

# Refugees in Distress

## *The Protection of Safety Radiocommunication Signals against Harmful Interference*

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### **Abstract**

The problems inherent to the protection of people taking to the seas or to other dangerous routes in search of safety, refuge, or better economic conditions, are not new. This contribution focuses upon a very particular aspect of this subject – namely the legal protection of potential distress signals against harmful interference (HI).

Nowadays, distress signals can be rapidly transmitted by satellite and terrestrial communication techniques both to search-and-rescue authorities ashore, and to ships or other vehicles in the vicinity. These radio signals, however, are prone to interference and can be compromised. One of the main goals of regulating radio communications and the radio frequency spectrum is to avoid HI. The Constitution (CS) and the Radio Regulations (RRs) of the International Telecommunication Union (ITU) provide the main international legal framework on HI, but the wording and focus of these documents is rather on prevention and avoidance and not on a *stricto sensu* prohibition. Pursuant to Article 45 CS, stations must be established and operated in such a manner as not to cause HI to the radio services or communications of other Member States or of other recognized services. Clearly, there is a prescription to avoid HI, but it is not prohibited in itself, even if there exists an obligation to cease radio emissions once identified as harmful.

Yet, the situation may be different when distress, urgency or safety signals are in question. On two particular occasions, the RRs go as far as to use the term ‘prohibit’. Furthermore, a prohibition can also be substantiated with a reference to the definition of HI itself. In fact, any interference against a safety service is qualifiable as harmful when it endangers its functioning. There is no additional specification that the interference should seriously degrade, obstruct or repeatedly interrupt the transmission, as is the case with other radiocommunication services. Therefore, this contribution seeks to clarify the level of protection against HI when it comes to safety and distress signals as well as evaluate the legal consequences of such a prohibition on an international level, both in itself as well as in comparison to other radio and satellite communication services. Hence, the following questions will be tackled: Is interference to distress signals clearly prohibited? And if so, what are the legal consequences?

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## 1. Introduction

The significance of radiocommunications for many areas of our lives nowadays is ever-growing and undisputable. The numerous uses and applications of such telecommunication systems can equally be applied to protecting and safeguarding people in vulnerable situations, such as refugees. This article focuses on one specific aspect of the regulation of telecommunication systems, which impacts on the level of protection refugees may enjoy under international law in case they may find themselves in situations of distress or peril. More specifically, the authors analyze the level of protection from harmful interference (hereinafter, HI) of a safety or distress radiocommunication signal, especially in comparison to other radiocommunication signals. The analysis is based on the legal framework of the International Telecommunication Union (ITU), which is a *lex specialis* in the field of telecommunications in international law.

The legal framework of the ITU is based on three international treaties. These are the ITU Constitution (hereinafter, ITU CS), the basic ITU treaty establishing institutional and organizational norms; the ITU Convention (hereinafter, ITU CV), which contains dispositions regulating specifically the functioning of the ITU bodies; and the ITU Administrative Regulations, which include both Radio Regulations (hereinafter, ITU RRs) and International Telecommunication Regulations (hereinafter, ITU ITRs), which regulate technical aspects concerning the management and coordination of the Spectrum-Orbit Resource in order to assure its rational, efficient, economic and equal use, as well as an interference-free environment. These three documents are interconnected and follow a hierarchical principle, applicable in case of inconsistency between their provisions.<sup>1</sup>

## 2. Radiocommunications in Emergency Situations and Relevance to Refugees

The value and utility of telecommunication systems, including space-based systems, in cases of emergency situations relief at sea as well as on the ground have been largely demonstrated during the last decades. In fact, they play a crucial role interconnecting and dispatching logistical, rescue and first responder resources in any part of the world. More specifically, satellite communications play a vital role in this regard, as they are the only tool

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1 ITU CS Article 4.4 in fact, states that “[i]n the case of inconsistency between a provision on the Constitution and a provision of the Convention or of the Administrative Regulations, the Constitution shall prevail. In the case of inconsistency between a provision of the Convention and a provision of the Administrative Regulations, the Convention shall prevail”. Another feature upholding this hierarchical structure is the different majority requested to amend these treaties.

available when wireless connections with ground infrastructure is impossible, due to destruction following a manmade or natural disaster, or unavailability for other reasons.

