ANALYSIS OF THE LEGAL REGIME FOR THE ESTABLISHMENT OF GUIDING PRINCIPLES TO GOVERN THE USE OF DIRECT BROADCASTING SATELLITES (WITH SPECIAL EMPHASIS ON THE CANADA-SWEDEN INITIATIVE WITHIN THE COPUOS)

A Research Project Undertaken
on behalf of the
Government of Canada, Department of Communications,
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P R E F A C E

In the spring of 1978, the Centre for Research of Air and Space Law was informed by the Social Sciences and Humanities Research Council of Canada that its application for funding of an interdisciplinary study on: Space Activities, Emerging International Law and Implications for Canada, had been approved for a period of four years. However, the third part, which was to deal with space law and Canadian space policy was deferred. It was the general opinion of the research team that was eventually established that the facts and documentation collected and the results obtained while pursuing the in-depth S.S.H.R.C.C. project should be enlarged and applied in parallel to the Canadian situation. The Minister of Communications shared this view and expressed the immediate interest of the Department in such a project.

Discussion in this respect commenced in early 1979, and after a visit on-the-site, during which a representative of the D.O.C. attended one of the S.S.H.R.C.C. meetings of Principal Investigators, the Centre was advised that it had been entrusted with a research project similarly lasting for four years on mutually agreed topics (letter dated March 9, 1979 from the Department of Communications). The total award to the Centre was $100,000 i.e., $25,000 per year, and extension of the grant was made conditional upon the results obtained at the end of the first year and subject to government budgetary policy. In view of the fact that documentation had to be

collected and catalogued for future years, it was not possible for the Centre to enter into a contract which was subject to possible financial restrictions or unilateral termination.

After further negotiation, a second letter from the Department of Communications, dated March 12, 1979 (Annex A) was received, but only towards the end of April, in which the mutually agreed terms and conditions for the entire study were finally established.

In accordance with the terms of this agreement, we are pleased to submit herewith the first phase of the project, duly completed (including Annexes 1 -XIV), and dealing with: An Analysis of the Legal Regime for the Establishment of Guiding Principles to Govern the Use of Direct Broadcast Satellites with Special Emphasis on the Canada-Sweden Initiative within the Legal Sub-committee of the United Nations on the Peaceful Uses of Outer Space. Part I (phase 2) of a detailed plan for the coming year (1980-81) (Annex XV), along the lines of the request made to the Centre by the Department of Communications is also submitted. Part II (phase 3) (1981-82) will be prepared in due course, taking into account the important evolution of this subject matter in the meantime. The outline for phase 4 of the report will also follow in time. Research on Part I (1980-81): Legal Aspects concerning the Use of the Geostationary Orbit, including Questions of the Definition of Outer Space and Delimitation of State Sovereignty over the Airspace above a State's National Territory, has already commenced and is proceeding satisfactorily.

we were asked them to start that.

The research team, consisting of Dr. Nicolas M. Matte (Director); Dr. Jean-Louis Magdelénat (Assistant Director); Professor Tomas Pavlasek (Department of Engineering, McGill Univ.); Professor Alek Vicas (Department of Economics, McGill Univ.); Professor Paris Arnopoulos (Department of Political Science, Concordia Univ.) and our two senior research assistants, Messrs. Ludwig Weber and Ram S. Jakhu are, of course, at the disposal of the Department of Communications for further discussions which may be necessary concerning the present report, or the outline for the first part of phase 2 for the coming year.

Our thanks are extended to the Department of Communications for the award of this four-year project, which will enable us to satisfy the triple interests of the Social Sciences and Humanities Research Council of Canada, the Department of Communications and the development of the Centre for Research of Air and Space Law.

INTRODUCTION

Advancing satellite technology is on the verge of developing a generation of direct broadcasting satellites (D.B.S.) which will be operational: placed into orbit, these satellites will allow television transmissions directly from the satellite into home receivers, a system which will present a serious competition to the traditional type of TV transmissions domestically, and totally new possibilities of transmitting programmes to foreign populations, internationally.

It is obvious that, domestically, new regulatory techniques and measures are needed for this new type of TV-broadcasting activity, and both the U.S. and Canada are actively engaged in preparatory stages for such measures. However, more large-scale problems arise internationally from the considerable concerns of many governments of States over the political, social and cultural impact of TV transmissions of D.B.S. from foreign countries into their own State. For more than 10 years, governments have attempted, in the framework of the UN-Committee on the Peaceful Uses of Outer Space (COPUOS), to draft Principles which would govern States' conduct in carrying out D.B.S.-activities, and which would guarantee a standard of protection against unwarranted broadcasts, while at the same time allowing the unimpeded technical and operational development of D.B.S.-systems. Mainly

due to a deep-rooted controversy over the question, if prior agreement of the transmission-receiving State is a precondition for operating an international D.B.S.-service, consensus has so far not been reached on such internationally accepted principles.

The main objective of this legal research study is thus threefold. As this new type of broadcasting activity by D.B.S. is by no means operated in a legal vacuum, but governed by a large number of instruments and rules of international Law, the study is, firstly, concerned with the objective to find out which instruments and rules of international law are applicable, what the application of these provisions amounts to, and which effects this may have on the position States may take within COPUOS.

Since, on the domestic level, a number of laws and regulations govern the "traditional" broadcasting activities to a considerable extent, the second objective is to find out applicable norms, effects of application and the possible effects for the position within COPUOS, from the domestic legal point of view.

The answers to these questions constitute a legal pattern in the light of which the Canadian position within COPUOS, in particular as established in the Canadian-Swedish "clean text" of 1979, must be viewed . Furthermore, these answers, along with

the legal and political positions of other States and groups of States within COPUOS, determine also the elements of any future position of Canada within COPUOS. The third objective of the study is, then, to find out, in the light of international and domestic law, and of a cross-section survey of positions of States towards the "clean text", which options present themselves for future Canadian positions within COPUOS, and in what respects the "clean text" could be amended, or possibly modified, in order to reach a compromise solution in drafting principles for the conduct of D.B.S.-services.

Chapter I: BACKGROUND

A. Technology*

Radio signals carrying TV programmes travel in a straight line. Since there are natural hazards like the curvature of the earth, mountains, forests, seas, oceans etc., these signals have to be carried over longer distances by microwave relay stations or cable. To install relay stations or cables is expensive and very time-consuming. Direct Broadcast Satellites (D.B.S.) work as a relay station in the line of sight of both the transmitter and receiver. Thus, D.B.S. has made it possible to carry TV programmes across seas, oceans and continents.

There is a link between the transmitting power of a telecommunication satellite and the size of the antennae to receive its signals on the earth. A number of telecommunications satellite networks for point-to-point communication services have already been established. Radio signals are received from a satellite by large antennae and retransmitted to their final destinations by traditional means of communication. The satellites with increased transmitting power could already distribute their signals to a large area and be received by relatively small antennae

* For details, see Annex 2.

- called community antennae. Thanks to continuous technological developments, satellites have been developed with sufficient transmitting power for their signals to be received in private homes with antennae as small as 3 feet and costing only $200. to $300. each.

TV is a no longer a "domestic affair". Technological advances have made it truly "international" - a new development unparalleled in the history of mankind. International radio has been in existence for a long time but TV, with dual effects - visual and audial -, is a much more powerful mass medium than radio. The States of the world seem concerned about foreign TV broadcasts. Though they can exercise some kind of control on satellite communications received by large antennae or community antennae, no such control may be possible when direct TV broadcasts (of foreign origin) via D.B.S. can be received by unaugmented individual receiving sets. Given the state of the technology, this situation is almost upon us.

B. Advantages of the New Technology

The advantages of D.B.S. are believed to be enormous. They have been and will continue to be used both in the developing and developed countries for educational purposes, including

school and adult education, teacher and vocational training, providing information about health and sanitary conditions, agricultural techniques and family planning. They are equally useful in the dissemination of news, sports, recreational and important events, national unity programmes and programmes concerning a State's culture and society. They are the most effective, rapid and inexpensive mode of broadcasting to remote communities in large countries and those consisting of scattered islands. The U.N.'s Working Group on D.B.S., in its second Session Report, recognized that they promise an "unprecedented progress in communications and understanding between peoples and cultures"[1]. Perhaps the greatest advantage of D.B.S. is that they can provide world-wide "real time" television broadcasting which was not possible before.

C. Experiments and Projects

A number of countries have undertaken experimental projects to use satellites for direct television broadcasting, among them are:

The U.S. Corporation for Public Broadcasting used N.A.S.A.'s ATS-I from January 4 to March 26, 1970, for public television broadcasts in North Carolina and California. 30 to 40 feet antennae were used. This experiment showed that routine

service could be established for reliable TV transmission via satellites. Using the same satellite, the University of Hawaii in association with certain countries in the Pacific area conducted an experiment, known as PEACESAT, in three separate phases starting in 1971 for educational and health care services. This experiment demonstrated the potential and benefits of international direct TV broadcasting by satellites.[2]

N.A.S.A.'s ATS-6 satellite was the most sophisticated and powerful telecommunications satellite of the ATS series. It was used in a one-year (1974) Satellite Technology Demonstration in the Rocky Mountain area of the U.S. for educational purposes, and covered eight of the U.S. mountain States. Hundreds of schools and other institutions participated and numerous students and adults in remote and isolated communities benefitted. Similar experiments with the ATS-6 were conducted in the Eastern (Appalachian), Alaska and Pacific Northwest region for education and telemedicine purposes.[3]

India, using N.A.S.A.'s ATS-6 satellite has carried out its Satellite Instructional Television Experiment (SITE). The SITE was undertaken to use space technology for general national

development. Nearly 5000 villages in remote areas were equipped with community antennae and received television programmes about family planning, agricultural, vocational and teacher training, general education, news and recreational events. The project was so successful that the Indian Government is now working towards establishment, in 1981, of its operational INSAT system, which will include telecommunication, meteorological and direct broadcasting via satellite.[4] Other developing countries, individually or collectively, were thus prompted to seriously consider the use of D.B.S. for general national development purposes. A number of developing countries in Africa and Latin America are planning to establish regional D.B.S. systems for education and development.[5]

Canada is in the forefront in the use of telecommunications satellites for domestic and international communications. It has carried out encouraging experiments with the Communications Technology Satellite ("Hermes"), using Telesat Canada's Anik-B satellite, "Canada became the first country to install earth stations in private homes to test a direct broadcast satellite service".[6]

Private families have been loaned 1.2 m. dish antennae for direct TV reception via satellite. A number of institutions are carrying on tele-education, telemedicine and other similar experiments throughout Canada.[7] The success, and experience gained from this project show that Canada is on the verge of starting direct-to-home satellite TV broadcasting on an operational basis.

The U.S.S.R., France, Germany and Japan have also conducted similar experiments and are planning operational D.B.S. systems, while member States of the Arab League, the Scandinavian countries, the European Space Agency, and China, are actively and rapidly moving towards an organisational framework and necessary infra-structure for use of D.B.S. for various purposes.[8] A number of other countries, such as Luxembourg, Brazil, etc. are also expected to join in the race. Technological progress and the advantages to be derived from D.B.S. show that direct TV broadcasts via satellites on an operational basis will start in the very near future.

The U.S. may not have such immediate plans for "international" direct TV broadcasting via satellite but there are indications that it will

soon have "a new satellite communications system to provide direct-to-the-home television service".[9] Thus, individual homes could receive direct TV broadcasts using 3-ft. or less antennae costing approximately $200. - $300. each. It has also been reported that:

> "Homeowners would pay a subscription fee of $15. - 20. monthly to receive programmes. More than 40 organizations currently are offering programmes to about 2,000 cable television systems equipped with earth terminals for reception. The offerings include movies and other entertainment programmes, 24-hour news service, and religious, foreign language, sports, public affairs and children's programmes".[10]

It is often said that international direct TV broadcasts via satellite will not be possible because of language barriers. However, this problem is of the past. A few weeks ago, for example, the U.S. Public Broadcasting Service broadcasted "Molière", a television biography of the French dramatist... in both French and English "at the same time ."[11]

> "The multilingual broadcasts are possible under a new audio system called DATE (Digital Audio for Television), which allows transmission of up to four channels of high-quality audio along with the television picture. The four-channel audio capacity makes it technically feasible to transmit a television programme in up to five

languages simultaneously, when coupled with the single sound channel already available on satellite transmissions". 12

Also, the obstacle of different time zones will not impede direct TV broadcasts via satellites, both for domestic and international service, since programmes would be transmitted at different times for different areas. The technology for delayed transmission of meteorological and remote sensing data is already operational. Advantages afforded by D.B.S. and contemporary development of D.B.S. systems in the world show that the advent of direct broadcasting via satellites into individual unaugmented home receiving sets is fast approaching and could be earlier than expected by the Working Group on Direct Broadcast Satellites (D.B.S.) of the U.N.'s Commitee on the Peaceful Uses of Outer Space (COPUOS), i.e. 1985.[13]

D. Problem-Oriented Issues

The use of D.B.S. for direct broadcasting to individual home receiving sets will raise a number of problems both at national as well as at international level. In oder to assess the application of the existing legal regime or to suggest the new appropriate legal regime to regulate the use of D.B.S., it is necessary to

know the nature, seriousness and implications of these problems. The following are just a few which arise in the political, economic and legal fields.

I. Political Issues*

Since the dawn of the space age, D.B.S. have been hailed as a boon to mankind. Riding on the enormous potential of technology, many people saw in D.B.S. a way to unify the world. The disregard of national boundaries by D.B.S. meant the rise of a universal culture and the destruction of petty nationalism. The instant communication and exchange of information which D.B.S. can make so easy would create a global village in which all humanity could participate. D.B.S. could reach every individual and community in the world, thus providing general education and specialized training, art and recreation; thus combatting ignorance, parochialism and fear.

Yet, for precisely the same reasons, many people were afraid that D.B.S. could become the bane of society. In apposition to the above scenario, these people posited another one highlighting the dangers of D.B.S. These dangers, like the promises, are also well-known: the

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* For details, see Annex III.

possibility of the strong cultures destroying the weak, commercialism spreading throughout the world, racist or war-mongering propaganda fanning the fires of hatred, subversive doctrines fomenting revolution and even brain-washing by subliminal control. This more sobre view emphasizes the negative aspects of D.B.S., as much as the first opinion outlined only the positive. Up to a point, both of them are plausible and either one could come about within this century.

The reality of the situation lies somewhere in the middle of these two extremes. Nevertheless, the potential of D.B.S. creates immediate political problems as is always the case when governments perceive an unacceptable situation which may lead to a loss of their decision-making capacity. Such loss diminishes their power to govern inside their territory and hence their influence in the international system. Satellites in general and D.B.S. in particular do not respect national boundaries. When space telecommunications reach a certain stage, mass audiences anywhere may pick up programmes originating in far-away foreign countries and may thus be "adversely" affected by them. This possibility is the key issue of the political problem.

The political issues can be divided into two categories: substantive and procedural. In turn, the substantive issue has two parts: form and content. As to form, States are trying to agree on the management of the broadcasting frequency spectrum and the orbital planes to be allocated to their satellites. This "technical problem" has political implications because both spectra and orbits are scarce resources and hence their distribution becomes contentious.

As to content, once the above infrastructural problems have been resolved, the issue is who decides on the programming to be received by a certain audience: the people themselves, their government or whoever can get to them. This problem, which arises also in the domestic setting, becomes more accute in international politics because there are foreign broadcasts involved. These raise the spectre of "cultural imperialism" and "foreign propaganda" which no government can ignore. The question is whether it rests on the transmitting State to decide the programme content or rather on the receiving State. If the former, the so-called principle of "freedom of information" applies; if the latter it is that of "prior consent".

This brings us to the procedural issue behind the substantive one: i.e. how far does State sovereignty reach. Does "sovereignty" mean complete control over all information entering or leaving a country? The international community has not yet reached an unequivocal answer on this question.

There is, however, another confrontation which cross-cuts ideological lines. In that one, the division is between the space satellite powers on the one side and those who are not on the other. This means again the United States and other technologically developed countries who share common interests because of their space capabilities versus the so-called "underdeveloped" countries which are excluded from space activities because they cannot afford it. This confrontation coincides with the North-South gap in many areas and reflects the mutual fears between the "haves" and the "have-nots". In this case, the smaller, newer, weaker and poorer States are naturally afraid of the possible domination of their cultures and economies by the bigger, older, stronger and wealthier States. Most Afro-Asian and Latin American governments are either too insecure or

too conscientious to accept with equanimity an avalanche of western commercials and other cultural images spread over their unsuspecting societies. Such foreign influx would raise the expectations of the masses, disturb and disorient people, put their cultural traditions in disrespect and question the authority of their governments. Thus, D.B.S. may become the oligopoly of certain northern States who will then misuse it to exploit the third world.

Some of these fears may be well justified, even if the D.B.S. States have no intention of using their power in such a way. For that reason the principle of "State responsibility" to some extent has been accepted by most countries, both in the North and South, East and West. What remains to be done is find a compromise between various extremes and so build a consensus somewhere in the middle. This is precisely what some moderates are trying to do, lead by Canada and Sweden. These attempts aim to strike a balance between nationalism and internationalism, laissez-faire and strict control, by some regional systems approach. The trick here is to find an

acceptable common ground where conflicting national interests will coincide with the necessary international coordination. The Swedish-Canadian proposals have not yet found the appropriate consensus, so the matter stands deadlocked for the time being. As D.B.S. becomes a reality, the present deadlock will be broken one way or another. If an international policy cannot precede technology, the inexorable "progress" of technology will force some policy reaction.

II. Economic Issues*

Direct broadcast satellites raise two distinct types of economic issues. D.B.S. shares with other space activities the use of certain space resources, and these resources must be allocated in some way to different uses. Here we deal only with a second set of economic issues, that is, questions which are specific to the broadcasting nature of D.B.S. Most of the international issues are concerned with xeno-signals, a term coined to describe television signals transmitted by one country but received in another country. Xeno-signals already exist from transmitters on the ground, for example, where stations are located along national borders.

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* For details, see Annex IV.

In any country with television broadcasting, there is an identifiable broadcasting industry consisting of privately-owned commercial enterprises or quasi-public organizations or both. In addition, there are a number of supporting industries, including local performing arts, that depend on domestic broadcasters. Xeno-signals pose a competitive threat for local broadcasters and their supporting industries.

While broadcasting is an industry providing service, it is usually subject to a number of regulations imposed by a local public body. Some of these regulations aim at protecting the public against misinformation or inducements to buy products that are considered harmful; they may also try to modify the content of broadcast material in order to foster national, cultural and moral objectives. The presence of xeno-signals - signals not controlled by the regulatory body - may reduce the regulatory body's ability to achieve its objectives. The number of viewers who are likely to substitute xeno-signals for domestic signals is a rough measure of the likely impact of xeno-signals on the effectiveness of policy tools available to the regulatory body.

The impact of D.B.S. on the local broadcasting industry and on the local government's ability to regulate broadcasting depends on the attractiveness of the programmes offered by D.B.S. This attractiveness, which can be summarized in a "beta parameter", depends on the level of expenditure on programming, accessibility to the language of the broadcast, and effects of time-zone differences. U.S. networks are likely to enjoy ad advantage in the immediate future because of their levels of expenditures on programmes. The other factors are likely to impose constraints on the potential for D.B.S. as a commercial venture or D.B.S. as a significant threat to domestic broadcasting.

In the Canadian context, where U.S. signals are already available to a substantial portion of the population either "off-the-air" or through cable systems, D.B.S. is likely to have a marginal impact. Other countries where English is spoken substantially, the availability of U.S. network programming via D.B.S. is likely to pose a similar threat to that which already exists in Canada. With the advent of the simultaneous, multilingual transmission technology called DATE (see above, this would seem to extend even to non-English speaking countries.

The addition of new signals that become available to a region may increase the total hours of viewing as well as divert viewers from existing stations. However, foreign language broadcasts are unlikely to attract a significant part of the audience with any consistency. The time-zone factor may also affect the value of the "beta-parameter". However, the attractiveness of global television broadcasting would be affected by time-zone differences only until the satellite technology overcomes this obstacle.

The revenues of a commercial broadcaster are likely to vary in a rough way with the size of his audience. The audiences lost to xeno-signals do provide a rough indication of lost revenues.

Broadcasting involves a variety of components. The costs of some of them are relatively fixed. One operates the transmitter or one goes off the air. If all fixed costs are deducted, then we are left with an amount which is available for producing programmes plus providing net earnings on the operations. The result of subtracting costs from the total funds available to the broadcaster is that the amount available for programme production is likely to be much more variable in percentage terms than the variation

in the size of the audience.

In many countries, one of the objectives of regulation is to promote national content or local culture. The interaction between broadcasting and the performing arts seems to be at best a two-edged sword. Baumol concluded that on the whole, broadcasting injures those in the performing arts. D.B.S., as we have seen, is likely to diminish significantly the demand for artists in televised productions if there is a sizeable diversion of audience to xeno-signales.

In almost all countries, the development of culture industries, including broadcasting and the performing arts, is a matter of national policy. The effects of Xeno-signals on local viewing habits are therefore of concern.

III. Legal Issues

The most serious problem in international law posed by the D.B.S. is that they give rise to a conflict between a State's right to control and regulate broadcasting over its territory (or a State's right to "agree" or "disagree" to receive the D.B.S. programmes of other States), and an individual's freedom to seek and impart information irrespective of national borders. In other words, this conflict is between the principles of "prior agreement" and "free flow of information". The major portion of discussions on D.B.S. in international forums centered around this conflict and the States of the world have so far failed to solve this problem while most of the other issues of D.B.S. have been resolved.

At the national level, it is feared that the D.B.S. may give rise to some legal problems, especially if the principle of absolute "free flow of information" is allowed to prevail.

