EQUITABLE USE OF GEO STATIONERY ORBIT—NEED FOR LEGAL PROTECTION OF THE RIGHTS OF DEVELOPING COUNTRIES

Dr. Anil G. Variath*

Space law has become a burning issue in International Law ever since the launch of first space shuttle in 1957. Since then, the world has started exploring the possibility of commercial use of space and outer space which has led to different interests, interest groups, disputes and dispute settlements; which in turn, gave birth to a separate set of rules which we call in the present day as '*Space Laws*'.

Space Law basically encompasses municipal and international laws governing different activities in 'outer space'. The term *outer space* is not susceptible to any globally satisfactory definition. By and large it is agreed that outer space begins at the lowest altitude above sea level at which; objects can orbit the earth, i.e. approximately 100 km. This definition itself is a subject of dispute, as many scientists do not subscribe to this definition. Then, not to speak about the activities in outer space.

Commercial and military use of outer space had always been in the agenda of the big powers and therefore, the peaceful use of outer space is a major issue of concern for them since, the early fifties as reflected through the earliest bilateral discussion between the USA and erstwhile USSR in 1958; leading to a UN debate and culminating in the formation of the *Committee On Peaceful Uses Of Outer Space (COPUOUS)* in 1959.

The COPUOUS has formed two sub committees viz. Scientific & Technical Sub-committee and the Legal Sub-committee. The Legal sub-committee of COUPOUS has been the primary forum for discussion and negotiation of International Agreements relating to outer space. The COUPOUS has been successful in negotiating and drafting five International Treaties viz.

1. Treaty on Principles governing the activities of States in the exploration and use of outer space, including moon and other celestial bodies (1967)—(The Outer Space Treaty).
2. Treaty dealing with Agreements as to the Rescue of Astronauts, the return of Astronauts and return of objects launched in the outer space. (1968)—(The Rescue Treaty).
3. The treaty dealing with International liability for damages caused by Space objects (1972)—(The Liability Convention).

* Dr. Anil G. Variath, Principal, Asmita College of Law, Vikhroli (East), Mumbai. He is also the Chairman of Academy for Advanced Legal Studies and Training and Senior Legal Consultant of M/s. Law Focus.

4. Convention related to Registration of the objects launched into outer space (1975)—(The registration Convention).
5. The treaty governing the activities of the States on the Moon and other celestial bodies (1979)—(The Moon Treaty).

The growth of outer space technology has resulted in the increasing demand for the use of Geo Stationery Orbit. The Geo Stationery Orbit is a limited/scare natural resource and is important to all the countries. In recent years, there have been and explosive growth in the use of geo stationery orbit especially for the purpose of communication satellites. The increased use of Geo Stationery Orbit and the prevailing practice of allocation based on the "first came first served" principle have caused concern among the developing countries. There is a feeling among the developing countries that, the use of Geo Stationery Orbit shall be regulated by a specific *sui generis* regime to guarantee a fair, rational and equitable sharing among all the countries developed as well as developing based on the fundamental principles laid down in the Space Treaty of 1967, which include the following:

a. the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind;
b. outer space shall be free for exploration and use by all States;
c. outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means;
d. States shall not place nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies or station them in outer space in any other manner;
e. the Moon and other celestial bodies shall be used exclusively for peaceful purposes;
f. astronauts shall be regarded as the envoys of mankind;
g. States shall be responsible for national space activities whether carried out by governmental or non-governmental activities;
h. States shall be liable for damage caused by their space objects; and
i. States shall avoid harmful contamination of space and celestial bodies.

They feel that the existing system must be revamped to provide for equitable access to Geo Stationery Orbit and frequency bands allotted to space services without diluting the spirit of the above principles.

Viewing the issue from the background of the concern expressed by the developing countries, it is to be noted that most countries in the world accept the Geo Stationery Orbit as a part of outer space and is available for the use of all the nations in accordance with the Outer Space Treaty, 1967. However, equatorial

countries consider that, the Geo Stationery Orbit is a physical phenomenon related to the earth's gravity, and hence it is not be included in the concept of outer space. According to them, it being not part of outer space, its use cannot and shall not be regulated by law.

