

THE DECLARATION OF BOGOTA

From 29 November to 3 December 1976, the equatorial states of Ecuador, Colombia, Brazil, Congo, Zaire, Uganda, Kenya, and Indonesia met in Bogotá, Colombia "with the purpose of studying the geostationary orbit that corresponds to their national terrestrial, sea, and insular territory and considered as a natural resource." Gabon and Somalia, also equatorial states, were not present. The "Declaration of the First Meeting of Equatorial Countries," also known as the Bogotá Declaration, was adopted on 3 December 1976. The declaration claimed the right of equatorial states to exercise national sovereignty over the arcs of the geostationary orbit (GSO) that are directly over their territories. This claim is in apparent contravention to the 1967 Outer Space Treaty, which states that "outer space... is not subject to national appropriation by claim of sovereignty." However, the Bogotá Declaration asserts that "there is no valid or satisfactory definition of outer space," and that the GSO "must not be considered part of the outer space." The legal status of the GSO is tied to the controversy over a legal definition of outer space. Both issues have been debated in the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) or its Legal Subcommittee for four decades, and they remain on the agenda. Gbenga Oduntan observes that the Bogotá Declaration:

...is quite unpopular among non-equatorial states and the majority of Space lawyers and it is especially unacceptable to the Space Powers. But again this is no compelling argument why the claims under it must be dropped. Therefore, it is still necessary to locate the real reason why the declaration cannot stand (Oduntan 2003, 78).

DECLARATION OF THE FIRST MEETING OF EQUATORIAL COUNTRIES

(Adopted on December 3, 1976)

The undersigned representatives of the States traversed by the Equator met in Bogota, Republic of Colombia, from 29 November through 3 December, 1976 with the purpose of studying the geostationary orbit that corresponds to their national terrestrial, sea, and insular territory and considered as a natural resource. After an exchange of information and having studied in detail the different technical, legal, and political aspects implied in the exercise of national sovereignty of States adjacent to the said orbit, have reached the following conclusions:

1. The Geostationary Orbit as a Natural Resource

The geostationary orbit is a circular orbit on the Equatorial plane in which the period of sidereal revolution of the satellite is equal to the period of sidereal rotation of the Earth and the satellite moves in the same direction of the Earth's rotation. When a satellite describes this particular orbit, it is said to be geostationary; such a satellite appears to be stationary in the sky, when viewed from the earth, and is fixed on the zenith of a given point of the Equator, whose longitude is by definition that of the satellite.

This orbit is located at an approximate distance of 35,871 Kmts. over the Earth's Equator.

Equatorial countries declare that the geostationary synchronous orbit is a physical fact linked to the reality of our planet because its existence depends exclusively on its relation to gravitational phenomena generated by the earth, and that is why it must not be considered part of the outer space. Therefore, the segments of geostationary synchronous orbit are part of the territory over which Equatorial states exercise their national sovereignty. The geostationary orbit is a scarce natural resource, whose importance and value increase rapidly together with the development of space technology and with the growing need for communication; therefore, the Equatorial countries meeting in Bogota have decided to proclaim and defend on behalf of their peoples, the existence of their sovereignty over this natural resource. The geostationary orbit represents a unique facility that it alone can offer for telecommunication services and other uses which require geostationary satellites.

The frequencies and orbit of geostationary satellites are limited natural resources, fully accepted as such by current standards of the International Telecommunications Union. Technological advancement has caused a continuous increase in the number of satellites that use this orbit, which could result in a saturation in the near future.

The solutions proposed by the International Telecommunications Union and the relevant documents that attempt to achieve a better use of the geostationary orbit that shall prevent its imminent saturation, are at present impracticable and unfair and would considerably increase the exploitation costs of this resource especially for developing countries that do not have equal technological and financial resources as compared to industrialized countries, who enjoy an apparent monopoly in the exploitation and use of its geostationary synchronous orbit. In spite of the principle established by Article 33, sub-paragraph 2 of the International Telecommunications Convention, of 1973, that in the use of frequency bands for space radiocommunications, the members shall take into account that the frequencies and the orbit for geostationary satellites are limited natural resources that must be used efficiently and economically to allow the equitable access to this orbit and to its frequencies, we can see that both the geostationary orbit and the frequencies have been used in a way that does not allow the equitable access of the developing countries that do not have the technical and financial means that the great powers have. Therefore, it is imperative for the equatorial countries to exercise their sovereignty over the corresponding segments of the geostationary orbit.

