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| **World Radiocommunication Conference (WRC-19) Sharm el-Sheikh, Egypt, 28 October – 22 November 2019** |  |
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| PLENARY MEETING | **Document 78-E** |
|  | **7 October 2019** |
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| Germany (Federal Republic of)/Austria/Brazil (Federative Republic of)/Cameroon (Republic of)/Djibouti (Republic of)/France/Luxembourg/Mali (Republic of)/Norway/Netherlands (Kingdom of the)/Portugal/Sweden/Switzerland (Confederation of)/Tunisia | |
| Proposals for the work of the conference | |
| **Clarification on the implementation of Article 48 of the ITU Constitution by the Radiocommunication Bureau** | |
| Agenda item 9.3 | |

9 to consider and approve the Report of the Director of the Radiocommunication Bureau, in accordance with Article 7 of the Convention:

9.3 on action in response to Resolution **80 (Rev.WRC-07)**;

Abstract

The sovereign right of each Member State to regulate its telecommunications is fully recognized. The ITU Constitution further recognizes the rights of Member States for complete freedom in matters related to National Defence as enshrined in Article 48 of the ITU Constitution. Nonetheless, it is also recognized that Member States are bound to abide by the spirit and the provisions of the ITU Constitution and are strongly encouraged to observe the provisions of the Administrative Regulations concerning the types of emission and the frequencies to be used, according to the nature of the service performed by such installations.

While also respecting the rights of all administrations regarding Military Radio Installations for National Defence Services under Article 48 of the ITU Constitution, it is proposed that WRC-19 clarifies the effects and the procedures related to the invocation of this Article.

Reference documents

1 ITU Constitution

2 Circular Letter CR/389 relating to the decisions of WRC-15

Introduction

All Administrations have the right to invoke the provisions of Article 48 of the ITU Constitution. This right has already been invoked correctly numerous times by several administrations, and such invocation never warranted the scrutiny of the Radiocommunication Bureau or the Radio Regulations Board. However, during the 78th meeting of the Radio Regulations Board, the Board recognized that it did not have a mandate to take decisions in regard to Article 48 of the ITU Constitution. Nonetheless, the members of the Radio Regulations Board agreed on the need to avoid abuses in the use of Article 48 and drew the attention of administrations to the need for compliance with the provisions of that Article.

For context, Article 48 of the ITU Constitution is titled “Installations for National Defence Services”, and states that:

1 Member States retain their entire freedom with regard to military radio installations.

2 Nevertheless, these 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, and the provisions of the Administrative Regulations concerning the types of emission and the frequencies to be used, according to the nature of the service performed by such installations.

3 Moreover, when these installations take part in the service of public correspondence or other services governed by the Administrative Regulations, they must, in general, comply with the regulatory provisions for the conduct of such services.

Even though Article 48 of the ITU Constitution recognizes the right of Member States with respect to military radio installations, this Article encourages Member States to observe the applicable statutory provisions in order to minimize harmful interference. More importantly, to the extent that military radio installations are used for purposes other than national defence, these installations must comply with the regulatory provisions applicable to such services. So it is clear that Article 48 includes within it provisions a limitation on how it is to be invoked and used by Member States.

In an effort to bring some clarity to how Article 48 of the ITU Constitution is to be invoked and applied, the World Radiocommunication Conference, Geneva, 2015 (WRC-15), in adopting a partial revision of the Radio Regulations, took a number of decisions based on the experience in applying the Radio Regulatory Procedures and other related matters.

Section 3.2.4.3 of the Director’s report to WRC-15 discusses the usage of frequency assignments in space services with a direct or indirect reference to the provisions of Article 48 of the ITU Constitution. In discussing the issues raised in this section and in conjunction with the questions raised in the RRB Report on Resolution **80** regarding these same issues (see Section 4.4 of Document 14), WRC-15 noted that Article 48 refers to **“military radio installations” and not to stations used for governmental purposes in general**, and **decided that the BR** should not infer that an administration refers to Article 48 of the ITU Constitution in its answer to an inquiry under RR **No. 13.6** unless this administration has explicitly invoked the provisions of Article 48. WRC-15 also decided that there should be no restriction in terms of the class of station and nature of service for a station eligible to operate under Article 48 (CR/389 of WRC-15).

