CHAPTER IV

STATE SOVEREIGNTY AND DIRECT BROADCAST SATELLITE

The problem of sovereignty bedevils the entire fabric of international law. Ever since the beginning of the debates on direct broadcast satellite, the concept of sovereignty has been an extremely crucial issue and it still remains unresolved. In fact DBS activities, by adding new dimensions, have made the issue more complex. The impact of DBS technology has helped to transform traditional views about sovereignty, which have hitherto been largely understood and expressed in geographic or spatial terms, into a new kind of concern about sovereignty, one that can be defined as a concern about information sovereignty or integrity of states.¹ The modern concept of sovereignty means not only that a state has a right to maintain its territorial integrity and political independence, it also includes its right to protect national culture, values, and economic and private interests. The threat to these elements of statehood does not come from the force of arms but from the invasion of ideas to which DBS is a powerful medium.² The purpose of this chapter is to discuss


sovereignty in its principal wider aspects, as may be affected by DBS activities.

**GENESIS OF THE CONCEPT OF SOVEREIGNTY**

To appreciate the problem in perspective, it is desirable to describe briefly the genesis and development of the concept of sovereignty. The genesis of the doctrine of sovereignty can be traced back to the sixteenth century when after a long struggle between the Pope and the Emperor the authority of the church declined. The European kings refused to recognize any superior, both within and without their realms and jurists came to their aid with a legal theory which served both as a weapon of defence and as a justification for the claim of royal supremacy. To this end Jean Bodin's formulations of sovereignty in 1576 as "the absolute and perpetual power within the state, that is, the greatest power to command and of the sovereign as one who, after God, acknowledges no one greater than himself", came to be recognized.

Taking a realistic view of the emergence of constitutional government, thinkers started propounding the theory that absolute and uncontrollable power need not be

4. Ibid.
vested in a single individual. Brierly notes that "... sovereignty, under the impulsion of the historical developments which took place in the character of European Governments, came to be regarded as power absolute and above the law, and eventually when it became impossible to fix the location of such power in any definite person or organ within the state, as the attribute of the personified state itself." 6 This theory paid least regard to the inter-state relations and became an unacceptable theory for a world which contained numerous states.

TERRITORIAL SOVEREIGNTY

With the increase of intercourse and interdependence between states, theoreticians realised the need to make the concept of sovereignty practicable. Hence the concept of "territorial sovereignty" was evolved which signifies that within their territorial domain jurisdiction is exercised by the states over persons and property to the exclusion of other states. 7 Theoreticians agree that sovereignty means control over citizens and territory, the use of sharable resources and amenities (high seas, outer space), and the capacity to establish relations with other states. 8

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8. Levi, n.5 ,p.87
In the Island of Palmas case Arbitrator Max Huber described territorial sovereignty in these terms:

"Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the function of a state". 9

Thus Max Huber defined sovereignty as independence. This clearly signifies that sovereignty of a state and its subjection to international law are compatible, because international law is not controlled by another state. Kelsen considers sovereignty of a state as a quality of the state. According to him sovereignty is of importance only in so far as it can serve the state to maintain its actual power by exactly defining, in laws, how that state’s citizens should best be ruled.10

States rely heavily upon sovereignty because it serves their legal, political, social and even propagandist ends. While powerful states rely on it to perpetuate their predominance, weak states rely on it to protect their interests against violations by the powerful states.11 The communist or socialist states seeking to insulate their socio-political systems consider sovereignty to be the central point of all international legal principles and


11. See, Levi, n.5, pp.87-88
norms, and are very strongly attached to sovereignty. For them sovereignty means a state’s complete authority over its own territory and independence in international relations. Accordingly this principle obliges a state to respect the full authority of another state over its own territory and its independence from other states and hence the principle that sovereign states are juridically equal.\(^\text{12}\)

However, it is a fact of international relations that no state, not even the most powerful one, is absolutely independent. While sovereignty of a state in its internal aspects means exercise of supreme authority within its territory, in its external aspects, it is subject to many limitations, some of which are self imposed.\(^\text{13}\)

**SOVEREIGN EQUALITY OF STATES**

The principle of sovereign equality of states consists of two basic components, namely, respect for the sovereignty of all states and their equal rights in international relations. This principle finds place in the United Nations Charter, Article 2 (I), which provides that "The organization is based on the principle of the sovereign equality of all its members". The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States defined the principle of sovereign

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equality of states in these terms: "All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature".14

Particularly, sovereign equality includes the following propositions:

