

57th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Up, up and away: Future legal regimes for long-term presence in space (2)

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CHASING GHOST SPACESHIPS: LAW OF SALVAGE AS APPLIED TO SPACE DEBRIS

Abstract

High above, throughout the sky, a constellation of uncontrolled space objects circulate in Earth's orbit. Of different sizes and natures, those wandering vessels, not so much abandoned as disregarded, rest in a state of limbo, waiting for their fate: be it to crash into another space object, to continuously fragment itself into smaller parts, or to finally re-enter our planet's atmosphere. Since the number of space debris continues to grow, creating dangers to space activities and astronauts, the international community must seriously start to consider alternatives to authorize and legalize orbital cleaning up initiatives, whether conducted by the respective Launching States or not. In that sense, the Law of Salvage, as regulated by Maritime Law, is capable of suggesting an interesting analogy to Space Law, specifically as far as environmental salvage is concerned. Contemporary law of maritime salvage states that rescuers who voluntarily assist ships in distress at sea should be rewarded, being entitled to a gratification commensured with the value of the property saved. According to the 1989 International Convention on Salvage, the traditional principle of "no cure no pay" regarding salvage efforts, which provides that salvage services do not deserve remuneration unless the property is saved, are to be forsaken in case of relevant damage to the environment. Indeed, in those extreme situations, expenses undertaken by rescuers to prevent a substantial damage of that nature are to be recovered by the owner, irrespective of the success of the rescuing enterprise. Arguably, despite the unavoidable particularities of the space activities and the outer space environment, such legal principle could eventually be transplanted to Space Law. Considering the international relevance of the current space debris situation, the study of the legal regime applicable to maritime salvage may effectively prove to be invaluable to *de lege ferenda* perspectives for future Space Law regulation on that regard.