The D.B.S. may give rise to international torts since a programme fully legal in the originating State may be unlawful in the receiving State because of different laws in both States. The lawyers will have to answer very difficult and complex questions "as to what

kind of law will govern liability for damage caused by direct satellite broadcasts which are transmitted on a world-wide scale or perhaps only in a majority of States with differing legal systems".[14]

A State has unquestionably a right as well as a duty to control and regulate its internal affairs (principle of territorial jurisdication). It is the supreme judge as to what information should reach its population. Gotlieb and others have rightly noted that:

> "There is no state, no matter how large, how libertarian in its laws or rich in its human resources, that is completely indifferent to what kind of information comes into its boundaries. Thus every State has laws, differing, of cause, in their nature, that relate to such matters as obscenity, public morality, sedition, and national security. Every State has laws or regulations relating to certain aspects of broadcasting. Every State exercises the right to keep certain foreigners from its territory and it is not uncommonly the case, whether one approves or not, that this is because States do not wish to import their ideas".[15]

A State's laws and regulations which regulate and control broadcasting over its territories generally impose licences, restrictions on advertisements and contents of programmes, and prescribe sanctions for the violation of these laws. The foreign broadcasters, using D.B.S. and not being subject to the receiving State's

laws, may defeat the very purpose of these laws. A State, which is under a legal duty, according to its laws, to protect, preserve and encourage the social, moral, religious and cultural values of its population, may not be in a position to fulfill this duty when there are uncontrolled and more powerful foreign broadcasts via D.B.S. For example, the Canadian Radio-Television and Telecommunication Commission (C.R.T.C.), under the Canadian Broadcasting Act "shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy".[16] The broadcasting policy, as specified by Section 3 of the Act, provides that in order "to safeguard, enrich and strengthen the culture, political, social and economic fabric of Canada....there should be provided.... national broadcasting service that is predominantly Canadian in content and character". The C.R.T.C., when renewing the licenses of Canadian broadcasters stresses the implementation of this policy.[17] It should not be difficult to imagine the value of such implementation when foreign broadcasters using D.B.S. will broadcast, to Canadians, whatever they want even to the complete disregard of Canadian broadcasting policy. In such a situation

the C.R.T.C. will not be in a position to perform its legal duties to effectively achieve the specified aims.

Other problems with respect to the rights of broadcasters, authors, performers, etc. could also be expected to arise in connection with the use of D.B.S. for international broadcasting.

1. U.N. Doc. A/AC.105/66 (August 12, 1969), p. 4.

2. For details, see generally Delbert D. Smith, Teleservices Via Satellite, Sijthoff and Noordhoff, (1978)

3. Ibid.

4. See generally, Elson, B.M., "India's Multiservice Satellites Seen Most Economical", Aviation Week and Space Technology, Dec. 10, 1979, p. 72; "India's Villages to Receive Direct Television Via Satellite System", International Herald Tribune, Sept. 19, 1979, p. 125; "Satellite Communication for National Development Purposes" Telecommunication Journal, Vol. 35 - VIII (1968), p. 408; "Indian Budget Emphasizes Long-Term Projects", Flight International, Aug. 6, 1977, p. 439; Jayaraman,K.S., "India's March into Space", Indian and Foreign Review, Vol. 16, no. 10 (March 1, 1979) , p. 15

5. For details see "Space Communications for Education Purposes" (A number of interesting papers presented at the B.I.S.'s Symposium on "Communication Satellites" held at the University of Southampton, U.K., on 19-20 Sept. 1972), SPACEFLIGHT, Vol. 15, no. 3, March 1973, pp. 94-109; United Nations/UNESCO African Regional Seminar on Satellite Broadcasting Systems for Education and Development, (Addis Abeba, Oct. 22-31, 1973), U.N. Doc. No. A/AC.105/120 of Nov. 29, 1973.

6. "King Family Peased with Earth Station", MODULATION, (Government of Canada, Department of Communications), December 1979 no. 23, p. 2.

7. "Une première mondiale: le Canada premier pays à développer un service de télédiffusion directe par satellite", Communiqué, Government of Canada, Department of Dommunications, Ottawa, September 25,1969. See also, News Release (government of Canada, Department of Communications) Vancouver, 13 December 1979; "Satellite canadien en orbite", Dimanche-Matin, 17 décembre 1978, p. 7.

8. See generally, Theo Pirard, "From Molniya to Ecran", SPACEFLIGHT, Vol. 20, No. 1, January 1978, pp. 9-12; Bassett, E.W., "French, Germans to Begin T.V. Sat Effort", Aviation Week and Space Technology, December 10, 1979, p. 69; "France and Germany go ahead with Television Satellite" Flight International, Oct. 20, 1979, p. 1259; "European Space Agency Planning New Telecommunications Satellites", by W.E. Bassett, in Aviation Week and Space Technology, December 31, 1979, p. 12; "Broadcast Satellite Keyed to Ariane", Aviation Week and Space Technology, Oct. 17, 1977, p. 135; "Messerschmitt Launch New T.V. Satellite", The German Tribune, no. 890 of 20 May 1979, p. 9; "Manufacturers are poised to plug teletexts in every home", Ibid.; "GE, Red Chinese Air TV Satellite Plans", Aviation Week and Space Technology, January 22, 1979, p. 17; "Arabs Agree on Communications Satellite, Aviation Week and Space Technology, April 26, 1976, p. 21; "Télécommunications par satellite pour les pays arabes, début 1983", Air et Cosmos, no. 781 (6 Oct. 1979), p. 49; "Hughes, MESH contend for Arabsat", Aviation Week and Space Technology, Nov. 12, 1979, p. 23; Fjørne, H.M., "Nordsat - A Possible Broadcast System for the Nordic Countries", and Anderson, L., "A European Approach to Nordsat", in Space Telecommunications and Radio Broadcasting: Objectives For the 80's op.cit, pp. 225-244. See also Flight International, 22 April 1978, p. 1116; Air et Cosmos, No. 653 (8-1-1977), p. 33. "Scandinavian Comsat Interest", Aviation Week and Space Technology, July 6, 1964, p. 189.

9. "Comsat, Sears Near Agreement on Direct-to-Home TV Service", Aviation Week and Space Technology, January 28, 1980, p. 66. See also Auerbach, A., "Firm Wants Satellite TV Link", The Montreal Star, August 15, 1979, p. B15, and Holsendolph, E., "Comsat Plan Irks Broadcasters", The New York Times, March 25, 1980, p. D1.

10. Ibid.

11. "Multilingual Shows Possible on U.S. T.V.", International Herald Tribune, Thursday, January 10, 1980, p. 3.

12. Ibid.

13. U.N. Doc. A/AC.105/51 (Feb. 25, 1969), pp. 3 and 4.

14. Patermann, C., "The Question of the Law Applicable in Cases of Damage caused by Direct Satellite Broadcasts", 16th Colloquium on the Law of Outer Space (1973), p. 75.

15. Gotlieb, A., et al, "The Transborder Transfer of Information by Communications and Computer Systems; Issues and Approaches to Guiding Principles", 68 American Journal of International Laws (1974), p. 227.

16. R.S.C., B-11 (For detailed discussions, see infra chapter 2.J)

17. Provonovich, W., "C.B.C. Ready to Fight over U.S. Sitcoms", The Montreal Star, May 2, 1979, p. A6; Bryan, J., "New Programs Could Cost C.T.V. $4 Million Extra", The Gazette , Montreal, August 8, 1979, p. 13; Provonovich, W., "C.B.C. to Increase Canadian Content", The Montreal Star, September 5, 1979, p. H5.

Chapter II: APPLICABLE INTERNATIONAL AND DOMESTIC LAW

A. General Remarks

Internationally binding regulations drawn up by the competent I.T.U. Radio Conferences have the effect that no international direct broadcasting by satellites can be started without some technical coordination between sending and receiving states. Thus, it has been argued that there is no need for governing principles to regulate the D.B.S. However, the I.T.U. regulations are technical in nature and limited in scope. For example, provision 428A of the Radio Regulations applies to technically unavoidable spill-overs but is silent as to what is technically unavoidable spill-over, and does not make a distinction between unintentional unavoidable spill-over and intentional unavoidable spill-over. Above all, a majority of States, including the U.S.A. and U.S.S.R., are of the view that the technical regulations adopted by the I.T.U. cannot solve the legal and political problems of the D.B.S., which are under the jurisdiction of the U.N.'s Committee on the Peaceful Uses of Outer Space (COPUOS).[1] The I.T.U.'s regulations relate to the radio signals but not to the content of the D.B.S. programmes. The I.T.U. itself does

not want to be a politicised forum and has referred the matter to the COPUOS. Thus, there is a need to establish international principles to govern the uses of D.B.S. for international broadcasting.

The main point of disagreement among States for the establishment of international principles is the legal conflict between the principles of "prior consent or agreement" and "free flow of information". Other points of disagreement are basically and essentially related to this. International law and domestic law of Canada are to be analysed with the main purpose to evaluate the legal bases for either of the Conflicting Views.

B. General Rules of International Law in the Light of State Practice

I. The Right of States to Control and Regulate Telecommunications

The Preamble of the presently applicable International Telecommunications Convention of 1973, (Malaga-Torremolinos, ITC) fully recognized "the sovereign right of each country to regulate its telecommunications". It further specified that this Convention is established "with the object of facilitating relations and cooperation between the peoples by means of efficient telecommunication services". Codding, discussing the inclusion of the principle of sovereignty in the Preamble of the I.T.U.'s Atlantic City Convention (which has a similar Preamble than that of the 1973 ITC) asserted that "when considering the declared purposes of the Union, it is necessary to keep in mind the ideas expressed in the Preamble to the Atlantic City Convention". He further reasoned that:[2]

> "Inasmuch at the I.T.U., as has been the case with most other international organizations, has never in the past attempted to force any of its Members to accept any changes with respect to their internal telecommunication services, the necessity for such a declaration, which might give rise to an evasion of obligations, might not be clear. An explanation can be found

> in the minutes of the Organization Committee when it was considering the Preamble. The delegate of Belgium, at that time, strongly supported the insertion of the provision because it did, in his opinion, 'involve the independence of the telecommunications of certain countries'. In that respect he pointed out that it has been suggested in the Atlantic City Radio Conference that countries on the same continent should carry out their communications, both national and international, by wire instead of radio so that enough frequencies would be available for intercontinental communications. He felt that the insertion of the 'sovereignty clause' would guard smaller nations against such actions and would in general ensure 'the principle of sovereignty of telecommunications, not only within countries, but between countries as well'. After this intervention, the delegates agreed to the insertion of the clause in the Preamble".

The traditional concept of "absolute sovereignty" may, at first sight, seem to have changed to "functional sovereignty" because of the increased interdependence between States.[3] However, in practice, States often have exerted their sovereignty when their vital interests (decided by them as to what their vital interests are) are threatened. "Sovereignty" includes a State's exclusive jurisdiction over persons, things, and activities taking place within its territorial borders and the competence to pass laws, to control and regulate them. Such territorial jurisdiction is part of the fundamental rules and principles of

international law. The correlative duty is to respect the territorial sovereignty of other States. This duty has been recognized in the U.N. Charter's Article 2(4) and by the International Court of Justice in the Corfu Channel Case.[4] Under this principle of territorial jurisdiction, States pass their laws and regulations to control and regulate their affairs, including their telecommunication facilities and programme contents.

> "It is generally accepted that a State may require its broadcasting stations to be licensed and abide by minimum programming standards that are conducive to the maintenance of internal order. State control can be exercised both in regard to technical matters and may be evidenced in program content censorship. The usual justification given is that, in addition to the need for the enlightened assignment of the limited number of available frequencies, the State has a morally valid interest in controlling program quality".[5]

Every State regulates or controls the programme contents of its broadcasting stations to a variable degree depending upon its policies. The U.S., which champions the principle of free flow of information in the D.B.S. discussion, complained to Canada that "certain Toronto-originated television programmes were morally objectionable" to the Buffalo area.[6] In 1971, "in relation to prospective activities of Telesat Canada in the United States and to trans-

border radio paging operations of certain Canadian companies, the United States has insisted on the principle that the consent of U.S. Authorities is required for such activities".[7] It is also interesting to note that countries similarly exercise their control on the programmes of direct TV broadcasts by D.B.S. For example, India, in association with the U.S., has completed its SITE project in which various programmes were broadcasted to some 5000 Indian villages. While the U.S. assisted in the space segment (hardware) of the project, India exclusively controlled the development and production of programmes (software) which were broadcast.[8]

While the Indian project involved national broadcasting, PEACESAT was basically of an international broadcasting character. In this experiment, a PEACESAT Report states that "nations in the Pacific, many of which are newly independent, are sensitive to the advances of cultural imperialism. They want to exercise control over their own development".[9] Thus they developed and controlled their own programmes which were broadcast to their territories under the PEACESAT project.

West Germany, although favouring the "free flow of information" in discussions on D.B.S. in the COPUOS, also seems to be worried about the direct TV broadcasts

via satellite of commercial programmes by Radio-Television Luxembourg. It fears that such programmes may hurt "German family" life, are "culture-endangering", and pose "a danger more acute than atomic energy".[10] Radio-Television Luxembourg was planning to lease a channel on a French-German television satellite but has been blocked to do so by West Germany and consequently may launch its own D.B.S.[11]

Does a State's exclusive jurisdiction over its telecommunications include its 'right to object' to the unwanted communications coming from the places which are beyond its territorial borders?

Radio was invented just a few years before the invention of aircraft. As early as 1906, Fauchille, the founder and defender of the "freedom of air", emphasized the analogy between wireless telegraphy and air navigation, mainly because of the "nature of the air and the rights of States over the atmosphere".[12] He based his thesis on the idea that electromagnetic waves travel in the gaseous air.[13] Thus, he advocated "freedom of air" along with his idea of "freedom of air" for air navigation.

However, scientifically, electromagnetic waves do not need the presence of air. They can

'travel' in a vacuum, as is quite clear from the relays via telecommunication satellites. Politically, the States of the world did not adopt Fauchille's idea of "freedom of the air", but in the Paris Convention of 1910 and the Chicago Convention of 1944, they declared "complete" and "exclusive" sovereignty in the air-space above their territories.

It may be interesting to note parallel developments in air transport. The "open skies" policy of the U.S. was rejected at the 1944 Chicago Conference by States which were weaker with regard to their airline infrastructure. This gave rise to the exchange of commercial rights on a bilateral basis, in particular with the Bermuda Agreement I of 1946 between the U.S. and the U.K. When the U.K. air industry became better equipped, it forced the U.S. into negotiations towards the more balanced Bermuda II in 1977. Since 1978, the U.S. has deregulated its air-line industry and has been trying to persuade other States to follow it in international air transport. However, States of the world are still very sensitive, and carefully guard their commercial interests. Recently, the International Civil Aviation Organization's Air Transport Conference

rejected the U.S.'s "open skies" policy again.[14] Given this political situation in the present world, one wonders if the States will be ready to open their skies to the free flow of information via D.B.S. over which they will exercise no control.

Along with the principle of national sovereignty in the air-space, according to Estep and others:

> "It is also an accepted principle of customary international law that a State has the right to object to transgression of its territory by offensive radiowaves of foreign origin".[15]

The radio signals carrying objectional programmes "pass through" the air space of the objecting States which, according to Glazer:

> "Under international law in its present posture, may interdict by right, the passage of radiowaves through their territorial air spaces. Neither the law-making treaties of the I.T.U., nor customary international law derogate from this principle".[16]

Article 20 of the 1973 ITC recognized the right of each State:

> "to suspend the international telecommunications service for an indefinite time, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit".

"International telecommunication service" includes D.B.S. broadcasts, as is clear from the definitions of different telecommunication services given in the 1973 ITC.[17]

Thus, it may be concluded that a State can legally object to the transgression of objectionable or unwanted radio transmissions of foreign origin. The exercise of this right is, of course, subject to the discretion of the respective state. Thus, it may also choose to acquiesce to such transgression.

II. The Right of States to Jam Radio Signals of Other States

The right to "jam" objectional foreign broadcasts is related to the right to object. In fact, the action 'jamming' is the execution of a State's "right to object".

Jamming of objectional broadcasts is usually done by broadcasting or transmitting noise on the same frequency, thereby causing noise interference with the broadcast. Article 35 of the 1973 ITC prohibits "harmful interference":

> "All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications or other Members...which operate in accordance with the provisions of the Radio Regulations".

Therefore, jamming is intentional harmful interference or intentional non-conformity with the Radio Regulations which are part of the 1973 ITC. The International Frequency Registration Board of

the I.T.U., according to Leive, has been "noticeably less successful in resolving"[18] such problems. States exert their right when they feel it necessary to jam objectional foreign broadcasts. Since international law does not provide sanctions, States expressly declare their right to enforce it as was done by Belgium, Spain and the U.S.S.R. These countries specially declared and reserved their right to jam, under the 1936 Broadcasting Convention (discussed below) and as allowed by customary international law, objectional foreign radio broadcasts, pending settlement of a dispute under Article 7 of the Broadcasting Convention.

There have been numerous cases of jamming. Both the U.S.S.R. and the U.S. have been jamming each other's radio broadcasts. In a dispute over jamming by both of them, during 1956-57, the U.S. informed the I.F.R.B. that:

> "the U.S. had previously informed the I.T.U. that because of international harmful interference caused by the U.S.S.R. to U.S. broadcasts, the U.S. had to take whatever steps it thought necessary to bar such 'jamming ".[19]

David also mentions the examples of the Romanian Government's jamming of Soviet broadcasts, which were asking the Romanian people to revolt, and Moscow's jamming of British radio broadcasts during a general strike in England.[20]

General State practice with respect to radio and 'traditional' TV broadcasts into foreign countries shows that States have, as a rule, acquiesced to such foreign broadcasts. However, they have exercised their right to object and to take countermeasures, in particular to 'jam' foreign broadcasts under exceptional circumstances, namely when they considered these broadcasts to be harmful to their vital interests mainly in cases of political and ideological propaganda.

Since ITU regulations do not provide for effective sanctions and methods to eliminate 'harmful interference', States may be justified in jamming the foreign broadcasts which cause such interference.

In this context it is interesting to note the justifications for jamming given by Smith:

> "The act of jamming is the overt expression of a given governmental policy designed to regulate the entrance of external telecommunications into its territory. The concept of State sovereignty justifies the formulation of this policy and allows for its implementation. One possible result might be the total exclusion of all external broadcasting coupled with a government monopoly of the telecommunication facilities within the State.
>
> Thus, the existence of a threat to internal order which would obviously affect the State could provide a justification for national jamming based on the general disturbance of the airspace over which the State has exclusive sovereignty. An even stronger case could be made if the threat were adjudged to be against national security. The right of the State to protect national security could be interpreted in such a way as to include the necessity of prohibiting external broadcasts originating beyond territorial boundaries. The content of the unauthorized external broadcasting would be analysed by the receiving State authorities to determine whether action could be taken against the State from which the transmission originated or the transmission

> themselves. This could even be interpreted as an exercise of the inherent right of self-defense recognized in Article 51 of the United Nations Charter. Since the freedom of action afforded by this liberal interpretation of the right to protect national security would also be available to other States, care would have to be taken in its exercise to minimize the possibility of the same rationale being used to justify offensive action by these States. The problem would be one of interpreting the factors that constitute breaches of national security in such a way as to include external broadcasting within the restricted categories".[21]

It may be pointed out that though the "right to jam" has been claimed to be an accepted right of a State but it has been the cause of international friction.[22] There could also be technical difficulties in jamming D.B.S. signals. A State has the right to jam only those broadcast signals which transgress its territories, but once jamming of D.B.S. signals is carried out it may cause the jamming of some broadcasts to a third State. According to ~~Prof~~. Lay and others:

> "Jamming the transmission to the satellite would make reception of the program impossible by any country, although the same result has been achieved through jamming of standard and short-wave transmissions in the country whose government objected to the program content. Jamming of satellite transmissions may be considerably more difficult on a world-wide basis".[23]

However, this does not mean that a carefully carried-out jamming within that State's jurisdiction is prohibited. The right to jam prevails over the idea of "free flow of information".

According to Evensen:

> "A few international law scholars of the Western world have maintained...that under modern international law there exists a principle of freedom of information which not only permits the dissemination of news and information by broadcasting across borders, but which would make it unlawful for a State to 'jam' the reception of such programmes on its own territory. Such views are based partly on Article 19 of the Universal Declaration of Human Rights...and partly on a resolution passed by the General Assembly on December 15, 1950, to the effect that jamming of such programmes from abroad violates the basic principle of freedom of information. Such allegations may admittedly be commendable de lege ferenda; but to maintain that these views express prevailing rules of international law, is probably not tenable". (emphasis added).[24]

The "right to jam" may be asserted to be subject to the "abuse of rights" which occurs when a State exerts its right:

> "in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage".[25]

The "abuse of rights" is a part of the doctrine that "no right is absolute". Rights and duties go together. The exercise of a right must not be carried out in such a way that the duties corresponding to that right are ignored. If the

duties are not fulfilled, the rights may be refused recognition. According to Lauterpacht:

> "There is no legal right, however well established, which could not, in some circumstances, be refused recognition on the ground that it has been abused".[26]

Thus, the right to jam broadcasts without proper justification should not be recognized. Such recognition can only be granted under exceptional circumstances. However, according to Brownlie, the doctrine of "abuse of rights" has had limited support from the dicta of international tribunals:

> "(This) Doctrine is a useful agent in the progressive development of the law, but that, as a general principle, it does not exist in positive law. Indeed it is doubtful if it could be safely recognized as an ambulatory doctrine, since it would encourage doctrines as to the relativity of rights and result, outside the judicial forum, in instability".[27]

III. The Right of States to Control Pirate Broadcasting Stations

Pirate broadcasting stations started to broadcast from vessels and aircraft situated beyond the territorial jurisdictions of any State, in the fifties They have been commercial stations obtaining income from advertisements, etc., and avoiding the laws of States, with respect to licences, income tax, prohibition of advertisements, etc. The problem

was quite serious in Europe and a number of articles appeared in legal literature with respect to the legal aspects of these stations.[28] They were considered a threat to national interests by States to whose population their broadcasts were directed.

At the insistance of some European States, the 1959 ITU Radio Conference inserted provision 422 (now 6214) of the Radio Regulations, which provided that:

> "The establishment and use of broadcasting stations (sound broadcasting and television broadcasting stations) on board ships, aircraft or any other floating or airborne objects outside national territories is prohibited".[29]

However, the ITU lacks the enforcement machinery and the ability to impose sanctions in cases of violation of this provision. The affected States started passing laws making the violation of this provision an offense. Radio Veronica has been broadcasting off the Dutch coast since 1961. The Dutch Government passed a "North Sea Installation Act" on December 3, 1963.[30] Under this Act, the Dutch Government confiscated Radio Veronica and put an end to its broadcasts, justifying its action with a claim to jurisdiction which includes, among other matters, the protection of its legal interests. It contended that:

> "Under international law a State might validly exercise jurisdiction on the high seas in order to protect certain legal interests. These legal interests might be those of the State, of its subjects or of the international community. The protection of the legal order prevailing on its territory against encroachments taking place from somewhere outside territorial waters solely in order to escape the effects of that legal order is an interest worthy of legal protection".[31]

Later, the Council of Europe also sponsored the conclusion of the European Agreement for the Prevention on 'Pirate' Broadcasts[32] which was opened for signature on January 20, 1965, and has been effective since October 19, 1967. The Agreement is open for adherence by any member State of the ITU. According to its Article 2, States Parties undertook to :

> "Take appropriate steps to make punishable as offences, in accordance with its domestic law, the establishment or operation of pirate broadcasting stations, as well as acts of collaboration knowingly performed".