(a) Each state has the duty to respect the sovereignty of other states;

(b) Each state has a duty to respect the territorial integrity and political independence of other states;

(c) Each state has a right to freely choose and develop its own political, social, economic and cultural systems;

(d) All states are juridically equal. They have equal rights and obligations as members of the international community irrespective of differences in their economic, social and political systems;

(e) Each state constitutes a subject of international law from the time of its emergence;

(f) Each state has a right to participate in the resolution of international questions that affect its interests in some way;

(g) Each state possesses one vote at international conferences and international organizations;

(h) States create norms of international law through agreements on the basis of equal rights. No group of states can impose on other states norms of international law that it itself creates.15


15. See, Tunkin, n.12, pp.137-38
In reality the legal equality of states does not imply their actual equality. There are certain contradictions in between the principle of sovereign equality of states and there actual equality. The developing countries argue that in the face of wide political and economic inequalities among states the objectives of sovereign equality have not yet been achieved. Anand states that despite all the assertions of the principle of equality and teachings or preachings of the classical jurists, the principle was in fact more honoured in breach than in observance.\(^\text{16}\) His proposition can best be measured by looking at the cumulative erosions of sovereign equality by the actions taken by the more powerful member states both within and outside the United Nations over the years on a variety of occasions.

**SOVEREIGNTY OVER THE AIR SPACE**

The aviation activities in the beginning of the century led to the claim of sovereignty of states over their superjacent air space. As early as in 1906, at the Ghent session of the Institut de Droit International there were those who pleaded for the principle of air sovereignty.\(^\text{17}\) Similarly, the Air Law Congress held in 1910 at Verona declared itself decidedly in favour of the theory of

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16. Anand, n.3, p.54
sovereignty, and the International Law Association at its 1913 Madrid session accepted a formula based on the principle of air sovereignty.\(^{18}\) Prior to the First World War there were a number of theories with regard to the air space over occupied territory and over waters subject to state sovereignty.

The First World War suddenly brought home the vital importance of the legal status of the air, and the experience of that war made it certain that states would accept nothing less than full sovereignty over the air space over their territory and territorial waters.\(^{19}\) This doctrine was incorporated into law by an international Convention on Air Navigation held at Paris in 1919. Article I of the Paris Convention states:

"The high contracting parties recognise that every power has complete and exclusive sovereignty over the air space above its territory".

This principle was reaffirmed in the Chicago Convention on International Civil Aviation Organization, 1944, and also in the internal legislations of various countries. For example, Article I of the 1983 USSR Air Code states that "the USSR possesses full and exclusive sovereignty over the air space above the USSR. The term air space of the USSR

\(^{18}\) Ibid, p.52

\(^{19}\) Brierly, n.6 ,p.218
refers to the space above its land and water territories, including the territorial waters of USSR". 20 Similarly, Article I of the Swedish-Norwegian Convention of May 1923 provides that "the contracting states mutually acknowledge each other's sovereignty over the entire air space above their land and sea territory". 21

Gal States that the Chicago Convention embodies the principle of Article I of the Paris Convention and that therefore if there had been any doubts whether the Paris Convention embodied a customary law principle, this time any such doubts were laid to rest. 22 The object of the Chicago Convention was also to promote world-wide arrangements governing commercial air traffic rights as well as technical and navigational matters relating to international civil aviation. To this end the Chicago Conference sought to evolve a consensus among all participant states on what is now known as the "Five Freedoms of the Air", namely, the rights of the airlines of each state to

1. Fly across foreign territory without landing;
2. land for non-traffic purposes;
3. disembark in a foreign country traffic originating in the state of origin of the aircraft;

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20. Tunkin, n.12, p.447
21. Gal, n.17,p.56
22. Ibid,p.57
4. pick up in a foreign country traffic destined for the state of origin of the aircraft;
5. carry traffic between two foreign countries.23

An important point under the Chicago Convention was that state aircraft, including government military aircraft, were to have no rights of flight over or landing in the territory of other states without special authorisation of the subjacent state.24 Another point is that a number of regulations of aviation were derived from the concept of sovereignty over the air space. Also several states laid down their sovereignty over the air space in their constitution or other fundamental enactment.25

PRINCIPLE OF SOVEREIGNTY IN OUTER SPACE

From the foregoing it can be inferred that the complete and exclusive sovereignty of a state over its air space is established by the international conventions, bilateral agreements and the laws of all the states. However, the question whether state sovereignty extends to outer space came to be settled by the Outer Space Treaty, 1967. Article 2 of the Outer Space Treaty provides that "Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means".

