

National Center for Remote Sensing, Air and Space Law

Informational resources on the legal aspects of human activities using aerospace technologies

Harmful Interference: Its Meaning and Prospects of Enhancing Space Security and Safety

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Harmful Interference

- Term is being used in security treaties
 - But it is undefined
- Look to historical antecedents
 - Outer Space Treaty Article IX
 - ITU's Radio Regulations



Outer Space Treaty Article IX

- . . . If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the Moon and other celestial bodies, would cause **potentially harmful interference** with activities of other States Parties in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the Moon and other celestial bodies, would cause **potentially harmful interference** with activities in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, may request consultation concerning the activity or experiment.



Outer Space Treaty Article IX

- Undefined in treaty
- VCLT
 - “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”; and
 - “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”



Outer Space Treaty Article IX

- Ordinary meaning – Black’s Law Dictionary
 - Harm - “Injury, loss, damage; material or tangible detriment.”
 - Interference – “An obstruction or hindrance.”
- Harmful Interference - an obstruction or hindrance that causes a material or tangible detriment.



Outer Space Treaty Article IX

- Subsequent State Practice
 - International Incidents as norm Indicators
 - FY-1C*
 - No State relied on Article IX arguments
 - At least one reading can conclude that States prefer a very high threshold for Harmful Interference occurs
 - Intentional creation of space debris does might not cross the threshold



Radio Regulations

- Purpose: to protect States from harmful interference with Radiocommunications
- Interference - “The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system.”
- Harmful Interference - "*Interference* which endangers the functioning of a *radionavigation service* or of other *safety services* or seriously degrades, obstructs, or repeatedly interrupts a *radiocommunication service* operating in accordance with these Regulations."



Radio Regulations

- Drawbacks
 - Narrow in Scope
 - i.e. doesn't cover *FY-1C* type event
 - States often circumvent
 - e.g. Iran satellite jamming



Codes of Conduct

- Stimson Center Model Code
 - Responsibility of space-faring State “to refrain from harmful interference against space objects.”
 - Undefined within model code



Codes of Conduct

- EU Code of Conduct
 - “the responsibility of States to take all the appropriate measures and cooperate in good faith to prevent harmful interference in outer space activities.”
 - Implement law and policy to “to minimise the possibility of accidents in space, collisions between space objects or any form of harmful interference with other States' right to the peaceful exploration and use of outer space”



Is Harmful Interference a Solution?

- States have a natural proclivity to preserving freedom of action; especially in high technology areas
- Adopting stringent definition could increase Outer Space Treaty burden
- EU Code of Conduct provides a foundation from which the term can grow
- However, the term's relationship with Article IX, which States have been somewhat reluctant to utilize, could inhibit its effectiveness



Thanks!

Questions?

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