Finding a place in the space and Geo Stationery Orbit is considered to be a right by the developing countries. The principal idea about the space as a common heritage of the mankind carries more weight in this direction. The place of developing countries and access of all the nations to Geo Stationery Orbit has been addressed by the German Democratic Republic as early as in 1986, when it submitted a working paper entitled "Draft Principals Governing the Activities of States in the Utilization of the Geo Stationery Orbit". The paper emphasized that the legal sub- committee of COUPOUS shall substantiate and develop the international framework for the use of Geo Stationery Orbit without prejudice to the role of International Telecommunication Union. The United Nations Organization was also deeply convinced of the common interest of mankind in promoting and expanding the exploration and use of outer space as the province of all mankind.

The disputes relating to and arising out of the use of Geo Stationery Orbit is presently dealt with under the International Telecommunication Union Mechanism. The International Telecommunication Union Mechanism though serving its purpose for the current day regime is not sufficiently equipped to cater the needs of the future. At present it is an affair between the members of International Telecommunication Union Mechanism with the least developing countries having no much role to play.

The lion's shares of the members in the comity of nations are yet to begin serious space research and to develop space technology. Space research in many other member countries are in the infant stage. Since, at present the use of Geo Stationery Orbit is by a limited number of countries each one using a portion thereof and as a result; the competition for position is between a certain number of countries and not a global one. Now, the serious question agitating the thoughts process of developing countries includes:

1. Do the handful of nations who have developed their space technology have the unfettered right to have access and use of Geo Stationery Orbit?
2. Do the developed nations have any obligation towards the developing nations?
3. Is it not necessary to reserve some space for the future us of the nations who are yet to develop their space technologies?
4. Do the large scale commercial exploration of the Geo Stationery Orbit by the leaders in Space Science and technology infringe the legitimate future rights of the developing countries?
5. Is the existing system sufficient to protect their interests?

These are the questions which are to be seriously addressed and answered.

Developed countries with advanced technology should make a particular effort to provide technical assistance to the developing countries in order to provide the greatest possible access to communications. Such assistance shall include education, training, planning and design of communication satellite system and operation and maintenance of ground system.

Special efforts must be made by the International Telecommunication Union Mechanism and its members to assist the developing countries to acquire future satellite communication requirements.

In the absence of such efforts and initiatives the majority of the nations in the world will be kept away from the space research and technology. It will create concentration of the space science in the hands of a few countries and ultimately in all fields touching the space science there will be a few service providers and others will be reduced to the status of outsourcing agents.

If such a situation occurs in future, the possibility of an arms race in the outer space cannot be ruled out. The developing countries have already voiced their concern about such an arms race and have called up on the developed nations to adhere themselves to Article IV of the Treaty of 1967 and to discharge the obligation to prevent arms race.

The present day's issues like overcrowding or congestion in the Geo Stationery Orbit may lead to collisions between satellites and other objects in the Geo Stationery Orbit. It may result in loss of damage to operational satellites. The issue is not yet been addressed systematically. In the absence of a consensual code fixing the liabilities for damages; the interests of the developing countries are bound to be adversely affected.

As all the satellites in the Geo Stationery Orbit must occupy a single ring above the equator there is a crunch with respect to the number of orbital slots available. The non operational objects and debris in the Geo Stationery Orbit add more problems to this. All these result in conflict and competition for orbit placement. In the absence of a comprehensive rule or code, proper placing of satellites becomes a subject for dispute which is again a concern for developing countries. Closer spacing of satellites in a Geo Stationery Orbit is a solution to this problem supported by development of technology to provide for greater overall efficiency in the orbit use, which has to be legally ensured. Similarly, the code must provide for effective removal of non operational satellites and objects out of the Geo Stationery Orbit.

In the result, it is submitted that there is a need to develop an International Rule of Law including the relevant norms of Space Law and Rules of International Co-operation for exploration and use of outer space for peaceful purposes. While, framing such Rule of Law; the voice of developing countries must also be given adequate attention as they are the future players in the field.

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