Radiocommunications are also vital in cases of danger to migrants taking to the sea or other dangerous roads looking for international protection. It is through telecommunication systems that they can connect with emergency services ashore or in the vicinity to obtain help. Additionally, relief services having already saved them, could look for further help. In 2015 alone and only in Europe more than a million migrants and refugees crossed the Mediterranean Sea as well as international borders<sup>2</sup> fleeing from violence, war or within their home countries. The journey is dangerous and the International Organization for Migration (IOM) reported that during that year more than 3770 people died trying to cross the Mediterranean Sea and some 800 perished in the Aegean crossing from Turkey to Greece. The scale of the problem is extremely hard to measure as many bodies and vessels disappear into the waters.

Sometimes imperiled vessels do not send out calls for assistance and are simply being spotted by coastguard authorities or passer by ships, but it does happen also that a distress call from sinking boats is sent. In April 2015, for example, a ship in the Mediterranean Sea carrying more than 300 people, with at least 20 people reported dead, initialized the call.<sup>3</sup>

It is important to note that the effectiveness of telecommunication systems in these situations, as always, relies upon the availability of frequencies and is dependent upon the absence of HI which may degrade or completely obstruct the radio signal.

Before going into depth with the legal analysis, an important clarification is needed. The focus of the paper is the legal framework of radiocommunications which could potentially be used by refugees in distress situations and cases of emergencies. *The legal framework here examined applies to the signal which may be sent out by refugees in emergencies and not to the refugees themselves.* Hence, the conclusions reached could be relevant not only to refugees, but to all and any individuals, who may find themselves in distress. The precise legal status of the users of the signal is irrelevant to determine if they can benefit from the protection accorded to distress and safety radiocommunications signals.

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2 BBC, [www.bbc.com/news/world-europe-34131911](http://www.bbc.com/news/world-europe-34131911), (last accessed 5<sup>th</sup> September 2017).

3 France 24, [www.france24.com/en/20150420-mediterranean-migrants-distress-signal-boat-italy-greece](http://www.france24.com/en/20150420-mediterranean-migrants-distress-signal-boat-italy-greece) (last accessed 5<sup>th</sup> September 2017).

### 3. Safety Radiocommunication Services: Historical and Regulatory Provisions

The ITU RRs provide the necessary definitions for understanding the legal problems examined in this article. Firstly, ‘radiocommunication’ is defined as a “[t]elecommunication by means of radio waves”.<sup>4</sup> Telecommunication is defined in turn as “any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems”.<sup>5</sup> Moreover, the RRs specify that a radiocommunication service is “[a] service [...] involving the transmission, emission and/or reception of radio waves for specific telecommunication purposes”.<sup>6</sup> The wording of these definitions easily explains how any service provided by means of radio waves is a radiocommunication service. The different nomenclature in use e.g. Radionavigation, Earth Observation etc., is based on the different purposes of the service itself and may also signify different technical characteristics of the systems’ design.

#### 3.1 Brief Historical Context

As the focus of this paper is on distress and safety signals, in order to better understand their specificity, it is useful to briefly present them in a historical context. It was a tragic event which influenced the regulatory framework of radiocommunication in the sense of giving more protection to distress signals. Reference is hereby made to the sinking of the Titanic in the night between the 14<sup>th</sup> and the 15<sup>th</sup> of April 1912 in the middle of the Atlantic Ocean, only four days after its departure from the Southampton harbor. During the catastrophe radiocommunication technologies were essential for soliciting aid from neighboring vessels, which proceeded to the rescue. But it is likely that many more lives could have been saved had other vessels in the vicinity been equipped with radio distress systems able to communicate with each other, regardless of free market competition’s considerations.<sup>7</sup>

The impact of the Titanic disaster on maritime and distress communications was enormous. Just a few months after the tragedy, the 1912 International Radiotelegraph Conference, held in London, agreed on a common wavelength for ships’ radio distress signals. Also, every ship was instructed to maintain radio silence at regular intervals, when operators could listen for distress calls. To improve the efficiency and quality of operation, the 1927 Washington conference allocated frequency bands to the various radio services (fixed, maritime and aeronautical mobile, broadcasting, amateur,

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4 ITU RR Art. 1.6.