The member State undertook to punish "<u>its nationals</u> who have committed" any offence under this Agreement:

> "On its territory, ships, or aircraft or any other floating or airborne object".

However, it can only punish:

> "<u>Non-nationals</u>, who on its territory, ships or aircraft, or on board any floating or airborne object <u>under its jurisdiction</u> have committed any"

offence under the Agreement.[33] The Agreement, there-

fore seems to be "too cautiously formulated" but it was:

> "an important step forward in protecting the necessary law and order in the field of radio-communications against a development which...might be a very serious threat to the international community as a whole".[34]

Does the provision of ITU Radio Regulations, which prohibits "pirate" broadcasting, apply to outer space including D.B.S.?

Leive distinguishes D.B.S. from pirate stations because the latter

> "were generally regarded as undesirable, since they were established solely to evade domestic restrictions on local broadcasting. While it is conceivable that a direct broadcast satellite might beam programs into a country over its objections, this may not be a realistic possibility; such satellites may, in fact, be desirable, provided that appropriate international agreement as to their use can be reached".[35]

However, the absence of any "appropriate international agreement" may reduce D.B.S. to a similar status as pirate broadcasting stations. It may also be asserted that provision 422 of the Radio Regulations applies to D.B.S. "by analogy". The States themselves, whose "legal interests" were damaged by pirate broadcasting stations, assumed the right, as part of their territorial jurisdiction, to control them and punish their operators. The lack of enforceability of the ITU Radio Regulations in respect to D.B.S. prompts the affected States to assume similar rights. Leive

also envisaged the situation of unenforceability:

> "The pirate station problem graphically pointed out the limits of the Board's (IFRB) enforcement powers under the Regulations. Therefore, quite apart from the political problems raised by the direct broadcast satellite, and considering only the problems raised by this type of satellite service relating to non-conformity with the ITU Convention and Regulations, the ITU might well be similarly handicapped in resolving such problems or enforcing its rules".[36]

It may be concluded that a State has the right to control and regulate its telecommunications. It has the "right to object" to, and may rightfully exercise its "right to jam" objectionable broadcasts of foreign origin under exceptionable circumstances. It also has the right to take action against the broadcasting stations, operating from places which are beyond its territorial jurisdiction, if its interests are adversely affected.

C. The United Nations Charter

The U.N. Charter is the fundamental and binding international instrument which regulates the international relations of the States of the world. It is of prime importance because it has been almost universally adhered to and overrides other international treaties or agreements entered into by its member States in case of inconsistency.[37] It has also been expressly referred to by the 1967 Outer Space Treaty[38], the "magna charta" of outer space.

The U.N. and all its member States are under the duty to act in accordance with the principles that the "Organization is based on the principle of the sovereign equality of all its Members"[39] and "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them"[40] under the Charter. These obligations have been established in pursuit of the purposes of the U.N. which include the objective to "achieve international co-operation...promoting and encouraging respect for human rights and for fundamental freedoms of all".[41] In order to achieve this goal, they must follow the established duties irrespective of whether they succeed or not in such achievement. The

promotion of respect for human rights, therefore seems to be more of a programmatic character rather than an established rule of international law, while the principle of territorial jurisdiction is a well established and recognized norm of international law. The principle of territorial jurisdiction clearly, in this context, has precedence over the programmes concerning human rights.

Other articles of the Charter do not specify legal obligations of the member States to promote and encourage respect for human rights and fundamental freedoms buth rather establish the procedure or mechanism to achieve this goal. They provide functions and powers of different organs of the U.N. with respect to human rights.[42] However, according to Article 73 on the "Declaration Regarding Non-Self-Governing Territories", the member States "which have or assume responsibilities for the administration of "non-self-governing territories" recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, ...the well-being of the inhabitants of these territories, and, to this end: (a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational

advancement, their just treatment, and their protection against abuses" (emphasis added). If the administering State allows its own broadcasters, or those of other States using D.B.S., to cause damage to the cultural, political, economic, and social values of the so administered territories, it would fail to respect its legal obligations under Article 73 of the Charter.

D. The 1967 Outer Space Treaty

The Treaty[43] has been in force since December 10, 1967, and is binding among more than 70 States. It is considered the "magna charta" of outer space since it applies to all the outer space activities of States, including D.B.S., and all other space law treaties and agreements are derived from and are based on this Treaty. The Treaty itself essentially comprises numerous U.N.G.A.'s resolutions (discussed below), some of which are referred to in its Preamble.

Article I of the Treaty declares outer space to be "the province of all mankind" and the "exploration and use of outer space...shall be carried out for the benefit and in the interests of all countries". There is also declared the freedom of "exploration and use of all States without discrimination of any kind, on a basis of equality". This freedom is not absolute. All activities must be carried out in accordance with the provisions of this Treaty, U.N. Charter and general principles of international law.[44] Any State engaging in international direct T.V. broadcasts by using D.B.S. has to take account of its duties and the rights of other States under the U.N. Charter and general international law. In particular, a State is free to launch and operate a D.B.S. so far as it does

not adversely affect the rights of other States.

Article II of the Treaty prohibits the appropriation of outer space by any State "by claim of sovereignty, by means of use or occupation or by any other means". This article seems to prohibit the appropriation of outer space completely. However, because of an inherent weakness of the Treaty some problems arose under this Article. A number of equatorial States, in 1976, declared their sovereignty, in the form of the Bogota Declaration[45], over the geostationary orbit above their territories. Their main arguments for this are that the geostationay orbit is a physical fact related to the rotation of the earth and since there is no demarkation between the air space and outer space, their sovereignty (over the air space) extends to the geostationary orbit. This is a complex problem which needs a separate elaborate study. However it will suffice to say that the problem arose mainly because of the near-monopolization of a limited natural resource - the geostationary orbit - by some developed nations under the pretext of freedom of "use" of outer space. The new-comers and late-comers are worried about their accessibility to

this orbit which is the most suited orbit for telecommunication satellites including D.B.S. The first-comers, occupying the important orbital slots, may start broadcasting via D.B.S. into the late-comers' territories. The fears of these late-comers may look fictitious but they are becoming evidently real with the trend of developments of outer space activities in the world. It may be of some interest to note here that such fear has been one of the main reasons for Canada's development of a telecommunications satellites system inclucing D.B.S..[46] Because of this fear, most of the developing (late-comers) countries insist that other countries, before starting direct T.V. broadcasts to their territories, must acquire their consent to such broadcasts.

The assertion of the late-comers may receive some support from Article IX of the Treaty which, in part, provides:

> "In the exploration and use of outer space, ...States parties to the Treaty shall be guided by the principle of cooperation and mutual assistence and shall conduct their activities in outer space...with due regard to the corresponding interests of all other States parties to the Treaty" (emphasis added).

The outer space activities, under Article III of the Treaty, shall be carried out "in the interest of maintaining international peace and security and

promoting international cooperation and understanding".

This Article can be interpreted to include, by implication, prohibition of propaganda by using D.B.S.. The prohibition of propaganda is contained in U.N.G.A.'s Resolution no. 110 which is mentioned in the Preamble of this Treaty where States parties considered this resolution to be applicable to outer space. Though the Preamble is considered to be a non-operative part of the Treaty, the interpretation of Article III in the light of the Preamble makes it evidently clear that States parties to the Treaty are legally bound not to use D.B.S. for propaganda which is designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression.

Under Article VI, a State party to the Treaty bears international responsibility for the outer space activities of its nationals, both natural and juridical. A State shall be internationally responsible for the broadcasts via D.B.S. carried by its public or private persons.

Under Article II of the Convention on International Liability for Damage Caused by Space Objects (1972)[47] a "launching State shall be absolutely

liable to pay compensation for damage caused by its space object on the surface of the earth". It seems difficult to accept that any damage caused by broadcasts via D.B.S. can be compensated of 'damage' given in this Convention includes only:

> "loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations".[48]

Broadcasts via D.B.S. are unlikely to cause such damage. Therefore, the Liability Convention of 1972 will hardly be applicable to D.B.S.-activities.

However, the principle of State responsibility in the Outer Space Treaty is, of course, not limited to questions of liability. Thus, responsibility of a State for its international conduct, in particular for violations of international law or illegal action in general, may give rise to a right of retaliation - in some cases even to jam objectionable D.B.S. broadcasts.

E. The International Telecommunication Convention And the Radio Regulations.

The International Telecommunication Convention (1973) (ITC) "which is the basic instrument of the International Telecommunication Union"[49] (ITU) is a binding international treaty to which more than 150 States are parties. ITU is a specialized agency of the U.N.[50] The purpose of the ITU, besides others, is:

> "to maintain and extend international cooperation for the improvement and rational use of telecommunications of all kinds".[51]

"Telecommunications of all kinds" are wide enough to include telecommunication via satellites and D.B.S.

The ITU may convene world or regional administrative conferences "to consider specific telecommunication matters".[52] The provisions of the ITC are completed by the Radio Regulations and Additional Radio Regulations, adopted by different world or regional administrative radio conferences, and which are "binding on all members".[53]

A number of world or regional administrative radio conferences (WARC or RARC) have adopted radio regulations under which radio frequencies have been allocated to a number of radio services including broadcasting-satellite service. Since they are highly complex and technical in nature

only very important and relevant ones are specified here. However, before that, it is important to note that all the member States are legally obliged to follow their duties and the ITC and Radio Regulations. Article 44 of the ITC provides:

> "1. The Members are bound to abide by the provisions of this Convention and the Administrative Regulations in all telecommunication offices and stations established or operated by them which engage in international services or which are capable of causing harmful interference to radio services of other countries.
>
> 2. They are also bound to take the necessary steps to impose the observance of the provisions of this Convention and of the Administrative Regulations upon private operating agencies authorized by them to establish and operate telecommunications and which engage in international services or which operate stations capable of causing harmful interference to the radio services of other countries."

Detailed procedures are established for avoiding and settling the disputes which may rise under the ITC and the Radio Regulations.[54]

> "As in most other areas of international law, while rights and obligations may be established, the machinery for enforcement is either weak or nonexistent. The Board cannot order stations off the air and cannot even refuse to record frequency assignments in the Master Register...In fact, ITU members generally observe them because it is in their own interests to do so...The Regulations are

> replete with provisions the violation of which triggers the imposition of a penalty. An ITU member knows that if it permits its stations to cause harmful interference to stations of other countries, its stations may themselves be penalized in various ways...The moral force of the legal obligation to comply with the Convention and Regulations should not be underestimated...It must be recognized that at present enforcement of the Regulations depends primarily upon the efforts and good will of ITU members themselves".[55]

However, the good will is generally lacking when the disputes "are primarily political in nature".[56] The International Frequency Registration Board (IFRB) of the ITU:

> "is noticeably less successful in resolving harmful interference disputes that are based on intentional interference (i.e. jamming) or on an intentional non-conformity with the Regulations, whether for political or commercial considerations".[57]

Broadcasting-Satellite Service has been defined in the Radio Regulations as a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public.

In the broadcasting-satellite service, the term "direct reception" shall encompass both individual reception and community reception.[58]

Allocating radio frequencies to the Broadcasting-Satellite Service (BSS) the 1971 WARC also adopted Radio Regulation 428 A (now provision 6222)

which provides:

> "In devising the characteristics of a space station in the broadcasting-satellite service, all technical means available shall be used to reduce, to the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries" (emphasis added).

This provision allows unintentional international broadcasting, without the consent of the receiving State, only to the extent that it is technically unavoidable "spill-over". There may rise problems in defining precisely "spill-over". According to Sarkar:

> "this unintentional broadcasting to the unavoidable minimum power is almost impossible to define technically unless the parties cooperate. Also this unintentional programme may become very objectionable to the other territory depending on the contents and the political mood at that time".[59]

The 1971 WARC also adopted Resolution no. Spa 2-2 which has been replaced by Resolution no. AU of the 1979 WARC. This Resolution provides:

> "that stations in the broadcasting-satellite service shall be established and operated <u>in accordance with agreements and associated plans</u> adopted by World or Regional Administrative Conferences, as the case may be, in which all the administrations concerned and the administrations whose services are liable to be affected may participate" (emphasis added).

It is important to note that recommendations and resolutions adopted at the WARC or RARC do not have legally binding force though they are generally followed by States.[60]

The 1977 WARC-BS[61] adopted a Plan for Regions 1 and 3 (i.e. whole world except Americans) allocating radio frequencies and orbital positions for space stations in the broadcasting-satellite service. The Final Acts of the 1977 WARC-BC has been signed by representatives of 111 States, and have been incorporated in the Radio Regulations as Appendix 29A by 1979 WARC. The 1977 Final Acts are legally binding on the member States which have ratified them and they have come into force on January 1, 1979.

The Plan provided for individual reception and national coverage. Small countries are provided one beam each, while for the coverage of large countries, several beams are allowed to be used to avoid too much power on the satellite. It is important to note that:

> "where the specified service area deliberately exceeded the national frontiers, the agreement of countries that were subject to spill-over had to be obtained".[62]

In other words, the superbeams, which cover the whole or part of the territory of the neighbouring country or territory of a group of countries, are

allowed only after a specific agreement with the countries whose territory is being spilled-over. The ITU, in its Seventeenth Report to the UN COPUOS, summed the relevant provisions in this regard, as follows:

> "The Conference decided in principle, that the planning of the Broadcasting-Satellite Service in this band should be for domestic broadcasting. In only a few cases and then only when agreement was specifically given at the Conference, does the plan enable direct inter-country broadcasting on the same channels. Spill-over has been reduced to a minimum consistent with No. 428A of the Radio Regulations; moreover, it is expected that the technical conditions which prevail in reception from broadcasting-satellites (antennae in particular) are such that the possibility of reception of emissions, not intended in the Plan for the coverage of the area considered will be more difficult than in the case of terrestrial broadcasting." (emphasis added).63

"International Broadcasting" was allowed only between those countries which have already agreed to such service.[64] This was possible for few countries only. According to a Working Paper presented by the U.K. to the COPUOS (see the full text in Annex XIV below):

> "There is no legal possibility, in the life of this plan, for additional inter-state broadcasting by supernational beams".[65]

International broadcasting by using D.B.S. without a prior agreement on the technical aspects with the receiving State seems impossible.

According to the U.K.'s paper:

> "deliberate State-to-State broadcasting by satellite without the agreement of the receiving country will be not only in breach of treaty obligations but... not a practical possibility".[66]

For Region 2 (The Americas) the 1977 WARC-BS could not draw a similar Plan mainly because of (1) some technical reasons, i,e, in this Region, the 12 GHz band is shared between fixed-satellite service and broadcasting-satellite service which needs further delineations, and (2) some of the countries, in this Region, led by the U.S.A., were against the establishment of a fixed plan, as they followed

> "the so-called evolutionary approach, where system design and deployment are constrained by a number of sharing principles together with prior consultation with other concerned administrations".[67]

According to Resolution CH of the 1979 WARC, a RARC for the Americas will be held not later than 1983 to:

> "draw up a detailed frequency assignments orbital positions plan for the broadcasting-satellite service...(and that RARC) shall take into account the pertinent provisions of Appendix 29A (The 1977 WARC-BS Plan)".

Till the drawing up of that Plan in 1983, some interim provisions to be applicable to Region 2 were adopted in Article 12 of the 1977

WARC-BS Plan. The 1979 WARC brought only some minor changes to the provisions of Article 12.[68]

The most important point for present purposes is that the frequency band from 11.7 to 12.7 GHz is allocated to both fixed-satellite service and broadcasting-satellite service in Region 2, but, it carries footnote no. 405 BC. This footnote, after minor revision by the 1979 WARC, provides:

> "The use of the band 11.7 - 12.7 GHz in Region 2 by the fixed-satellite and broadcasting-satellite services is limited to national and subregional systems and is subject to previous agreement between the administrations concerned and those having services, operating or planned to operate in accordance with the Table, which may be affected". (emphasis added)[69]

This rule will apply till the drawing up of a Plan in 1983. Since that Plan is essentially going to be similar to the 1977 WARC-BS Plan, Chapman and Warren, speculating the possibility of international broadcasting without prior consent of the receiving State, in the Americas, said:

> "If U.S.A. and Canada were each to be allotted under the Plan a limited number of orbital positions (for argument's sake, let us say 2), could either country afford the luxury of sharing one of these orbital positions with the other?".[70]

The provisions of footnote 332A (now 3661) of the I.T.U. Radio Regulations, as revised by the 1979 WARC, are interesting to note. In Region 2 'traditional' television broadcasting is also subject to prior agreement between the affected States. It provides:

> "Within the frequency band 620 - 790 MHz, assignments may be made to television station using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected...Such stations shall not produce a power flux-density in excess of the value 129 dB (W/m^2) for angles of arrival less than 20^o... within the territories of other countries without the consent of the administration of those countries (emphasis added).

It may be concluded that ITU Radio Regulations though technical in nature, have the effect that in practice it is not legally and technically possible to start State-to-State intentional broadcasts via D.B.S. without the prior agreement on the technical aspects with the receiving State. However, technically unavoidable spill-over on the territory of other States is allowed.

F. The 1936 Convention on the Use of Broadcasting in the Cause of Peace

The dangers inherent in broadcasting were already felt at the time of the invention of radio transmission. Some States tried to regulate it on a bilateral basis,[71] but the League of Nations undertook the responsibility to regulate it on a world-wide basis so that it might be used for peaceful purposes. The League of Nations convened a Conference on September 17, 1937 in Geneva. This Conference adopted the Convention on the Use of Broadcasting in the Cause of Peace on September 23, 1936.[72] The Convention has been in force since April 2, 1938. It has, so far, been ratified by 22 countries,[73] acceded to by 46,[74] and signed by 16.[75]

Article I of the Convention contains the prohibition, and duty to stop, within the territory of the contracting State, the broadcasting of

> "any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a State Party".

'Any territory' mentioned in this article is wide enough to include the territory of a State which is not a party to this Convention.

Artile 2 prohibits war propaganda:

> "The High Contracting Parties mutually undertake to ensure that transmissions from stations within their respective territories shall not constitute an incitement to war

> against another High Contracting Party or to acts likely to lead thereto".

Transmissions of false or distorted statements or news are prohibited, under Article 3, since they are "likely to harm good international understanding". It also provides that

> "incorrect statements shall be rectified at the earliest possible moment by the most effective means".

So that fuel may not be added to the fire, contracting Parties mutually undertake:

> "to ensure, especially in the time of crises, that stations within their respective territories shall broadcast information concerning international relations the accuracy of which shall have been verified".

That means they are under duty to broadcast only information which has been previously verified. While, under Article 5, they have a duty to provide, if so requested, the information to be broadcasted by the various broadcasting services, about "better knowledge of the civilization" and foreign relations which might encourage better understanding between the people and contribute to world peace.

Under Article 6, the contracting Parties undertake to issue guidelines to their public and private broadcasting services, to give full effect to their duties under this Convention and to secure their application by these services.

The Convention, under Article 7, prescribes a detailed procedure for the settlement of disputes arising under this Convention. The Convention is open for accession by almost any State. The U'N. has resumed responsibilities assigned to the League of Nations under the Convention.[76]

The terms "transmission", "broadcasting", "radiodiffusion", "emission" are not defined in the Convention. They are wide enough to include television broadcasting and even any broadcast via D.B.S. The Convention, being a part of international law, should be considered to be equally applicable to outer space by virtue of Article III of the 1967 Outer Space Treaty.

At the time of signing this Convention, it is interesting to note that Belgium, Spain and the U.S.S.R.[77] declared and reserved their right to jam improper transmissions. Thus:

> "it may be argued that the treaty has closed its signers the remedial avenues customarily available, including jamming".[78]

However, it seems difficult to agree with this. These declarations made in the <u>procès-verbal</u> of the final meeting of the Conference seem more or less like explanations and reaffirmations of the right already existing under customary international law. Since the Convention does not provide any

sanctions or enforcement machinery, these States expressed their right to prevent or stop the continuation of improper transmissions pending the settlement of disputes. The settlement of international disputes is generally a cumbersome and time consuming process. To allow the continuation of "improper transmissions" during that period would defeat the purpose of the Convention. Thus the right to jam "improper transmission" as is available under customary international law was not affected by this Convention, rather it seems to have been given treaty recognition.

The weakness of the Convention is that it has not been ratified by a number of countries, including the U.S.S.R., which merely signed it. The U.S. did not become a member of the League of Nations. Thus the U.S., along with Germany, Japan, Italy, China, never signed, nor acceded to this Convention.

It is difficult to assess the precise impact of this Convention as to the creation or merely indication of norms and rules of customary international law [79] concerning unlawful or inadmissible programme content in international broadcasting. However, it can be said that it does contain such

rules of international law which subsequently have been recognized and reiterated in a number of other treaties, agreements, and resolutions.[80] Considering that it has been in force for more than forty years and is binding between 68 countries, the prohibition of propaganda in foreign States can be said to be a part of international law, and this prohibition should be considered to be equally applicable to the broadcasts via D.B.S.

G. The Human Rights Convention

The Universal Declaration of Human Rights was not intended to be binding between the member States of the U.N. It was adopted as a resolution of the U.N.G.A. (discussed below). However, as indicated in the latter part of that Declaration, an international treaty on Human Rights was subsequently to be drafted. The U.N.G.A., in its Resolution No. 2200 (XXI) of 16 December 1966, adopted the International Covenant on Civil and Political Rights which has been ratified and acceded to by more than 35 States. The Covenant has been in force since 23 March 1976.[81] Similarly, on a regional basis European countries and American States have adopted international treaties with respect to human rights, namely the "European Convention for the Protection of Human Rights and Fundamental Freedoms"[82] and the "American Convention on Human Rights"[83]. The European Convention has come into force on September 3, 1953, and the American Convention on July 18, 1978.

Some of the important provisions of these treaties are as follows:

I. The International Covenant on Civil and Political Rights

Article 19 of the International Covenant is derived from Article 19 of the Universal Declaration of Human Rights but it seems more consistant and elaborated. It provides:

> "1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals. (emphasis added)."

The "freedom to seek, receive, and impart information" is qualified by "either orally, in writing or in print, in the form of art, or through the media of his choice". The "media of his

choice" is wide enough to include direct T.V. broadcasts via D.B.S.

The freedoms guaranteed in this Article are not absolute. They are subject to conditions mentioned in paragraph (3) of Article 19. These conditions must be necessary and be provided by law. What is "necessity" is left to be decided by the State which will impose them by its laws. The expressions "public order" and "morals" can be widely interpreted by the State imposing conditions to include any curtailments of the freedoms.

