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REFUGEES IN DISTRESS: PROTECTION OF THEIR RADIOCOMMUNICATION SIGNALS
AGAINST HARMFUL INTERFERENCE

Abstract

The problems inherent to the protection of people taking to the seas or to other dangerous roads in search of safety, refuge, or better economic conditions, are not new. This contribution will focus upon a very particular aspect of this subject – namely the legal protection of potential distress signals against harmful interference (HI).

Nowadays, distress signals can be rapidly transmitted by satellite and terrestrial communication techniques both to search-and-rescue authorities ashore, and to ships or other vehicles in the vicinity. These radio signals, however, are prone to interference and can be compromised. One of the main goals of regulating radiocommunications and the radio frequency spectrum is to avoid HI. The Constitution (CS) and the Radio Regulations (RRs) of the International Telecommunication Union (ITU) provide the main international legal framework on HI, but the wording and focus of these documents is on prevention and avoidance and not on a *stricto sensu* prohibition. Pursuant to Article 45 CS, stations must be established and operated in such a manner as not to cause HI to the radio services or communications of other Member States or of other recognized services. Clearly, there is a prescription to avoid HI, but it is not prohibited in itself, even if there exists an obligation to cease radio emissions once identified as harmful.

Yet, the situation may be different when distress, urgency or safety signals are in question. On two particular occasions, the RRs go as far as to use the term ‘prohibit’. Furthermore, a prohibition can also be substantiated with a reference to the definition of HI itself. In fact, any interference against a safety service is qualifiable as harmful when it endangers its functioning. There is no additional specification that the interference should seriously degrade, obstruct or repeatedly interrupt the transmission, as is the case with other radiocommunication services.

Therefore, this contribution will seek to clarify the level of protection against HI when it comes to safety and distress signals as well as evaluate the legal consequences of such a prohibition on an international level, both in itself as well as in comparison to other radio and satellite communication services. Hence, the following questions will be tackled: Is interference to distress signals clearly prohibited? And if so, what are the legal consequences?