Right of Self-Defense in Space

Kazuto Suzuki
Hokkaido University
kazutos@juris.hokudai.ac.jp
Conditions for Activating Art.51

- Act of aggression against Member States

What constitutes for act of aggression?

- Intention of harming the assets of others
- Using means addressing to certain targets
- Methods that degrades values of those assets
  - Not limited to kinetic attacks – non-kinetic attacks are included
  - It does not limit to space-to-space weapons – extends to ground-to-space weapons

- Can Jamming be an act of aggression?
  - Should be governed by ground-based territorial rules (e.g. interference of radio transmission)
Are Satellites Sovereign Territory?

- Equivalent to vessels in High Sea
  - Flag state – Launching state
  - Nominal beneficiary – Registered owner
  - Commercial beneficiary – Operator
    - Satellites owned by governmental agencies are directly controlled by states – jurisdiction extends to space
    - States have responsibilities to protect the rights of commercial operators and owners – jurisdiction extends to space
Attribution Issues

- Space is not visible by human eyes
- Identification of aggressor is not easy
  - SSA can identify objects larger than 10cm – many blind spots
  - Proximity operations – difficult to identify actions
- Identification of intent is not easy
  - Malfunction of satellite/intentional collision
- Identification of causes is not easy
  - Hit by debris/intentional attack
  - Malfunction by natural causes (e.g. solar flare)/non-kinetic attack
- it establishes the right of self defense from an armed attack
- clarity should be sought as to what would constitute an armed attack in outer space