CHAPTER VI

CONCLUSIONS

Direct broadcasting satellite (DBS) has limitless potential to serve the interest and welfare of mankind. Today people around the world are better informed and have greater access to diversified forms of cultures. The potential benefits of DBS are particularly important to the Third World owing to the fact that DBS has capabilities to link together isolated rural communities and distant areas of population. The world's first experimental direct broadcast satellite, ATS-6, launched by the United States National Aeronautic and Space Administration in 1974 in support of the Indian Satellite Instructional Television Experiment is an outstanding example of benefits of the direct broadcasting satellite to developing countries.

International satellite broadcasting is undertaken by a host of international, regional and national organizations. The activities of DBS are required to be regulated at some organizational level. Hence measures towards regulating the activities of DBS were initiated at international level well before their practical implications became known. The United Nations concern for the activities in outer space became evident shortly after the space age began in 1957. The task of developing regulations for DBS activities was undertaken
by COPUOS, ITU, and UNESCO. The United Nations General Assembly adopted numerous resolutions and established certain committees, sub-committees and working groups to study and develop regulations. COPUOS became the principal forum within the United Nations system to deliberate up and evolve policies and mechanisms to regulate DBS.

Since 1969 DBS has been a subject of continuing concern within the COPUOS. The COPUOS agenda includes a wide range of issues of technical, political and legal nature relating to DBS. In addition to its sub-committees, COPUOS, pursuant to General Assembly Resolution 2453 (XXIII), established a Working Group on Direct Broadcast Satellites. The Working Group met several times and evolved a draft resolution on principles governing the activities of DBS, which was subsequently approved by the General Assembly.

Being a UN body the remarkable feature of COPUOS and its sub-committees, is that their decisional process is the consensus method, where every effort is made to achieve unanimous or consensual agreements. This method enables the fora to establish highly flexible procedures for discussions, even if at times it prolongs discussions, and makes negotiations arduous. The most significant achievement of COPUOS so far has been the adoption of five international agreements which form the corpus of international space law as it exists today. These agreements are the Outer Space

In 1959 COPUOS called upon the International Telecommunication Union to undertake the responsibilities for allocation of frequencies for space communications. Since then ITU has been contributing to various technical aspects of communications. For example, technical questions relating to radio frequency spectrum, satellite parking slots in the geostationary orbit and the problem of spillover are being dealt with by ITU.

The geostationary orbit is considered a limited natural resource. Having limited slots in the orbit for placement of satellites, developing countries which have not yet developed satellite technology were in a disadvantageous position due to the "First come first served" principle. However, the decisions taken at the 1985 and 1988 sessions of the World Radio Administrative Conference on the Use of Geostationary Satellite Orbit (WARC-ORB) have served the purpose of the states which were not the first users of the resource. Thus with regard to technical problems relating to space communication ITU has been successful in bringing different interest groups together and has proved itself a prime forum for evolving international co-operation. Although states are not legally obliged to adhere to the ITU
regulations on the technical aspects, such regulations when accepted by the states have the force of treaties. Hence, ITU regulations can be said to have further extended the reach of international law into outer space.

UNESCO, on its part, has been contributing in the field of space communications through various studies, publications, meetings and seminars on the use of space communication for education, spread of information, cultural interaction and development. The Section of Free Flow of Information and Communication Research in the UNESCO Secretariat responsible for diverse aspects of international exchange of information and television news and programmes via communication satellites. Major efforts of UNESCO towards developing regulatory norms for satellite broadcasting include the "Declaration of Guiding Principles" 1973. It is now generally accepted that the UNESCO declaration has a normative character in that state conduct will be tested against the touchstone of the declaration.

Apart from COPUOS, ITU and UNESCO, a few other specialised agencies of the United Nations are involved in space activities. Also the role of intergovernmental and non-governmental organizations with regard to space activities cannot be ignored.

