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LEGALITY OF ORBITS AND SPECTRUM LEASING IN VIEW OF FUNDAMENTAL SPACE LAW
PRINCIPLES

Abstract

The world today is often referred to as a 'global village' thanks to advanced means of communication. Those who control the physical means of transmitting such information have become the central players in this era. It is therefore that control over radio-communication spectrum and orbital spaces for parking satellites (especially in the geo-stationary orbit), as the essential means of facilitating seamless global communications, has come to occupy paramount importance for nation states. Being finite resources in themselves, the allocation and use of such spectrum/orbital space has emerged as a bone of contention in recent times.

Given the significance of controlling global dissemination of information, this issue has taken on the hue of a question of efficiency versus equity. Debates between developed and developing nations are not new to the realm of space law, and the present question merely adds to an ever increasing list of contentious issues. Advanced nations have staked their claims on the basis of their superior technical and operative efficiency where as the developing nations, yet to reach the zenith of their technical capabilities, have demanded that this finite space be proportionately divided keeping in view concerns of equity among nations.

This situation has of course not been helped by activities of some nations such as Tonga, which in the 1990s proceeded to rent six satellite positions allotted to it to private organizations. This not only fuelled the debate further but also brought forward the question of extent of rights conferred to the states in the orbits and spectrums, some calling it 'financial speculation in geo-stationary orbit'. The ITU has assumed a central role in this debate by not only trying to bring the two sides to a consensus, which albeit rests on unsure foundations, but also by providing regulations facilitating such allocation.

The present paper seeks to examine in copious detail the various results of prevailing situations in respect of the allocation of orbit/spectrum and their subsequent use and utilization by those to whom such orbital spaces/spectrum have been allotted. The paper is an attempt to put into perspective the legal regime related to orbit/spectrum allocation vis-à-vis known standards of international law in general and the law relating to outer space in particular. The issues that relate to allocation and subsequent alienation of orbit/spectrum in light of questions encompassing equitable distribution and control over outer space resources form the core of the present paper.