23. Starke, n.7, p.197
24. Ibid, p.200
25. See, Gal, n.17, pp.57-58

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The above text provides that outer space is an international area, no part of which can be appropriated by a state or group of states. However, the problem is that up to now no demarcation between air space and outer space has been drawn.\(^{26}\) So, from a practical point of view, it is not clear as to where the national regime of air space ends and the international regime of outer space begins. The 1967 Space Treaty and other international instruments regulating the exploration and use of outer space make much use of the concepts of outer space and space activity, but do not contain their definitions.

Another point is that the term "sovereignty" is mentioned only in the 1967 Space Treaty. All other conventions and agreements which were evolved on the basis of the 1967 Space Treaty, namely, The Rescue Agreement, The Liability Convention, The Registration Convention, and The Moon Agreement do not specifically mention the term sovereignty.

However, even if the term sovereignty has not been mentioned, the rules of space law often are adopted from the springboard of the principle of sovereignty, since the texts of the space law conventions in many places refer to the rules of international law, which forms the body of non treaty space law.\(^{27}\) Attribution to the various obligations

\(^{26}\) See, pp.110-116 of this study.
\(^{27}\) Reijnen, n.10, p.10
and state responsibility of particular states under the space law conventions corresponds to the exercise of sovereign rights.

**OUTER SPACE AS "RES COMMUNIS OMNIUM"**

The principle of the *res communis omnium* status of outer space has been widely supported in theory and in official declarations. The preamble of the 1967 Space Treaty provides that the progress of the exploration of outer space and its use for peaceful purposes is the common interest of all mankind. Article 2 of the Treaty stipulates that "Outer space including the Moon and other celestial bodies is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means". In a sense Article 2 is a kind of restriction to the principle of freedom of uses. It rejects the proposition that outer space should be regarded as *res nullius*, so that its ownership could be claimed through

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28. *res communis omnium* in Roman law denotes a thing in common ownership. In the western theory of international law, the term is often used to substantiate the freedom of high seas. See, Murad Saifulin, ed. *A Dictionary of International law*, (Moscow, 1986) p. 212

29. *res nullius* in Roman law refers to a thing which is nobody’s property but may become the property of a person who seizes it first. Ibid.
On the basis of this proposition some jurists hold that by prohibiting appropriation of outer space the Space Treaty confirms that outer space should be accepted as res communis omnium. For example, Gal holds that "outer space is, morally speaking, the common property of all mankind, because the Space Treaty regards the space exploration and the use of the cosmic space as "the joint venture of all mankind" declaring as it does, the right of all states, without discrimination and based on sovereign equality, to carry on space activities. This is the meaning of the term res communis omnium and nothing else."\(^{31}\)

Reflecting this concept Article I of the Space Treaty stipulates that the exploration and uses of outer space "shall be carried out for the benefit and in the interest of all the countries, irrespective of their degree of economic and scientific development, and shall be the province of all mankind". Similarly, Article XI of the Agreement Governing the Activities on the Moon and other Celestial Bodies of States adopted by the United Nations General Assembly in 1979 provides that 'The Moon and its


natural resources are the common heritage of mankind'.

Paragraph 5 of the same Article, in accordance with Article XVIII, provides that "States parties to this Agreement undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible".

A serious question about the principle of sovereignty in outer space was posed by the equatorial countries. In 1975, Colombia announced a claim of sovereignty over the portion of the geostationary orbit over its territory. In 1976, a meeting of the equatorial states was held in Bogota, in which representatives from Colombia, Ecuador, Brazil, Congo, Zaire, Uganda, Kenya and Indonesia signed a declaration proclaiming their sovereignty over the respective portions of the orbit above their territories.

These claims were rejected by the developed countries and did not receive much support from other developing countries. Similarly, at the 1977 ITU Conference the demand of the equatorial countries was not accepted. To which these countries stated that they reserve the right to take


whatever step they may consider fair to preserve and secure the observance of their rights.\textsuperscript{34}

This issue raised legal concern and was considered as a threat to the principle of freedom of outer space.\textsuperscript{35} However, although the claims have been rejected, the need for broader and immediate co-operation between the developed and developing countries is highlighted. As Gorove states "The adoption of the Bogota Declaration by the equatorial states was intended to send a signal to the United States and the Soviet Union. While these equatorial states are themselves unable to explore outer space they are concerned and interested in the exploration of space without necessarily challenging the superpowers".\textsuperscript{36} Goedhuis observes that "the only chance of warding off this danger (the Bogota Declaration) lies in a stronger and speedier pursuit of international co-operation between the have’s and the Have not’s".\textsuperscript{37}

