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WHEN THEORY MEETS PRACTICE: RESOLVING LEGAL OBSTACLES FOR THE REMOVAL OF
SPACE DEBRIS WITH LEX SPECIALIS RULE

Abstract

Lex specialis derogat legi generali (or short: lex specialis) rule is an interpretative tool that entails that the more specific legal norm prevails over a more general one. In this paper I will develop a thesis that lex specialis rule can prove useful in resolving legal obstacles to space debris removal, in particular, a conflict of norms between the customary no harm principle and Article VIII of the OST. Under the no harm principle, States are obliged to take action to prevent significant harm deriving from their territory or their activities. Translated into the context of space law, this means that Launching States must take action to prevent the harm to occur due to the space objects, launched from their territory. On the other hand, Article VIII of the OST confers jurisdiction and control over such space object to its State of Registry. When Launching State is also the State of Registry, there are no legal discrepancies. The discrepancies, however, arise when there are more Launching States but only one State of Registry. In that case Article VIII effectively precludes the Launching States to respect their obligations under the customary no harm principle and to remove potentially dangerous non-functional objects (space debris) that were launched from their territory. Accordingly, Article VIII could be used as an excuse or justification for such a Launching State failing to take measures in accordance with the no harm principle. In this paper I will first argue that no harm principle is applicable to Outer Space pursuant to article III OST. Second, I will demonstrate that in the situations described above Article VIII and no harm principle pose a conflict of norms. In other words, Article VIII presents a legal obstacle for the effective space debris removal. I will further argue that for resolving this conflict of norms, lex specialis rule can be used. For this purpose, I will explain the applicability of lex specialis in international law, its function and its legal effect. I will then examine the relationship between lex specialis rule and other interpretative tools, such as lex posterior derogate legi priori (a later legal norm derogates an earlier one) and lex superior derogate legi inferiori (a hierarchically higher norm derogates hierarchically lower norm) rules. Last, I will assess the pitfalls and risks deriving from the lex specialis approach to resolve issues of space debris removal and provide an overall conclusion.