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THE ASSESSMENT OF “HARMFUL INTERFERENCE” CONFLICTS IN OUTER SPACE
ACTIVITIES ACCORDING TO INTERNATIONAL TORT LAW STANDARDS; AND SELECTING
THE APPROPRIATE DISPUTE SETTLEMENT METHOD FOR SMALL SATELLITE OPERATORS.

Abstract

Conflicts deriving from harmful radio frequency interference (hereinafter: “harmful interference”) in allocations, as well as dispute resolution mechanisms in such conflicts, continue to be complicated issues of international space law. Since the 2000s, the number of commercial satellite countries has increased and tensions over radiofrequency allocations have consequently increased. The Outer Space Treaty, the first preemptive international treaty in outer space, requires states to ‘adopt appropriate measures, and if there is reason to believe that any activity or experience carried out in those areas would cause potentially harmful interference with activities of other states parties in outer space, they should undertake international consultations’ (Article IX). However, disputes concerning harmful interference have become more distinctive in comparison to physical damage claims. The ITU documents also prohibit harmful interference and primarily urge parties to negotiate and do consultations. The ITU has its special Protocol for solving harmful interference disputes. There is also the option of applying to the Claims Commission reflected in the Liability Convention. Unfortunately, none of them has been used by Parties and there is not any widely used law enforcement experience so far. The most significant obstacle in harmful interference conflicts is that most parties prefer to keep the situation confidential. However, considering that radio frequencies are limited natural resources, harmful interference should not be deemed secret, according to the Long Term Sustainability Guidelines. Modern commercial satellite operators need a new and effective dispute-resolution process. The objective of this new mechanism is to aid in the elimination of quasi-judicial dispute settlement methods established by the international community so far. The fundamental challenges are to maintain good faith and due diligence while also developing mechanisms to prevent incorrect conduct that create harmful interference. Thus, a special International Space Court should be developed and refreshed substantial and procedural norms should be developed for solving harmful interference disputes more successfully. In my view, the first root of harmful interference comes from not recognizing the notion of spacecraft or space objects in international law, and this notion shall be interpreted. Finally, the legal aspects of negligent behaviour in harmful interference disputes and consultation periods shall be presented and discussed during the presentation as well.