_and_Use_of_Force.pdf)

<sup>16</sup> 'The Militarization of Space and International Law', *Jstor*, <https://www.jstor.org/stable/424169>

<sup>17</sup> 'Space Militarization-How Does Law Protect in War?' *Online Casebook*, 1 Jan 2024, <http://casebook.icrc.org/case-study/space-militarization>

<sup>18</sup> 'Outer Space Becoming Contested Domain for Supremacy with Space-Based Communications, Intelligence Assets, Anti-Satellite Weapons, First Committee Hears', *UN General Assembly*, 19 Oct 2023, <https://press.un.org/en/2023/gadis3722.doc.htm>

<sup>19</sup> 'The Outer Space Treaty-UNOOSA', *UNOOSA*, 28 Jun 2024

<sup>20</sup> Ibid

**Anjali Kumari** is currently pursuing her undergraduate studies at Rajiv Gandhi National University of Law, Patiala, Punjab. She is also working as an intern at the Centre for Peacekeeping at the United Service Institution of India. She specialises in International Law. Her interest areas include International Humanitarian Law, International Human Rights, and Ballistics Studies.

**Article uploaded on 16-04-2025**

**Disclaimer** : The views expressed are those of the author and do not necessarily represent the views of the organisation that he/she belongs to or of the USI of India.