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\item \textsuperscript{34} See, Richrd E. Butler, "World Administrative Radio Conference for Planning Broadcasting Satellite Service" \textit{Journal of Space Law}, Vol.5 (1977), pp.95-96
\item \textsuperscript{36} Stephen Gorove, "Treaty Law and Outer Space: The Role of the United Nations". Panel Discussion Cosponsored by the American Society of International Law and the Association of US Members of the IISL, April 12, 1986, p.385
\item \textsuperscript{37} Goedhuis, n.35, p.41
\end{itemize}
It is of importance that in the last thirty four years, after the first Sputnik was launched in October 1957, no state, except the equatorial states, has put forward exclusive claims of sovereignty in outer space. Instead, they have explicitly and constantly acknowledged the binding character of the principles of functions of non-appropriation.

PRINCIPLE OF SOVEREIGNTY AND DBS

The capacity of direct broadcast satellite' to send a television signal across national borders directly into homes has already started bringing about fundamental changes in established national broadcasting systems. For example, in India due to lack of any regulation for cable television independent broadcasters, who can buy satellite transponders, are challenging established broadcasting systems by installing dish antennae and distributing foreign broadcasts. This has caused governments to feel greatly concerned over their role to preserve state sovereignty. Hence debates on DBS over the last 25 years have tended to focus more directly on issues of sovereignty. While a narrow interpretation of the concept of sovereignty might

38. The Times of India, New Delhi, Saturday, January 5 1991

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include only the right of a nation to protect its borders from military aggression, a broad interpretation encompasses a state's right to control its physical, economic, social, and cultural environment within those borders. 39

It is pertinent to determine the various dimensions of sovereignty in the context of direct satellite broadcasting.

In this context reference should be made to the Final Act of the Conference on Security and Cooperation in Europe 1975, widely known as the Helsinki Agreement. The Final Act provides that:

"The participating states will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every state to juridical equality, to territorial integrity and to freedom and political independence. They will also respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations". 40


NON-INTERVENTION IN INTERNAL AFFAIRS

One of the basic traits of sovereignty is the international recognition of the legal right of a state that grants equality to it to act independently without any outside interference in its external and internal affairs. Direct satellite broadcasting causes interference both intentionally and unintentionally. While intentional interference is designed by a foreign state to serve its political, economic, cultural or ideological interests, intentional interference is caused due to the technical short-comings of satellite technology, that is the problem of "spillover".41

The concern here is the intentional interference. The United Nations General Assembly passed a number of resolutions concerning foreign interference in the domestic affairs of a state. These resolutions provide the background against which DBS issues have been discussed. "The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty", recognizing the full observance of principle of non-intervention of states in the

41. The beam transmitted from a broadcast satellite has a basically cylindrical shape with a very gradual fall-off from the central point. Thus the beam spills into parts of neighbouring countries that stand within the circular field. See, Martin E.Gold,"Direct Broadcast Satellites : Implications for Less Developed Countries and for World Order" Virginia Journal of International Law, Vol.12, (1971) p.80
 internal and external affairs of other states provides that all forms of direct or indirect intervention constitute a violation of the Charter of the United Nations.\textsuperscript{42} Similarly Resolution 31/91 of the General Assembly expresses its concern for the prohibition of any form of interference overt or covert, direct or indirect.....any act of military, political, economic or other form of intervention in the internal or external affairs of states.\textsuperscript{43} The Resolution reiterates 'the inalienable sovereign right of every state to determine freely, and without any form of foreign interference, its political, social and economic system and its relations with other states and international organizations'.\textsuperscript{44}

The 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States reaffirms the previous resolutions and declarations and considers the principle of non-interference and non-intervention vital for the maintenance of international

\textsuperscript{42} UNGA, "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty" Resolution 2131 (XX), 21 December 1965, Preamble.

\textsuperscript{43} UNGA, "Non-interference in the Internal Affairs of States" Resolution 31/91, 14 December 1976, Article, 3 and 4.

\textsuperscript{44} Ibid, Article 1.
peace and security. The concern for the non-intervention and non-interference also finds expression in "Principles Governing the Use by States of Artificial Earth Satellites for International Television Broadcasting", which provides that "activities in the field of international direct television broadcasting by satellite should carried out in a manner compatible with the sovereign rights of states, including the principle of non-intervention..."

