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A POTENTIAL LEGAL BASIS FOR HARVESTING ORBITAL DEBRIS WITHOUT PRIOR
CONSENT

Abstract

Outer Space Treaty Article VIII is construed as prohibiting the salvage of orbital debris. Article VIII expressly provides that the registry State retains jurisdiction over a space object and its component parts and ownership of a space object and its component parts is “unaffected by their presence in outer space or on a celestial body or by their return to Earth.” Hence, the concept of abandonment employed in maritime law is deemed inapplicable in outer space. This circumstance impedes orbital debris removal as consent of the registry State and owner are generally viewed as a prerequisite for touching another’s space junk. An alternative reading of Article VIII and Rescue Agreement Article 5 may suggest otherwise.

Article VIII does not expressly require consent prior to another party touching a derelict space object. Instead, Article VIII provides for the return of objects or component parts “found beyond the limits” of a registry State upon its satisfying certain conditions. This suggests that a space actor can take physical possession, but not title to space debris “found” in Earth orbit. This raises the crucial issue of what constitutes a space object being “found beyond the limits” of a registry State.

If orbital debris can be construed as a “lost” space object, then another space actor can take and retain possession of the object under Article VIII. At this juncture the object or its component may be subject to disposal as opposed to returning it to the Registry State or owner. Pursuant to Rescue Agreement paragraph 5(4), if a State has reason to believe that a space object or its component parts “recovered by it” outside of its territorial jurisdiction constitutes a hazard or is deemed to be of a “deleterious nature,” then the object’s launching State is required to take effective steps, under the direction and control of the recovering State, to eliminate the possible danger or harm. This necessarily implies disposing of the debris as it is beyond dispute that orbital debris is a hazard and is of a “deleterious nature.”

This paper will explore and analyze the viability of this alternative perspective regarding the removal or salvaging of orbital debris under the Space Law Treaty Regime. If the perspective is viable, then a legal basis exists for potentially negating a crucial impediment to harvesting of orbital debris.