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# Trespass to Airspace: How to Deter North Korea from Its Space Ambitions?

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*In deterring North Korea from pursuing its space ambitions, the neighbouring States may consider to advance a sovereignty argument that North Korea's overflying rockets have trespassed to their territorial airspace. The current UNSC Resolution-based arguments may not provide adequate deterrence because they are built upon a unilateral interpretation of the UNSC Resolutions and therefore lack legal persuasiveness. Currently, there is seemingly a strong international consensus favoring the demarcation line between airspace and outer space at approximately 100-120 kilometres above the sea level. As the North Korean rockets will likely overflow foreign territories when reaching to this altitude, a trespass claim should therefore have strong legal merits. Moreover, North Korea cannot raise a defence by claiming a right of innocent passage over foreign airspace, because such right does not exist as a customary international law. Even if such right exists, North Korea will be hard to rely on it because its overflying rockets are hardly 'innocent.'*

## **Keywords**

Satellite Launch, Air Sovereignty, NPT, Outer Space Treaty, Ballistic Missile, Right of Innocent Passage.

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## I. Introduction

On December 12, 2012, the Democratic Peoples' Republic of Korea (hereinafter North Korea; "DPRK") stunned the world with its space ambitions by attempting to launch an 'Earth-observation' satellite.<sup>1</sup> Although the international community has repeatedly condemned North Korea prior to the launch for breaching the United Nations Security Council ("UNSC") Resolutions 1718<sup>2</sup> and 1874,<sup>3</sup> North Korea's determination still remained unaffected. As today's space technology can be easily converted to manufacture ballistic missiles, it is a matter of concern that North Korea's space activities would eventually become a threat to the world security in the future.

The primary objective of this research is to suggest a possible solution in effectively deterring North Korea from its growing space ambitions. This article consists of five parts including Introduction and Conclusion. Part two will present the overview of the present scenario by reviewing the history of North Korean space launches and the challenges that such activities can bring to the international security. Part three will examine the current international condemnations against North Korea for breaching the UNSC Resolutions 1718 and 1874. Here, the author will address that this UNSC argument cannot afford adequate deterrence to North Korea's ambitions. Part four will suggest that a more effective solution for North Korea's neighbouring countries is to advance a sovereignty argument that North Korea's satellite launching vehicles have trespassed to their territorial airspace. This part will also discuss a possible counter-argument of North Korea based on a "right of innocent passage" over foreign airspace for its space activities because North Korea is geographically disadvantaged from accessing the outer space without trespassing the territorial airspace of other countries.

<sup>1</sup> Sang-Hun Choe & D. Sanger, *North Koreans Launch Rocket in Defiant Act*, N.Y. TIMES, Dec. 12, 2012, available at <http://www.nytimes.com/2012/12/12/world/asia/north-korea-launches-rocket-defying-likely-sanctions.html> (last visited on Mar. 2, 2013).

<sup>2</sup> S.C. Res. 1718, U.N. Doc. S/RES/1718 (Oct. 14, 2006), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1718](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718) (2006) (last visited on Mar. 2, 2013). For details, see Eric Yong Joong Lee, *Legal Analysis of the 2006 U.N. Security Council Resolutions against North Korea's WMD Development*, 31 *FORDHAM J. INT'L L.* 8-12 (2007).

<sup>3</sup> S.C. Res. 1874, U.N. Doc. S/RES/1874 (Jun. 12, 2009). See also D. Joyner, *Introductory Note to the United Nations Security Council Resolution 1874*, 48:5 *I.L.M.* 1174-1175 (2009).