THE WORKING GROUP ON DIRECT BROADCAST SATELLITE (WGDBS)

The principle of non-interference has been one of the most debated issues in the WGDBS. The Second session of the WGDBS included the concern to ensure the principles of national sovereignty and non-interference in the internal affairs of states. The third session noted that "improper use of direct broadcasting via satellite could directly and seriously affect the legitimate interests of states in whose territory foreign satellite television broadcasts might be received". In this session some of the delegations were


46. Adopted by the UN General Assembly at its 100th Plenary meeting on 10 December 1982. For Text see, UN Doc.A/AC.105/358, 1986, pp.230-32

47. Ibid, Purposes and Objectives, p.230

of the opinion that the legitimate rights and interests of both the transmitting state and the receiving state should be safeguarded.\textsuperscript{49}

The report of the fourth session mainly consisted of two different opinions. Certain delegations placed emphasis on the supreme importance of protecting the sovereignty of states from external interference and of avoiding the international conflict. Other delegations expressed the need to promote the principle of freedom of speech and free flow of information and ideas, as reflected in the Universal Declaration of Human Rights and other international instruments.\textsuperscript{50} This dilemma of confrontation of sovereignty and free flow of information was discussed further in the fifth session of the working group. Most delegations were of the opinion that direct television broadcasting by satellite should be conducted, bearing in mind the need to ensure the free flow of information, on the basis of strict respect for the sovereign right of states, and of the principle of non-intervention in the internal affairs of states, bearing in mind different cultural values.\textsuperscript{51}

\textsuperscript{49} Ibid, pp.6-7


Apart from these reports of the Working Groups the Working papers presented by some of the states reflect widely differing views regarding the principle of non-interference in domestic affairs of states. The most detailed proposal containing specific guidelines for regulation of DBS to avoid interference in internal affairs of a receiving state was presented by the French delegation. The French paper, inter alia, forbade direct intervention in internal conflicts, propaganda liable to be prejudicial to the maintenance of international peace or internal peace, and propaganda that might be an incitement. The proposal went on to provide that broadcasts must respect the diverse cultures, religions or philosophical doctrines existing in the areas of reception, and that in particular, programmes tending to destroy civilizations, cultures, religions or traditions shall be forbidden.

The paper presented by Canada-Sweden included a statement that direct television broadcasting by satellite should be carried out in a manner compatible with the maintenance of international peace and security. Such


53. Ibid.
broadcasting should be conducted on the basis of respect for the principles of sovereignty of states, non-intervention and equality and in the interest of promoting the free flow of information. 54

The Soviet proposal and the United States proposal contained views diametrically opposed to each other. While the Soviet proposal emphasized that DBS broadcasts causing potentially harmful interference to other states would be deemed illegal and the injured state might take, in respect of such broadcasts, measures which are recognized as legal under international law. 55 The United States proposal stated that such activity should be carried out in a manner compatible with the maintenance of international peace and security and to enhance co-operation, mutual understanding and friendly relations. 56 The United States proposal nowhere mentioned the principle of non-intervention or non-interference. It is worth noting that the 1982 Principles Governing the Use by States of Artificial Earth Satellites for International Television Broadcasting was adopted with the United States voting against it.

54. Paper by Canada and Sweden, UN Doc, A/AC. 105/127, Annex III, n.51

55. See, Paper presented by the delegation of the USSR to the Working Group on Direct Broadcast Satellites, in UN Doc. A/AC. 105/127, Annex II, n.51

56. See, the Paper of United States of America, in UN Doc. A/AC.105/127, Annex, IV, n.51
The foregoing shows that the principle of non-interference and non-intervention, a basic trait of political sovereignty, finds expression in numerous instruments and debates relating to direct satellite broadcasting, even in preference to the doctrine of free flow of information.

SOVEREIGNTY IN CULTURAL PERSPECTIVE

Cross-cultural influences have occurred throughout human history, but because of the rapid pace of change and the media's potential to influence and standardize culture, nations will have to take care to ensure that what is most distinctive and evolved in their own cultures must be preserved, rather than giving way to what is most common place. The concept of cultural sovereignty, in this context, involves the right of a state to develop and preserve its national culture from outside influences. The capability of DBS to send programmes across national borders has caused a serious concern to many countries because of their apprehensions, often well founded, that a sharp increase in foreign programmes will not only undermine their own culture but also affect the life style and values.

of the people. This, bringing of unwelcome structural changes in society, will eventually impair the national identity. Hence the concept of cultural sovereignty finds expression in numerous statements, UN documents and international agreements.

