

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Recent Developments in Space Law with Particular Focus on Space Debris Remediation (7)

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ACTIVE REMOVAL OF FOREIGN COUNTRIES' SPACE DEBRIS: OBLIGATION AND LIABILITY
ISSUES

Abstract

Space debris elimination in valuable Earth orbits is an urgent challenge for the sustainable development of outer space activities, and active removal is considered the most useful elimination measure. Considering legal jurisdiction and the need for mutual assistance, any country that plans to initiate the removal of space debris that is not registered in its national registry faces an examination of important legal issues, including the obligation of space debris removal of foreign countries. According to the basic principles of international space law, for identifiable space debris of foreign countries, both threatened countries and countries with removal capabilities have the right to conduct an active removal. The country that implements the removal activity has a strict legal obligation to the country that had registered the debris, including notification, consultation, due regard, and information sharing, failure of which would result in responsibility for an internationally wrongful act. Moreover, active space debris removal may cause damage to third-party space objects. Under the existing damage liability regime, the country conducting the removal is required to assume the liability for damage and even the responsibility for the internationally wrongful act unless it gets authorization from the United Nations, obtains an agreement of jurisdiction transfer of debris between countries, or applies the necessity of an emergency. Furthermore, the liability of countries that registered debris is not considered by the regime in some situations, which may limit the removal action of capable countries and the claims by injured parties. Thus, developing a more reasonable liability allocation regime is necessary. The international society needs to 1) establish a liability-sharing mechanism for debris removal, which provides clear ways and means, both before and after the removal, for countries that remove or register the debris to clarify the proportion of liability for damages incurred during operation, and 2) set disclaimer agreement between relevant countries referring to existing legal documents and national practices to exclude possible burdensome international liability resulting from the existing space damage liability regime. Meanwhile, establishing possible debris removal funds and donation procedures, introducing non-governmental entities to share the removal fee and technical costs, and promoting the commercial recycling of space debris are possibly conducive to actively implementing the obligation to clean up space debris and the liability for damages.