2. Sovereignty of Equatorial States over the Corresponding Segments of the Geostationary Orbit

In qualifying this orbit as a natural resource, equatorial states reaffirm “the right of the peoples and of nations to permanent sovereignty over their wealth and natural resources that must be exercised in the interest of their national development and of the welfare of the people of the nation concerned,” as it is set forth in Resolution 2692 (XXV) of the United Nations General Assembly entitled “permanent sovereignty over the natural resources of developing countries and expansion of internal accumulation sources for economic developments”.

Furthermore, the charter on economic rights and duties of states solemnly adopted by the United Nations General Assembly through Resolution 3281 (XXIV), once more confirms the existence of a sovereign right of nations over their natural resources, in Article 2 subparagraph i, which reads:

“All states have and freely exercise full and permanent sovereignty, including possession, use and disposal of all their wealth, natural resources and economic activities”.

Consequently, the above-mentioned provisions lead the equatorial states to affirm that the synchronous geostationary orbit, being a natural resource, is under the sovereignty of the equatorial states.

3. Legal state of the Geostationary Orbit

Bearing in mind the existence of sovereign rights over segments of geostationary orbit, the equatorial countries consider that the applicable legal consultations in this area must take into account the following:

(a)

The sovereign rights put forward by the equatorial countries are directed towards rendering tangible benefits to their respective people and for the universal community, which is completely different from the present reality when the orbit is used to the greater benefit of the most developed countries.

(b)

The segments of the orbit corresponding to the open sea are beyond the national jurisdiction of states will be considered as common heritage of mankind. Consequently, the competent international agencies should regulate its use and exploitation for the benefit of mankind.

(c)

The equatorial states do not object to the free orbital transit of satellites approved and authorized by the International Telecommunications Convention, when these satellites pass through their outer space in their gravitational flight outside their geostationary orbit.

(d)

The devices to be placed permanently on the segment of a geostationary orbit of an equatorial state shall require previous and expressed authorization on the part of the concerned state, and the operation of the device should conform with the national law of that territorial country over which it is placed. It must be understood that the said authorization is different from the co-ordination requested in cases of interference among satellite systems, which are specified in the regulations for radiocommunications. The said authorization refers in very clear terms to the countries' right to allow the operation of fixed radiocommunications stations within their territory.

(e)

Equatorial states do not condone the existing satellites or the position they occupy on their segments of the Geostationary Orbit nor does the existence of said satellites confer any rights of placement of satellites or use of the segment unless expressly authorized by the state exercising sovereignty over this segment.

4. Treaty of 1967

The Treaty of 1967 on “The Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies”, signed on 27 January, 1967, cannot be considered as a final answer to the problem of the exploration and use of outer space, even less when the international community is questioning all the terms of international law which were elaborated when the developing countries could not count on adequate scientific advice and were thus not able to observe and evaluate the omissions, contradictions and consequences of the proposals which were prepared with great ability by the industrialized powers for their own benefit.

There is no valid or satisfactory definition of outer space which may be advanced to support the argument that the geostationary orbit is included in the outer space. The legal affairs sub-commission which is dependent on the United Nations Commission on the Use of Outer Space for Peaceful Purposes, has been working for a long time on a definition of outer space, however, to date, there has been no agreement in this respect.

Therefore, it is imperative to elaborate a juridical definition of outer space, without which the implementation of the Treaty of 1967 is only a way to give recognition to the presence of the states that are already using the geostationary orbit. Under the name of a so-called non-national appropriation, what was actually developed was technological partition of the orbit, which is simply a national appropriation, and this must be denounced by the equatorial countries. The experiences observed up to the present and the development foreseeable for the coming years bring to light the obvious omissions of the Treaty of 1967 which force the equatorial states to claim the exclusion of the geostationary orbit.

The lack of definition of outer space in the Treaty of 1967, which has already been referred to, implies that Article II should not apply to geostationary orbit and therefore does not affect the right of the equatorial states that have already ratified the Treaty.

5. Diplomatic and Political Action

While Article 2 of the aforementioned Treaty does not establish an express exception regarding the synchronous geostationary orbit, as an integral element of the territory of equatorial states, the countries that have not ratified the Treaty should refrain from undertaking any procedure that allows the enforcement of provisions whose juridical omission has already been denounced.

The representatives of the equatorial countries attending the meeting in Bogota, wish to clearly state their position regarding the declarations of Colombia and Ecuador in the United Nations, which affirm that they consider the geostationary orbit to be an integral part of their sovereign territory; this declaration is a historical background for the defense of the sovereign rights of the equatorial countries. These countries will endeavour to make similar declarations in international agencies dealing with the same subject and to align their international policy in accordance with the principles elaborated in this document.

Signed in Bogota 3 December 1976 by the Heads of Delegations.

Brasil, Colombia, Congo, Ecuador, Indonesia, Kenya, Uganda, Zaire