

# The Law of Satellite Communications: Filling in the Gaps

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*The modern international system of information and communication requires equal development of satellite communications on both legal and technical dimensions. Lack of regulations of satellite communications and inefficiency of present international law concerning, for example, the issue of non-interference in national sovereignty of nations has caused some countries to encounter many problems in different areas such as cultural invasion and the decline of nations' sovereignty by satellite communications. In this article, suggestions are offered concerning the way governments and international organizations can help deal with the shortcomings related to the law of space. First, states' responsibilities as to enacting rightful regulations of satellite communications through treaties, regional or international agreements and reconsidering present regulations of international law are discussed. Second, the prominent role of international organizations including the UN General Assembly, the UNESCO and the International Telecommunication Union and the European Union as well as satellite organizations like Intelsat, Inmarsat and satellite regional organizations like Eutelsat, Arabsat, etc. and satellite local organizations like Insat in India and Cumsat in the United States is critically reviewed. Finally, some suggestions are offered on how to achieve parallel development of satellite communication on both technical and legal sides.*

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## I. The legal sources of satellite communications

International norm: as a result of diversity in international interaction in the field of mutual interaction among governments and international organizations it results in customary rules that can efficiently solve many legal challenges in satellite communications and can be as a base for drawing up contracts or international conventions in this field. Respecting cultures and civilizations in communications as well as freedom of speech before having a basis can be extracted from international norm. International agreements: developments in new communication technology especially

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satellites remarkable growth has led governments to draw up bilateral or multilateral agreements in the field of rights and laws relevant to satellite broadcasting. Nowadays many countries regulate their own communication rights through this, especially multilateral communication contracts that have resulted in international.

**International conventions:** international organizations themselves have allocated a significant portion of previous subjects. International conventions are legal bases and regulatory framework for some of international organizations, like what existed in international telecommunication union according to international convention objectives.

**Declarations and recommendations:** although those declarations and recommendations which are mostly issued from the United Nations General Assembly, UNESCO and some international organizations are small in number and are controversial, but they have a significant place in sources of communication rights.

**Judicial procedure:** Different decrees obtained from international courts and even national courts which have been issued in the field of international communications can be as a source of satellite communication rights. The decrees issued from European court of justice have a highly prominent role among other courts.

**General principles of law:** in previous discussions the principles on the ground of violation prohibition, lack of interventions in the internal affairs of others, nation's jurisdiction on their own destiny, etc. have been mentioned that could meet satellite legal needs to some extent.

A few points should be explained according to above mentioned sources. At first, although most sources of international law contained in article 38 statute of international court of Justice are considered here as our source and even as a complement for legal doctrine, they aren't remarkable in number. For example the international norm is rarely used. Declarations and recommendations are few in number and conventions are rarely found.

Moreover, most regulations arising from sources governing communications are common. So obtaining other sources in the field of satellite communications is difficult except three or four declarations as well as some arranged international contracts by members of satellite organizations.

In addition, some existing regulations aren't compatible with current status of satellite communications especially ever-increasing development

of modern mass media and they face satellite communications with legal challenges instead of being helpful, for example, when a country claims that direct television broadcasting by satellites can interfere in its internal affairs or can threaten its national sovereignty. So in this case what will happen to freedom of information and freedom of expression which are accepted as internationally customary rules and are included in some important international documents such as universal declaration of human rights and some other statements. So, aren't such cases an indicative of inconsistency in general rules governing communications? And is it possible to solve legal problems of ever-increasing satellite communication by maintaining current rules of international law?

## **II. Recommendations to deal with the gaps**

To answer above –mentioned questions it is necessary to say that the current rules of international law can never provide answers to legal problems of satellite communications and a major change in the rules of international law is required.

In fact, enacting laws and regulations in vacuum has no legal value. It is not to say, on the other hand, that laws and regulations must follow social, political or economical events, but it should be noted that although being practical in satellite communication law may not be helpful, even idealism cannot solve any problems.

Nowadays it is not requested from communities to match themselves with the rules of non-aggression or non-interference even if they don't understand the word "border".