The United Nations General Assembly Resolution 3148 (XXVIII) explicitly states that, the General Assembly:

Affirming the sovereign right of each state to formulate and implement, in accordance with its own conditions and national requirements, the policies and measures conducive to the enhancement of its cultural values and national heritage,

Considering that the value and dignity of each culture as well as the ability to preserve and develop its distinctive character is a basic right of all countries and peoples,

Convinced that on the one hand, intensified efforts must be made to prevent the misuse or abuse of scientific and technological developments, which endangers the distinctive character of all cultures, and that, on the other hand, all necessary steps have to be taken towards the preservation enrichment and further development of national cultures and ways of life,

Recognizes that contacts and exchanges among various cultures, conducted on the basis of equality and with due regard to the principle of sovereignty of states, may positively contribute to the enrichment and development of national cultures and regional cultural values.\(^{58}\)

\(^{58}\) UNGA, Preservation and Further development of Cultural Values, Resolution 3148 (XXVIII), 14 December 1973, Preamble.
Resolution 36/56 called upon all nations to make every effort to use the achievements of science and technology in order to promote peaceful social, economic and cultural development and progress. 59

Apart from these resolutions various United Nations Declarations also recognize cultural sovereignty. The "Declaration on the Inadmissibility and Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty", 1965 states that:

all peoples have an inalienable right to complete freedom the exercise of their sovereignty and the integrity of their national territory and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development." 60

Similarly, the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States adopted in 1981 declares that the principle of non-intervention and non-interference in the internal and external affairs of states includes:

Sovereignty, political independence, territorial integrity, national unity and security of all states, as well as national identity and cultural heritage of their peoples;


60. See, n.42, Preamble.
The sovereign and inalienable right of a state to determine freely its own cultural and social systems without outside intervention, interference, subversion, coercion or threat in any form whatsoever;

The right of states and peoples to have free access to information and to develop fully, without interference, their system of information and mass media and to use their information media in order to promote their social, political, economic and cultural interests.

Similar concern was expressed in The 1970 "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". The Declaration states, 'Inter alia' that the principle of non-intervention in domestic affairs of states recognizes that no state has the right to intervene directly or indirectly in the political, economic and cultural elements of another state.

The UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, The Spread of Education and Greater Cultural Exchange while recognizing the fact that the development of communication satellites capable of broadcasting programmes for community or individual reception establishes a new dimension in

61. See, n.45, Article 1. Emphasis added

international communications, made several statements regarding the protection of cultural sovereignty. For example, Article II of the Declaration states that "satellite broadcasting shall respect the sovereignty and equality of all states". Further, Article VII provides:

1. The objective of satellite broadcasting for the promotion of cultural exchange is to foster greater contact and mutual understanding between peoples of permitting audiences to enjoy, on an unprecedented scale, programmes on each other's social and cultural life including artistic performances and sporting and other events.

2. Cultural programmes, while promoting the enrichment of all cultures, should respect the distinctive character the value and the dignity of each, and the right of all countries and peoples to preserve their cultures as part of the common heritage of mankind.

While the Declaration provides that the objective of satellite broadcasting for the free flow of information is to ensure the widest possible dissemination among the peoples of the world, it also provides that the


64. Ibid, Article II.

65. Ibid, Article VII.

distinctive character, the value and the dignity of each culture should be respected.

The issue of protection of cultural sovereignty was also discussed by the debates of Working Groups on Direct Broadcast Satellite, (WGDBS) and in the working papers submitted to the WGDBS by various states. Representatives of various countries expressed their serious concern to imminent threat to their national cultures by direct satellite broadcasting. For example, the working paper submitted by the United Kingdom noted that while the free exchange of programmes may make a real contribution to mutual understanding, in countries whose domestic television services are relatively underdeveloped and where foreign television broadcasts comprise the main source of information, it may be subject to cultural and political pressures of which they are scarcely aware. 67

The French paper entitled "Proposed Principles to Govern Direct Broadcasts from Communication Satellites" presented before the Working Group in 1970, sought to provide that potential broadcasters "shall respect the sovereignty of states that do not wish their territory to be covered by these broadcasts". 68 Among the items of forbidden


68. See, n.52, p.29

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conduct enumerated in the French paper, were the programmes tending to destroy civilizations, cultures, religions or traditions. The paper further affirmed that there was a duty to respect diverse cultures, religions, or philosophical doctrines existing in receiving areas.  

