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ARE THE CURRENT SPACE LAW TREATIES AND ITU INSTRUMENTS REGARDING STATE
RESPONSIBILITY AND LIABILITY ADEQUATE TO DEAL WITH HARMFUL INTERFERENCE
POSED BY LONG-TERM PRESENCE IN SPACE?

Abstract

Long-term presence in space will rely, inter alia, on the appropriate use of radio frequencies and orbital positions in order to avoid harmful interference to space objects which has the potential to negatively impact space operations. The current applicable legal regime, however, may contain ambiguity regarding the responsibility of nation states for causing this type of harmful interference, as well as a potential legal gap concerning their liability for damages resulting from such interference. Regarding ambiguity, the International Telecommunication Union (ITU), the agency charged with protecting administrations from international harmful interference, provides in Article 36 of its Constitution that Member States have no legal responsibility to users of international telecommunication services, notably in claims for damages. However, because the term “users” is not defined in any ITU instrument, it is unclear to what parties Member States are not responsible; this would likely depend upon a considered definition of “users”. By comparison, both the Outer Space Treaty (OST) and the Liability Convention (LC) mandate that a nation state is internationally responsible for its national space activities. Thus, if a particular nation’s space object causes harmful interference, one should determine which legal standard applies: the exemption of responsibility provided to ITU Member States by its Constitution, or the imposition of responsibility on nation states mandated by the aforementioned space law treaties. Additionally, both the OST and LC only regulate liability for physical damage caused by a space object, but neither treaty contains any provisions regarding liability for signal failures of a space object, and so these treaties may not even be applicable to cases of liability involving harmful interference. Coupled with the fact that long-term human presence in space will likely increase future reliance on radio frequencies and orbital positions, the establishment of an international liability regime for damage caused by harmful interference should be considered as an important tool to help prevent such instances of interference. This paper analyses whether present space law and ITU treaties are adequate in addressing instances of damage caused by harmful interference, discusses possible solutions regarding potential conflict of law issues concerning the damage caused by harmful interference, and evaluates whether the establishment of an international liability regime could help prevent cases of harmful interference in the future which, in turn, could assist in promoting a safe environment for the long-term presence of humans in space.