



MAX PLANCK INSTITUTE

FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

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***Old Wine, New Bottles? Challenges for the Application of the Law of Targeting in
Cyberspace and Outer Space***

MPIL Agora

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With the benefit of hindsight, it is easy to see how much we initially got wrong about the actual use of the cyber and space domains. As the first satellite was launched in 1957, supposed military experts claimed that there would be 'no practicable military application' of that technology in the foreseeable future. Similarly, four decades later, it was seriously claimed that cyberspace was a sovereignty-free zone in which States, those 'weary giants of flesh and steel', had no role. And yet, today States commonly rely on space assets for military purposes and are busy developing offensive cyber capabilities.

Therefore, it is virtually inevitable that the wars of the future will have a cyber or a space element, and probably both. Against that backdrop, it is essential to assess whether, and if so, to what extent, the law of armed conflict (LOAC) applies to these new domains. In this presentation, Dr. Kubo Mačák will argue in favour of general applicability of LOAC to both outer space and cyberspace. However, an argument for caution against conflating the application of the law to specific operations and the legitimization of such conduct can also be made.

On that basis, this presentation will examine one specific challenge posed for the LOAC regulation of targeting in each of these domains: (1) the question whether computer data may qualify as a military objective; and (2) the question of lawfulness of attacks against military astronauts in time of armed conflict. Overall, the presentation explores the theme of effective application of 'old law' to unforeseen challenges and underscores the role States should play in that regard on the international plane.



Dr. Kubo Mačák is a Senior Lecturer in Law at the University of Exeter in the United Kingdom. He holds the degrees of DPhil, MPhil, and MJur from the University of Oxford, and an undergraduate degree in law from Charles University in Prague, Czech Republic. In 2012, he was awarded the Diploma of the Hague Academy of International Law. Kubo has been a Europaeum visiting researcher at the Graduate Institute of International and Development Studies and the International Committee of the Red Cross in Geneva, a visiting researcher at the Institute of Public International Law at the University of Bonn, and a Research Fellow of the Minerva Center for the Rule of Law under Extreme Conditions at the University of Haifa, Israel. He has worked at the United Nations International Criminal Tribunal for the former Yugoslavia in The Hague and at the International Criminal Tribunal for Rwanda in Arusha, Tanzania. He has also served as a law clerk to the President of the Constitutional Court of the Slovak Republic. He is currently serving as an

expert member of the International Humanitarian Law Group of the Manual on International Law Applicable to Military Uses of Outer Space (MILAMOS) project. His research interests span general international law, international humanitarian law, and the law of cyber security.

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