

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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ITU RESOLUTION 261 (2022) ART. 9 AND THE “THIRD WAY”

Abstract

The ITU in 2022 has approved resolution 261, regarding the possible triggering of art. 48 ITU Constitution (freedom for military radio installation). At first glance it appears as just a legal text regarding procedure in case of non-compliant use of radio frequencies for military purposes but, what stated in article 9, might introduce significant consequences. Art. 9, in fact, deals with the continuous disagreement of States regarding the recommendation of the Radiocommunication Bureau and the Radio Regulation Board's decision on the subject. It stated that, especially in case of disagreement with the RRB' decision, States can appeal to the next WRC whilst the Bureau's decision “shall remain in abeyance” until the response from the WRC. In the meantime, what are the rules that shall apply to those affected frequencies? Since the Claimant States deals with military frequencies and has sovereignty over its spectrum domain, its own rule shall prevail. At the same time, though, if the future WRC ruled out the State's view, is the State liable for (possible) Harmful Interference and non-compliance with ITU's resolution? Moreover, what is the nature, the legal status, of RRB's decision? Whether the States can only accept it or appeal, such decision has the characteristic of an administrative decision over States' Sovereignty domain; therefore the power granted to the ITU by its Constitution can be seen as a transfer of Sovereignty (albeit on specific sectors) from the States to the International sorting (ITU, in this specific case)? Or it just go down at the (more traditional) *pacta sunt servanda*? Consequences that may also “invade” the Space regime, where art. II of the Outer Space Treaty granitic rules the national non-appropriation principle. Now, the ITU, on the other hand, is not a Nation nor a State. If in his ganglia is possible to find some sprouts of international Sovereignty, although in a very specific, administrative and narrow subject, maybe is it also possible to establish a third way, between the National Sovereignty of States and the complete absence of it in the Outer Space. This brief presentation would like to discuss the international legal consequences of the non compliance with ITU's regulation 261 and, as a ultimate goal, start an international discussion about the possibility of new vision of the Outer Space legal status, looking ahead instead of backward, establishing the ground rules for the new millennia space's endeavors.