Section 4.10 of the Report of the Radio Regulations Board to WRC-19 on Resolution 80 (Rev.WRC-07), Document RRB19-1/2-E, deals with the application of Article 48 of the ITU Constitution. In this section, the Board mentions that: *“The Board also considered concerns raised by some administrations regarding the appropriateness of other administrations’ previous application of Article 48 of the ITU Constitution. The Board has recognised that WRC-12 and WRC-15 made decisions on the application of Article 48 of the ITU Constitution, as well as provision 3 (CS204) of Article 48, which states:*

*CS204 3 Moreover, when these installations take part in the service of public correspondence or other services governed by the Administrative Regulations, they must, in general, comply with the regulatory provisions for the conduct of such services.*

*Considering the legitimate sensitivity of matters related to national defence, the Board considers that WRC-15 concluded that administrations had to invoke CS Article 48 explicitly in order for it to apply, and, once they had, their word was final.* ***Furthermore, the Board recognizes that it is not within its mandate to make contravening decisions after an administration has made reference to CS Article 48. Thus, invocation of CS Article 48 in response to an inquiry under No. RR 13.6 must be assumed to have been done with complete honesty.”***

Also, *“****The Board encourages all administrations that invoke CS Article 48 to do so for legitimate reasons only.”***

While respecting the rights of administrations regarding military radio installations for National Defence Services under Article 48, serious concerns have been expressed notably in relation to the implications of invoking Article 48 to the detriment of equitable orbital access for other administrations and satellite networks and as a regulatory loophole to shield specific filings from being examined under **No. 13.6** of the Radio Regulations (see, for example, RRB Document 18‑1/7, 26 February 2018). This raises the general question of whether Article 48 could be applied to satellite systems in order for administrations to benefit from rights derived from the application of the Radio Regulations, without meeting the corresponding obligations.

In this regard, a number of issues related to the practical application of Article 48 to satellite systems can be considered: i) publication of the information that Article 48 has been applied to a satellite network (e.g., during the CR/C notice); ii) *a priori* identification of satellite networks that are operating pursuant to Article 48; and iii) how to treat satellite networks to which Article 48 has been applied if these satellite networks are subsequently used for non-military radio installations.

Details of these questions would likely require in-depth considerations by a World Radiocommunication Conference, because they are specific to the implementation of the principles embedded in Article 48 of the ITU Constitution to satellite systems.

**Conclusion**

Administrations should consider the application of Article 48 of the ITU Constitution to be restricted exclusively to military radio installations and the provisions of this Article should not be used for non-military or commercial radio installations. There should be no commercial exploitation of the frequency assignments under Article 48. Commercial and military assignments should be split into two different filings.

Therefore, to clarify the implications of the invocation of Article 48 of the ITU Constitution and considering:

– the rights of administrations regarding military radio installations for National Defence Services under Article 48 of the ITU Constitution; and

– the implications of invoking Article 48 of the ITU Constitution to the detriment of other administrations and other satellite networks.

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It is proposed:

That the World Radiocommunication Conference 2019 (WRC-19) decides on the practical aspects related to satellite networks that invoked Article 48 of the Constitution in relation with BR investigation under RR No. **13.6**, namely to:

1 request the BR to periodically and regularly publish a list of satellite network filings to which Article 48 has been applied, to allow for more transparency among all Member States;

2 clarify how to treat current satellite networks, under RR No. **13.6**, to which Article 48 has been applied if these satellite networks were found to be used for non-military radio installations. Article 48 can only be used for national military installation of the filing administration, and shall not apply to dual use filing (military and non-military). In future, different filings should be used for military installations and commercial use. As a consequence, any filing for which Article 48 has been invoked cannot later be used for non-military (e.g. commercial) services. For cases for which Article 48 has been already invoked, the BR should work with the concerned administration to earmark the part of the assignment for which Article 48 applies and may treat the remaining part of the assignment under RR No. **13.6**;

3 define a deadline for invoking Article 48, i.e. two years before the bringing into use. In the current practice, an invocation of Article 48 becomes only known during an investigation under RR No. **13.6** by other concerned administrations. If Article 48 is invoked at a later point of time, it shall not be used for not responding to an investigation under RR No. **13.6**;

4 provide guidance to the BR on how to apply RR No. **13.6** to satellite networks to which Article 48 has been invoked and where the validity of the application of Article 48 is being challenged by another Member State, taking into account items 2 and 3 above.

These elements shall not be considered as restricting in any manner the rights of administrations to apply Article 48. They are only to be used by the BR and the RRB as guidance to identify cases where Article 48 cannot be considered any longer for not responding to an investigation under RR No.**13.6**.

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