5 ITU RR Art. 1.3.

6 ITU RR Art. 1.19.

7 Message of the ITU Secretary Generale Pekka Tarjanne for 1997 World Telecommunication Day, available at [https://www.itu.int/newsarchive/wtd/1997/welcome/sg\\_msg.html](https://www.itu.int/newsarchive/wtd/1997/welcome/sg_msg.html) (last accessed 5<sup>th</sup> September 2017).

and experimental).<sup>8</sup> It should be recalled that in 1906 the International Telegraph Union, the predecessor of the ITU, had adopted the brand-new Service Regulations to include mandatory operational requirements and provisions on maritime distress communications, and at the same time the former ITU was nominated as the watchdog for the correct applications of maritime safety procedures. At the same time another important accomplishment was reached i.e. the establishment of ‘SOS’ as the international maritime distress code, the very first step in the vital field of emergency communications.

Additionally, just few months after the tragic event recalled above, on the 20<sup>th</sup> of January 1914, the first version of the International Convention for the Safety of Life at Sea (SOLAS) was adopted.<sup>9</sup> This international treaty was last amended in 2004 and it contained provisions requiring certain vessels to carry equipment designed to improve the chances of rescue following an accident, including satellite emergency position indicating radio beacons (EPIRBs) and search and rescue transponders (SARTs) for the location of the ship or survival craft. These provisions are closely linked to the RRs of the ITU.

### **3.2 Definition of Distress and Safety Services**

#### **3.2.1 Distress**

Distress refers to a factual situation of extreme peril, usually connected to ships or aircraft in extreme weather conditions or experiencing mechanical failures or other circumstances, endangering persons abroad, which gives rise to different legal consequences under international law.<sup>10</sup> As a result of humanitarian considerations, special safety regulations and rules of assistance and salvage have been established, incorporated into many bilateral and multilateral treaties and have become part of customary international law.<sup>11</sup> The international treaties that are referred to most often in this context are, among others, the International Convention on Salvage, the International Convention for the Safety of Life at Sea, the Convention on International Civil Aviation (Chicago Convention) and also the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. Notably, within the context of the law of State Responsibility, distress is also regarded as a circumstance, which can preclude

8 On the outcome of the 1927 Washington Conference see [www.itu.int/en/history/Pages/ITUsHistory-page-2.aspx](http://www.itu.int/en/history/Pages/ITUsHistory-page-2.aspx) (last accessed 5<sup>th</sup> September 2017).

9 IMO, [www.imo.org/en/about/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-\(solas\)-1974.aspx](http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-(solas)-1974.aspx).

10 ‘Distress’. Max Planck Encyclopedia of Public International Law, Oxford Public International Law, Oxford University Press, 2015.

11 ‘Distress’. Max Planck Encyclopedia of Public International Law, Oxford Public International Law, Oxford University Press, 2015.

wrongfulness, pursuant to Art 24 of the ILC Articles on State Responsibility. Likewise, Art 109 of the UN Convention on the Law of the Sea prohibits “unauthorized broadcasting” except in cases when distress calls are concerned.

Given the above considerations, it is also logical to assume that the ITU rules, concerning communications related to distress situations would have priority over other types of communication services. Namely, the ITU Constitution, stipulates that Radio stations are “obliged to accept with *absolute priority*, distress calls and messages, regardless of their origin, to reply in the same manner to such messages, and immediately to take such action in regard thereto as may be required.”<sup>12</sup>

### 3.2.2 Safety Radiocommunication Service

Article 1.59 of RRs provides the definition of a *safety service*. It is “any radiocommunication service used permanently or temporarily for the safeguarding of human life and property”. Along with this general definition, the RRs include in Art. 1 definitions of specific services particularly devoted to safety purposes: as an example, there are the *maritime mobile service*,<sup>13</sup> *ship movement service*,<sup>14</sup> or the *aeronautical mobile service*.<sup>15 16</sup>

Additionally, the general definition that was presented includes not only radiocommunications using frequencies expressly allocated to safety services, as reported in the Table of Frequency Allocation (hereinafter, TFA), but also all radiocommunications transmitting an emergency message able to prevent loss of life and property, using frequencies originally allocated to other services.

12 ITU CS. Art. 46.

13 ITU RR Art. 1.28: “[a] mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communications stations; survival craft stations and emergency position-indicating radio beacon may also participate in this service”.

14 ITU RR Art. 1.31: “[a] safety service in the maritime mobile service other than a port operations service, between coast stations and ship stations, or between ship stations, in which messages are restricted to those relating to the movement of ships. Messages which are of a public correspondence nature shall be excluded from this service”.

