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SPACE DEBRIS REMOVAL, THE FRAGMENTATION OF INTERNATIONAL LAW AND CONVERGING UN MANDATES: WHY COMMERCIAL ACTORS SHOULD PAY ATTENTION TO DEVELOPMENTS IN THE UN

Abstract

The increase of actors in outer space, including private commercial actors, raises issues of sustainability, which in turn, have been recognized as matters of international security. Concerns were exacerbated by orbital debris resulting from a 2007 Chinese anti-satellite test, in the wake of which COPUOS finalized its Space Debris Mitigation Guidelines.

The technology that facilitates debris removal could also be used to disable military and national security satellites. These capabilities have civil, commercial applications, but also are potentially ASATs. Such dual-use technology implicates overlapping and sometimes contradictory regimes of international law – a phenomenon known as the fragmentation of international law.

Space actors are governed by international treaties and non-binding norms developed by COPUOS and implemented nationally. Dual-use technologies also raise the spectre of the laws of armed conflict – dual use satellites could be valid military targets. This has implications for commercial actors that provide space applications to military or national security entities, such as increased insurance costs and the inability to raise funds.

There are broader implications for international organizations. Dual-use creates overlapping mandates. This was made apparent by a 2013 Report by a Group of Governmental Experts on Transparency and Confidence-Building Measures, which recognized roles for COPUOS, CD, ITU and WMO with the maintenance of international peace and security. Through a series of resolutions, the UN General Assembly called upon relevant entities within the UN system to coordinate on matters related to TCBMs for outer space.

The UN General Assembly recently sanctioned a GGE on the Prevention of an Arms Race in Outer Space. It is foreseeable that the outcome of this GGE will include similar calls for breaking down stove pipes within the UN system. Notwithstanding future outcomes of the GGE on PAROS, overlaps in mandates are further manifesting. The CD recently established a working group on PAROS that is projected to deal with space debris. The draft Guidelines on LTS developed in COPUOS address close proximity operations. Likewise, a draft resolution on UNISPACE+50 includes language on PAROS. These developments have implications for governmental and non-governmental actors dealing with space debris removal.

This paper will address the fragmentation of international law vis-à-vis efforts in the UN First Committee (CD), the UN Fourth Committee (COPUOS) and the UN Secretariat (GGE on PAROS) relevant to debris removal technologies. It seeks to illustrate the value of TCBMs and PAROS for non-governmental, particularly commercial, actors developing debris removal technologies.