

## THE DBS DECLARATION OF 1982: THE TV MARTI CASE

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### Abstract

Twelve years after the United Nations General Assembly approved, in a divided decision, the Declaration about the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television (DBS), it's complete inoperative.

In 1982, the General Assembly majority members opted for the thesis of national control of the DBS to the detriment of more important liberalization. Nowadays, with a World situation different from one that prevailed over the past decades, it is fitting to joint forces to look into the Declaration of the DBS again and to attain the consensus that could not be reached in 1982.

It remains obligatory to dispose of an adequate international regulation concerning national policies on DBS to provide conflicts as the ones in the Caribbean Sea between

United States and Cuba about TV Marti.

It is necessary to substitute national control on DBS for a regional coordination of legislation's and introduce operating forms that will put order in the actual information jungle; it is a future priority of international communications by satellite.

### 1. Introduction

This winter will accomplish 12 years that the United Nations General Assembly approved in controversial decision, the Declaration on Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting (DBS).<sup>1</sup> Since then there are several reasons who distinguished this Declaration and particularly two: 1) some questionable subjects of Declaration, such as the 'prior consent' and 2) the decision of United Nations Committee on the Peaceful Uses of Outer Space, the separate from consensus traditions in their works.<sup>2</sup>

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<sup>1</sup>The views expressed herein are those of the author and not necessarily reflect the views of the Mexican Government.

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It's important to revise the DBS's Declaration for the necessity of the International Community has the instrument whose rules direct broadcast of television. The reasons that compel the General Assembly to study and consider this international legal matters continue in validity. To revise the Declaration to introduce the "operative formulas", as allude the doctrine, 3 is a way feasible. The international situation today is force of to regulate juridically the DBS. Even more, the appearing of abrupt nationalism and of ethics and religious radical ideas, proves that the world won't walk in one direction. The "global village" ideas confront obstacles serious in several national societies, as it has happened in muslim countries.

The technological advantages of telecommunications are in the risk of stopping while continuing to exist a legal anarchy in this field. Except European Union (EU), not they are entity what pose of adequate shape of this international space subject.

The more significant of all cases, is the unsuccessful intent of DBS's to regulate what its null impact in the international relations. It is curious to denote that the Declaration was unknown, with exceptions, so much for supports as that opponents. Not even, the beneficiary States of its rules -like the 'prior consent- not to resort to the Declaration. In conclusion, apparently with the approval of a majority, the Declaration receives some sort of "stigma".

To its unimportant event in the space international policy, in early times, have arisen in some countries the effect the DBS, with purpose of municipal law regulation, or forbidden. It, of course, dons favor at harmony better in the development of international communications and, frequently is the source of irritation and deterioration in the state's

relations. It is thus, because of its nature own, the DBS surpass the national legislation and claims at international regime.

In some recent cases, denote a tendency that the State law making in direct broadcasting television matters for it to introduce rules on its contents in profit of public interest or to forbid the transmission, interferes the signals or control or restrict the parabolic antenna's installations.

Before of to continues, it is necessary to put out the intervention state custom in whole or part of reception process of the DBS, as it this happens in the United Kingdom 4 and France. 5 In others words it exists a belief in that satellite television waves cruise the air space state and are getting for the peoples, by virtue of an unwritten or formal State assent. This is a fact outstanding. 6

## 2. The TV Marti Case

The recent Case of TV Marti, show of an eloquent mode, the legal problematic to face a system of DBS's when it is used as vehicle of particulars politics purpose.

Moreover, it is the only known case that has opposed clearly two States, in matters that, in the past, appeared with force in the United Nations Committee on the Peaceful Uses of Outer space: State sovereignty vs. freedom of information. 7

The ingredients of the debate on such broadcasts are not only political, but also technical and legal. Under the North American Regional Broadcasting Agreement signed in 1950 by several nations of the area, including Cuba and the United States, "the United States was granted twenty-four unduplicated clear channels and nineteen clear channels; Canada received six unduplicated and four shared clear

channels; Mexico seven and five; Cuba one and one; and the Bahamas one and zero. 8

