

16th IAA SYMPOSIUM ON SPACE DEBRIS (A6)
Policy, Legal, Institutional and Economic Aspects of Space Debris Detection, Mitigation and Removal
(Joint Session with IAF Space Security Committee) (8)

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LEGAL SOLUTIONS BASED ON FRENCH LEGISLATION AND OTHERS REGARDING ACTIVE
DEBRIS REMOVAL ISSUES PHILIPPE CLERC

Abstract

Active debris removal (ADR) may be define as an On-orbit service consisting in removing a man crafted space debris into a graveyard orbit or to an Earth return trajectory. ADR is as such considered as a Space Operation made during the “command phase” under the French Space Operations Act of June 3rd 2008 . The main question to address under this jurisdiction, in order to have a clear apportionment of responsibilities or liabilities between ADR’s Stakeholders or toward third parties, or indeed to confirm that this jurisdiction is applicable to this activity under Article VI of the 1967’s Outer Space Treaty, is to point out who is accountable as the ADR’s Operator, specifically those at a given time, have the independent and effective control or command and the power to dispose of the Spacecraft; in other words, to identify the one who behaves as the real decision maker, even if not being the owner, in particular when it comes to engaging critical manoeuvres that may affect lifetime of a Spacecraft or safety toward third parties. Another important issue, which affects more specifically ADR as operations targeted to remove non-controllable or not-controlled vehicles, is to know to what extent the owner, ex-operator Registered State or Launching State of the moved debris (the Displaced), shall provide a prior explicit or implicit consent to authorize the ADR’s Operator (the Remover), to pay its price, or at least to hold harmless, wholly or party, such remover in case of damage caused to its property or to third parties. In this regard, legal solutions originating from ordinary law, either civil than public, like “negotiorum gestio”, or “gestion d’affaire” or “quasi-contrat” codified under the French Code Civil under articles 1301, 1301.1 to 1301.5, or “occasional or volunteer contributors to a public service’s mission” may be extended to ADR’s activities. In the aftermath of Unispace III +50, the purpose of this paper is to develop such solutions, that appear to be shared by many legislations in the world, as a food for thoughts for those who are eager to increase the legal certainty of ADR’s services that represent a new opportunity for Space technology and industry development as well as contributing to improve the Space activities’ sustainability.