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The relationship between space law and cyberlaw, and other recent developments in space law (5)

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THE PRINCIPLE OF NON-HARMFUL INTERFERENCE IN CYBERSPACE AND OUTER SPACE

Abstract

In the 21st century, the concept of cybersecurity has entered into the lexicon of ITU law and gradually influenced on the existing law applied to telecommunication. While the use of Geostationary Orbit (GEO) has been well coordinated and regulated by the International Telecommunication Union (ITU), the increasing cyberthreat was recognized since Information Communication Technologies (ICTs) fell into the scope of ITU regulation. According to Article 45 of the ITU Constitution and Convention of 1992, not only member states but also agencies are prohibited from causing harmful interference in telecommunication. Considering that the ITU has 193 member states with more than 700 non-governmental entities, the principle of non-harmful interference is established already and implemented by the existing law at the national level without any problem; however, the use of ICTs brought another concern, namely, harmful interference in cyberspace.

While the first incident recognized as cyberattack is the Distributed Denial of Services (DDoS) attack caused in Estonia 2007, the concept of cybersecurity was outlined earlier by the UN in 2003 and ITU started its initiatives in 2005. The concept was first adopted in UN General Assembly resolution of 57/239 “Creation of a global culture of cybersecurity” endorsed on 31 January 2003, and secondly appeared in “Geneva 2003-Tunis 2005” adopted during the World Summit on the Information Society in 2005. Those two documents resulted into the establishment of Internet Governance Forum (IGF) within the ITU. To consider counter-measure against cyberthreat, on 17 May 2007, the ITU Secretary-General Hamadoun I. Touré launched Global Cybersecurity Agenda (GCA) and established High-Level Expert Group (HLEG). The reason for such a quick action lied in the extending scope of the ITU’s regulations covering internet-based telecommunications such as IP telephone, SNS or digital TV.

In order to strengthen cybersecurity, the ITU decided to recommend its members to ratify the Council of Europe’s Convention on Cybercrime of 2001, namely, the Budapest Convention. However, the principle of non-harmful interference in the ITU law and the application of the Convention to cyberspace for cybersecurity highlight the need for clarification whether or not the latter create any legal conflict with the existing space treaties applicable to the use of GEO. In this respect, with clarifying the background of the ITU’s initiatives, this article aims to identify legal challenges over the use of GEO between the ITU law and the application of the Budapest Convention.