### A. History

Since Radio Marti went on the air on May, 1985, there was public speculation about carrying out a television project especially designed to Cuba. 9

In 1962, during the Caribbean Crisis, Edward R. Murrow, then USIA Director, sent a memorandum to President Kennedy advocating the spreading of anti-Cuban propaganda through television. Murow's plan envisaged using two DC-6 aircraft fling at 6,000 meters and quite closed to the limits of Cuba airspace. Experts believe this plan involved too many risks. 10

Under President Carter, english scholar Hugh Thomas suggested the use of television to the island-nations. This idea was further developed by professor George Chester from University of Maryland, who said that broadcast could be sent from Key West through some channels not being used in Cuba.11

At the Annual Convention of the Asociacion de Publicistas Latinos, in July, 1985, the Cuban-American National Foundation (FNCA) announced its objective of conducting feasibility studies aimed at transmitting television signals to Cuba.12

That year, circulated in the United States Congress some studies draft on the feasibility of broadcast signal of television to Cuba. In May 1986, Florida Representative Lawton Chiles sent a letter to USIA Director Charles Wick, promoting the idea of conducting feasibility studies to learn the viability of the television system aimed at Cuba. Chile wrote: "The TV Marti would provide the Cuban people with another source of information,

news and ideas". 13

On August 7, 1987, representative's Daniel Micca, Dante Fascell, Bill Nelson, Claude Pepper and Lawrence Smith submitted a concurrent resolution to the House Foreign Relations Committee for an appropriation of Dls. 100,000 for studying the feasibility of the project. Shirty afterwards, the Senate Appropriation Subcommittee approved the request funds, and in December that year President Reagan signed the appropriation. 14

1988 was a decisive year for the cosponsor of the project. Four engineering consulting firms (A.D. Ring, Cohen & Dippell, Hammet and Edison, Jules Cohen, Waterhouse Price) and two financial and juridical companies (Waterhouse Price and Price and Pierson, Ball & Dowd), were hired conduct the technical feasibility study. 15

In October 1988, of 85 million dollars budget authorized for the Director of the United States Information Agency (USIA) covering radio broadcasting expenses, roughly 7.5 million dollars were approved for purchasing the equipment to pave the way for the TV Marti project, including a test period. This law provides that the USIA would use Cudjoe Key AFB facilities at Key West, Florida.16

In 1989, the White House and the Senate approved a resolution each by that authorizing the television station to be set up once the broadcasting test had been satisfactorily completed. 17

The resolution approved holds that any broadcasting beam to Cuba must conform to the regulations of the Federal Communications Commission (FCC) and must not impair the quality of transmitter on the United States. 18

The projects feasibility studies examined the

use of four variants to beam the television signal to Cuba with the required quality: a tower, a ship, a plane and a stationary aerostat. Finally, the variant chosen was an aerostat carrying a 10,000 watt transmitter and kept at an altitude of 10,000 to 14,000 feet over the Cudjoe Key area. 19

To reach Cuba TV sets the signal must follow a difficult route. Allegedly, the signal broadcast by Miami station will be sent by microwave, satellite or coaxial cable to land station in Cudjoe Key, and from there it will go up to the aerostat's transmitter beaming to signal to Cuba. 20

The March 27, 1990, beginning the broadcasting services of the TV Marti. The signal originates in Washington and retransmits to Cuba by aerostat stationary on the Coast Sud of Florida, was successfully blockaded since the first day, with the use of terrestrial aerial and maritime means. 21

The television broadcasts begin every day in the first hours early morning. The intents for entering the signal by the Channel 13 local begin at 02:30 to 03:00 a.m., when in this Channel there is no transmission. Immediately, the Cubans interfere with the signal and the intents by entering and blockading last three or four hours. 22

Several Cuban terrestrial stations worked in the blockade of TV Marti. Nevertheless, when the broadcast attempts to filter toward La Havana around, began to operate a naval blockade to control the area, supported by several helicopters with systems of interruption over the weak point. 23

As an epilogue of this situation, the Representatives House Appropriation Subcommittee refused the request of the State Department of 28 million dollars in 1994, toward Radio Marti and TV Marti. Several

members of the Appropriation Subcommittee disgrace on the utility of both means and considered represent a loss of money, due that the Government of Cuba blocked and indicated the radio is less necessary already what the Cubans can win to listen to ten commercial radio stations of Florida. 24