15 ITU RR Art. 1.32: “[a] mobile service between aeronautical station sans aircraft stations, or between aircraft stations, in which survival craft stations may participate; emergency position-indicating radio beacon stations may also participate in this service on designated distress and emergency frequencies”.

16 Beyond the services cited as an example, RRs identify other safety services. They are the *maritime mobile-satellite service* (Art. 1.29 RRs), the *port operations service* (Art. 1.30 RRs), the *aeronautical mobile (R)\* service* (Art. 1.33 RRs), the *aeronautical mobile-satellite (R)\* service* (Art. 1.36 RRs), the *radionavigation-satellite service* (Art. 1.43 RRs), the *maritime radionavigation service* (Art. 1.44 RRs), the *aeronautical radionavigation service* (Art. 1.46 RRs), and the *aeronautical radionavigation-satellite service* (Art. 1.47).

*Prima facie*, the definition of a safety radiocommunication services is very similar to any other purpose-based services, such as radiolocation, or Earth exploration, but all the relevant accompanying provisions discern them later on, and demonstrate that this definitional similarity brings about procedural and regulatory differences, as will be shown in the next section.

### 3.3 Special Status of Safety Services

Not surprisingly, radiocommunications for the purpose of safety of life (SOL) would be provided with a more distinctive status in relation to other services. Notably, these services enjoy an ‘absolute priority’ as reflected both within the ITU CS as well as the more technical RRs.

Notably, article 40 of the ITU CS states that: “[i]nternational telecommunication services must give absolute priority to all telecommunications concerning safety of life at sea, on land, in the air or in outer space, as well as to epidemiological telecommunications of exceptional urgency of the World Health Organization”. Even governmental communications, which generally enjoy priority over any other telecommunications must first take consideration of safety services, as provided in the following article 41 CS.

These CS provisions are also complemented by Article 5 of ITRs,<sup>17</sup> which goes into depth, explaining the meaning of the institution of absolute priority.<sup>18</sup> The first paragraph of that Article states that: “[s]afety-of-life telecommunications, such as distress telecommunications, shall be entitled to transmission as of right and, where technically practicable, have absolute priority over all other telecommunications, in accordance with the relevant articles of the Constitution and the Convention and taking due account of the

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17 Art. 5 of ITRs: “5.1 Safety-of-life telecommunications, such as distress telecommunications, shall be entitled to transmission as of right and, where technically practicable, have absolute priority over all other telecommunications, in accordance with the relevant articles of the Constitution and the Convention and taking due account of the relevant ITU-T Recommendations. 5.2 Government telecommunications, including telecommunications relative to the application of certain provisions of the United Nations Charter, shall, where technically practicable, enjoy priority over telecommunications other than those referred to in No. 39 (5.1) above, in accordance with the relevant provisions of the Constitution and the Convention and taking due account of the relevant ITU-T Recommendations. 5.3 The provisions governing the priority enjoyed by any other telecommunication services are contained in the relevant ITU-T Recommendations. 5.4 Member States should encourage authorized operating agencies to inform all users, including roaming users, in good time and free of charge, of the number to be used for calls to the emergency services”.

18 As mentioned earlier, ITRs are one of the four main funding treaties of the ITU, and it has been lastly modified by the World Conference on International Telecommunication (hereinafter, WCIT-12), held in Dubai in 2012.

relevant ITU-T Recommendations”.<sup>19</sup> Again, Art. 5.2 of ITRs specifies that the term *absolute* means also that safety services have priority over governmental communications,<sup>20</sup> “including telecommunications relative to the application of certain provisions of the United Nations Charter”.<sup>21</sup>

The priority of distress communications is also repeated in relation to specific safety services in RRs. As far as *maritime mobile service* or the *maritime mobile-satellite* service are concerned, for example, article 53 of RRs provides the order of priority of communications, indicating four level of priority: the first are distress calls, messages or traffic, then following there are urgency communications, safety communications and then other communications.<sup>22</sup>

Furthermore, Chapter VII of the Radio Regulation is specifically dedicated to “[d]istress and safety communications” and it encompasses Arts. 31 to 34. This chapter contains relevant provisions for the operational use of the Global Maritime Distress and Safety System (GMDSS) as well provisions for initiating distress, urgency and safety communications by means of radiotelephony. Moreover, the distinct character of safety services implies also that not only during the operations, but also while assigning and using frequencies Members States should pay special attention. In fact, Art. 4.10 of RRs states that: “[m]ember States recognize that the safety aspects of radionavigation and other safety services require special measures to ensure their freedom from harmful interference; it is necessary therefore to take this factor into account in the assignment and use of frequencies”.

