

(12) Some aspects concerning the use of the geostationary orbit: paper adopted by the Legal Subcommittee

1. In its related resolutions, the General Assembly has regularly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that its Legal Subcommittee continue its examination of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of this orbit, without prejudice to the role of the International Telecommunication Union (ITU).
2. In 1996, Colombia submitted to the Legal Subcommittee at its thirty-fifth session a working paper entitled "Some considerations concerning the utilization of the geostationary orbit" (A/AC.105/C.2/L.200 and Corr.1), recommending certain principles that could be applied to the management of frequencies and orbital positions relating to the geostationary satellite orbit.
3. Following the presentation and ensuing discussion, it did not prove possible for the Legal Subcommittee to endorse the paper. At the thirty-eighth session of the Legal Subcommittee, in 1999, after an impressive presentation made by the representative of Colombia, the outcome of the discussion was that Colombia's standpoint should secure agreement on a text that would address the concerns expressed, without leading to implementation difficulties with ITU.
4. The Legal Subcommittee must find a way to reach an agreement on this important question. With this in mind and taking into account all of the points of view that have been expressed, the Legal Subcommittee adopts the recommendations made in paragraph 8 below.
5. Article 44, paragraph 196.2, of the ITU Constitution as amended by the Plenipotentiary Conference, held in Minneapolis, United States of America, in 1998, states:

"In using frequency bands for radio services, Member States shall bear in mind that radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to those orbits and frequencies, taking into account the special needs of the developing countries and the geographical situation of particular countries."
6. Access to frequency bands other than those which are planned is at present governed by the principle of "first come, first served". That approach, while suited to developed countries, may disadvantage developing countries, especially those yet to have access to that orbit. The existing coordination procedures that apply to the non-planned bands are designed to overcome that difficulty, but they are not necessarily capable of giving full satisfaction. There is therefore a need to facilitate access to the orbit/spectrum resource by developing countries or countries yet to have access to that orbit/spectrum resource in relation to those already using it, that is, to ensure equitable access between those countries already having access to the orbit/spectrum resource and those seeking it.

7. In conclusion, the Legal Subcommittee considers that:

(a) In accordance with article 44 of the ITU Constitution, the satellite orbits and radio frequency spectrum are limited natural resources, which must be used rationally, efficiently, economically and equitably;

(b) It is necessary to facilitate equitable access to the orbit/spectrum resource;

(c) ITU has planned the use of certain frequency bands and services for the geostationary orbit;

(d) In many frequency bands and services access to frequencies and satellite orbits, including the geostationary satellite orbit, takes place according to the principle of “first come, first served”;

(e) The current regulations on access to frequencies and satellite orbits in respect of bands and services may give rise to situations involving difficult processes of coordination among developed as well as developing countries.

8. The Legal Subcommittee therefore recommends that:

(a) Where coordination is required between countries with a view to the utilization of satellite orbits, including the geostationary satellite orbit, the countries concerned take into account the fact that access to that orbit must take place, inter alia, in an equitable manner and according to the ITU Radio Regulations. Consequently, in the case of comparable requests for access to the spectrum/orbit resource by a country already having access to the orbit/spectrum resource and a developing country or another country seeking it, the country already having such access should take all practicable steps to enable the developing country or other country to have equitable access to the requested orbit/spectrum resource;

(b) Countries wishing to use frequencies and satellite orbits, including the geostationary satellite orbit, in the above-mentioned cases file such requests according to the relevant provisions of the ITU Radio Regulations, taking into account resolution 18 of the ITU Plenipotentiary Conference (Kyoto, 1994) and resolution 49 of the ITU World Radiocommunications Conference (Geneva, 1997) in order to guarantee effective use of the orbit/spectrum resource;

(c) Item 6 of the agenda of the Legal Subcommittee continue to remain on the agenda of the Subcommittee. However, no working group shall be convened on the issue of equitable access to the geostationary orbit. This decision could be re-examined in due course, in accordance with the Subcommittee’s normal procedure, if further developments warranted;

(d) This document will be made available to ITU.