Wave is not like an airplane that can be controlled from the place it takes off to the landing place. New technology is unable to prevent unwanted broadcasting of satellite programs. Meanwhile the subject of unwanted broadcasting is considered as the cause of many present disputes. Leonardo Marks, universal communications specialist says "red lines on the map, divide the borders of a country from another country but there isn't such a red line for satellite. Other geographical borders are unable to control the flow of information.

To solve these problems how can one insist on rules which have been imposed for geographical borders not for communication borders. For

solving legal problems of satellite communications following strategies are recommended:

**A. Conceptual change in some rules of international law**

As it was discussed, some general principles of law such as non-interference in the internal affairs of others non-aggression, etc can't solve legal problems of satellite communications. So adjustment in the concept of some rules of international law helps to regulate the relationship between senders and recipients of satellite programs. For example prohibition of assault can be merely considered as a military assault and shouldn't be transmitted as aggression of satellite signals to other regions. Especially, diagnosing material and spiritual elements in the realm of communication is more difficult than military assault to geographical borders of other countries.

On the other hand, any kind of communication activity in other countries shouldn't be considered as a kind of intervention in the internal affairs of that country; otherwise, broadcasting satellite radio in each country can be banned under name of intervention.

While in international communication norm, nobody can consider broadcasting radio programs as an intervention in its own affairs, it, unquestionably, has severe effects in other countries. Planning more practical laws, in this regard, can be helpful.

The legal system of the current structure of communications and international organizations in the face of ever-increasing problems of satellite communication laws isn't effective enough and should be coordinated with new international order of communication and information.

**B. Forming institution of international satellite communication under United Nations Organization**

The truth is that UNESCO and international telecommunication union are both dependant on the United Nations and the committee for peaceful use of space that works under the U.N. General Assembly hasn't succeeded in the development of communication laws so far.

International Telecommunication Union, while the range of its activities isn't limited to satellite communication, even it has paid more attention to technical issues of satellite communication rather than the legal aspects of satellite communication. UNESCO, first, has a very broad duty in communication. Secondly the principles that has been set in this field and has

been issued in the form of statement by UNESCO, do not have enough executive guarantee.

It must be noted that a free and balanced flow of information and communication which was replaced for free flow of information and then new international order of information and communication which is UNESCO's achievements of numerous meetings containing ideal fundamentals was less true.

The committee for the peaceful use of space is made up of two sub-committees, namely, legal and scientific, technical so far. It hasn't done anything important except to issue several resolutions and to name the year of communications and the year of international space and so on.

Obviously the three above mentioned institutions have been able to impact positively the field of satellite communication. But the importance of satellite communication will increasingly expand with the development of computer networks and the internet, and the establishment of an organization that can specially solve legal problems of satellite communication and fundamentally complete legislative process and criteria making in such an organization is urgently needed.

**C. Creating the international commission on satellite communications**

In different fields of international law, such as the law of treaties, law of the sea and labor international law, you can encounter with different treaties and commissions where the details of their related subjects are considered. But we don't have especial convention in satellite communication law except international communication conventions, so we need to create satellite communication convention and to enact applied regulations in this scope.

**D. Making international units more active which is better to encourage international units and regulations**

**E. Satellite organization must pay more attention to activating regional satellite organizations**

Moreover, enact regulations to encourage international and regional satellite organizations especially Intelsat, Eutelsat, Inmarsat, etc. More attention must be paid to legal aspects of satellite communication. However, the fact is that unfortunately more attention has been directed to technical and economical aspects.

F. Teaching satellite communication law in scientific and academic centers.

G. Avoiding excess and wastage in enacting regulations related to communication

It means that the developed countries shouldn't impose their opinions for enacting regulations in this field.

H. Enabling International Court of Justice

Otherwise creating independent institution for solving satellite communication disputes.

### **III. Conclusion**

Considering the beneficial role of satellites in human society and social progress from positive aspects of satellites, controlling any activity is prohibited unless international law issues allowance because the main purpose of international law is, respecting human rights, maintaining national and international security and public order, which is emphasized in paragraph 3 of Article 19 of the International Covenant on Civil unless there is a kind of political compromise.

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