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The relationship between space law and cyberlaw, and other recent developments in space law (5)

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DEVELOPING ISSUES: THE FRAGMENTATION OF SPACE LAW

Abstract

Since its inception, space law has been governed by principles and rules established by governments and primarily applicable to government activities. Today we are experiencing policy changes to encourage private sector initiatives to carry out government missions and to expand potential profit-making opportunities. The space treaties allow for nongovernmental activities in space but only under the auspices of a nation. Each nation approaches legal solutions in their own way. These variations create challenges for all space-faring nations and may, if there are no international agreements, create a more fragmented, unpredictable, and unsustainable environment for all participants, both governments and private companies in outer space.

The fragmentation of international law is defined by the development of sets of rules pertaining to specific subject areas that may claim autonomy from principles of general international law. Those subject areas reflect the larger global issues that include the environment, energy, resource availability, migration, health, and the proliferation of weapons of mass destruction. Space law is unique and may be considered one of the fragmented areas of international law. But within space law itself, the principles of the now 50-year old treaties have been upheld by all space-faring nations. New developments are challenging that.

At issue are many areas of space law including liability, property rights, debris and environmental harm. Different on-orbit space activities such as satellite servicing, exploiting resources, and removing debris highlight the types of space activities with many similar legal concerns but which may result in different rules in different nations and even for different rules within a nation. These domestic space law regimes will create new and growing legal tensions among space-faring nations.

Solutions to this problem are all suboptimal. Neither top-down oversight nor separate bottom-up rules or guidelines will suffice as stable, predictable, and long-lasting regimes that create a favorable legal environment for future space exploration and use. The advantages and disadvantages of these current trends toward fragmentation within space law and between space law and international law will be analyzed. The various near-term options that could lead to a resolution of some of these problems will be discussed.