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Legal Aspects of Space Debris Remediation (4)

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WHEN THE NATURE AND DURATION OF SPACE BECOMES APPROPRIATION: A  
PROPOSITION – “USE” AS A LEGAL PREDICATE FOR A STATE’S OBJECTION TO ACTIVE  
DEBRIS REMOVAL

**Abstract**

One of the primary legal obstacles to removal of orbital debris is Outer Space Treaty Article VIII, under which the state of registry retains jurisdiction and control over a space object while in space. The prevailing legal opinion is that, without consent from the owner, a nonfunctioning space object cannot be interfered with regardless of its functional status. This paper will explore the possibilities of an alternative argument based on “non-use”, which permits the current treaty provisions to be given full effect as permitted by the Vienna Convention on the Law of Treaties. The paper will also elucidate successful examples of “use” as a limiting criterion currently in effect that elaborate the legal functionality of the twin requirements of “use” and non-appropriation. The paper will conclude with the proposition that these requirements are predicates to any legal right of the owner to object to removal of a dangerous and non-functioning space object and may be used to pave the way to ADR without the need to amend the Outer Space Treaty or adopt a new treaty, resolution or code of conduct.