

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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Author: Mr. Arpit Gupta
India

COMMON BUT DIFFERENTIATED RESPONSIBILITY FOR SPACE DEBRIS: USING EQUITABLE
PRINCIPLES TO INCENTIVISE DEBRIS MITIGATION

Abstract

Over the years, a small number of states have established supremacy in outer space. In the process of doing so they have created the vast majority of space debris in orbit around the Earth. This growing population of space debris has led to an increase in the costs of operations for all actors in the form of debris avoidance measures as well as soft law requirements for debris mitigation which impose additional costs. These states, many of whom are only beginning their space programs, have not gained any benefits from the pollution of outer space yet are forced to bear the costs of such pollution. This paper discusses how the foundational principles of space law incorporate the spirit of Common but Differentiated Responsibilities (CBDR). It shows how the rationale of inter-national equity behind the CBDR principle is incorporated the Outer Space Treaty as the principle that space exploration and use is the province of all mankind. It also shows how the Liability Convention incorporates the principle of differential responsibility of states which have participated in space exploration and use and those which have not. Having established that the concept of CBDR is not alien to the law of outer space, the paper goes on to explore how it follows logically from the principle of non-appropriation when seen in light of the fact that states retain jurisdiction and control over their space objects both functional and non-functional. The paper will explore ways in which the principle of CBDR can be implemented for both active and passive debris mitigation. While the question of active mitigation shall be tackled through the non-appropriation principle, the question of tackling the principle of CBDR for active debris mitigation which requires all state actors to assume costs is more complicated. The paper will propose that the question of active debris mitigation be solved together with the other thorny question of ensuring that the states responsible for debris creation are held liable for the damage caused by pieces of debris whose ownership is impossible or impractical to ascertain. This would be done by holding the chief polluters collectively responsible for damage caused to states who have not contributed to the debris population in any meaningful way so long as the latter complies with the debris mitigation norms. This would implement the CBDR principle and incentivise the new spacefaring nations to comply with norms of space debris mitigation.