Article 20 of the International Covenant prohibits propaganda that includes not only war propaganda but also "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

II. The European Convention on Human Rights

Article 10 of the European Convention is also based on Article 19 of the Universal Declaration of Human Rights. It provides:

> "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article

> shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises".
>
> (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary". (emphasis added).

The European Convention seems to be more conservative in granting freedom of expression. There may be a problem of interpretation of "opinion" as to exclude or include propaganda. The most important point to note is that it expressly contains the right to require licenses for broadcasting. It was feared that it may be interpreted by the court that there should not be conditions imposed by a State in the form of requirement of licences. This provision is very similar to provision 725 (5221) of the ITU Radio Regulations which, as revised by the 1979 WARC, provides:

> "No transmitting station may be established or operated by a private person or by any enterprise without a licence issued in an appropriate form and in conformity with the provisions

of these Regulations by the Government of the country to which the station in question is subject".

This Article prescribed tougher and broader controls than the ones under the International Covenant. The freedom can be reduced to a formality at the whim of any State party to the European Convention.

III. The American Convention on Human Rights

The Article 13 of the American Convention provides:

"1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies,

> or equipment used in the dissemination of information, or by any other means tending to impede the communications and circulation of ideas and opinions.
>
> 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
>
> 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law. (emphasis added).

This Article, too, has its origin in Article 19 of the Universal Declaration of Human Rights. Because of the involvement of the U.S. in the drafting of this Convention, one can easily see the inclusion of its policy in this Article, i.e. the freedom of thought and expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability". In this regard, this convention is different from the ones discussed above. Though "prior censorship" may be imposed, it must be for "public entertainments" and "for the sole purpose of regulating access to them for the moral protection of childhood and adolescence". (emphasis added)

"Thought" and "expression" shall be imparted regardless of frontiers. This seems to have included propaganda of political nature. Though propaganda is prohibited under paragraph (5) propaganda in that paragraph does not seem to include political propaganda.

The freedom of expression "may not be restricted by indirect methods or means". This Convention is certainly more liberal in granting and guaranteeing the freedom of expression than those discussed above. However, it has been ratified by few States on the American continent, while the International Covenant and the European Convention have received wider adherence.[84]

It is important to note that the U.S. has not ratified or adhered to any of these treaties. In 1978, the Carter administration has transmitted to the U.S. Senate four human rights conventions[85] for ratification. It is being emphasized before the U.S. Senate that:

> "unless the United States is a party to the treaties, we will be unable to contribute fully to this eveloping international law of human rights".[26]

These treaties, if ratified by the U.S., will not be "self-executing and, thus, not enforceable directly by the courts".[87] The treaties "are not

subject to legally binding sanctions", they are intended to "increase the political costs attached to the violations of human rights".[88]

Looking at the attitude of the U.S. towards the ratification of human rights, in the form of non self-executing treaties and without legal sanctions, the position of the U.S. towards human rights on the international legal level seems not quite clear. On the other hand, the U.S.S.R. which is the champion of 'prior consent' principle in the COPUOS, has ratified the International Covenant on Civil and Political Rights.

It may be concluded that "free flow of information" as a part of the right of freedom of expression is gaining international legal force. However, it still has a long way to go. There are mainly three international treaties which guarentee this right but they impose quite a few conditions and restrictions on the exercise of this right. The important point is that they all differ substantially in granting this right. They are not world-wide adhered to, and the American Convention - the most liberal treaty in this regard - has been ratified by few countries, the most important exception being the

U.S. It seems difficult to accept that the "free flow of information" is an absolute and internationally binding principle of international law. In the light of the U.N. Charter, it rather seems to be a "programme" or a "goal" of the international community, to be taken into account in connection with the exercise of legal rights and duties under international law, and, in particular, the international law-making process. Therefore, it must be taken into consideration in COPUOS's discussions on the use of D.B.S. for direct international T.V. broadcasts without forming a stringent legal rule.

H. The UNESCO Instruments and the 1974 Brussels Convention

I. The UNESCO Declaration of 1972

The problems created by telecommunication satellites are of "such magnitude that they could be dealt with only in part within UNESCO's mandate".[89] Other parts of these problems fall within the competence of the U.N. and that of the I.T.U.

UNESCO's Space Communication Programme has three aspects, i.e. firstly to promote the free flow of information, secondly to expand the use of television broadcasting for education, and thirdly to promote cultural exchanges.[90]

Under the UNGA Resolution No. 1721 (XVI), the U.N. had requested UNESCO's assistance in the elaboration of principles to regulate outer space activities. However, the decisions taken by UNESCO, though helping to clarify the legal norms, have not been accepted by its Members as legally binding.[91] Thus UNESCO may not have legislative functions, but it does promote international agreements, and this function "is clearly part of its responsibilities".[92] In UNESCO's opinion:

> "The tasks involved in preparing international arrangements would be shared in the following way: political and legal aspects of freedom of information, as they are involved in the use of broadcasting satellites, lay within the competence of the United Nations; regulatory

> and technical aspects regarding the use of radio frequencies were part of the mandate of the I.T.U.; the development of broadcasting and the flow of educational, scientific, cultural, and information materials were the responsibility of UNESCO".[93]

As early as 1968, a Meeting of Experts, on the invitation of UNESCO's Director-General, started work on the drafting of a declaration on the guiding principles on the use of D.B.S. The 1972 Meeting of Experts, after considerable revision, unanimously recommended a draft which became the final draft of the UNESCO Declaration. It is important to note that the Meeting of Experts consisted of experts invited by the Director General to participate in a personal capacity, not as governmental representatives. The final draft was sent by the Director General to the U.N. and the I.T.U. for their comments. The U.N. COPUOS, though some delegations expressed their views, was unable to comment on it during that session. The wish was expressed that UNESCO would give it another chance to comment upon the draft since:

> "as a principal United Nations organ on outer space, providing a 'focal point' for international cooperation in the peaceful uses and exploration of outer space...the Committee had the obligation to comment on the UNESCO draft declaration".[94]

Contrary to COPUOS's wish, UNESCO's General Assembly at its XVIIth session held in October-November 1972, approved the final draft, with one amendment, and with 55 votes in favour, 7 against

and 22 abstentations. The full title of the declaration is

> "Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange".[95]
> (See the text below in the Annex V)

Articles I and II of the Declaration specify the application of international law, of the Outer Space Treaty, and of the U.N. Charter to satellite broadcasting which "shall respect the sovereignty and equality of all States". "The objective of satellite broadcasting for the free flow of information", as proclaimed by Article V:

> "is to ensure the widest possible dissemination, among the peoples of the world, of news of all countries, developed and developing alike".

The Declaration certainly tends towards the adoption of the 'prior consent' rule to regulate the D.B.S. services. Article VI (2) provides that "each country has the right to decide on the content of the educational programmes broadcast to its people". The most important and the most controversial provisions, in this regard, are contained in Article IX which states:

> "(1) In order to further the objectives set out in the preceding articles, it is necessary that States, taking into account the principle of freedom of information, reach or promote prior agreements concerning direct satellite broadcasting to the

population of countries other than the country of origin of the transmission.

(2) With respect to commercial advertising, its transmission shall be subject to specific agreement between the originating and receiving countries". (emphasis added).

The remaining support for the adoption of the 'prior consent' rule comes from Article X which stresses that the national laws of the receiving countries shall be taken into account while preparing the programmes for D.B.S. broadcasts to other countries.

The effect of these provisions would be that a country has a right to censor international broadcasts to its people. This is what was wanted by the U.S.S.R. which had the support of France, U.A.R., East European countries, Latin American and other developing countries of the world.

On the other hand, countries emphasizing their tradition of freedom, voted against the adoption of the UNESCO Declaration. The leader of this approach was the U.S.; Canada, Denmark, the Federal Republic of Germany and the United Kingdom also voted against the Declaration because they would not accept an unrestricted rule of 'prior consent'. In other words, they preferred to adopt rules which strike a balance between the principles of free flow of information and state sovereignty.

The vote on the adoption of the UNESCO Declaration shows that the Declaration did not even receive the simple majority of the total members of UNESCO. Of the 128 member States, 110 were present and 84 voted. Out of those who voted, 55 were in favour, 7 against and 22 abstained.

To a great extent, the manner in which it was drafted reduced the real value of the UNESCO Declaration.

Some of the delegations, at the September 1972 Session of COPUOS, were critical of the final draft of the Declaration which had been sent to the COPUOS for comment, by the UNESCO's Director General before its adoption by the UNESCO. Mr. Reis, of the U.S. delegation to the COPUOS, lodged the strongest criticism as he said that:

> "Governments had not commented on this text. It has...been drawn up with the participation of a lot of distinguished people but they acted in an individual capacity; they do not bring the responsibilities of governments to bear. I represent a government, we represent governments here, and I think we need to have a governmental look at this kind of thing".[96]

As noted above, UNESCO does not have legislative power and its decisions have not been accepted by its member States as legally binding. In addition, the above mentioned criticism may weaken the impact

of the UNESCO Declaration on the legislative process to adopt principles to regulate the D.B.S. services.

II. Other UNESCO Instruments

On 19 November 1974, UNESCO's eighteenth General Conference adopted a Recommendation concerning Education for International Understanding.[97] Article III (3) of this Recommendation provides:

> "Education should be infused with the aims and purposes set forth in the Charter of the United Nations, the Constitution of UNESCO and the Universal Declaration of Human Rights, particularly Article 26, paragraph 2, of the last-named, which states: Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

In order to enable every person to contribute actively to the fulfillment of this aim, major guiding principles of education policy must include the:

> "understanding and respect for all peoples, their culture, civilizations, values and ways of life, including domestic ethnic cultures and cultures of other nations".[98]

UNESCO, during its 20th General Conference of November 1978, adopted unanimously a declaration on mass media.[99] (see the text below in Annex VI). Article I of the Declaration provides that:

> "The strenghtening of peace and international understanding, the promotion of human rights...demand a free flow and a wider and better balanced dissemination of information". (emphasis added).

The emphasis needs some explanation. It is interesting to note that "free flow of information" does not stand alone, it has been put together with "a wider and better balanced dissemination of information". This change is the result of developments taking place in an effort to establish a "New Information Order" or a "New Communication Order" which is essentially to form a part of the "New International Economic Order".

Mass media and communications in general are a part of the North-South controversy because they are said to be monopolised in the hands of few developed countries. The developing countries and the socialist countries fear that their peoples may be subjected, without their consent, to foreign ideas and influences. (This is the main reason that they want the adoption of the 'prior consent' principle for the use of D.B.S.). It is equally true that international news which is reported by the newsmen of the "monopolising" countries may not always be reported without bias. They are influenced by their cultural background and they may not be purely objective in reporting news about other countries.[100] The developing countries do not have much control on such reporting and do not have an

adequate infrastructure of their own to present their viewpoints. In some parts of the world they have started to establish news reporting agencies on a regional basis.

Such disparities and inequalities have been recognized by UNESCO:

> "The 1972 General Conference called upon the major communicating countries to recognize their international responsibilities to prevent the mass media from becoming vehicles for the 'domination of world public opinion of the source of moral and cultural pollution'. Further, it warned that the one-way flow from only countries with dominant influence over international communications might seriously harm the cultural values of other countries and called for a code of ethics for communication".[101]

The developing countries, in their efforts to establish a "New International Economic Order" and a "New Information Order", stress that freedom of information must not be interpreted to include the freedom to impart information only but also freedom to seek information. Through this reasoning they demand freedom of access to information about scientific and technological developments in the developed countries. Article 19 of the Universal Declaration of Human Rights, in part, provides the right to:

> "seek, receive and impart information and ideas through any media and regardless of frontiers" (emphasis added).

The concept of "freedom of information", insisted upon in COPUOS's discussion on D.B.S., emphasizes the "impart" aspect of freedom of information. If the countries pleading "freedom of information" accept the "seek" aspect of it, there would be no problem in reaching an agreement on the governing principles on D.B.S.

Equal freedom can only be established among equals. So long as disparities and inequalities exist in the mass media throughout the world, there seems to be less chance of acceptance of an unqualified "freedom of information". The existence of these inequalities has been accepted in the 1978 Declaration of UNESCO:

> "For the establishment of a new equilibrium and greater reciprocity in the flow of information which will be conducive to the institution of a just and lasting peace and to the economic and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries. ...".[102] (emphasis added).

In fact, because of the recognition of these "inequalities" and the inclusion of "better balanced dissemination of information" the Declaration could be adopted unanimously. The U.S., "champion" of freedom of information, seem to have realised that unqualified freedom of information cannot be accepted by the States of the world whose economies differ greatly.

George A. Dally, Deputy Assistant Secretary of State (U.S.) for International Organization Affairs, in his testimony on "UNESCO and Freedom of Information" before the House of Representatives' Subcommittee on International Organization, stated:

> "Indeed, there is truth in some of the complaints (of developing countries), validity in some demands for rectifying certain inequalities and injustices, and grounds for recognizing the destabilizing influence on the world of the massive imbalance of communications resources...
>
> The realities require us to recognize other nations' and people's aspirations. We are far more likely to see essential characteristics of expression survive and prevail in to-day's interdependent world if we adopt a cooperative attitude toward Third World media resources".[103]

If the U.S. shows a similar attitude in the COPUOS, agreement could possibly be expected on the governing principles on uses of D.B.S.

The U.S., during discussions on the Declaration, made commitments to rectify the "inequalities" and "imbalances". The fulfillment of these commitments still remains to be seen in the future; as noted above, UNESCO's declarations do not have legally binding force. However, the 1978 Declaration seems to exhibit an important trend in U.S. foreign policy with respect to "freedom of information". This new trend may influence the discussions taking place in the COPUOS on the governing principles on the use of D.B.S.

III. The 1974 Brussels Convention

With the use of telecommunication satellites, the geographic areas that are served have increased so much that it may involve the territories of a number of countries having different laws with respect to the rights of the broadcasters, copyright owners, etc. Unauthorized rebroadcasting of programme-carrying signals can easily occur. This has been called "poaching". Serious concern about the "poaching" of satellite signals was evident during the meeting of a working group of the International Bureau for the Protection of Intellectual Property (BIRPI) in 1968 and the UNESCO Meeting of Experts on the Use of Space Communication for broadcasting, held in January 1968. UNESCO and the World Intellectual Property Organization (previously BIPRI) jointly sponsored and convened the Brussels Conference on May 6, 1974 to consider the drafts of their previously convened Conferences for the same purpose. The Brussels Conference, in spite of initial difficulties, adopted the "Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite" (The Brussels Convention).[104]

The basic and principal provision of the Convention is Article 2(1) which states that:

> "Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal".

A number of restrictions and conditons are imposed by other articles on the application of the Convention.

Article 4(iii) creates an exception to the applications of the Convention, for the benefit of developing countries. Where the Contracting State is a developing country it shall not be required to apply the "adequate measures" against the poaching of signals if the:

> "distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research".

Also the Convention does not apply to the programme-carrying signals of a direct broadcast satellite which are intended for direct reception by the general public.[105] However, the Report of the Rapporteur of the Brussels Conference clarifies this provision that:

> "the exclusion does not go so far as to exempt the activities of a 'pirate' distributor using a D.B.S. system for his distribution of conventional satellite signals".[106]

Above all the Convention seems to be:

> "inapplicable to the D.B.S. signals as far as the receiving State is concerned, since the transmission is intended for reception by the general public of that State, but nevertheless retains its validity in respect of all other States for which the emitted signals were unintended".[107]

It is important to note that "the subject of the treaty is the container and not the content", in other words, the "Convention deals with signals and not the messages those signals carry".[108] At the Brussels Conference, the U.S.S.R., Byelorussian S.S.R. and the Ukranian S.S.R. made repeated attempts to include governmental control over the contents of the emitted signals in the Convention. However, these proposals were rejected mainly on the grounds that the regulation of programme-content was beyond the mandate of the Conference, and the Convention obliges the receiving State to take "adequate measures" against the poaching of emitted signals and does not create any obligation for the transmitting State.[109]

The Brussels Convention entered into force on 25th August, 1979 on the fifth ratification by the Federal Republic of Germany in May 1979. The Convention has already been ratified by Kenya, Mexico, Nicaragua and Yugoslavia.[110]

J. The U.N. General Assembly Resolutions and Declarations

The U.N. General Assembly (U.N.G.A.) has adopted a number of resolutions and recommendations which are considered to be applicable to the uses of D.B.S. for international broadcasting. Because of the serious controversy over the legal status of these resolutions and recommendations, as mentioned below, only important and relevant provisions of some of them are specified here with the view to exhibit the concerns of the world political body.

I. The Resolutions Concerning Propaganda

The first and one of the most important ones is Resolution No. 110 (II) of 3 November 1947, which condemned:

> "all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression".

The essential provision of this Resolution can also be found in the International Convention concerning the Use of Broadcasting in the Cause of Peace (Geneva, 1936), discussed above. The Resolution has been considered to be applicable to the outer space by the preamble of the 1967 Outer Space Treaty and a number of U.N.G.A. resolutions. Thus, it seems that this prohibition of propaganda is a part of

international law .

II. The Resolutions Concerning Exploration and Use of Outer Space

A few days after the launching of the world's first artificial satellite, the U.N.G.A. started expressing the concerns of the world community with respect to outer space. Its Resolution No. 1148 (XII) of November 14, 1957 called for:

> "the joint study of an inspection system designed to ensure that the sending of objects through the outer space should be exclusively for peaceful and scientific purposes".

Dedication of outer space for "peaceful purposes only" was reaffirmed by it in its Resolution No. 1348 (XIII) of 13 December 1958. Nemerous resolutions were adopted thereafter for the guidance of States in their explorations and uses of outer space and celestial bodies.

In its Resolution No. 1721A(XVI) of 20 December 1961, the U.N.G.A. affirmed its belief that:

> "the exploration and use of outer space should be only for the betterment of mankind and to the benefit of all States irrespective of the stage of their economic or scientific development".[111]

It also affirmed its belief, in its Resolution No. 1721 D, that:

> "communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis".

Such beliefs have been reaffirmed in its various other resolutions.

The unanimously adopted Resolution 1802 (XVII) of 19 December 1962 stresses the necessity of the progressive development of international law pertaining to the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space. It was also expressed that:

> "communication by satellite offers great benefits to mankind, as it will permit the expansion of radio, telephone and television transmissions, including the broadcast of United Nations activities, thus facilitating contact among the peoples of the world".[112]

The Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space was unanimously adopted by Member States of the United Nations (Resolution No. 1962 of 13 December 1963) in which they solemnly declared that:

> "1. The exploration and use of outer space shall be carried out for the benefit and the interests of all mankind.
>
> 2. Outer space and celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law.

> 3. Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.
>
> 4. The activities of States in the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.
>
> 5. States bear interntional responsibility for national activities in outer space, whether carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried on in conformity with the principles set forth in the present Declaration. ...
>
> 6. In the exploration and use of outer space, States shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space with due regard for the corresponding interests of other States. ..."

In the preamble of this Declaration, the application of Resolution 110(II) to outer space was recalled and the belief was also expressed that "broad international cooperation in the scientific as well as in the legal aspects of exploration and use of outer space for peaceful purposes.., will contribute to the development of mutual understanding and the strengthening of friendly relations between nations and peoples". These principles, along with some others, have been incorporated in the 1967 Outer Space Treaty.

The origin of the "New International Information Order", as far as the information about outer space explorations is concerned,can be seen in the U.N.G.A.' Resolution No. 2221 (XXI) of 19 December 1966. In this, it expressed that "it is in the interest of all countries, and of the developing countries in particular, that knowledge and understanding of the achievements of space science and technology should be more widely disseminated and that the practical applications of space technology should be actively promoted".[113] This Resolution also recalled that "the Declaration of the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in October 1964, requested those States which had succeeded in exploring outer space to exchange and disseminate information related to the research they had carried out in this field, so that scientific progress in the peaceful utilization of outer space might be of common benefit to all".

On 20 December 1968, U.N.G.A. approved the "establishment by the Committee on the Peaceful Uses of Outer Space of a working group to study and report on the technical feasibility of

communication by direct broadcast from satellites and the current and foreseeable developments in this field, including comparative user costs and other economic considerations, as well as the implications of such developments in the social, cultural, legal and other areas".[114] It endorsed, in Resolution No. 2733 (XXV) of 16 December 1970, "the Working Group's conclusions on the applicability to such broadcasting of certain existing international legal instruments, including the Charter of the United Nations, The Treaty on Principles Governing the Activities of States in the Exploration and use of Outer Space, including the Moon and Other Celestial Bodies and the applicable provisions of the International Telecommunications Convention and Radio Regulations". It also invited the International Telecommunication Union (I.T.U.) and UNESCO to consider the issues and problems of D.B.S. which fall under their respective jurisdictions.

On November 9, 1972, the U.N.G.A. adopted the important Resolution 2916 (XXVII) on the Preparation of an International Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting. The following provisions of this Resolution are interesting to note:

"Bearing in mind that direct television broadcasting should help to draw the peoples of the world closer together, to widen the exchange of information and cultural values and to enhance the educational level of people in various countries,

Considering at the same time that direct television broadcasting by means of satellites should take place under conditions in which this new form of space technology will serve only the lofty goals of peace and friendship among peoples,

Mindful of the need to prevent the conversion of direct television broadcasting into a source of international conflict and of aggravation of the relations among States and to protect the sovereignty of States from any external interference,

Desiring to further the elaboration of specific rules of international law governing the activities of States in this field on the basis of the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Believing that the activity of States in the field of direct television broadcasting must be based on the principles of mutual respect for sovereignty, non-interference in domestic affairs, equality, co-operation and mutual benefit,

Considering at the same time that the introduction of direct television broadcasting by means of satellites could raise significant problems connected with the need to ensure the free flow of communications on a basis of strict respect for the sovereign rights of States,

1. Considers it necessary to elaborate principles governing the use by States of artificial earth satellites for direct television broadcasting with a

view to concluding an international agreement or agreements;
2. Requests the Committee on the Peaceful Uses of Outer Space to undertake the elaboration of such principles as soon as possible". (emphasis added).

Some other Resolutions of the U.N.G.A. simply reaffirmed its beliefs expressed in the above mentioned resolutions.[115]

III. The Declaration on Friendly Relations and Cooperation Among States

On 6 December 1949 the U.N.G.A. adopted a resolution to which the "Draft Declaration on Rights and Duties of States" was annexed.[116] The Draft Declaration was prepared by the International Law Commission and was deemed by the U.N.G.A. to be a "notable and substantial contribution towards the progrssive development of international law and codification". The provisions of this Draft Declaration have been incorporated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (See the text in Annex VIII below), which was unanimously adopted by the U.N.G.A. in Resolution 2625 (XXV) on 24 October 1970. The U.N.G.A. was deeply convinced that the Declaration "would contribute to the strengthening of world peace and constitute a landmark in the development of international law

and of relations among States".