### B. Legal Aspects

Since the beginning, the Government of Cuba would not accept the broadcast of TV Marti, for legal questions. It is manifest that there are no broadcasting agreements between the United States and Cuba. For the Havana regime, the right question is to respect the International Law and the Treaties and after to decide if the people should look or not look at television. "The treaty's dints sleep early morning and the International Law is not in recess, like either the sovereignty of a country. 25

For the Government of Cuba, the broadcasts from US territory are illegal because according to the ITU regulations every country has the sovereign right to regulate its communications channels. Therefore, all Cuban VHF television channels (2 through 13) are either actually or potentially occupied by Cuban television stations and upon the signals of the TV Marti being broadcast over any of those channels, Cuban broadcast and the Cuban right to regulate its radio spectrum are interfered with. 26

In support of its position, further, the Government of La Havana invoked the authority of the Institut of Droit International whom in 1906, tackled these questions, arriving at conclusions that for years have served as starting point for modern definitions in line with the progressive development of International Law. 27 According to the Gante Declaration, the air is

free and the States are bound to preserve it so. Article 3 of the Declaration reads as follows: Every State is empowered, to the extent necessary for its security, to oppose the passage of land or hertzian waves transmitted by a particular device placed on land or aboard a vessel or a balloon over its territory and territorial and territorial waters.<sup>28</sup>

According to Government Cuban, the setting up TV Marti by the United States Information Agency violated the following provisions of International Law:

- a) The basic international principles on the sovereign equal rights of the States and the non-interference in domestic affairs of the States, as stippled in the UN Charter and countless international conventions;
- b) The international legal obligation to develop friendly relations among neighboring States, for the sake of world peace and security.

The TV Marti similarly ignores a series of legal provisions contemplated in:

- c) The 1982 International Telecommunications Union Convention and the ITU regulations on radio matters;
- d) The 1966 UN Convention on Political and Civil Rights;
- e) The 1967 Treaty on Outer Space;
- f) The 1978 UNESCO Declaration on the Media; <sup>29</sup>
- g) UN Resolution 37/92 of 1982 on DBS. <sup>30</sup>

This is an of the uncommon case what a State invoked the DBS's Declaration in support it position.

To this effect, the UNESCO's Declaration on the Media is more knowledge.

The United State, for other hand, based on the principles of free flow of information, to oppose to prior consent. Any principle requiring a broadcaster to obtain the consent of a foreign government and their would violated U.S. obligations toward both broadcaster and their intend audience, and would violated 19 of the Universal Declaration of Human Rights on the right to seek, receive and impart information and ideas through any media regardless of frontiers. Besides, the United States fear that selective censorship could inhibit the use and expansion of DBS and might effect others communications media.

On the TV Marti Case, in Television Broadcasting to Cuba Act, submitted to Congress in 1989, reads: Broadcasting by the Service shall be conducted by the International Telecommunications Convention promulgated by the International Telecommunications Union of the United Nations, the Annexed Radio Regulations thereto, and all other applicable international laws and treaties. The Federal Communications Commission shall monitor the operations of television broadcasting to Cuba pursuant to section 703 (g) of this Act. If, on the basis of such monitoring or of a complaint from any person or foreign nation, the Federal Communication Commission determines the broadcasting by the Service is in violation of the International Telecommunications Convention, the Annexed Radio Regulations thereto, or any other applicable international laws and treaties, the Federal Communications Commission shall direct the services to cease broadcasting. Television broadcast to Cuba shall not be resumed until the Federal Communications Commission finds that the service has brought its broadcasting operation into full compliance

with International Law, and that the violation will no recur. 3 1

### 3. Restrictions to the DBS in Some Countries

The last times are characterized for at emphasize of the radical positions on the freedom broadcasting for several States. It is duty that International Community establishes the general rules in this matter and prevent possible controversies. As follows, cite some cases of national restrictions to the DBS.