Representatives from developing countries, expressing concern over the adverse effects that DBS television programmes could have on vulnerable cultures, often pleaded that cultural sovereignty was fundamental to their national sovereignty. They asserted that television broadcasting by satellite must be subject to prior agreement between the sending and receiving states and that cultural values of each country must be respected.  

SOVEREIGNTY IN ECONOMIC PERSPECTIVE 

The Charter of Economic rights and Duties of States adopted by the UN General Assembly in 1974, recognizes" the need to develop a system of international economic relations on the basis of sovereign equality". The Charter further provides that: 

"Every state has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in

69. Ibid, p.30  
70. See, UNGA, GOPUOS, Verbatim Record of the Two Hundred and Thirteenth Meeting, UN Doc. A/AC.105/PV 213, 15 July 1980, p.11.  
71. UNGA, Charter of Economic Rights and Duties of States, Resolution 3281 (XXIX), 12 December 1974, Preamble.
accordance with the will of its people without outside interference, coercion or threat in any form whatever”. 72

Every state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities. 73

It is in this context in which we discuss here the economic implications of DBS that affect national sovereignty. While DBS technology holds out the hope of promoting the implementation of the new international economic order it may be detrimental to the economic integrity of the programme receiving states, especially to the economy of the developing nations.

COMMERCIAL ADVERTISING

Transnational advertisements by DBS may have as its objective a change in consumer behaviour in favour of a product that the programme receiving nation is unable to produce. Thus it may well affect the social and economic fabric and may lead to commodity imperialism resulting in internal discontent among the people. Another and perhaps more directly adverse material impact could be that suffered by local industries in the face of foreign advertisements. 74 In other words, commercial advertisements

73. Ibid, Article 2 (I)

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by DBS could pose a threat to the economic structure of a nation by seeking to displace local products and industries. As noted by the European Broadcasting Union (EBU), the advent of DBS will increase the penetration of advertising from abroad. This penetration may have economic repercussions.\textsuperscript{75}

For this reason even some of the developed countries which are less vulnerable to the effects of commercial advertisements, ban or severely limit foreign commercial advertisements over their domestic television. For instance, France, Austria, and Switzerland maintain a total ban on advertising for alcoholic beverages. Similarly, German broadcasters are prohibited from broadcasting commercial advertisements for medicines for which prescriptions are required.\textsuperscript{76}

Aware of the implications of television advertising broadcast by DBS with respect, \textit{inter alia}, to protection of consumers the EBU General Assembly unanimously adopted the Declaration of Principles Regarding Commercial Television Advertising Broadcast by DBS in 1983. Article 1 of the Declaration provides that "the member organizations of the


\textsuperscript{76} See, Taishoff, n.74, pp.39-40
EBU recall that it is the duty of an EBU member using DBS to comply with the domestic law applicable to it in its country, even though presumably, its law may very well differ from that of the receiving state.77

Almost all the developed countries have got national laws relating to advertisement and such laws are respected in order to protect national economic sovereignty. But the developing states which have recently thrown the yoke of imperialism and yearn for an the opportunity to develop their economy are more apprehensive of the ill effects of commercial advertising by DBS due to the fact that these states are media backward and information backward. A UNESCO study notes that in developing country media advertising can be a motivating force for better living standards, but it also runs the risk of contributing to frustrations when economic means do not exist to satisfy expectations that may be stimulated.78

The UNESCO Declaration of Guiding principles states inter alia that "with respect to commercial advertising, its transmission shall be subject to specific agreement between

77. Ibid, p. 41
the originating and receiving countries".\textsuperscript{79} The Declaration further states that "in the preparation of programmes for direct broadcasting to other countries account shall be taken of differences in the national laws of the countries of reception".\textsuperscript{80} The 1982 DBS Principles call for assistance in the economic development particularly of developing countries.\textsuperscript{81} The Principles further provides that activities in the field of international direct television broadcasting by satellite should be carried out in a manner compatible with the sovereign rights of states, including the principle of non-intervention.\textsuperscript{82} Thus the Principles, while not including any provisions relating to commercial advertisement, provide a general guideline by stating that international co-operation and assistance for economic development should take cognizance of national sovereignty.

