

15th IAA SYMPOSIUM ON SPACE DEBRIS (A6)  
Policy, Legal, Institutional and Economic Aspects of Space Debris Detection, Mitigation and Removal  
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Author: Mr. Marc Carns  
United States, mgcarns@gmail.com

CONSENT NOT REQUIRED (CNR): MAKING THE CASE THAT CONSENT IS NOT REQUIRED  
UNDER CUSTOMARY INTERNATIONAL LAW FOR REMOVAL OF OUTER SPACE DEBRIS  
SMALLER THAN 10 CM(2)

**Abstract**

[[[This abstract is in prepublication for the Air Force Law Review May 2017. I have permission to submit this abstract to the IAC for the sole purpose of consideration for oral presentation. Please do not further distribute outside of oral presentation consideration without consent.]]]

Customary international law is developing at an accelerated pace. Much of the historical school of thought has been resistant to this change, preferring to recognize laws only after both the act and the passage of time allows for significant maturation and acceptance. Conceding the benefit of such a tried and true historical approach, it does not make moot the value of shifting away from such rigidity. This is particularly true in space. Recent schools of thought in the development of international law proffer that when a true ‘meeting of the minds’ forms between sovereign states, customary international law can be established ‘instantly.’ In the development of space law, this modern approach presents an extraordinary opportunity to establish much needed new rules to respond to crises, particularly how to deal with space debris smaller than 10cm(2). Historical precedent asserts that material residing in space belongs to sovereign states in perpetuity; further, that second or third party removal requires consent of the owning state. Were the modern approach taken toward establishing instant customary international law where, in selected circumstances, consent is not required, the current ownership rule could be beneficially upended.

My LL.M. thesis proposed that there is existing precedent in international law which argues that conditions can be created where sovereign states, absent consent, have little, if any, realistic legal recourse against another sovereign state for debris removal. My oral presentation would provide an analysis of the underpinnings of ownership rights applicable to space objects and assesses the challenges of space debris mitigation efforts (both technologically and politically) in light of these ownership rights. A discussion would follow addressing customary international law and modern cases which have opened the door for development of instant customary international law. The key to this presentation would address the issue of the right to remove the bulk of space debris (smaller than 10cm(2) without an owning-state consent. The presentation would close with a general discussion of the risks to sovereign states who fail to develop new law related to the prompt removal of debris to both their national security and commercial interests.