Additionally, note should be taken of Recommendation ITU-R SM.1535, which again concerns the protection of safety services. It reiterates that all aeronautical operational and air traffic control and many maritime communications are fundamentally safety of life services and that these include radionavigation systems and radionavigation satellite systems. The recommendation points out that SOL services often depend on the ability to detect a weak or distant signal where interference can critically affect reception and that this means special protection may be required for safety services, because of the criticality of protecting life and property. The necessity for safety systems to detect weak signals makes it important that

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19 ITU ITR Art. 5.1. The relevant ITU-T Recommendations referred to are E.106 and E.107.

20 Governmental telecommunications include, according to the current Annex to the ITU CS, “any telecommunications originating with any Head of State; Head of government or members of a government; Commanders-in-Chief of military forces, land, sea or air; diplomatic or consular agents; the Secretary-General of the United Nations; Heads of the principal organs of the United Nations; the International Court of Justice, or replies to government telecommunications mentioned above”, ITU CS 1014.

21 ITU RR Art. 5.2.

22 For the aeronautical mobile service and the aeronautical mobile-satellite service, the order of priority of communications is settled by article 44 of RRS.



these systems operate in an environment free from harmful interference. The international radio regulatory authorities recognize that *special protection* is required for the safety services. In view of the importance of safety systems and their vulnerability to interference, RRs Art. 31 specifically prohibits any emission causing harmful interference to distress and safety communications on any of the discrete frequencies identified at RRs Appendices 13 and 15.<sup>23</sup>

#### 4. Harmful Interference and Safety Radiocommunication Services

The legal framework of the ITU identifies three types of interference: permissible, accepted and harmful. Interference becomes harmful once it “*endangers the functioning of a radionavigation service or other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service* operating in accordance with Radio Regulations (emphasis added).”<sup>24</sup> Arguably, this is a very technical definition and it does not differentiate between the intentional and accidental interference, rather it puts emphasis on the effect that this interference may have on a specific service. At this point, it is also relevant to recall the preambular consideration 0.7 of the RRs, which is to ensure “the availability and protection from harmful interference of the frequencies provided for distress and safety purposes.” This is one of the principles upon which the Regulations are founded.

The section below looks more closely into this definition and points out relevant considerations for safety services.

##### 4.1 Definition of HI – A Brief Analysis

The analysis hereby is based on the ordinary meaning of the terms in question and on the basis of interpretations according to the Vienna Convention on the Law of the Treaties of 1969 (hereinafter, VCLT). The identification of different services has important consequences on the threshold of nuisance required to characterize the interference as harmful.

A close look at the definition of HI in itself puts forward two distinct and specific instances of interference.

The first one is specific to a situation whereby the affected services are radionavigation or other safety services, while the second instance is when the affected service is a radiocommunication service, operating in accordance with the RRs. HI exists if safety services are simply endangered, while other radiocommunication services are considered ‘harmfully interfered with’ if they are *seriously* degraded, obstructed or *repeatedly* interrupted. Additionally, there is the specification that HI will exist to these services *only*

<sup>23</sup> ITU-R SM.1535.

<sup>24</sup> Art. 1.169 of RRs. The same wording appears in the current Annex to the ITU CS (CS 1003).

if they operate in accordance with the RRs,<sup>25</sup> a clarification which does not exist when it comes to safety services. In other words, the threshold for an interference to be harmful is lower for safety services. This definition of HI is also in line with and coherent to other relevant ITU law provisions as well as humanitarian and safety of life provisions in other international treaties.

#### 4.2 Prohibition vs. a Duty to Avoid

Given the existence of two particular cases of HI, we expect to find two different levels of protection: in fact, according to many provisions of ITU law, safety services and radionavigation services enjoy *full protection* from HI. Besides, as Art. 4.10 of the RRs points out, “[m]ember States recognize that the safety aspects of radionavigation and other safety services require *special measures* to ensure their freedom from harmful interference”.

General rules concerning the protection of radiocommunications from HI can be inferred through a joint reading of Article 15 RRs and Article 45 CS. The latter prescribes that “[a]ll stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Member States or of recognized operating agencies, or of other duly authorized operating agencies which carry on a radio service, and which operate in accordance with the provisions of the Radio Regulations”. The wording of this provision, combined with the other one already examined, seems to establish upon governmental administration in charge of telecommunications matters, i.e. Member States, a duty of avoiding HI. Legally speaking, this an obligation of mean, because its purpose is to avoid the realization of the act or fact considered unsuitable.