In seven different areas, the Declaration specified the rights and duties of States with a view to developing friendly relations and cooperation among States and to maintain international peace and security. In the preamble to the Declaration, the U.N.G.A. noted "the great political, economic and social changes and scientific progress (in the specially mentioned outer space field also) which have taken place in the world since the adoption of the Charter gives increased importance to these principles and to the need for their more effective application in the conduct of States whenever carried on". The Declaration solemnly proclaimed that "All States enjoy sovereign equality" which includes the enjoyment of a State's "rights inherent in full sovereignty, ...the right freely to choose and develop its political, social, economic and cultural systems, ...(and) the duty to respect the personality of other States". States equally have a duty to promote "universal respect for, and observation of human rights and fundamental freedoms for all, ... to promote friendly relations and cooperation among States, (and) ...to conduct their international relations in the economic, social, cultural, technical and trade fields in accordance

with the principles of sovereign equality and non-intervention". (emphasis added).

The last part of the Declaration specified a very important duty of every State that it "shall fulfill in good faith its obligations under the generally recognized principles and rules of international law" and "under international agreements valid under the generally recognized principles and rules of international law".

The U.N.G.A. was also convinced, as expressed in the preamble of the Declaration, that "the strict observation by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of a situation which threatens international peace and security" (emphasis added). Thus, the Declaration contained a prohibition of interference with the affairs of other States. It provided that "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State".

This principle also includes that every State has "an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State".

The duty of every State to refrain from interference with the internal affairs of other States has been the subject of a few separate resolutions of the U.N.G.A. in which it also denounced "any form of interference in the internal or external affairs of States" and called upon all States in keeping with the provisions of the Declaration (mentioned above), "to undertake measures to prevent any hostile or aggressive act or activities from taking place within their territory and directed against the sovereignty, territorial integrity and political independence of another State".[117]

IV. The Resolutions Concerning the Strengthening of International Security

The U.N.G.A., at its twenty-fifth session, adopted two very important declarations, the one[118] discussed above and the "Declaration on the Strengthening of International Security".[119] Marking the 25th anniversary of the U.N., it wanted to take "new initiatives to promote peace, security, disarmament and economic and social progress for all mankind". Stressing much on the urgency and

desirability to maintain international peace and security, the Declaration reaffirmed the rights and duties of States, i.e. the duty not to intervene in matters within the domestic jurisdiction of any State, universal respect for full exercise of human rights and fundamental freedoms, and "the promotion of international cooperation, including regional, subregional and bilateral cooperation among States, in keeping with the provisions of the Charter and based on the principle of equal rights and on strict respect for the sovereignty and independence of States, (that) can contribute to the strengthening of international security".

In some other resolutions, the U.N.G.A. called upon member States to fully adhere to and implement this Declaration.[120]

V. Declaration and Resolutions on Human Rights

1. The Universal Declaration of Human Rights

The U.N.G.A. adopted Resolution 217 (III) of 10 December 1948, "International Bill of Human Rights", and Part A of this Resolution is the Universal Declaration of Human Rights. This Declaration has been widely cited and referred to during the discussions on the establishment of governing principles on the direct television

broadcasts by satellite, and therefore, deserves a detailed analysis.

The most important provisions of this Declaration, for our purposes, are contained in its Article 19, which reads:

> "Every one has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (emphasis added).

The underlined part of this Article is the basis of the argument for "free flow of information" which implies that the broadcasting State need not have the permission of the receiving State before starting direct broadcasts by satellites .

However, no right is absolute. There are conditions, specified in the Declaration, which can be imposed on the exercise of these rights. Article 29 provides:

> 1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
> 2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
> 3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

A careful study of these provisions shows that there is inconsistency, incompatibility and vagueness in the Declaration. The "freedom to hold opinions without interference" is clearly inconsistent with the freedom to "impart information and ideas through any media and regardless of frontiers" especially in the context of D.B.S. The right of the States stressing "prior consent or agreement" is justified on the principles of territorial jurisdiction and sovereign equality (as described in U.N.G.A.'s above mentioned resolutions) on which the U.N. has been based. In other words, freedom to "impart information and ideas" may not be exercised contrary to these principles. Article 22 entitles everyone "to realization ...of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". This, too, seems to favour the argument of the States stressing the necessity of "prior consent or agreement" to protect their economic, social and cultural values of their people.

In fact, the Declaration contains the highest aspirations and goals to be achieved to establish freedom, justice and peace in the world. In practice, not all States give effect to these ideals. It is not difficult to compare the theoretical ideas with the practical effectiveness

and realization of the following rights incorporated in the Declaration:

> Article 1: All human beings are born free and equal...and should act towards one another in a spirit of brotherhood.
>
> Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
>
> Article 13 (a): Everyone has the right to leave any country, including his own, and to return to his country.
>
> Article 17 (1): Everyone has the right to own property alone as well as in association with others.
>
> Article 23(1): Everyone has the right to work...
>
> Article 23(2): Everyone, without any discrimination, has the right to equal pay for equal work.
>
> Article 26(3): Parents have a prior right to choose the kind of education that shall be given to their children.

Even the most advanced and industrialized countries, in some instances, cannot afford to give effect to these lofty ideals. The Declaration was adopted in the form of a resolution by the U.N.G.A. which clearly shows, according to Brownlie, that it "was not intended to be binding".[121] However, the Declaration was an important first step in the adoption of the International Bill of Human Rights since the drafting and adoption

of the International Covenant on Human Rights, in the form of a binding international treaty, followed thereafter. It is discussed below.

The Declaration has given rise to discussions on the adoption and implementation of different specific human rights and freedoms.

The U.N.G.A. has also been discussing and adopting resolutions on subjects related to the Declaration; for example, freedom of information, preservation and development of cultural values, and human rights and scientific and technological developments.

2. The Resolutions Concerning Freedom of Information

The question of freedom of information has its origin in Article 19 of the Universal Declaration of Human Rights. The U.N.G.A. has always reiterated its belief that "freedom of information forms an important part of the human rights and fundamental freedoms, to the promotion of which the United Nations is dedicated".[122]

Since the creation of the U.N., different U.N. organs have been discussing and adopting resolutions and recommendations on the question of freedom of information.[123] However, because of some other pressing business the U.N.G.A. has not been able to complete its "Draft Declaration on

Freedom of Information" and "Draft Convention on Freedom of Information" which have been on its agenda since its fourteenth session (1959) and fifteenth session (1960) respectively. While the preamble of the Draft Declaration on Freedom of Information affirms Article 19 of the Declaration of Human Rights, Article I provides that:

> "The right to know and the right freely to seek that truth are inalienable and fundamental rights of man. Everyone has the right, individually and collectively, to seek, receive and impart information".

According to its Article 3,

> "No government or public or private body or individual should ecercise such control over media for disseminating information as to prevent the existence of a diversity of sources of information or to deprive the individual of free access to such sources".

However, the rights and freedoms of information are not absolute. Limitations on them can be imposed which are, according to Article 5 of the Draft Declaration, "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of national security, public order, morality and the general welfare in a democratic society". It is interesting to note that what are "the just requirements" of national security, public order, morality and the general welfare" of a State are to be decided and

"determined by law" of that State. Thus, a State may control the incoming information of foreign origin which it considers to be against its interests in the specified areas.

The items "Draft Declaration on Freedom of Information" and "Draft Convention on Freedom of Information" remain on the agenda of the U.N.G.A.[124] This shows the reluctance on the part of the member States to agree on these issues. In fact, for the last few years, they have been given different shapes to be a part of the "New International Economic Order" and "New Communication Order" and have been well discussed in the United Nations Educational, Scientific and Cultural Organization (UNESCO).[125]

3. The Resolutions Concerning Cultural Values

The U.N.G.A. has adopted a number of resolutions recognizing "the importance of cultural development which, along with progress in the economic and social fields, should contribute to the improvement of living conditions and the well-being of nations and the peoples in the process of establishing a new international economic order".[126] Since UNESCO is the appropriate body to deal with cultural matters, the U.N.G.A. appreciated UNESCO's work "in promoting the cause of the preservation and further development of cultural values". It called upon UNESCO:

"To encourage the international exchange of information on modern methods used in the preservation and development of cultural values" and

"To promote and assist international cooperation among States and relevant international organizations aiming at the preservation and further development of cultural values." 127

4. The Resolution Concerning Human Rights and Scientific and Technological Developments.

Scientific and technological developments improve human welfare and threaten human existence. They open up vast prospects for the realization of human rights and economic, social and cultural development but also threaten the fundamental rights because of the abuse of certain scientific discoveries and their applications. The U.N.G.A. emphasized that "the establishment of a new international economic order entails, inter alia, a fundamental contribution on the part of science and technology to economic and social progress and to the promotion and safeguarding of human rights.[128] The promotion of transfer of technology to developing countries is necessary, according to the U.N.G.A., which considered "while acknowledging the indispensable role of science and technology for the development that it is necessary, on the one hand, to ensure that scientific and technological developments are not used in a manner contrary to the principles of international law and, on the

other hand, to protect human rights and fundamental freedoms in situations of scientific and technological development, taking into account the political, economic and social context of the different countries considered."[129]

VI. The Legal Status of U.N. General Assembly

What are the legal effects of the U.N.G.A.'s resolutions and recommendations? This is a very controversial question which needs elaborate study. This subject has been researched extensively with respect to the development of international law in general and space law in particular.[130] Several opinions have been expressed by the delegates to the U.N.[131] and legal publicists.[132] According to Matte:

> "If we take into consideration the manner in which these resolutions were obtained, that is, mostly as the result of insistence on the part of the United States and the Soviet Union; that, in fact, the member States of the United Nations do not consider them binding except when certain principles expressed in resolutions are reproduced in treaties; that it would be presumptuous to claim that the United Nations recommendations or resolutions are also binding on States which are not members of the United Nations; if we also take into consideration the reservations with which, at times, certain States adhere to the United Nations resolutions - even when unanimously approved; these reasons seem sufficient to refuse to acknowledge that the said resolutions are binding, while recognizing their importance in clearing the way to new agreements.

> However, we must not underestimate the importance of the United Nations insofar as being the melting-pot to clarify opinions and unify differences in order to arrive at resolutions. It is a major and respectable role. Law must not be confused with pseudo-law, its arch enemy". 133

The Declarations are proof as to what the law should be and not necessarily what the law is. But, if States of the world follow the principles incorporated in these Declarations[134] accepting them as binding and follow them without interruption for a considerable time, they may be accepted as a part of customary international law based on States' practice. It may also be said that unanimously adopted Declarations, and the resolutions which clearly express intent to establish principles to regulate the conduct of States, carry a considerable weight as a supplementary evidence along with other clearly binding international principles of agreements, in clarifying the rights and duties of States with respect to a specific problem. The Universal Declaration of Human Rights, as noted above, was not intended to be binding. But, international covenants based on and derived from this Declaration are internationally binding treaties. Thus it is hard to accept in purely legal terms, a political statement like this:

> "The Universal Declaration of Human Rights is deemed an integral part of the Charter of the United Nations, thus we regard every member of the United Nations as a signatory to the Universal Declaration". 135

Accepting this statement as an interpretation of international law, one wonders about the necessity of ratification of international human rights treaties which are presented to the U.S. Senate by the present Administration for ratification.

J. Domestic Law (of Canada)

After reviewing the various norms of international law, the same questions of applicability arises in the domain of Canadian national laws and regulations, with special regard to the "prior agreement" requirement in the Canadian-Swedish "clean text".

I. The Canadian Constitution[136]

Since the subject matter is, in the first place, concerning telecommunications, it is part of the federal domain under section 91, para. 29, in connection with section 92, para. 10(a), BNA Act[137]. Furthermore, the subject matter is concerning the external relations and eventually the treaty-making power of Canada and therefore part of the federal domain under sections 91, 132 BNAA.[138] Therefore, the Federal Government has exclusive jurisdiction with respect to D.B.S.-regulation, in particular with respect to agreements with foreign States or in the framework of I.T.U.

II. The Canadian Bill of Rights of 1960.[139]

Art. 1(d) and 1(f) in part I of the Canadian Bill of Rights recognize and declare the fundamental freedoms of speech and the press.[140] Art. 2 of the Bill states that every law of Canada shall, unless expressly declared otherwise, be so construed and applied as not to abrogate- abridge or infringe any of the rights or freedoms recognized and declared. Since the "Drybones" decision of the Canadian Supreme Court[141], the Bill of Rights is to be regarded as a quasi-constitutional instrument[142]. The question arises, therefore, if under Canadian law, a similar problem would arise with respect to the "prior agreement" requirement for D.B.S. activities as under U.S. law, where the 1st Amendment specifically prohibits Congress to make laws infringing upon the freedom of speech and of the press.[143] In the U.S., a number of authors have expressed the view that this provision would bar the U.S. from accepting the requirement of "prior agreement" in the U.N.-D.B.S. principles.[144] Would the Canadian Bill of Rights bar the Canadian Government on legal grounds from sponsoring a "prior agreement" solution for D.B.S. because this would infringe upon the "free flow of information" and thus upon the freedom of speech and of the press under Art. 1(d)

and (f) of the Canadian Bill of Rights?

The guarantees of the freedoms of speech and of the press in the Bill of Rights are essentially aimed against internal government action interfering with, hindering or suppressing the free exchange of opinion, in particular in the public and the political arena.[145] However, from the constitutional point of view, internal control procedures of news media by the government may be quite something else than control measures of the news media from abroad. Since the freedoms of speech and of the press are by no means unlimited, but find their bounds in laws on defamation, blasphemy, sedition, obscenity and censorship, and in such provisions as sections 60 and 63 of the Canadian Criminal Code (relating to sedition and mutiny, respectively)[146], the government must be in the position to keep control over the influx of media from abroad. It is even under the responsibility towards its own citizens to create a legal basis for regulatory control over such influx in order to be able to ensure that the bounds of the freedoms of speech and of the press are observed and that Canadian Law is not violated.[147] Seen from this angle, the Canadian Government is not only legally entitled - with respect to the fundamental freedoms of

the Bill of Rights - to sponsor a "prior agreement" requirement for D.B.S. activities which would create the legal basis for regulatory control over the information influx by D.B.S., but is even under the legal responsibility to create such a basis in this ar another form. In other words, it would seem doubtful if the government could legally adopt a "laissez-faire" approach and consent to a solution which would allow international D.B.S. without affording a basis for preventive governmental regulatory control.[148]

III. The Broadcasting Act[149]

The Broadcasting Act, in section 3, sets out the Broadcasting Policy for Canada, and provides, in section 4 ff, for the objectives and powers of the C.R.T.C.[150] in relation to broadcasting. Although D.B.S. activities would, under section 2, fall under the definition of "broadcasting"[151], it appears from the rest of the definitions contained in section 2 as well as from section 3(a) of the Act, that international D.B.S. activities carried out by foreign States or foreign broadcasting entities into Canada and destined for the Canadian public would, in principle,[152] not form part of the "Canadian Broadcasting System" as set out in Section 3(a) of the Act. Therefore, such activities would not be subject to the

"Broadcasting Policy" provisions of section 3 of the Act or the regulatory powers of the C.R.T.C. under sections 4 ff of the Act.[153] Unless a prior government agreement or arrangement between broadcasting entities is concluded on the D.B.S. activity to be carried out, this type of activity would remain entirely unregulated - a more than obvious inconsistency within the broadcasting system and an unjustified privilege for foreign broadcasting entities.

It appears from the wordings of the section 3 on the "Broadcasting Policy for Canada", that a coherent comprehensive system with the aim "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" was to be created.[154] These purposes could hardly be achieved if foreign D.B.S. programmes would be permitted into Canada, on which the government could not legally exercise control. The notion of a coherent and comprehensive system in itself excludes a "laissez-faire" approach of the government towards international D.B.S. principles, in particular the "free flow of information" approach. Again, these considerations lead to the conclusion that a "prior agreement" approach, affording a basis for preventive governmental

regulatory control, appears yet to be the only legally acceptable approach.[155]

Although at present, the C.R.T.C. may be entrusted with limited powers with respect to certain technical aspects of international D.B.S. activities (section 17(1)(f), e.g.)[156], it may be necessary to amend the powers of the Commission with a view to exercise regulatory control over such activities, in particular with respect to their compatibility with the Canadian broadcasting system.[157]

IV. The Television Broadcasting Regulations[158]

The limitations upon the freedoms of speech and of the press outlined above[159] have particular application to television broadcasting activities under Canadian Law . Section 5(1) of the Television Broadcasting Regulations provides that no station or network operator shall broadcast[160]

"(a) anything contrary to law

(b) any abusive comment or abusive pictorial representation on any race, religion or creed

(c) any obscene, indecent or profane language or pictorial representation

(d) any false or misleading news

(e) ..."

Furthermore, section 6A sets considerable time limitations for non-Canadian programmes and section 7 contains provisions for programmes of a political, in particular partisan character. Section 8 ff set forth detailed provisions for advertisement broadcasts.

These Regulations do in principle not apply to international D.B.S. activities into Canada, since the sending "station" or "network" is not subject to the jurisdiction of the C.R.T.C.[161] However the contents of section 5(1) of the Regulations would seem to apply to any broadcasting activities, including international D.B.S., in Canada, since they are limitations upon the freedoms of speech and of the press already following from other legal sources, such as laws on defamation, blasphemy, sedition, obscenity and censorship.[162] Furthermore, in order to maintain a coherent and comprehensive broadcasting system, the Canadian Government would appear to be under the responsibility to apply comparable standards to international D.B.S. programmes as those it applies under the Television Broadcasting Regulations. Otherwise, a multifold system would develop with a number of completely non-Canadian programmes, something which runs counter the provisions of the Regulations and the

Broadcasting Act. The government would therefore have to make sure that any principles on the conduct of international D.B.S. activities afford a legal basis to exercise preventive governmental regulatory control.

V. Results

Under sections 91 and 92 of the BNA Act, the Federal Government has exclusive jurisdiction with respect to D.B.S. regulation, in particular with respect to agreements with foreign States or in the framework of I.T.U.

Taking into account the freedoms of speech and of the press guaranteed in the Canadian Bill of Rights, as well as the limitations of these freedoms, the Canadian Government is under the responsibilities towards its own citizens to ensure a legal basis for regulatory control over D.B.S. information influx from abroad in order to be able to ensure that the bounds of the freedoms of speech and of the press are observed and that Canadian Law is not violated.

Although the Broadcasting Act and the Television Broadcasting Regulation would not directly apply to international D.B.S. activities into Canada, the notion of a "Canadian Broadcasting

System" which is to be coherent and comprehensive, as well as the programme standards set out in the TV "Broadcasting Regulations", require the Canadian Government legally to ensure that the principles on the conduct of international D.B.S. activities afford a basis for an to exercise preventive governmental regulatory control.

It may be added that analogous considerations would seem to apply to all those States whose internal legal systems provide for established limitations on the freedom of expression as well as for comprehensive governmental control of the broadcasting system including programme content standards.

Chapter 2 - Footnotes

1. Generally see Galloway, J.F., "Telecommunications, National Sovereignty and the Geostationary Orbit", 20th Colloquium of the Law of Outer Space, (1977), p. 226. (For a detailed discussion on this point, see infra, chapter 3.D.VI.3).

2. Codding, International Telecommunication Union: An Experiment in International Cooperation, (1952), p. 274.

3. Since, "Space, with science and technology have deeply affected the essence of the State which can no longer exist merely on the basis of territory and population" suggests Bandazzi, that the classical concept of sovereignty should be replaced by "scientific - technological sovereignty" which will reflect a "State's scientific and technological capability" ...and it "would concern all branches of science and technology including telecommunications": C. Bandazzi, "Telecommunications and Space", Telecommunication Journal, Vol. 38 (1971), p. 479 et p. 481. However, it remains to be seen how the international lawyers and States of the world will accept his new concept which seems nothing more than a utopian impossibility at least at present.

4. I.C.J. Reports (1949) p. 4 at p. 35.

5. Delbert D. Smith, International Telecommunication Control, 1969, A.W. Sijthoff-Leyden, p. 10.

6. Allan Gotlieb, et al, "The Transborder Transfer of Information by Communications and Computer Systems: Issues and Approaches to Guiding Principles", 68 American Journal of International Law, (1974), p. 227 et p. 239.

7. Ibid.

8. Delbert D. Smith, Teleservices via Satellite, (1978), Sijthoff and Noordhoff, pp. 128-132.

9. Ibid., p. 36.

10. "Luxembourg Accuses Germany of Being Bully over TV Dispute", The New York Times, Tuesday, October 23, 1979.

11. Ibid.

12. J.C. Cooper, Explorations in Aerospace Law, (ed. by I.A. Vlasic), (1968), McGill University, Montreal, p. 10.

13. Paul Fauchille, Traité de droit international public, Tome I, 2nd part, (1925), p. 587.

14. "ICAO Conference Rejects U.S. on Capacity Restriction Removal", Aviation Week and Space Technology, February 25, 1980, p. 30.

15. Samuel D. Estep, et al, "Space Communications and the Law: Adequate International Control after 1963? 60 Michigan Law Review (1961-62), p. 871 at p. 876.

16. J. Henry Glazer, "The Law Making Treaties of the International Telecommunication Union Through Time and Space", 60 Michigan Law Review (1961-62), 269, at p. 292. See also Oppeinheim (Lauterpacht) International Law, 8th ed. (1955), Vol. I, p. 529; Jessup and Taubenfeld, Controls for Outer Space and the Antarctic Treaty, (1959), p. 204; Briggs, The Law of Nations, 2nd ed., (1952), p. 325.

17. Annex 2 attached to the 1973 ITC, for example, provides:
Broadcasting Service: A radio communication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmissions.
Radio communication: Telecommunication by means of radio waves.
International Service: A telecommunication service between telecommunication offices or stations of any nature which are in or belong to different countries.

18. David M. Leive, International Telecommunications and International Law: The Regulation of the Radio Spectrum, A.W. Sijthoff-Leyden, (1970), p. 132.

19. Ibid., note 83.

20. W. Davis, Radio Law, (1929), p. 359, cited in Estep et al., op. cit. p. 877.

21. Delbert D. Smith, op. cit., supra (Fn. 5), pp. 8 and 10.

22. S. Houston Lay, et al, "Preliminary Draft of a Study of Censorship provisions of a Proposed Telecommunications Satellite Treaty and the Constitution of the United States of America", 17th Colloquium on the Law of Outer Space, (1974), p. 72 at p. 76. The U.N.G.A. Resolution no. 424 (V) of December 14, 1950, has condemned jamming "as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers". However, it also invited "all governments to refrain from radio broadcasts that would mean unfair attacks or slanders against other peoples anywhere and in so doing to conform strictly to an ethical conduct in the interest of world peace by reporting facts truly and objectively". These beliefs were reaffirmed by the U.N.G.A. in its Resolution no. 841 (IX) of December 17, 1954.