Saudi Arabia forbidden the import and the manufacture of parabolic antennas till now tolerate in the Kingdom, but whose use may were censure for the religious hierarchy. According to order of Ministry Council is forbidden to import parabolic antennas, manufacture and to be in use decodificadors for receives programs diffuse by satellite. The order not decides if the antennas already in operation will be affected. The penalty is the 100,000 to 500,000 rials (36,000 to 180,000 dollars) and the seizure of equipment. 3 2

The order disposes that the Ministry of Information will be elaborating a project of redistribution by cable of the broadcasting television, respectful the social and religious ideas of the country. The installation of parabolic antennas in Saudi Arabia was favoured for the Gulf War, with the import of 20,000 antennas. The phenomenon persisted with the put in orbit of Middle Est Broadcasting Center Channel, from London. 3 3

In Iran, the Government announced the decision of forbid the use of parabolic antennas. The police will be to seize all the antennas already in operation. According to advisers, approximately 50,000 receivers were

installers during the last months in Teheran and others cities. Half million viewers would be connecting to twenty Asian and Western channels. 3 4

In Egypt, some local authority has forbid the use of antennas in place public. It is arguing that the foreign broadcasting not duty interferes in domestic affaires. They should also consider the cultural and social ideas, include the respect to the custom and local traditions. 3 5

Qatar forbid the reception of broadcasting television with purpose of strengthen its network by cable. Now, the television system has few customer due to charges height of installation and rent for only twelve channels. The programs by network will be subject to the governmental approbation. 3 6

The Government Syrian, turned out to be more aggressive against the satellite antennas; it is said that the officials unfavorable attitude was mainly inspired by the government's desire to maintain Syrian culture and its own code ethic. 3 7

According to the media official, some Maghreb country's Algeria, Morocco and Tunisia in particular did not run into controversy over satellite TV programs. Those Arab Maghreb countries already have their own access to European programmes owing to their locations close to the European continent. Algerian and Tunisians can easily join TV viewers in Italy and France. The TV satellite antenna's services are tolerated by the officials. The Governments in Algeria, Morocco and Tunisia did not have to trouble themselves with the antenna's advantages or disadvantages because the people there already had access to all channels. 3 9

Lebanon, does not bother itself with the

antennas-related dispute. Long before the Lebanese was informed of the satellite antenna services, the Government there had not protested against the TV broadcast by private companies. 40

In Africa, the Government of Nigeria has express its preoccupation for the "massive transmission" of foreign information by satellite. The DBS under not control are at "cultural invasion". The broadcasts in direct of foreign programs are at "unlucky side" of partial commercialization of state mediums. 41

In Asia, China has take new provisions for strengthen the control over the use of parabolic antennas for receive DBS. This rules provisions adopted for the Trade and Commerce Ministry due to the private enterprise that have antennas to request a state licence for their operation. 42

In Latinoamerica, on 1986, the Government of Bolivia faced the proliferation of privates television channels (seven channel averages in seven of nine politics departments country), approved the television rules, fixed the technical basic requirements, but without to be interested for the contents. It was considered plus negative that if not have had legislation. The state begins to install, on rural villages, parabolic antennas for counteract the foreign broadcast. 43

#### 4. Conclusions

1) The restrictive attitude on the DBS's Declaration of 1982 begins to decline, because of the new international situation provoked for the end of Cold War, for one hand, and for the prevailing tendency in official and academics circles, of revise concepts like the state sovereignty in matter of spatial cooperation.

2) Is foreseeable that the concept of

traditional sovereignty begins to changer for to be more "soft", in subject of communications via satellite, such as happened today on the European Union. However, this process not will be universally, in brief time.

3) In others regions, on the contrary, will have obstacles remarkable to free flow of information by satellite, in consequence of the religious intolerance on several Muslims countries and extreme nationalism, in others latitudes

4) The Government Cuban position's, support on argument strongly established in Latinoamerica, invoked two principles of International Law for the question of the TV Marti's legality: a) the principle of the state sovereignty over the air space and the medium where propagate the television waves; b) the principle of non-intervention in domestic affaires. Both principles are peremptory rules (jus cogens) of International Law.