But when it comes to radionavigation and safety services, ITU legal instruments go as far as to use the verb *to prohibit*, a much stronger term than the duty to avoid, one which entails higher legal responsibilities: suffice it to think about general international law rules concerning, for example, the prohibition of the use of force, and possible consequences of their infringement. This is an obligation of result, with the precise intent of impede the act or fact itself.

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25 A radiocommunication service, other than radionavigation service and safety service, which do not operate in accordance with mandatory norms and rules set forth by RRs, cannot claim protection against HI. This is confirmed by provisions set forth both in Art. 4.4 of RRs and Art. 45 of the ITU CS. Art. 4.4 of RRs: “[a]dministrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations”. This rule is completed by Art. 8.5 of RRs.

An accurate analysis of ITU treaties from a terminological perspective shows that the verb *to prohibit* is used only in RRs, but very rarely. It is found in eleven articles and only four out of those eleven references are related to HI. Out of these, four, three are in turn prohibiting HI related to distress and safety signals.

The basic rule establishing the prohibition of HI to safety and distress signals is contained in article 4.22 RRs, which says: “[a]ny emission capable of causing harmful interference to distress, alarm, urgency or safety communications on the international distress and emergency frequencies established for these purposes by these Regulations is *prohibited*. Supplementary distress frequencies available on less than a worldwide basis should be *afforded adequate protection* (emphasis added)”.

This provision is complemented by two others related to two special systems designed specifically to save life of property in danger. The first one is contained in footnote 5.267 of RRs, stating that “[a]ny emission capable of causing harmful interference to the authorized uses of the band 406-406.1 MHz is prohibited”. This particular band is allocated to the *mobile-satellite service (Earth-to-space)*, used by the international satellite system known as COSPAS-SARSAT, which provides precise, timely, and trustworthy distress alert and location data to help search and rescue authorities, assist persons in distress, trying to reduce the time required to discover the location of the distress call and provide assistance, with a direct impact on the probability of survival of the person in distress at sea or on land.

The second special reference to HI specifying the general prohibition is contained in article 31.2 § 2 of RRs, saying that “[a]ny emission causing harmful interference to distress and safety communications on any of the discrete frequencies identified in Appendix 15 is prohibited”. This special provision, added to RRs thanks to the revision made by the World Radiocommunication Conference held in 2007, is contained in Chapter VII of RRs, establishing rules on frequencies for the Global Maritime Distress and Safety System (GMDSS).<sup>26</sup>

### 4.3 Absolute Protection from HI – Explained

Safety radiocommunication services are entitled to ‘absolute international protection’ in contrast to other services, which can claim simply ‘protection’ from harmful interference. The ITU regulatory documents do not have a

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26 Operational since the 1<sup>st</sup> of February 1999, it consists in an integrated communication system using both space-based and terrestrial-based devices. Under the GMDSS, all passenger ships and all cargo ships over 300 gross tonnage on international voyages have to carry specified terrestrial and satellite radiocommunications equipment for sending and receiving distress alerts and maritime safety information, as well as for general communications. The regulations governing the GMDSS are contained in Chapter IV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and are completed by rules set forth in the RRs.

dedicated chapter, section or specific article defining the absolute protection from HI, but the meaning thereof can be inferred through an overall analysis of Radio Regulations. Art. 15 of RRs is the most important source in this regard even if it refers to HI in general, and only in certain instances – to HI to safety services, in specific. In its introductory Section, Art 15 outlines appropriate norms of behavior and obligations to prevent HI, such as the forbidding unnecessary transmissions, or the transmission of superfluous, false, misleading or non-identified signals. Concerning safety services, “[s]pecial consideration shall be given to avoiding interference on distress and safety frequencies, those related to distress and safety identified in Article 31 and those related to safety and regularity of the flight identified in Appendix 27”.<sup>27</sup> In addition, both Sections II and III of the same article, related to electrical apparatus of any kind and equipment used for industrial, scientific and medical applications, establish that Member States shall take all possible measures in order to avoid HI, “*in particular*, to a radionavigation service or any other safety service”.<sup>28</sup> Further on, Section VI identifies appropriate coordination and notification procedures that parties have to undertake so as to resolve cases of HI, which are mainly based on good will and mutual assistance principles. As far as safety services are concerned, Article 15.28 provides that “[r]ecognizing that transmissions on distress and safety frequencies and frequencies used for the safety and regularity of flight require *absolute international protection* and that the elimination of harmful interference to such transmissions is imperative, administrations undertake to act immediately when their attention is drawn to any such harmful interference”. Coherently, it is also established that when an Administration receives a communication to the effect that one of its stations is causing HI to a safety service, it shall promptly investigate the matter and take any necessary remedial action and respond in a timely manner.<sup>29</sup> In other words, the undertaking of remedial actions is an imperative in this situation. In contrast, when reference is made to other services, the Radio Regulations only employ the term ‘protection from harmful interference’. For instance, Arts. 5.30 and 5.21 of RRs when delineating the categories of services and allocations simply refers to the possibility of primary and secondary services to “claim protection” from other stations, but this protection is dependent upon date of assignment and favorable MIFR registration findings and is not absolute.