23. S.H. Lay, Ibid.

24. Jens Evensen, "Aspects of International Law Relating to Modern Radio Communications", 115 Recueil des Cours, (1965), p. 471, at pp. 559-560.

25. Oppenheim, op. cit. p. 345.

26. Lauterpacht, The Development of International Law by the International Court, p. 164 (cited in Brownlie, op. cit., at p. 432.

27. Ian Brownlie, Principles of Public International Law, 2nd ed. (1973), Clarendon Press, Oxford, pp. 431 and 432.

28. See generally N. March Hunnings, "Pirate Broadcasting in European Waters", The International and Comparative Law Quarterly, Vol. 14 (1965), p. 410; Bos, "La liberté de la haute mer, quelques problèmes d'actualité", 12 Netherlands International Law Review (1965), p. 337; Woodliffe, "Some Legal Aspects of Pirate Broadcasting in the North Sea", 12 Netherlands International Law Review (1965), p. 365; Max Sorensen, "Pirate Broadcasting from the High Seas", Legal Eassays (Festschrift Castberg) Oslo, (1963), p. 319; Persin, "Will Space be Open to Piracy?", 30 Telecommunication Journal, Vol. 30 (1963), p. 113;

Evensen, "Certain Aspects of International Law Concerning the Operation of Pirate Stations from Ships or Aircraft", European Broadcasting Union, Doc. O.A. 1503 of August 22, 1960; van Pan Huys and van Emde Boas, "Legal Aspects of Pirate Broadcasting, A Dutch Approach", 60 American Journal of International Law, (1966), p. 303; Evensen, "Aspects of International Law Relating to Modern Radio Communications", 115 Recueil des Cours, (1965), A.W. Sijthoff-Leyden, p. 471 at pp. 563-578.

29. See also provision 725 (now 5221) of the I.T.U. Radio Regulations which provides:

> "No transmitting station may be established or operated by a private person or any enterprise without a license issued in an appropriate form and in conformity with the provisions of these Regulations by the Government of the country to which the station in question is subject."

30. Reprinted as Annex to Panhuys and Boas, "Legal Aspects of Pirate Broadcasting", 60 American Journal of International Law, (1966), p. 303 at pp. 340-341.

31. Panhuys and Boas, Ibid., p. 333.

32. Reprinted in 4 International Legal Materials (1965), p. 115; European Treaty Series No. 53; U.K. Treaty Series No. 1, (1968), Comnd. 3497.

33. Ibid., Article 3.

34. Evensen, "Aspects of International Law Relating to Modern Radio Communications", 115 Recueil des Cours, (1965), p. 471, at p. 577.

35. Leive, op. cit., pp. 244-245, fn. 56.

36. Ibid.

37. Article 103 of the U.N. Charter Provides that "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

38. Article III of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereinafter referred

to as the Outer Space Treaty) Opened for Signature at Moscow, London and Washington, on 27 Janaury 1967, and came into force on 10 October 1967.

39. The U.N. Charter Article 2(1).

40. Ibid., Article 2(2).

41. Ibid., Article 1(3).

42. For example, "The General Assembly shall initiate studies and make recommendations for the purpose of ... (b) promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms". (Article 13); "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ...(b) solutions of international economic, social, health, and related problems, and international cultural and educational cooperation, and (c) universal respect for, and observance of, human rights and fundamental freedoms for all..." (Article 55); "The Economic and Social Council... may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" (Article 62); "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights..." (Article 68).

43. Officially known as Treaty on Principles Governing the Activities of States in the Exploration and the Use of Outer Space, Including the Moon and Celestial Bodies, opened for signatures at London, Moscow and Washington on January 27, 1967. It has been reprinted in TIAS 6347; Space Law: Selected Basic Documents, 2nd Edition, prepared at the request of U.S. Senate's Committee on Commerce, Science, and Transportation, December 1978, G.P.O. Washington, pp. 23-36.

44. Ibid., Article III.

45. The text of Bogota Declaration is published in Jasentulyana, N.S., Manual on Space Law, (1979), Oceana Publications, N.Y., Vol. II, p. 383.

46. White Paper on Domestic Satellite Communication System for Canada, Ministry of Industry, 28 March 1968, p. 66, cited in Csabafi, I.A., The Concept of State Jurisdiction in International Space Law, (1971) Nijhoff, The Hague, p. 139.

47. Done at Washington, London and Moscow on March 29, 1972 and came into force on September 1, 1972. More than 50 States are parties to this Convention. The text of the Convention is printed in Nicolas M. Matte, Aerospace Law, (1977), The Carswell Co. Ltd., Toronto, p. 321.

48. Ibid., Article I(a).

49. Preamble to the International Telecommunication Convention (Malaga-Torremolinos), 1973, ITU, Geneva, p. 1.

50. Ibid. Article 39. See Annex 3 (at p. 139), for Agreement between the United Nations and the International Telecommunication Union.

51. Ibid., Article 4(1) (a).

52. Ibid., Article 7(2).

53. Ibid., Articles 42 and 82.

54. Ibid., Article 50. See also Article 9 of the Radio Regulations.

55. Leive, David M., International Telecommunications and International Law, Sijthoff-Leyden (1970), pp. 24-25.

56. Ibid. p. 132.

57. Ibid.

58. Final Acts of the World Administrative Radio Conference, Geneva, 1979, Vol. I, provision 3103 (hereinafter cited as 1979 Final Acts). Provisions 3104 and 3105 further define "individual reception" and "community reception" as follows:

Individual reception (in the broadcasting-satellite service): The reception of emissions from a space station in the broadcasting-satellite service by simple domestic installations and in particular those possessing small antennae.
Community Reception (in the broadcasting-satellite service): The reception of emissions from a space station in the broadcasting-satellite service by receiving equipment, which in some cases may be complex and have antennae larger than those used for individual reception, and intended for use:
-by a group of the general public at one location; or
-through a distribution system covering a limited area.

59. Sarkar, S.K., "Requirements for Establishing a Broadcast-Satellite Service", 16th Colloquium on the Law of Outer Space, (1973), p. 84. (For a detailed discussion on "spill-over", see infra, chapter 3.VI.6.).

60. Gehrig, J.J., "Broadcasting Satellites: Prospects and Problems", 17th Colloquium on the Law of Outer Space, (1974), p. 42 at p. 44. See also Gorove, S., "The Geostationary Orbit: Issues of Law and Policy", 73 The American Journal of International Law, (1979), p. 444, at p. 456.

61. Final Acts of World Broadcasting-Satellite Administrative Radio Conference, Geneva, ITU, 1977 (hereinafter referred to as 1977 WARC-BS).

62. Ib Lønberg (The Chariman of the 1977 WARC-BS) "The Broadcasting-Satellite Conference", Telecommunication Journal, Vol. 44-II (1977), p. 482, at p. 487. See also Butler, Richard E., (Deputy Secretary General, ITU), "World Administrative Radio Conference for Planning Broadcasting Satellite Service", 5 Journal of Space Law, (1977), p. 93, at p. 96.

63. UN. Doc. A/AC.105/213 (December 22, 1977), pp. 6 and 7.

64. The Plan permitted "international broadcasting" by only nine ITU members i.e. Denmark, Finland, Norway and Sweden for NORDSAT system, Vatican City for the coverage area of whole Italy, and Tunisia, Saudia Arabia and Syria who may use ARABSAT.

65. UN. Doc. A/AC.105/196, Annex IV, p. 3. See also Jasentuliyana, N., "Regulations Governing Space Telecommunication" in Jasentuliyana N. (ed.) Manual on Space Law, Vol. I (1979), Oceana Publications, N.Y., p. 195 at p. 219.

66. Un. Doc. A/AC.105/196, Annex IV, p. 4. See also Stanley, C.M., Cooperation or Confrontation in Outer Space, Thirteenth Conference on United Nations of the Next Decade, Iowa City, Iowa, U.S.A. (1978), sponsored by the Stanley Foundation, at p. 10, discussing the effects of 1977 WARC-BS he wrote that "broadcast by one nation into the territory on the frequencies of another nation without that nation's prior consent would violate the agreement (The 1977 WARC-BS Plan). Thus, in effect, each nation will have substantial control over what is received within its national boundaries while it would be theoretically possible for a satellite broadcast from another nation to be received directly, expensive dish antenna, and electronic equipment would be required at the receiver."

67. Ib Lønberg, op. cit., p. 487.

68. 1979 Final Acts, Appendix 29A, Article 12.8 (included Resolution No. BO).

69. Ibid., p. RRN7-137. In this footnote words "national and subregional" are added to replace "domestic".

70. Chapman, J.H. and Warren, G.I., "Direct Broadcast Satellites: the ITU, UN and the Real World", IV Annals of Air and Space Law, (1979), p. 413, at p. 422. Kathryn M. Queeney is of the opinion that:
"Region 2 (the Americans and the Caribbean) has been bound not only by the provisions of the Final Acts of the 1977 Conference but also by commitments to a detailed planning conference, to be held no later than 1982, which will deal with the requirements for the fixed-satellite service - i.e., the conventional telephone, telegraph and television distribution systems - and the broadcast satellite service, both of which share the 12 GHz band with terrestrial services. Under existing Radio Regulations, the development of both the fixed-satellite service and the broadcast satellite service in Region 2 is confined to domestic services; there is no provision for multicountry broadcasts."! Direct Broadcast Satellites and the

United Nations, Sijthoff and Noordhoff (1978), p. 213.

71. For two bilateral agreements prohibiting broadcasting propaganda, see Journal des Télécommunications, Vol. I (1934), pp. 327 and 328.

72. League of Nations Treaty Series, (1938), Vol. 186-187, pp. 301-317. (See the attached Annex XII, below).

73. Australia, Brazil, Burma, Denmark, United Arab Republic, El Salvador, Estonia, Finland, France, Guatemala, India, Ireland, Luxembourg, New Zealand, Norway, South Africa, Southern Rhodesia, Sweden, the U.K., Switzerland, The Netherlands, and Chile.

74. Latvia, Leeward Island, Malay States, Gold Coast, Hong Kong, Somalia, Strait Settlements, Swaziland, Tanganyka, Tonga, Transjordan, Trinidad and Tobago, Uganda, Windward Islands, Basutoland, Barbados, Aden, Zanzibar, New Hele ides Isltand, Ceylon (Sri Lanka), Gibraltar, Falkland Island, Fiji Island, Gambia, Malta, Mauritius, Nigeria, North Borneo, Northern Rhodesia, Nyasaland, Palestine, St. Helena, Sarawak, Jamaica, Seychelles, Sierra Leone, Kenya, Bahamas, British Guiana, Bechuanaland, Bermuda, Cyprus, British Honduras, British Solomon Islands, Laos.

75. Albania, Argentina, Austria, Blegium, Colombia, Czechoslovakia, Dominican Republic, Greece, Mexico, Romania, Spain, Switzerland, Turkey, Uruguay, and the U.S.S.R. (For footnotes 73, 74 and 75, see World Treaty Index, Vol. I, (1974), pp. 295-296.

76. Laos deposited its accession to the Convention with the U.N., see United Nations Treaty Series, Vol. No. 560 (1966), p. 331. See also U.N. General Assembly Resolution No. 841 (IX) of 17 December 1954.

77. League of Nations Treaty Series, Vol. 186-187, (1938) at pp. 314, 315 and 317:

Belgium: "The Delegation of Belgium delcares its opinion that the right of a country to jam by its own means improper transmissions emanating from another country, insofar as such a right exists in conformity with the general provisions of international law and with the Conventions in force, is in no way affected by the Convention".

Spain: "The Spanish Delegation declares that its Government reserves the right to put a stop by all possible means to propaganda liable adversely to affect internal order in Spain and involving a breach of the Convention, in the event of the procedure proposed by the Convention not permitting of immediate steps to put a stop to such breach".

The. U.S.S.R.: "The Delegation of the Union of Soviet Socialist Republics declares that, pending the conclusion of the procedure contemplated in Article 7 of the Convention, it considers that the right to apply reciprocal measures to a country carrying out improper transmissions against it, insofar as such a right exists under the general rules of international law and with the Conventions in force, is in no way affected by the Convention".

78. Samuel D. Estep, et al, "Space Communications and the Law: Adequate International Control After 1965?", 60 Michigan Law Review, (1962), p. 873, at p. 885.

79. Jordan, V.A., "Creation of Customary International Law by Way of Treaty", JAG Law Review (September - October 1967), Vol. IX, No. 5, p. 38.

80. For example, the United Nations Charter: U.N. Draft Declaration on the Rights and Duties of States of December 6, 1949; the U.N. G.A. Resolution No. 110(II) whose application has been recognized in the Preamble of the 1967 Outer Space Treaty; U.N.'s Genocide Convention of December 9, 1948; Universal Declaration of Human Rights of December 10, 1948 (see the attached Annex IX); European Convention on Human Rights and Fundamental Freedoms of November 4, 1950; International Covenant on Civil and Political Rights (1966); American Declaration of the Rights and Duties of Man (Bogota) 1948; American Convention

on Human Rights (San José) of November 22, 1969 (see the attached Annex XI); U.N.'s Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of October 24, 1970 (see the attached Annex VIII), etc. etc.

81. Statement of Treaties and International Agreements, UN., March 1976, pp. 97-98.

82. The text of the European Convention on Human Rights (hereinafter referred to as the European Convention) is printed in Collected Texts (Fifth ed. Strasbourg), Council of Europe, p. 5.

83. The American Convention on Human Rights (hereinafter referred to as the American Convention) as Serie Sobre Tratados, No. 36, OEA Documentos Officiales OEA/Ser. A/16, (SEPF). (See the attached Annex XI).

84. More than 20 European countries are parties to the European Convention on Human Rights, see Yearbook on Human Rights (1973-74) U.N. (1977), p. 313. See also Yearbook of the European Convention on Human Rights (1978), Nijhoff, The Hague, pp. 2-6. International Covenant on Civil and Political Rights has been ratified by Barbados, Bulgaria, Byelorussia S.S.R., Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Germany-Federal Republic, Hungary, Iran, Iraw, Jamaica, Jordan, Kenya, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritius, MOngolia, Noway, Romania, Rwanda, Sweden, Syrian Arab Republic, Tunisia, Ukranian S.S.R., the U.S.S.R., Uruguay, Yugoslavia: Statement of Treaties and International Agreements, March 1976, U.N., pp. 97-98.

85. The International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political

Rights; The International Covenant on Economic, Social and Cultural Rights; and the American Convention on Human Rights.

86. Christopher, Warren, (Deputy Secretary of State, U.S.) in his testimony before the U.S. Senate's Foreign Relations Committee on November 14, 1979: see "Four Treaties Pertaining to Human Rights", in U.S. Department of State Bulletin, Vol. 80, No. 2034 (January 1980), p. 26.

87. Ibid., p. 29.

88. Ibid., p. 27.

89. UN. Doc. A/AC.105/77, para. 196.

90. See also "UNESCO's Program in Space Communication" by The Office of Free Flow of Information and International Exchanges, UNESCO, in International Cooperation in Outer Space: A Symposium prepared for the Committee on Aeronautical and Space Sciences, U.S. Senate, 1971, p. 365, at pp. 369-373.

91. Matte, N.M., Aerospace Law, Sweet and Maxwell Ltd., London, (1969), p. 134.

92. See supra note 90, p. 367.

93. Ibid., p. 360.

94. UN. Doc. A/8720 (1972), Supp. 20, p. 11.

95. For the text of this Declaration, see Matte, N.M., Aerospace Law, (1977), The Carswell Company Ltd., Toronto, p. 299; Jasentuliyana, N. (ed.), Manual on Space Law, (1979), Oceana Publications, Inc., N.Y., Vol. II, p. 377.

96. A/AC. 105/PV. 117 (September 13, 1972), pp. 49-50. For further similar comments see: A/AC.105/PV. 119 (September 21, 1972); A/AC. 1/PV.1866 (October 18, 1972), p. 18; A/AC.1/PV. 1867 (October 18, 1972), p. 18.

97. Recommendation concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, adopted by the General Conference at its eighteenth session, Paris, 19 NOvember 1974, published by UNESCO.

98. Ibid., Article III(4) (b).

99. Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, the Promotion of Human Rights and to Counter Racialism, Apartheid, and Incitement to War, UNESCO General Conference, Twentieth Session, Paris, 1978. The text of a Draft Declaration is attached to UNESCO and Freedom of Information, Hearing before the Subcommittee on International Organizations of U.S. House of Representatives' Committee on Foreign Affairs, 96th Congress, 1st Session, July 19, 1979, p. 63 (hereinafter referred to as UNESCO and Freedom of Information). (See Annex VI below).

100. "All communication, more-over, is subjective since it comes from a transmitter made of flesh and blood. However, objective the agency journalist tries to be, he expresses himself through his whole cultural background. An American and a Zambian with matching profession qualifications will not wirte identical dispatches:" P. Gaillard, "Introduction" to News Values and Principles of Cross-Cultural Communication, UNESCO (1979), p. 6.

101. Dally, George A., "The New World Information Order and International Organization", in UNESCO and Freedom of Information, op. cit., p. 9.

102. Article VI of the Declaration, op. cit.

103. UNESCO and Freedom of Information, op. cit., p. 9. At p. 31, Elie Abel stated:

> "As an American schooled in the tradition of the first amendment, I know what I consider to be the best model. I cannot be persuaded that any alternative system I have studied serves the people half as well as our own. I am bound to acknowledge, however, that citizens of other nations with value systems of their own, have the right to choose an alternative model that more nearly suits their needs".

104. For the Report of the General Rapporteur of the Brussels Conference, see "Draft Report of the General Rapporteur", 13 International Legal Material (1974), p. 1449 (thereinafter cited as The Report of General Rapporteur) and "Conférence diplomatique de programmes transmis par satellite: Rapport présenté par Mlle Barbara Ringer, Rapporteur général, et adopté par la Conférence", Le droit d'auteur, (1974-75),

p. 278. The text of the Convention is printed in 13 International Legal Material-(1974), p. 1447; Jasentuliyana (ed.), Manual on Space Law, (1979), Vol. II, p. 87, and Matte, N.M., Aerospace Law, (1977), The Carswell Company Ltd., Toronto, p. 317.

105. Article 3 of the Brussels Convention (1974).

106. The Report of the General Rapporteur, para. 105.

107. Matte, op. cit., p. 64.

108. The Report of the General Rapporteur, para. 64.

109. Ibid., paras. 133-142. See also Henry, Nancy L., "The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: A Potshot at Poaching", New York University Journal of International Law and Politics (1974), Vol. 7, p. 575, at pp. 584-585.

110. Loriot, François, "Propriété intellectuelle et droit spatial", IV Annals of Air and Space Law (1979), p. 553.

111. See also Resolution No. 2345B (XXIII) of 20 December 1968.

112. See also Resolution No. 1963 (XVIII) of 13 December 1963.

113. See also Resolution No. 2345B (XXIII) of 20 December 1968.

114. Ibid. In its Resolution No. 2601 (XXIV) of 16 December 1969, the U.N.G.A. noted with appreciation of the Working Group's reports of its first two sessions.

115. See, for example, Resolutions 3234 (XXIX) of 12 November 1974, 32/196 of 20 December 1977, and 33/16 of 10 November 1978.

116. Resolution No. 375 (IV) on "Draft Declaration on Rights and Duties of States". See Resolutions 596 (VI) of 7 December 1951, 178 (11) of 21 November 1947, and 38(1) of 11 December 1946 for more details and background of the Resolution No. 375(IV).

117. U.N.G.A. Resolution No. 33/74 of 15 December 1978. This resolution was adopted by 128 votes in favour, 14 against and none abstaining. See also other Resolutions 32/153 of 19 December 1977 and 31/91 of 14 December 1976.

118. U.N.G.A. Resolution No. 2625 (XXV) of 24 October 1970.

119. U.N.G.A. Resolution No. 2734 (XXV) of 16 December 1970.

120. See resolutions on "Implementation of the Declaration on The Strengthening of International Security", 3332 (XXIX) of 17 December 1974, and 33/75 of 15 December 1978.

121. Brownlie, Ian, Principles of Public International Law, Second Edition (1973), Clarendon Press, Oxfors, p. 555.

122. U.N.G.A. Resolution No. 2061 (XX) of 16 December 1965.

123. See U.N.G.A. Resolutions: 426(v) of 14 December 1950, 541A and B (VI) of 4 February 1952, 840 (IX) of 17 December 1954, 1313 (XIII) of 12 Dece-mber 1958, 2061 (XX) of 16 December 1965, 2448 (XXIII) of 19 December 1968. See also The Economic and Social Council's Resolution No. 756 (XXIX) on "Draft Declaration on Freedom of Information", of 21 April 1960.

124. Freedom of Information, Note by the Secretary-General, UN. Doc. No. A/34/195 of 7 September 1979.

125. See generally UN. Doc. Nos. A/34/148 of 13 September 1979, A/34/149 of 16 October 1979, and A/34/484Add. 2 of 2 November 1979. See also UNESCO and Freedom of Information, Hearing Before the Subcommittee on International Organizations of the U.S. House of Representatives' Committee on Foreign Affairs, 96th Congress, 1st Session, July 19, 1979, pp. 11, 12, 26.

126. U.N.G.A. Resolution No. 33/49 of 14 December 1978, on "Protection, Restitution and Return of Cultural and Artistic Property as part of the Preservation and Further Development of Cultural Values".