As the international community grew more and more acutely aware of the wider implications of direct satellite
broadcasting, the attention came to be focussed on relevance of the principles of the international space law. Two main pieces of legislative work of the United Nations as the foundation for the development of international space law have been the Declaration of Legal Principle Governing the Activities of States in the Exploration and Use of Outer Space and the 1967 Outer Space Treaty. As a sequel to the 1967 Space Treaty four more international agreements were concluded, to further develop and implement the basic rules laid down in the Space Treaty. These along with the Space Treaty, form the corpus of international space law. This corpus is by no means perfect. Each of these treaties has been a product of political compromises and technological restraints existing at the time of its adoption. Also, while international lawyers have attempted to define international space law, the problem of delimitation between air and outer space still remains unresolved. Yet, activities in outer space, not specifically governed by the five treaties, remain regulated by general international law, including the UN Charter, by virtue of Article 3 of the Outer Space Treaty of 1967.

Complete and exclusive sovereignty of a state over its air space is an established norm under international law. This has been laid down by the international conventions, bilateral agreements and the domestic laws of all states.
However, the 1967 Space Treaty has rendered outer space as a *res communis omnium*: the outer space is not subject to national appropriation by claims of sovereignty, by means of use or occupation or by any other means.

What has caused serious concern about the concept of state sovereignty is the capability of DBS to send broadcasts across national borders. The modern concept of sovereignty includes not only a state's right to maintain its territorial integrity and political independence, it also covers its right to protect its national cultural identity and economic integrity. Respect for sovereignty of all states and equal rights in their international relations are the two basic components of the principle of the sovereign equality of states. Any form of external interference in the political, social, economic or cultural elements of a state is considered as a violation of state sovereignty. The programme-receiving states, especially the developing countries, fear that foreign programmes will not only undermine their national programmes but also adversely affect the life styles and cultural values of their peoples. Similarly, commercial advertisements by DBS could pose a delicate threat to the economic structure of a programme receiving state by seeking to displace local products and industries.
The apprehensions of the programme-receiving states cannot be overlooked. Simply, the rights of a state cannot be ignored. Any approach that takes hard, critical look at the right of a state to preserve its sovereignty should be outright refuted. What is exactly required to resolve the issue, is mutual understanding and co-operation between the programme-sending and programme-receiving states. Without being sensitive to the apprehensions of a programme-receiving state, whose political, economic and cultural interests are at stake, any effort in the direction of developing international regulations will prove to be abortive.

Another issue which has stood out in the entire debate on DBS is the concept of free flow of information. The proponents of the concept argue that the right to send information across national borders was ensured as early as in 1948 in the Universal Declaration on Human Rights. Whereas the opponents of the concept plead that a foreign state can send broadcasts into a programme-receiving state in pursuit of ulterior motives. Hence broadcasts sent by a foreign state without prior consent of the programme-receiving state is a violation of state sovereignty.

The problem with regard to the concept of free flow of information is that it enables a foreign state to flush in any kind of information into a programme-receiving state. In
an era when the means of information are dominated and monopolized by a few technologically developed states, the free flow of information becomes an unrestrained liberty of these few to propagate their ideologies and interests. Thus the one way flow of information from developed to developing countries may have adverse implications for the latter.

International co-operation can only be built around an agreement on guiding principles to determine what constitutes appropriate information for a programme-receiving state. In a developing country where majority of population is illiterate and below poverty line, information regarding hygiene, health care, education and agriculture etc. can be said to be appropriate information. Whereas programmes containing propaganda against a programme-receiving state or its people may not pass the test of appropriate information, the subtle line that dealiennates sovereign sensitivities of programme-receiving states and the free flow of information doctrine is dictated by the principles of international responsibility of states.

It should be noted that the entire debate on various implications of direct broadcast satellites has been mainly between two distinct groups, i.e., countries, having achieved satellite technology, well ahead of others, which help themselves without restraint to certain resources which are expected to be shared by all members of the
international community collectively, dominate the current world information order, and countries from the Third World which not only lack satellite technology but also lack the basic infrastructure to enable them to gain access to this new frontier of technology. These states must develop infrastructure and train people to deal with technical issues relating to space communication at international fora such as ITU.

The major task of international lawyers is to make a value judgement as to what should constitute free flow of information as a human right in terms of propriety and needed, how to harmonize conflicting claims to free flow of information and to state sovereignty. More important, is to identify situations giving rise to international responsibility and work out to process the claims based on state responsibility. This study reflects an endeavour mainly to identify the broad dimensions of these tasks primarily in the context of the politico-legal debates of the concerned principal international organizations currently locked in with the DBS issues.