5) The United States, for the other hand, reaffirm its traditional position of the free information, as fundamental part of the human rights. However, in the TV Marti Case, was obviously the politics purpose of the U.S. to use that media of pressure against La Havana regime. This it reduces its lawfulness.

6) Both countries can to invoke political and legal arguments to favor of their positions. But was unquestionable the failure of the TV Marti -as propaganda media-, and its profitability financial, like recognized the US official circles.

7) The Government Cuban blockade prompts and with facility relative the signal of TV Marti, though that it forced to use economic resources important, in detriment of it's economy weak.

8) The TV Marti's dispute dint to reach the point of conflict out control, but show the risky of to manipulate politically the DBS's s y s t e m .

9) To establish mechanism of regional coordination, through of appropriate system of consultation - as would be the different schema's of commercial integration in existence-, where the similarity of history, culture, ideology and policy's ideas allows to favor at cooperation extensive between diferents groups of States. Could to be this the right way for take maxim advantage of the D B S s y s t e m .

### 5. Footnotes

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2. The General Assembly passed by a vote 108 to 13, with 13 abstentions Resolution, 37 U.N. GAOR (100th plen.myg) at 36-37, U.N. Doc. A / 3 7 / P V . 1 0 0 ( 1 9 8 2 ) .

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4 . D a n n , P h i l l i p , "Law and Regulation of Satellite Communications in the United Kingdom", J. Space L. 1992 (1), p.7.

5.Le Droit a l'Antenne, Loi Francaise du 2 Juillet 1966, Tele Satellite, 1993, p.15.

6.The European Community Directives know as Television Without Frontiers provides as follows: Each Member State shall ensure that all television broadcast transmitted by broadcaster under its jurisdiction comply with

the law applicable to broadcast intended for the public in that Member State, Article 2 (1), Council Directive 89/552/ECC, of October 3, 1 9 8 9 .

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11.Tv Aggression II, Ibidem

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13.Agency EFE, July 7, 1987.

14. Miranda Bravo, O. "Utilizacion de la Television como Instrumento de Agresion contra Cuba", Revista Cubana de Derecho, No. 1, La Habana, 1991, p.88.

15. TV Aggression II, ibid, p.21.

16. Public Law 100-459.

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20.The Anti-Cuban Television Project- A Challenge to International Law, Jose Marti



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21. "Excelsior", Mexico, April 2 and 3, 1990, pp. 34, 3 and 18.
22. "Excelsior", Mexico, ibid.
23. "Excelsior", Mexico. ibid.
24. "La Jornada", Mexico, June 23, 1993, p.35.
25. Castro, Fidel. Statement, in Agresion Sur les Ondes, Agence d'information nationale, La Havana, 1989, p.29.
26. Miranda Bravo, ibid. p.92.
27. H.G. Shermes, International Law Institute, Teaching and Materials, Kluwer, Dordrecht, 1974.
28. TV Aggression II, ibid. p. 27.
29. UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for Free Flow of Information, the Spread of Education and Greater Cultural Exchange, adopted November 15, 1972.
30. The Anti-Cuban Project, ibid. p.17.
31. Television Broadcasting to Cuba Act., Section 703 (f), Submitted to Congress in May, 1989.
32. Parabole, layadjouz, Arabie Saudite, SPA, 11-12 Mars, 1994, p.5.
33. Parabole, layadjouz, ibid.
34. "Le Monde", 06.04.93, p.13.
35. The dish, menace to morality or marvel of the age, "Egyptian Mail", May 14, 1994, p.4.
36. La parabole interdite a Qatar, "El Moudjahid", Algiers, May 27, 1993, p.17.
38. Satellite, Mis a Part, "L' Hedo Libere", No. 119, 7-13 Juillet, 1993, p.18.
39. Satellite, Mis a Part, Ibid.
40. Satellite, Mis a Part, Ibid.
41. Le gouvernement inquiet de la transmission masive d'information par satellite, "L'Opinion", Algiers, 221, 26-27, Fevrier, 1993, p. 5.
42. China: Control sur les paraboles, "El Moudjahid", Algiers, 23.03.93, p.6.
43. "Excelsior", Mexico, June 14, 1987, p.14.