127. Ibid.

128. U.N.G.A. Resolution No. 3268 (XXIX) of 10 December 1974.

129. Ibid.

130. See generally Matte, Aerospace Law, Sweet and Maxwell Ltd., London, (1969), pp. 275-281; Csabafi, "The U.N. General Assembly Resolutions on Outer Space as Sources of Space Law". VIII Colloquium (1965), pp. 337-361; Csabafi, "The Law of Celestial Bodies", 6 Indian Journal of International Law, (1966), p. 195, at p. 217; Cheng, "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?", 5 Indian Journal of International Law (1965), pp. 23-48; Vlasic, "The Growth of Space Law 1957-65: Achievements and Issues" in (1965) Yearbook of Air and Space Law, pp. 374-380; M.U. Yanovsky, "Soviet Science on the Legal Force of U.N. General Assembly Resolutions" (1964-65), Soviet Yearbook of International Law, pp.111-122; Tunkin, Droit international public, Pédone, Paris (1965), pp. 101-112; Tunkin, "Remarks on the Juridical Nature of Customary Norms of International Law" (1961) California Law Review, Vol. 49, p. 419; R. Higgins, The Development of Customary International Law Through the Political Organs of the U.N., Oxford University Press, (1963); K. Skubiszewski, "Forms of Participation of International Organizations in the Law-Making Processes", (1964) International Organization, Vol. 18, pp. 790-805; O. Asamoah, "The Legal Effect of Resolutions of the General Assembly" (1965) Columbia Journal of Transnational Law, Vol. 3, p. 210; F.B. Sloan, "The Binding Force of a 'Recommendation' of the General Assembly of the United Nations", (1948) British Yearbook of International Law, Vol. 25, pp. 1-33; Vollat, "The Competence of the United Nations General Assembly", (1959) Hague Recueil des cours, Vol. 97, p. 203; Johnson, "The Effect of Resolutions of the General Assembly of the United Nations" (1955-56), British Yearbook of International Law, Vol. 32, p. 97; Johnson, "The Conclusions of International Conferences", (1959) British Yearbook of International Law, Vol. 35, pp. 1-33; J.L. Kunz, "The Nature of Customary International Law", (1953) American Journal of International Law, Vol. 47, p. 662; O.O. Ogunbanwo, International Law and Outer Space Activities, (1975) Martinus Nijhoff, The Hague, pp. 17-21. See also infra notes 131 and 132.

131. The policies of the U.S.A., the U.S.S.R. and the U.K. on the legal effects of principles contained in U.N.G.A. Resolution No. 1962 of 1963 are as follows: The U.S. representative to the U.N. said:

> "We believe these principles reflect international law as it is accepted by the Members of the United Nations. The U.S. for its part intends to respect these principles. We hope that the conduct which the resolution commends to nations in the exploration of outer space will become the practice of all nations" - (UN. Doc. A/C.1/PV. 1342 at p. 12, Dec. 2, 1963); The Statement of the U.S. representative to the U.N., A.E. Stevenson, also appeared in (1963) U.S. Dept. of State Bulletin, Vol. 49, pp. 1005-1014, at p. 1007.

The U.S.S.R. representative to the U.N. said:

> "The United States considers that these legal principles reflect international law as it is accepted by the Members of the United Nations and that, on its part, the United States intends to respect these principles. The Soviet Union, for its part, will also respect the principles contained in this declaration":

(UN. Doc. A/C.1/PV. 1342 at p. 42, Dec. 2, 1963).

The United Kingdom representative made a similar statement:

> "My Government intends to respect these principles and believes that the conduct they enjoy will become the practice of every State and thus serve to ensure the exploration and use of outer space for peaceful purposes". (A/AC. 1284, at pp. 36-40).

However, France's representative denied the binding force of U.N.G.A.'s Resolution 1962:

> "We do not, in fact, consider that a resolution of the General Assembly, even though adopted unanimously, can in this case create, stricto sensu, judicial obligations incumbent upon Member States. Such obligations can flow only from international agreements" (A/AC.1/PV. 1345, of Dec. 5, 1963, at p. 21).

China - The policy of the People's Republic of China, on the legal effects of U.N.G.A. resolutions, has been described as follows:

> "Communist China, however, obviously recognizes that such resolutions may possess significant moral or political force for some members of the international community; otherwise, it would not bother to engage in frequent and lenghty tirades against General Assembly resolutions.

> A further element in the standard Communist Chinese appraisal of resolutions adopted by the United Nations organs is that no resolution or decision is deemed binding upon Communist China so long as it is 'unlawfully' excluded from participation in such organs".

(See H. Chiu, "Communist China's Attitude Towards the United Nations: A Legal Analysis", 1968, American Journal of International Law, Vol. 62, p. 20 at p. 29).

Canada - The representative of Canada to the U.N., Mr. Tremblay, said that:

> his delegation was most satisfied with the arrangements intended to establish internationally agreed-upon procedures for the exploration and use of outer space. He felt that the Committee on the Peaceful Uses of Outer Space had brought two years of vigorous discussion to a successful conclusion by approving the draft Declaration of legal principles. (This was adopted unanimously by the U.N.G.A. as Resolution No. 1962 in 1963)...
>
> ...The draft Declaration, as submitted to the First Committee, was the first chapter in the book of space law; the legal principles contained in it reflected international law as it was currently accepted by Member States. It was significant in that connection that the two major space Powers had declared their intention, provided the Declaration was approved by the General Assembly, to conduct their activities in outer space in conformity with the principles contained in the Declaration. His Government also undertook to do so. In view of the legal significance of the draft Declaration, the principles should conform with the intentions of all potential space Powers. That point had to be borne in mind in considering the implications of including in the draft Declaration the additional legal principle that outer space should be reserved for peaceful purposes only".
>
> (A/C.1/SR. 1346, p. 2, Dec. 10, 1963).

India - The representative of India to the U.N., suggesting the drafting of a declaration of general principles on rescue and return of spacecraft and astronauts, said that:

> "it would be best at the present stage to adopt a declaration of general principles, to be followed later by a convention which would be ratified by States and thus become legally binding...

> ...A declaration had great moral force and, when adopted unanimously, was generally accepted as part of international law. As and when additional information was acquired, it might be necessary to modify the principles adopted, but that would be difficult to do if the principles were immediately embodied in a binding treaty or agreement". (A/AC.105/C.2/SR.22 at p. 10, July 5, 1963).

On the similar subject (i.e. Declaration of General Principles on rescue and return), the delegate of Australia made the following statement:

> "His delegation held the Declaration to be simply a set of guide-lines to be followed in the general field of the peaceful uses of outer space. As such, and even though it might serve in part as a source of international law based on the practice of States, the Declaration could not be used as a test of the legal right of an astronaut to be returned to his country". (A/AC.105/C.2/SR.47, at p. 7, Sept. 28, 1965).

132. Jessup and Taubenfeld, "An Assembly resolution is technically only a recommendation, even to members; but it purports to be declaratory of law, it carries great weight". (Jessup and Taubenfeld, Controls for Outer Space, N.Y. Columbia University Press, 1959, p. 275). My es S. McDougal - "critical importance of the United Nations resolutions is in affording an easy and precise sampling of the expectations of the peoples of the world about what future decisions should be ... when we have a resolution of the General Assembly saying that access to space is free and open to all without discrimination, no country can act to the contrary in the future without resorting to naked force, as contrasted with authority. When the expectations of all the peoples of the world are so clear, the length of time for which they have endured is irrelevant". (M.S. McDougal, "The Prospects for a Regime in Outer Space", in Cohen, Law and Politics in Space (1964)McGill, Montreal, p. 115. Oscar Schacter - "The traditional slow procedures of customary international law are not considered as adequate to meet the rapid advances of space technology or threats to security which they seem to involve": Schacter, "The Prospects for a Regime in Outer Space and International Organization", in Cohen,

Law and Politics in Space, McGill, Montreal, 1964, p. 95 at p. 96.
Bin Cheng (op. cit. supra note 130, p. 35) is of the opinion that the U.N.G.A. Resolutions on Outer Space create 'instant' international customary law when they are unanimously adopted by the U.N. Members.
Goedhuis - "As regards the two basic principles laid down in the Declaration (and in Resolution No. 1721 XVI), it cannot be said that only the Space Powers are in agreement as to the binding character of these principles. The common interest of all States in the free exploration and use of outer space and celestial bodies had become so widely self-evident that, as has been said, no State contradicted the need for this freedom by an inconsistent practice or any other manifestations of 'opinio juris'": Goedhuis, "Reflections on the Evolution of Space Law", 1966 Netherlands International Law Review, p. 109, at p. 115; Schick, "Problems of a Space Law in the United Nations", July 1964, the International and Comparative Law Quarterly, p. 969 et seq.; Richard N. Gardner, the U.S. Deputy Assistant Secretary of State for International Organization Affairs hailed the U.N.G.A. Resolution No. 1962 of Dec. 13, 1963 as "A breakthrough for International Law". He said, "This declaration is a formal expression of the mutual restraints and reciprocal concessions which the members of the United Nations are prepared to accept in the sixth year of the Space Age". - 1964 American Bar Association Journal, Vol. 50, p. 30. See also Jennings, "Recent Development in the International Law Commission", 1964 International and Comparative Law Quarterly, p. 390; R.A. Falk, "On the Quasi-Legislative Competence of the General Assembly", 1966 American Journal of International Law, Vol. 60, pp. 782-791; and R.A. Falk, "New Approaches to the Study of International Law", 1967 American Journal of International Law, Vol. 61, p. 477 et seq.

133. Nicolas M. Matte, Aerospace Law, (1969), Sweet and Maxwell Ltd., London, pp. 280-281.

134. "A rule of customary international law not only reflects a general practice of reiterated acts of States, but also the belief on the part of States that compliance is required. When a practice is followed by States as a legal obligation, or in the words of Article 38(1) of the Statute of International Court

of Justice, 'accepted as law', it may be considered to be an internatinal custom:" Jordan, V.A., "Creation of Customary International Law by Way of Treaty", JAG Law Review, Vol. IX, No. 5 (1967), p. 38, at p. 42.

135. George A. Dalley, Deputy Assistant Secretary, Foreign International Organization Affairs, U.S. Department of State, in UNESCO and Freedom of Information, op. cit.,p. 24.

136. The British North America Act, of March 29, 1867, 30 and 31 Victoria, C.3 (consolidated with amendments).

137. See In re Regulation and Control of Radio Communication, (1932), A.C. 304.

138. In particular the "peace, order and good government" clause is concerned. See Laskin's Canadian Constitutional Law, 4th ed. (Toronto 1973), p. 218 ff with further references.

139. An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms, 8-9 Elizabeth II.

140. See Section 1: "It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms:

....
d) the freedom of speech
....
f) the freedom of the press."

141. (1970) 9 D.L.R. (3rd) 473.

142. For comments, see P. Cavalluzzo, "Judicial Review and the Bill of Rights: Drybones and its Aftermath", Osg. Hall L.J., Vol. 9 (1971), p. 511 ff; R.W. Kerr, "The Canadian Bill of Rights and Sex-based Differentials in Canadian Federal Law", Osg. Hall L.J., Vol. 12 (1974), p. 357 ff; J.G. Sinclair, "The Queen v. Drybones: The Supreme Court of Canada and the Canadian Bill of Rights", Osg. Hall L.J., Vol. 8 (1970), p. 599, 601f;

W.S. Tarnopolsky, "The Canadian Bill of Rights. From Diefenbaker to Drybones", McGill L.J., Vol. 17 (1971), p. 451.

143. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, ...".

144. See H. Law, A. Gribble, R. Copeland, K. Kind: "Preliminary Draft of a Study of Censorship Provisions of a Proposed Telecommunications Satellite Treaty and the Constitution of the United States of America", IAF-Proceedings XVII (1974) ed. 1975, p. 72, 73 ff with further references.

145. See W.S. Tarnopolsky, The Canadian Bill of Rights (Toronto, 1966), p. 128 ff.

146. See Tarnopolsky, op. cit. (Fn. 145), p. 129.

147. See also infra, 2 J. IV. (The Television Broadcasting Regulations), in particular the remarks concerning section 5(1) of the Regulations.

148. See also the following 2.J.III.(The Broadcasting Act), reinforcing this line or reasoning.

149. See R.S., C.B.-11, amend. C.16 (1st Supp.), C. 10 (2nd Supp.); 1973-74, C.51; 1974-75-76, c. 49.

150. Canadian Radio-television and Telecommunications Commission.

151. See section 2: "'broadcasting' means any radiocommunication in which the transmissions are intended for direct reception by the general public".

152. Since an essential element of the "Canadian broadcasting system" is the "use of radio frequencies that are public property by a broadcasting undertaking", international D.B.S. activities could be attributed to the "Canadian broadcasting system", whenever they make use of any Canadian "national" beam under the I.T.U. plans. So far, I.T.U. has not yet set up such a plan for the Americas. However, it would in principle be possible to bring international D.B.S. -insofar as it makes use of frequencies which are public property - under the notions of the Broadcasting Act.

153. But note the exception pointed out in Fn. 152.

154. See Section 3(b) of the Broadcasting Act.

155. See also above 2.J.III. It should be noted in this respect that the Canadian Government (Dept. of Communications) has, during the second helf of 1979, issued "Objectives and Guidelines" for "Satellite Distribution of Television Programming." Guideline No. 2 reads as follows:

> "Pursuant to the above, any foreign signal importation and distribution should be subject to established regulatory and licensing procedures".

See CRTC Press Release of Nov. 29, 1979 (MacDonald and CRTC Announce Two-Phased Public Hearing), p. 12.

156. However, it would be necessary that the Minister of Communications expressly entrust the matter to the Commission. The other regulatory powers - mainly pertaining to licensing - do at present not apply since a foreign broadcasting entitity could not be licensed. However, Canadian broadcasting undertakings planning D.B.S. activities from Canada abroad would appear to be subject to the C.R.T.C. powers entirely.

157. See in particular the following sections 2.J.IV.

158. Made by SOR/64-50, last amended by SOR/76-627 (status 1977).

159. See 2.J.II.

160. Section 5 is entitled "Broadcasting Generally", so that these standards apply to all kinds of broadcasting (incl. Radio, Television, and also - although not directly - to D.B.S.). See also supra Fn. 151.

161. See the definitions in section 2(1) (n): "Station means any television station licensed under the Radio Act..." (emphasis added); and in section 2(1) (g): "network" means an organization consisting of a network operator and the stations with which he has affiliation agreements".

162. See Tarnopolsky, op. cit. (Fn. 145), p. 129, with further references.

Chapter III: THE LAW-MAKING PROCESS WITHIN THE COPUOS AND THE CANADIAN-SWEDISH PROPOSALS

A. Background

The permanent Committee on the Peaceful Uses of Outer Space (COPUOS) was established by the U.N. General Assembly under Resolution 1472 (XIV), of December 12, 1959,[1] with a view to promote research of outer space, and, among other things, the study of legal problems arising from space exploration. For this purpose, a Legal Subcommittee was set up during the 1962 session of the Committee.[2] Discussions on the topic of D.B.S. began during the 1966 and 1967 sessions of the COPUOS, and mounting concern over the issue prompted the U.N. General Assembly in Resolution 2260 (XXII)[3] to request COPUOS to study technical and other implications of D.B.S. On the basis of a Canadian-Swedish proposal[4] and a favourable recommendation of COPUOS,[5] the U.N. General Assembly under Resolution 2453B (XXIII)[6] established the Working Group on D.B.S. This Working Group held five sessions (1969-1974) and specifically devoted its efforts to drafting recommendations of principles to regulate the use of D.B.S., after the U.N. General Assembly in its Resolution 2916 (XXVII) had given COPUOS a mandate to do so. The results were a set of 14 Draft Principles Governing D.B.S.[7] which served as a

basis for further work by the Legal Subcommittee on this question. In its efforts to narrow the gap still existing between different positions on a number of questions, the Legal Subcommittee, aided by a special Working Group, presented a new set of 12 Draft Principles on D.B.S. in 1978,[8] which were further developed in 1979.[9] They still contained a number of brackets, signifying draft principles on which consensus had not yet been reached. The Canadian-Swedish "clean text", presented in 1979,[10] was an attempt to reach such final consensus on the few still controversial issues.

B. Basic Proposals and Drafts

In the course of work on the draft principles on D.B.S., an impressive number of proposals have been submitted to the Committee or Legal Subcommittee Certain of these documents have had a considerable impact on the draft principles, as they stand at the present time.

In particular, the Soviet Union presented, as early as 1972, a "Draft Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting"[11] which promoted the "prior consent" principle along with

programme content control. These points were reiterated in the U.S.S.R. draft principles presented to the D.B.S. Working Group in 1974.[12] The Government of France, in its "Proposed Principles to Govern Direct Broadcasts from Communications Satellites",[13] presented in 1970, promoted a "Code of Good Conduct" to be agreed on, as well as the prior consent principle. The U.S., in 1974, submitted, in turn, a set of "Draft Principles on D.B.S.",[14] which promoted the "free flow of information" and attempted to take a pragmatic approach without the need to conclude agreements. The Canadian-Swedish Proposal on "Draft Principles Governing Direct Broadcasting by Satellite"[15] attempted to present an acceptable compromise, while emphasizing international cooperation and the principle of prior consent subject to the right of participation of receiving States. Argentina, in 1974, submitted a "Draft International Convention on D.B.S.,[16] which was based upon the results of the Working Group, and which also attempted to strike an acceptable balance between the "prior consent" principle and the "free flow of information" position, while emphasizing the need for regional solutions and arrangements.

The draft texts, elaborated by the Legal Subcommittee in 1978 and 1979 and further developed by the "clean text", can be regarded as the result of an "amalgamation process" taking into account these different drafts and proposals.

C. The Canadian-Swedish Proposals

I. The Development of the Canadian-Swedish Position

The Canadian-Swedish position in the COPUOS, the Legal Subcommittee and the Working Group on D.B.S. has emphasized, on one hand, the sovereign right of nations to regulate their own broadcasting system,[17] and, on the other hand, the need to bridge the gap between the differing positions of nations regarding the "prior consent", the "participation", the "spill-over" and the "programme content" issues.[18]

The initial approach of Canada and Sweden to these problems was based on a "regional systems" concept.[19] It provided for the formation of regional groups of broadcasting entities in contiguous geographical regions, which would each work out agreements on standards for programme content, international controls, programme flow, etc. This approach was to provide a practical solution to the questions of prior consent, programme content and participation, including the social, political, cultural and legal problems connected with them.[20] It was a non-governmental approach since it provided merely for agreements between broadcasting entities, along the lines of existing cooperative arrangements such as EUROVISION in the framework of EBU.[21] These proposals met, on one hand, with concerns in the Working Goup on D.B.S. about the development of

differing broadcasting systems with competitive friction, on the other hand, with considerable support as a practical solution.[22]

When the U.N.G.A. Resolution 2916[23] gave an express mandate to COPUOS to elaborate "draft principles governing the use by States of artificial earth satellites for direct television broadcasting", Canada and Sweden modified their approach in some respects.[24] Keeping within the framework of the "regional systems" concept, their new proposal presented to the Working Group on D.B.S.[25] provided for a "package consent" among States within a given regional system before the launch of any direct broadcasting satellite. It would cover all subsequent operational use, so that no further governmental consent would be necessary, and the broadcasting entities of the regional grouping could proceed to arrangements concerning programme standards, programme exchange, etc. With respect to the prior consent requirement, Canada and Sweden argued that this principle had already been established under provision 428A (6222) of the I.T.U. Radio Regulations,[26] and that it was consistent with the right of States to regulate their own broadcasting system. Furthermore, prior consent made programme content provisions unncessary.[27]

When the Working Group drafted 14 Recommended Principles on D.B.S., the Canadian-Swedish position had a considerable impact, but the "regional systems" approach and the "package consent" were not accepted.[28] During the following sessions of the Legal Subcommittee, Canada and Sweden therefore concentrated on striking a balance between the differing positions in respect to "consent", "participation" and "spill-over" on the basis of a "global approach" and the concept of specific "agreements" between States on cooperation, programme exchange, etc.[29] Thus, the requirement of "prior consent" was limited to the right of participation of receiving States. Largely influenced by this Canadian-Swedish concept, the Legal Subcommittee succeeded in drafting a tentative clause on "consultation and agreements between States"[30] which however did not receive unanimous support in the Subcommittee, mainly because the U.S. and other Western nations did not accept the prior agreement concept.[31] Canada and Sweden furthermore maintained that the concept of prior agreement made it unnecessary to retain the "programme content" and "unlawful broadcasting" clauses in the tentative text, as well as a general clause on the right and duty to consult.[32]

II. The "Clean Text" of 1979

In the 1979 Session of the Legal Subcommittee, Canada and Sweden submitted a "clean text"[33] which

contained all provisions previously agreed upon but which omitted the controversial clauses on programme content and unlawful broadcasts as well as all other parts within brackets which had been controversial. It presented a clause on "consultations and agreements among States", which would be most likely to receive the acceptance of States.[34] The 1979 sessions did, however, not succeed in reaching unanimity on the crucial question, if the requirement of "prior agreement" among States should form a part of the "principles" or not.[35]

III. Analysis of States' Reactions within the Legal Subcommittee of the COPUOS[36]

During the eighteenth session of the Legal Subcommittee (March-April 1979)[37], States members of the Legal Subcommittee stated their positions vis- à-vis the Canadian-Swedish "clean text". An analysis of the statements of States during this session shows that the "clean text" received more support than any other proposal including the previous Canadian-Swedish papers, especially because the Soviet Union and Eastern European countries for the first time indicated that they could accept the text as a compromise solution.[38] A total of 23 States expressed that they found the Canadian-Swedish "clean text" acceptable.[39] However, support from the Western side, especially from the U.S., West-

Germany and Belgium, as well as some other countries could not be reached; in fact, the U.S. and Belgium each presented amendments to the "clean text" which would alter it considerably with regard to the "prior agreement" issue[40]. A group of 6 States including the drafting States, supported these amendments. 3 of these States expressed, however, that the original version of the Canadian-Swedish text would also be acceptable to them in the unamended version.[41]

A group of 5 Latin-American States supported primarily the text presented by the Legal Subcommittee at the outcome of the 1978 session, but indicated at the same time, that they would also accept the Canadian-Swedish Paper if consensus could be reached.[42] Only one State (Iraq) indicated support for the Legal Subcommittee text without expressly indicating readiness to accept the "clean text".[43]

A group of 3 States emphasized the requirement for a "prior agreement" clause without mentioning any specific proposed text.[44] However, it would seem that this meant essentially support for the Canadian-Swedish text since it spells out the prior agreement requirement expressly.

One State (the Netherlands) merely favoured an approach emphasizing the concept of State responsibility.[45] It thus seems to lean towards the position of non-restriction of D.B.S. activities by government agreements.

Japan, which also indicated readiness to accept the Canadian-Swedish "clean text", stressed the need for special regulation of the "spill-over" problem.[46] Colombia refrained from stating any position on the problem of D.B.S.

A closer look at the groups of States which did not expressly indicate their readiness to accept the "clean text" shows the following: Assuming that all those States which did not expressly mention their readiness to accept the "clean text", would not support it, there would be consensus only among 23 States while 9 would be opposed.[47] However, this assumption will have to be somewhat corrected. In the first place, 3 of the 9 non-supporting States are in essence concurring with the "prior agreement" requirement which the Canadian-Swedish text sets forth.[48] Secondly, Iraq can be expected to align itself to the U.S.S.R. position and support the "clean text" as a compromise. Thirdly, Colombia can be expected to align itself to the other Latin-American States which have expressed their readiness to support the "clean text". Fourthly, since the Netherlands has not openly expressed (as, e.g. the U.S. and West-Germany) that the unamended "clean text" was unacceptable, it can reasonably be expected that under the influence of the "group dynamics" of the "consensus principle", the Netherlands might join the overwhelming majority in a spirit of compromise.

