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The Next Steps (A4)  
SETI 2: SETI and Society (2)

Author: Prof. Andrea Harrington  
Institute of Air and Space Law, McGill University, Canada

Prof. Charles Stotler  
University of Mississippi School of Law, United States

STATE RESPONSIBILITY FOR FIRST CONTACT UNDER INTERNATIONAL LAW

**Abstract**

It is well-recognized in international law that either acts or omissions can constitute wrongful acts by sovereign states. The sources of international law that trigger obligations for states include not only treaties, but also customary international law and general principles of law, as articulated in the Statute of the International Court of Justice. These circumstances are important when considering that there is currently no international body with legal authority to undertake first contact activities, and thus that the responsibility for the consequences of SETI will rest with states under international law. Active SETI, as distinguished from a passive search for radiofrequency evidence of other civilizations, creates heightened risks and opportunities for humanity in the case of contact.

First contact with an extra-terrestrial intelligence would be a monumental event for humanity. The results of such contact could be minimal, if the extraterrestrial intelligence in question is located at too far a distance for reasonable communication. It is possible, however, that contact could have more substantial effects if communication and/or regular contact are possible. In that case, contact could foreseeably lead to untold scientific discoveries and opportunities or to an existential threat. Given the potential consequences, it is critical that states understand their responsibilities in relation to SETI efforts.

Are SETI activities considered a space activity in the context of Article VI of the Outer Space Treaty, and thus subject to national authorization and supervision in that context? Does the Outer Space Treaty create any other responsibilities for states engaging in SETI activities, whether under the benefit principle or the due regard principle? Given the potential for transboundary harm, do states have a heightened duty of care when seeking contact with extra-terrestrial intelligence? Is there a requirement under international law for SETI activities to conform to the precautionary principle, which applies when there is serious risk that an act or omission could threaten the environment and/or human health in a manner that is grave or irreversible? Does existing SETI-related 'soft law,' such as The Declaration of Principles for Activities Following the Detection of Extraterrestrial Intelligence, create any legal responsibility or liability for states? This paper will address these questions with the aim of clarifying state responsibility for active SETI and will recommend the delegation of potential first contact to an international authority to mitigate the risks inherent in unilateral state behavior.