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27 ITU Art. 15.8 of RRs.

28 ITU RR Art. 15.12 and 15.13.

29 ITU RR Art. 15.37.

## 5. Legal Implications Stemming from the Prohibition of HI to Safety Services

The ITU treaties, a *lex specialis* of international law, have been drafted very carefully and are based on the “sovereign right of each State to regulate its telecommunication”.<sup>30</sup> Furthermore, the Constitution explicitly provides that Member States reserve their right to stop signal transmissions in accordance with their national laws<sup>31</sup> as well as to suspend services.<sup>32</sup> Furthermore, they retain their entire freedom with regard to military radio installations.<sup>33</sup> Additionally, pursuant to the Constitution of the Union, Member States accept no responsibility towards users of the international telecommunication services, particularly as regards claims for damages, as put forward by Art. 36. Evidently, signatory States, did not agree to be held liable for any eventual non-provision of services related to telecommunications and sought to retain their sovereignty on a wide array of potential cases, relevant to ITU law. Even though Member States agreed to be bound by the ITU provisions and to extend these provisions to any stations capable of causing HI to other stations, they still instituted an exception to these obligations – an exception, which concerns national defense services and which is found in Art. 48: “Member States retain their entire freedom in regard to military radio installations.”<sup>34</sup> Does that mean that military installations do not have to take note of the special ITU provisions relative to the absolute protection of safety services? Given the absolute protection of safety services from HI, which was elaborated on in the previous paragraphs, it is logical to assume that their protection would also apply in cases of interplay with military services. Additionally, CS Art 48.2 points out that military installations “must, so far as possible, observe statutory provisions relative to giving assistance in case of distress and to the measures to be taken to prevent harmful interference.”<sup>35</sup> The use of ‘must’ implies a very strong obligation, but the insertion of ‘as far as possible’ still presupposes an effort to be undertaken, rather than an achieved result.

## 6. Concluding Remarks

This article has aimed to elaborate on the specific position that safety and distress signals occupy within the international radiocommunications legal framework. It also asks and aims to answer the question as to whether HI to

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30 ITU CS, Preamble.

31 ITU CS, Art. 34.

32 ITU CS, Art. 35.

33 ITU CS, Art. 48.

34 ITU CS Art. 48.

35 ITU CS Art 48.2.

safety services is prohibited in international law. If so, under which conditions and to what effect?

It has been established that the legal framework of the ITU provides a special protection for the safety communications signals, which turn out to be very important for distress signals sent by refugees. In fact, safety signals enjoy absolute priority and benefit from absolute protection against HI, meaning that HI against those signals is prohibited. Hence, the answer to hypothetical research question – i.e. is interference to distress signals clearly prohibited – is certainly positive: HI to safety signals is clearly prohibited.

Putting this prohibition in context is a bit more difficult. Absolute protection should entail protection in any and all cases. Could this go against the exceptions, provided for in Art 48 of the ITU Constitution? Generally, there are problems on legal consequences of the infringement of the obligation of avoidance. And the consequences of the infringement of the prohibitions are less clear.

The protection of distress signals against HI is a very important issue, which could potentially be applied in for the indirect protection of people taking at the sea in search of a better and more secure life.

All in all, the ITU legal framework completes the international legal regime on the international protection of refugees and people in distress and should be interpreted in line with other international treaties, which regulate the international responsibility of States to provide assistance and safeguard people in distress.