# “The Centre of Conflict Itself”

## An International Law Assessment of Germany’s “Space Safety and Security Strategy”

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In late November, the German Ministry of Defense and the German Foreign Office jointly published the first-ever “Space Safety and Security Strategy”. Its most remarkable aspect is the straightforward recognition of Outer Space “not only [as a] potential arena for global conflicts but increasingly [as] the centre of conflict itself” (p. 12).

This political and military assessment carries important implications for the legal framework governing military uses of Outer Space. In the absence of a comprehensive multilateral treaty, the specific application of international law’s principles to the military uses of Outer Space is currently under development. Given significant divisions among spacefaring states, this legal order will most likely crystallize through a non-linear, heterogeneous process of individual statements, actions, and reactions. Germany’s strategy chimes into this debate and sets the tone for a much-anticipated Federal Space Law.

### International law on military use of outer space

State activities in Outer Space are regulated by international law according to Art. III of the 1969 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; OST). However, the OST does not provide detailed guidance how the general rules regulating armed conflict will apply in the specificities of Outer Space. Moreover, states have been unable (and probably unwilling) to provide further detail to these rules. Two draft treaties on the Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects of 2008 and 2014 were never adopted. In 2024, competing draft Security Council resolutions (S/2024/302 and S/2024/383) failed to pass. Therefore, significant uncertainty persists regarding the legal framework for the military use of Outer Space. Observers across different United Nations fora working on the military use of Outer Space are skeptical that a consensual regulation will emerge any time soon.

Against this backdrop, recent years have seen a frenzy of national rule making. At least 41 states have passed laws that regulate space activities, including military uses. This dynamic mirrors developments in international law on Cyberspace, where over the last five years, some 40 states and two regional organizations have issued statements on international law in Cyberspace, thereby significantly shaping this field of law.

### Military use of space and introduction of military objects into space

The preamble to the OST expresses the desire that Outer Space be used for “peaceful purposes”. There has been an ongoing debate whether this term means “non-military” or “non-aggressive”, i.e., whether the Moon must remain completely demilitarized or whether a justified use of military force on the Moon or other celestial bodies will fall within a “peaceful purpose” (see Pobjie, para. 13-14; Barrang, 320; O’Meara, 534). In line with a wide array of other states, Germany sides with the “non-aggressive” interpretation (p. 12):

> *“Article IV prohibits the stationing of nuclear weapons and other weapons of mass destruction in space and prohibits the use of the Moon and other celestial bodies for military purposes. However, it does not rule out the military use of space per se. In accordance with Article 51 of the Charter of the United Nations, all nations have the right to indi-*

> *vidual and collective self-defence in the event of an armed attack – including in space."*

Thus, Germany maintains that the jus ad bellum applies equally on Earth and in Outer Space. Moreover, Germany is skeptical of the push by Russia and China to conclude a treaty that would prohibit the placement of weapons into Outer Space (p.24):

> *"In the UN context, Germany and its partners are committed to the Prevention of an Arms Race in Outer Space (PAROS). A simple ban on 'space weapons' would fall short of this objective as there is no universally binding definition, partly because of the dual-use nature of most space systems."*

Accordingly, the difficulties in defining a weapon and distinguishing it from a dual-use technology is an important reason to oppose a general ban on weapons in Outer Space. Germany likewise highlights that it wishes to develop "defence capacities" to carry out military actions in Outer Space (p. 35). However, there is an important legal limitation. Art. IV OST bars states from placing objects carrying nuclear weapons or any other kinds of weapons of mass destruction in Outer Space. Citing reports of Russian plans to develop nuclear-capable space technology, Germany highlights this limitation (p. 18).

## Interference with space technology and legal responses

Space technologies can be subject to manifold forms of interference. Several states have developed technologies to disturb or destroy satellites, relying on lasers, microwaves, frequency disturbers, kinetic missiles, and or other objects in space. Such interferences can qualify as a violation of Art. IX OST, which mandates states to have "due regard to the corresponding interests of all other States Parties to the Treaty" when operating in Outer Space. According to Byers and Boley (p. 306), this translates into an obligation of non-interference with other states' uses of Outer Space, although the threshold for an unlawful interference is far from settled (Babin, Gensler and Hathaway, 175-178).

It is also being debated whether the use of these different technologies to interfere or destroy an object in space would violate the prohibition of the use of force or the prohibition of intervention (see Nasu and Pobjie). Conditions are unclear considering that the territorial nexus – which is generally required for the use of force in terms of Art. 2 (4) UN Charter – is difficult to determine. Moreover, satellites are frequently operated by multiple states, which complicates their affiliation with an injured state.

The Strategy does not provide exact criteria for measuring violations of international law. However, its conception of available legal reactions demonstrates that interferences with space technology can violate the rule of territorial sovereignty, the prohibition of intervention, and the prohibition of the use of force, even in the form of an armed attack.

The Strategy envisions three legal reactions towards interferences with Outer Space technology, depending on the gravity of the interference (p. 40):

> *"Germany reserves the right to respond to unfriendly behaviour with retortions;Germany reserves the right to undertake reprisals in response to breaches of international law;Germany reserves the right to exercise its right of individual or collective self-defence in the event of an armed attack, including in space."*

Some authors argue that self-defense against objects in Outer Space will not be strictly necessary, as the destruction of an object in space will create uncontrollable amounts of debris endangering the entire use of space, and alternatives for defense will usually exist on Earth (O'Meara, 540; Byers and Boley, 354-355). Germany's unqualified assertion of its right to self-defense against space objects pushes back against this interpretation.