\textsuperscript{79} The UNESCO Declaration of Guiding Principles, n.63 Article IX (2)
\textsuperscript{80} Ibid, Article X
\textsuperscript{81} See, UNGA, "Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting", Resolution 37/92, Annex, 10 December, 1982, Purposes and Objectives.
\textsuperscript{82} Ibid.
REMOTE SENSING

Remote sensing is an activity that poses a serious threat to economic sovereignty. The Committee on the Peaceful Uses of Outer Space (COPUOS) for working purposes adopted the following definition:

"a system of methods for identifying the nature and/or determining the condition of objects on the earth's surface and of phenomena on, below or above it, by means of observations from airborne or spaceborne platforms". 83

The methods of remote sensing can be divided into two major categories, active and passive. The first category employs operational sensors, capable of generating radiation which, after interaction with objects of interest, return a signal which is measured by onboard receivers on a spacecraft in orbit. Passive methods are based on registering radiation from the earth's surface and

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In the following years the COPUOS further discussed the exact definition of remote sensing. Various member states presented draft principles to COPUOS. Some of these drafts gave a more detailed description of remote sensing, by referring to certain properties of the data derived from remote sensing techniques. It is considered that such properties are of importance for the formulation of an exact, generally acceptable definition of concept of remote sensing. However, there was no agreement on any single formula.


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atmosphere. They include visual observations and observations yielding photo and television pictures. 84

The main purpose of remote sensing is to gather hitherto untapped data about the earth, which can help inter alia to locate fishing grounds and major geological structures, some of which may be associated with ore deposits and potential oil-bearing structures. 85 Thus remote-sensing by satellites gather data that directly relate to a state's natural wealth and resources, with respect to which there is a national interest, recognized in numerous international resolutions. 86


85. Ibid, para.103

86. For example as early as in 1952 a resolution was passed which states that "bearing in mind the need for encouraging developing countries in the proper use and exploitation of their natural wealth and resources.....noting that the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the purposes and principles of the United nations.....recommends all member states to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any state over its natural resources.

See, UNGA Resolution, 626 (VII), 21 December 1952
See also:
Resolution 1314 (XIII), 12 December 1958
Resolution 1515 (XV), 15 December 1960
Resolution 1720 (XVI), 19 December 1961
Resolution 1803 (XVII), 14 December 1962
Resolution 2158 (XXI), 25 November 1966
Resolution 2692 (XXV), 11 December 1970
Resolution 3366 (XXIX), 17 December 1974
Resolution 3281 (XXIX), 12 December 1974
Developing countries are apprehensive about an unrestricted right to remote sensing of the earth's resources due to the fact that technologically advanced states may obtain valuable information about their economic resources. This could lead to economic exploitation based on superior, if not exclusive information. For example, experience shows that on the basis of advance information about natural resources foreign countries and multinational corporations have been procuring exploration or exploitation permits in developing countries thereby extracting tremendous amount of natural resources.

Although the launching of a remote sensing satellite can be a national or international venture, due to the orbital position of the satellite the data acquired are always international in nature. Since the territory of a state can be remote sensed without its prior consent the act of remote sensing constitutes violation of national sovereignty.

Quite possibly remote sensing as it is currently taking place on a world-wide level, could conflict with the norms of general international law such as sovereign equality, non-intervention and permanent sovereignty over natural resources. At any rate, it is not yet based on any

87. Graaf, in Reijnen, n.10, p.67
unanimously agreed set of rules within the United Nations. 88

It is true that a state has some defenses against certain adverse economic consequences of remote sensing of resources, based on the fact that its resources are physically within its territory and that it can control access to them through licenses and other regulations. 89 It must, however, be recognized that there are limits to these defenses, particularly for a developed country, since remote sensing is conducted by means other than radio waves and, where these are employed, they are difficult to jam. 90

It may be seen from this analysis that the influence of satellite technology has transformed the traditional views about state sovereignty. It would be in the interest of international community to use satellite technology giving "due respect" to the concept of national sovereignty.

88. The Committee on the Peaceful Uses of Outer Space has established a Working Group on remote sensing which has been studying the issue of remote sensing. See, Reports of the Working Group on Remote Sensing of the Earth by Satellites on the First to Third Sessions, UN Doc. A/AC.105/102, Annex III. See also, Information Concerning Existing or Planned National or Regional Ground Stations for Direct Reception of Remote Sensing Data from Satellites, UN Doc. A/AC. 105/155 and Add.1-6, Year, N.A. Report on the Fourteenth United Nations/FAO International Training Course on the Applications of Remote Sensing to Land Resources, Held in Co-operation with the Govt. of Italy, Rome November 1989, UN Doc. A/AC. 105/442.

89. Gotlieb, et.al, n.1, p.235

90. Ibid.
At the same time it should be considered that with the growing world interdependence a rigid approach to the concept of state sovereignty will hamper the development process. Hence the need for unanimously agreed norms.