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GNSS AND HARMFUL INTERFERENCE: RESPONSIBILITY AND LIABILITY UNDER
INTERNATIONAL SPACE LAW

Abstract

Both civil and military use of Global Navigation Satellite System (GNSS) applications is increasing. Currently, two systems (GPS and GLONASS) are fully operational and two others (Galileo and BeiDou) are expected to reach full functionality very soon. However, GNSS signals are extremely susceptible to radio frequency interference. Thus, their usage is extremely risky, with the possibility of serious accidents resulting in large scale damage to life and property being a very legitimate concern. In this paper, the author seeks to discuss the international legal regime under which international responsibility and liability for harmful interference and consequent accidents may be apportioned.

The International Telecommunication Union (ITU) Constitution, Convention and Radio Regulations provide a very suitable avenue for pinning responsibility and liability for harmful interference. The treaties, to which 153 states are parties, set out a detailed procedure for making claims and also establish regulatory bodies to supervise dispute settlement. However, they are also very complex and often difficult to understand, having been drafted by technicians and not space lawyers. In this paper, the author has made an attempt to resolve some of these complexities by invoking interpretative techniques codified by the Vienna Convention on the Law of Treaties. Apart from the ITU regime, recourse may also be had to Article III of the Liability Convention. In this context, the applicability of the LIAB to non-material, intangible damage is discussed. Under both these regimes, difficulties may be encountered in establishing causation, which is a pre-requisite to making any claim. Since, state-of-the-art technology enabling identification of the source of harmful interference and production of direct evidence is available to very few nations, recourse to the principles of circumstantial evidence set forth in the Corfu Channel Case is possible.

As regards liability for consequential damages incurred on the Earth, Article II of the LIAB may be invoked. Here, it is seen that both direct and indirect damages are compensable under the Convention as long as the test for 'proximate causation' is satisfied. This entails establishing that the damage is a reasonably foreseeable consequence of the act, which is a difficult task. However, the principle of the 'ultra hazardous' nature of space activities may aid the claimant state. This aspect is discussed by making reference to other areas of International law and the travaux of the LIAB.