The second reaction category is particularly interesting. Reprisals – or, in terms of the Articles on Responsibility of States for Internationally Wrongful Acts, countermeasures – presuppose a violation of international law. Germany is generally very cautious in labelling its actions as countermeasures. In particular, sanctions, including far-reaching sanctions against Russia, are generally not portrayed in such terms. By invoking countermeasures in its strategy, Germany

signals that the interferences with its satellites could either constitute a violation of Art. IX OST or a violation of its sovereignty. Highlighting the role of countermeasures therefore professes a generally more assertive stance and a potential baseline to "restrict adversaries' use of space" (p. 40).

## Classification of dual-use space technology

This assertive stance also extends to dual-use space technologies. A dual-use technology is an object that holds both military and non-military payloads (Byers and Boley, p. 352). They are frequently operated and developed by private companies, which contributes to difficulties in their classification for the purposes of ius ad bellum (Nasu). Yet, neither of these difficulties causes significant concern from a German perspective (p. 12):

> *"Space technologies and their applications have inherent dual-use potential, meaning they can be used for both civilian and military purposes. Many commercial space systems also have this kind of dual-use capability, which is why they can be strategic and military targets when it comes to armed conflict."*

This aligns with the interpretation of the Woomera Manual on the International Law of Military Space Operations (p. 321). While this position is generally compliant with International Humanitarian Law, Art. 52 (3) of Additional Protocol I to the Geneva Conventions requires states to presume that an object is civilian when in doubt. Applying a too broad notion of dual-use could undermine this rule.

## Germany's commitment not to conduct DA-ASAT tests

Germany is one of several states that have committed not to conduct Direct Ascent Anti-Satellite Tests (DA-ASAT test). DA-ASAT weapons are missiles launched from the Earth that fly directly into space to physically collide with and destroy a satellite in orbit. Citing concerns over space debris remaining in lower orbits, Germany publicly declared this commitment during a 2022 session of the UN Open-Ended Working Group on Reducing Space Threats through Norms, Rules and Principles of Responsible Behaviour. The Strategy now states (p.24):

> *"Multilaterally agreed standards and norms help to distinguish between responsible and irresponsible or threatening behaviour and to react accordingly. Our political commitment, made together with numerous partners, to refrain from destructive testing of ground-, air- and sea-based anti-satellite missiles is a clear example of such."*

The Strategy frames this as a political rather than a legal commitment. To recall, states can unilaterally commit to acting in a certain way or refraining from a certain conduct. In the Nuclear Tests case (1974), the International Court of Justice (ICJ; the Court) held that France was bound by its self-commitment not to conduct nuclear tests. The Court found that France had manifested a legal intent to self-restrict itself, by publicly renouncing tests after a series of atmospheric tests in 1974, addressing these comments to the world community, and the language used in the series of declarations, and thereby generated legitimate expectations, based on the principle of good faith (para. 53).

While Germany did announce its self-commitment in a relevant forum, the language used is political rather than legal. The commitment was described as a "politically binding voluntary commitment" at the time. Although the terms "binding" and "commitment" suggest a more law-like understanding of the self-restriction, the terms "politically" and "voluntary" clearly limit the legal dimension of these terms. Moreover, the language in the Strategy only concerns a "political commitment" and embeds this term in a section on general "standards and norms" that are distinct from legal obligations. Accordingly, there is no persistent and clear messaging that Germany will consider itself legally bound by its 2022 self-commitment. This does not create legitimate expectations for other states to rely on, which is the principal reason why unilateral commitments create obligations under international law.

## Outlook

In summary, Germany's "Space Safety and Security Strategy" takes an assertive stance. It sets ambitious targets for the German Space Forces and qualifies many security challenges connected to Outer Space as urgent and necessary to address. Particularly, its deliberations on the implications of an interference with space technology and its assertion of the right to self-defense under such circumstances qualify as *opinio juris* with regard to the customary prohibition of the use of force and as an interpretation in terms of Art. 31 para. 3 lit. b Vienna Convention on the Laws of Treaties in relation to Art. III OST and Arts. 2 para. 4 and 51 UNCh. Similarly to other states, Germany thereby engages in the ongoing interpretive struggle over the application of the laws of armed conflict in Outer Space (see Tepper, 475-493). As the debates over the application of international law in cyberspace have shown, unilateral declarations of a state's legal position can contribute productively to the clarification of broader legal frameworks applicable in a certain domain. Further declarations on the military uses of Outer Space can therefore contribute to a more stringent understanding of international law in Outer Space.

Germany will soon be able to further elaborate its legal interpretation of the laws of armed conflict in Outer Space: the Security Strategy was an important step towards a Federal Law on Space, which has been in the works for quite some time and is high on the federal government's priority list. While the main thrust of Germany's engagement with Outer Space is commercial in nature, the Security Strategy now provides credibility to Germany's assertion that it will protect its interests in Outer Space.

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