On the basis of these assumptions, only the

U.S., West-Germany and Belgium remain as the "hard core" of the opponents to the "clean text".[49] Considering that they have indicated that they find the unamended "clean text" unacceptable,[50] it cannot reasonably be expected that they would - even considering the "aligning" effects of the consensus principle - declare their acceptance of the "clean text" unless the text is somewhat amended, altered, modified or merely rephrased. However, support of the other States may be lost if the amendments, alterations or modifications are setting the balance too far to the side of the three opposing States.[51] As a result, it would seem that the wording of the key clauses would have to be rephrased to a more flexible version giving more ground to the U.S. position without altering the requirement of the "prior agreement" in substance.

D. The Controversial Issues of the "Clean Text" in the Light of the Views of the Legal Subcommittee Members and of the International Legal Framework.

I The Preambular Clauses

The "clean text" did not opt for any one of the four alternatives in brackets (clauses 1.a to 1.d) which the Subcommittee Report of 1978 had listed,[52] but dropped all of them. Several Latin-

American States, while indicating their readiness to support the "clean text", emphasized their preference for the inclusion of clauses 1.a and 1.b in the text.[53] However, they did not seem to raise this point as a precondition for acceptance of the "clean text", so that it does not appear to r-epresent a serious obstacle.

During the 1979 session, Belgium submitted a proposal for amending the preamble by a new clause which would exempt technically unavoidable spill-over as well as domestic ("national") direct television broadcasting from the scope of all of the principles.[54] This particular proposal received support of merely two States, namely West-Germany and Japan,[55] of whom Japan had already indicated its readiness to accept the "clean text". West-Germany furthermore expressed merely its "preference" of the Belgian amendment to the "clean text" preamble, which indicates that the preambular clauses are not a major issue, but rather that they are subject to the "prior agreement" controversy in the framework of the operational clauses.[56]

II. The Declaration of States in the "Purposes and Objectives" Clause

Although the Legal Subcommittee text of 1978 was designed in the form of a U.N. General Assembly Declaration, the "Purposes and Objectives" clause

contained the wording of an additional declaration of States.[57] This wording was marked with an asterix indicating that it was subject to review in the context of the final form of this document. The "clean text" dropped it entirely, so that it remains purely a U.N. General Assembly Declaration without any declaration on the part of the particular States. In the Working Group as well as in the Legal Sub-committee, no objections were raised and the delegations agreed to delete the respective wording.[58]

III. International Cooperation

The "international cooperation" clause in the Subcommittee text of 1978 was also marked with an asterix indicating that its second sentence was subject to review.[59] The "clean text" reproduced this clause as a whole, including the previously controversial second sentence. It modified the first sentence slightly by inserting the word "international" before "direct television broadcasting", so that purely domestic broadcasting would be excluded from the scope of the clause. No objection was raised against this during the 1979 session[60] so that it can be regarded as accepted.

IV. Consultation and Agreements Between States

This clause represents the "turning point" of the remaining controversy.[61] The respective clause

of the Legal Subcommittee text of 1978 contained three subsections, the third of which was presented in four different alternatives (subsec. 3 (a) to 3 (d)). All subsections were set out in brackets, since the entire clause was controversial.[62]

The "clean text" incorporated subsections 1, 2 and 3 (a) without any alterations. It dropped alternatives 3 (b), 3 (c) and 3 (d) entirely. An analysis of this choice with respect to States reactions shows the following:

V. Prior Notification and Consultation (Subsection 2)

This subsection as such received the least opposition during the 1979 Legal Subcommittee session since its contents seem to represent the smallest common denominator of the differing positions.[63] In fact, the position favouring "prior agreements" as well as the U.S. position favour the principle of prior notification and consultation, as can be seen from the proposed U.S. amendment[64] in comparison with the unamended "clean text". The U.S. position differs merely in respect to the scope of such consultations. The U.S. favour the concept of "full consultation", taking into account and giving due regard to the interests and concerns of the receiving State(s), these consultations representing the "final stage" of the coordination procedure, with ensuing agreements and/or arragements merely on an optional basis.[65]

The "prior agreement" position, on the other hand, views such consultations merely as a preparatory stage for the conclusion of agreements and/or arrangements.[66] Subsection 2, as it is phrased in the "clean text", is wide enough to leave room for both views. It can therefore be said to be non-controversial as such.

In view of its function, and to make agreement on the entire clause easier, it would seem recommendable to alter its position within the clause. As the "smallest common denominator", representing a "common basis" to build up from, it seems advisable to set it out as the first subsection of the clause. This position would also correspond to the chronological order of the "coordination process" between "sending" and "receiving" States. Furthermore, it would avoid the psychological effect of the "prior agreement" subsection presently occupying the first position within the clause, which possibly emphasizes the "prior agreement" requirement to an unnecessary and exceeding extent, thereby making it more difficult for the U.S. to agree to this clause.[67] The "notification and consultation" subsection as the opening provision would seem to make any compromise easier, given the importance which the position and context of legal provisions usually have when they are the fruit of extensive negotiations.

VI. The Problem of Prior Agreements and/or Arrangements

1. The Legal Basis

As it has been pointed out above[68], the principle of territorial jurisdiction, including the right of States to regulate their own broadcasting systems, and the human rights aspects involved, including the principle of "free flow of information", both have legal significance with respect to direct broadcasting activities. The above legal analysis has shown, however, that under international law as it stands, the principle of territorial jurisdiction, including the right of States to regulate their own broadcasting system, takes clearly a precedence over the human rights aspects which, at the present time, are more of a programmtic character rather than established norms or rules of international law. Even if the international community, in applying existing law and in making new conventional law, is called upon to give increasingly effect to human rights[69] and may not neglect them in their mutual relations, human rights aspects and in particular, the free flow of information cannot de lege lata serve as a basis to put aside the established principles of territorial jurisdiction and the right of States to regulate their own broadcasting system. It follows, not only that the requirement of prior governmental agreement is in entire conformity with

international law, but also that the "free flow of information" concept of the U.S. would in several respects amount to a tacit agreement among States to aquiesce to foreign D.B.S. activities on which agreement cannot be reached, since it would normally require governmental approval before such activities as intentional D.B.S.-broadcasting into other States are carried out.[70]

2. Purpose and Scope of such Agreements and/or Arrangements

Governmental "agreements" on direct broadcasting activities would establish governmental approval on a mutual basis.[71] They may be concluded on a bilateral or multilateral basis; therefore, "regional system" solutions would remain perfectly possible, if the respective participating States opt for this solution. Moreover, these agreements may, to the discretion of the participating States, represent "package agreements", in the sense outlined above [72] or individual programme exchange agreements, or framework agreements, covering in toto the broadcasting activities to be specified by further arrangements between broadcasting entities. The latter solution, in particular, leaves room for regional system solutions, and would seem to be the form most likely to be adopted among States or groups of States with a comparable social and cultural background.[73] Moreover, if States so wish, these

agreements may also contain specifications as to programme content, although this would normally seem to fall into the scope of "arrangements".[74] Finally, States may also choose to abstain from concluding any agreement, thus giving their tacit approval to direct broadcasting activities and leaving the details to be settled by "arrangements" between the broadcasting entities.[75]

"Arrangements" in the sense of the respective draft clause would be formal or informal agreements, understandings, exchange of letters and the like, between the parties concerned, including broadcasting entities, actually carrying out the broadcasting activities.[76] These would cover programme standards, technical requirements and either programme package exchanges, or particular programmes, or specific programme content, according to the agreements and intentions of governments and of the broadcasting entities involved. Where governmental agreements exist, subordinate arrangements would have to correspond to the framework of such agreements.

3. The Relationship to Coordination Agreements under I.T.U. Regulations

As has been pointed out above,[77] I.T.U. regulations as they stand require technical coordination between sending and receiving States as to frequency, orbital positioning and the relevant "beam", before

a D.B.S.-activity between these States is carried out.

Under the 1977 WARC plan, sending and receiving States must as a first prerequisite, share a common orbital position provided for in the plan, otherwise the D.B.S.-activity would be illegal, even with the agreement of the receiving State.[78]

Secondly, sending and receiving States must either share a common "international beam" covering both territories and provided for in the plan, or they must agree among themselves on how to use the separate "national beams" at their disposal under the plan, each of which covers only the national territory. Under I.T.U. terms, only the common use of an "international beam" is regarded as "international direct broadcasting", whereas the use of "national beams" is regarded as "domestic" or "national" direct broadcasting, even if the national beam is utilized by a foreign State.[79]

Therefore, it is a prerequisite for any "international" direct broadcasting, that sending and receiving States have, in the framework of I.T.U., agreed upon a common orbital position and a common "international beam", as part of the I.T.U. plan.[80] The question has been raised, if this type of prior agreement would not make prior agreement on the basis of U.N.-draft

principles superfluous. One view was that the agreements reached under the I.T.U. plans made further agreements unnecessary since the I.T.U. plans provided an adequate protection.[81]

Another view was that the coordination agreements under I.T.U. regulations are exclusively covering technical matters and that they in no way concern regulatory questions on the political and legal level. Accordingly, the existence of I.T.U. plans on the technical aspects of D.B.S.-activities did not in any way affect the necessity of drafting international legal principles on D.B.S. providing for prior agreements between States, which was the prerogative of the U.N.[82]

Another view was advanced that in principle the I.T.U. plans for technical and legal reasons, made improper use of D.B.S.-facilities impossible,[83] but that the real area where prior agreements between States were still required was the "occasional exchange or sharing of a programme". The draft principles on D.B.S. should therefore provide a provision on "agreements between States on the exchange of programmes".[84]

The agreements among States reached under the I.T.U. provisions and relating to orbital positions, "international" or "national beams", and frequency are merely concerned with the technical prerequisites

without which a D.B.S.-activity cannot be carried out.[85] They do, in essence, not signify agreement that any of the other States may actually start a D.B.S.-broadcasting activity into one's own State, but they signify merely agreement on the technical basis on which international D.B.S.-activities may eventually later be carried out. It follows that prior government agreement relating to the conduct of the D.B.S.-activity itself has not become unnecessary because of I.T.U. plans.[86] In fact, both types of agreements complement each other.

This may be illustrated by the example of two countries having agreed under the I.T.U. plan of 1977 to share a common "international beam". Without any further agreement on the broadcasting activity itself, any of the two countries would be subject to the other countries' D.B.S.-activities in toto, without having a legal basis on which it could exercise control so as to make the influx of information compatible with its own broadcasting system and its standards. In this respect, the above remarks as to national broadcasting systems and governmental responsibility may be referred to.[87]

Moreover, with regard to States' agreements under I.T.U. relations, the view has been advanced that these I.T.U. plans indicated that the requirement

of "prior governmental agreement" has already been established as a principle in international telecommunications such as D.B.S.-activities.[88] Therefore, the same principle should apply on the political and legal level.

Another view stated that the I.T.U. provisions, due to their limited scope, constituted in no way a precedent for the question of agreement on the political and legal level, the subject of the U.N. draft principles on D.B.S.[89]

It should be noted that this latter view, which was advanced by the U.S. delegation in the Legal Subcommittee[90], appears to be not quite compatible with the position mentioned above[91] and also advanced by the U.S.[92], namely that agreement in the framework of I.T.U. made agreements on the political and legal level superfluous.

With respect to the subject matter of the question, the very limited and specific nature of the technical planning within I.T.U. cannot be denied. It would seem difficult to say that, taken the I.T.U. regulations alone, the planning element involving prior technical coordination and thus prior "technical" agreement would constitute a valid precedent for the crucial question of prior agreement on the political and legal level. The scope and content of both types of "agreement" would seem to be too different.

However, the I.T.U. regulations relating to technical coordination and planning on D.B.S. should be seen in the wider context of international law applicable to telecommunications across national borders.[93] The above analysis of the subject shows[94] that the principle of territorial jurisdiction includes a State's right to regulate and control its own broadcasting system. In order to avoid technical interference with the broadcasting system of a foreign State, any other State whose broadcasting activities might interfere with the system of the former State, is under inescapable technical and also legal constraints to coordinate its activities with the neighbouring State.[95] The I.T.U. regulations cover this aspect of the problem and reflect the law as it stands.

As to the question of coordination on the political and legal level (in particular: programme content), there are no comparable technical or legal constraints. The above analysis has shown[96] that with respect to traditional radio and TV broadcasting activities, the right of States to regulate and control their own broadcasting system and to remain free from foreign interference has, for technical, political and other reasons, been exercised only partly, and there has been a considerable amount of acquiescence to foreign interference.[97] With respect to traditional radio

and broadcasting, a legal rule requiring prior agreement cannot therefore be ascertained. However, with respect to D.B.S., States have in an overwhelming majority and long before the first operational D.B.S.-satellite is in orbit, indicated that they will not acquiesce to any foreign interference not previously agreed upon[98], and that they will thus exercise their right to control and regulate their own broadcasting system to the fullest extent.

From this perspective, the prior agreement requirement within the I.T.U. coordination procedures appears as a mere application in the technical field of the more basic principle of territorial jurisdiction, including the States' right to regulate and control their own broadcasting system. The prior agreement requirement on the political and legal level is to be regarded as an analogous application of the same principle.

4. The Advantages of a Flexible Approach Combined with a Compulsory Settlement Procedure

The past discussions in the Legal Subcommittee of COPUOS, in particular the discussions during the 1979 session[99], indicate clearly that the only solution likely to be acceptable to both opposing positions - "prior agreement" on one hand and "full consultations" on the other - is a compromise solution

which comprises the essential elements of both positions.[100] Rather than attempting to present the key clause of the "clean text" a second time to the Legal Subcommittee, it could therefore seem advisable to modify it somewhat, taking account of its intended purpose as a compromise solution. The compromise nature of the modified draft clause would be best emphasized and the acceptance of both opposed parties facilitated, if the wording and contents of the new clause would allow for a certain amount of flexibility. This tool has proved successful in a number of East-West negotiations with seemingly irreconcilable positions.

The opposing positions, embodied in the "clean text" draft clause on "consultations and agreements between States" on one hand, and the U.S. amendment proposal on the other hand, contain three different sets of elements:[101]

(1) Elements which are fully compatible.
Examples: the requirements of prior notification; of consultation.
These elements form an integral part of both positions and should be contained in a rephrased draft clause.
The compatible elements should - as a psychological "basis" - precede the wording of the other elements.[102]

(2) Elements which are only partly compatible or only as a general idea. Example: the aim of "facilitating the free flow" / "The freer and wider dissemination of information" in the respective proposals. These elements should in principle be retained but possibly further developed by flexible wording, thereby integrating both positions.

(3) Elements which are incompatible with each other. Example: the "prior agreement" requirement and the mere "consultation" concept. These elements should be brought together as far as possible by flexible wording. The remaining gap should be left open, thus, leaving the "hard core" of each position in the draft clause, but provisions should be made for a pragmatic solution of the individual cases by means of a compulsory dispute settlement procedure. The decision if a prior agreement would have to be concluded in any particular case would thus, in the case of failure to agree on this among the States concerned, fall upon some sort of settlement procedure, i.e. a special panel, an arbitration tribunal etc.[103] This solution would combine the advantages of pragmatism and flexibility.

5. The Advantages of Including a Review Provision

Furthermor-e, in order to facilitate a compromise between the opposing positions, it would appear advisable to provide for a review clause in any new draft proposal, such a review clause would have as its aim the review by all States parties concerned of the D.B.S. principles with respect to their practical application in the light of experience gained. This review clause would facilitate later modifications of the principles, should they become necessary, and would therefore make it easier for States to agree to a compromise solution which may not placate their fears in all respects. The technique of including a review provision for later modifications, thereby facilitating compromise, has, for example, been successfully applied in the case of the recently adopted Moon Treaty.[104] Art. XVIII of the Treaty provides for review by a conference of States parties after ten years. A similar provision for the D.B.S. principles, possibly on the basis of a shorter review period and regularly (e.g. every three years) would seem to provide a suitable means to adapt the legal framework continuously to the particularities of an activity the operational implications of which are not even well-known yet.[105]

6. The Problem of Spill-over in the Framework of the Consultation and Dispute Settlement Procedure

The problem of spill-over represents a special problem and in the Legal Subcommittee discussions, it has been treated as such.

The I.T.U. has been successful in drafting and adopting a regulation according to which States agree to reduce D.B.S.-spill-over "to the maximum extent practicable"[106], and furthermore in setting precise standards for the amount of "technically unavoidable spill-over" with respect to the States covered by the I.T.U. plan[107]. This agreement within I.T.U. signifies, in essence, that States will acquiesce to the foreign interference within the specified geographical limits, provided the interference constitutes true "spill-over" from domestic programmes and is not, by its contents, language, etc., in reality aimed at the receiving State. Such "spill-over" is therefore being treated on a similar footing than tranditional radio and TV broadcasts.[108] The problem of "prior agreement " does not arise here; the "clean text" therefore proposes an exemption clause to this effect.[109]

However, some delegations take the view that the spill-over should not only be exempted from the "prior agreement" requirement, but from

the entire scope of the D.B.S.-draft principles, since it was a technical problem to be dealt with in I.T.U. and not any political or legal problem.[110]

Although in view of the I.T.U. regulations and specifications agreed upon by States, the analogy to the situation with respect to traditional radio and TV broadcasting seems pertinent, some important points make it nevertheless necessary to draw a line between the two sets of problems.

The most important of these points is that acquiescence with respect to traditional radio and TV broadcasting activities was not dependent upon a specified sort of broadcast depending largely upon its contents, as is the case with "spill-over". Under the I.T.U. regulations, States will acquiesce only to these broadcasts which are the unavoidable consequence of the technical inability to keep domestic broadcasts within national boundaries.[111] As the borderline between such true unintentional and unavoidable "spill-over" and "intentional spill-over" (i.e. spill-over within the specified limits but in reality intended to reach the foreign population for economic, political or other reasons) will be narrow and difficult to identify,[112] it seems necessary to keep "spill-over" within the scope of the draft principles and not to exempt it entirely. Thus, the clauses on "State responsibility", the "duty

and right to consult" and the "peaceful settlement of disputes" could be usefully applied to this problem. Moreover, it may also be useful to include a separate special clause clarifying the difference in legal status of "unavoidable and unintentional" and "unavoidable but intentional" spill-over.[113] The latter kind of false spill-over could also be made subject to compulsory dispute settlement procedures, analogous to the "prior agreement" problem.[114]

VII. Programme Content and Unlawful/Inadmissible Broadcasts

The draft clauses on "programme content" and "unlawful/inadmissible broadcasts", contained in the Legal Subcommittee text but set in brackets,[115] were completely left out by the "clean text". The reasoning was that the "prior agreement" requirement rendered this type of rigid programme content limitation unnecessary, since receiving States were in the position to control programme content on the basis of the particular agreements and/or arrangements to be concluded, and were thus adequately protected.[116] Although the U.S.S.R., as the sponsor of the programme content draft clauses, was reluctant to drop the clauses entirely, it finally agreed to the "clean text" during the 1979 session,[117] thereby accepting the idea of dropping the clauses it has sponsored. Therefore, the controversy on these clauses can be regarded as settled, provided the "prior agreement"

solution can be maintained.

It should be noted, however, that provisions on programme content would not appear to violate or run counter international law as it stands, neither represents a precedent. The 1936 Broadcasting Convention,[118] to which 68 States are parties,[119] contains several clauses limiting the admissible programme content,[120] and, as far as could be ascertained, no objections have been raised so far with respect to human rights. Furthermore, given the essentially programmatic character of human rights protection on one hand,[121] and the principle of territorial jurisdiction, including the right of States to regulate their own broadcasting system, the right of States to agree among each other on unlawful or inadmissible programme content as to international broadcasting appears to override other norms and considerations of international law.

Chapter 3 - Footnotes

1. See UN. General Assembly, Resolutions of the 14th Session, ed. by UN., New York.

2. See on this subject K.M. Queeney, Direct Broadcast Satellites and the United Nations, Alphen/Rijn, Netherlands, 1978), p. 23 f.

3. See Un., General Assembly, Resolutions of the 22nd Session, ed. by UN., New York.

4. See UN. Doc. A/AC.105/PU.55, 62-70, (October 1968).

5. See UN. Doc. A/7285, 5-6 (Report of the Committee on the Peaceful Uses of Outer Space, October 1968).

6. See UN., Resolutions of the 23rd Session, ed. by UN., New York.

7. See UN. Doc. A/AC.105/133, Annex VII (6 June 1974); see also UN. Doc. A/AC.105/C.2 (XIII)/WG.III/1/Rev. 1 (Text of Principles Drafted by Working Group III).

8. See UN. Doc. A/AC.105/218, Annex II, p. 3 ff.

9. See UN. Doc. A/AC.105/240, Annex II, p. 8 ff.

10. See UN. Doc. A/AC.105/C.2/L.117.

11. See UN. Doc. A/8771 (of 9 August 1972).

12. See UN. Doc. A/AC.105/WG.3 (V)/CRP.8 (of 22 March 1974), sponsored by the U.S.S.R., Bulgaria and Hungary.

13. See UN. Doc. A/AC.105/WG.3/CRP.2 (of 20 May, 1970), (Working Paper by France submitted to the Third Session of the Working Group).

14. See UN. Docs. A/AC.105/WG.e (V)/CRP.2, of 11 March 1974; see also Doc. A/AC.105/WG.3 (V)/CRP. 7 (of 22 March 1974).

15. See UN. Doc. A/AC.105/WG.3 (V)/CRP. 6 (of 21 March 1974); see also UN. Doc. A/AC.105/WG.3/L.8 (of 13 Feb. 1974).

16. See UN. Doc. A/AC.105/134 (of 5 July 1974); see also UN. Doc. A/AC.105/WG.3 (V)/CRP. 3 (13 March 1974).

17. Canada, in particular, has been concerned about U.S. broadcasts across the border with multiple effects upon the social, cultural and political climate within Canada. See K.M. Queeney, Direct Broadcast Satellites and the United Nations (Alphen/Rijn, Netherlands 1978), p. 43 with further references. See furthermore the Canadian-Swedish Working Paper to the first session of the Working Group on D.B.S., UN Doc. A/AC.105/49, of Feb. 13, 1969.

18. See with respect to this concern of the Canadian-Swedish position the statement of the Canadian delegate, Mr. G. Warren, during the eighteenth session of the Legal Subcommittee, UN Doc. A/AC.105/C.2/SR.310, p. 6-7.

19. See the Canadian-Swedish Working Paper, op. cit. (Fn. 17); furthermore the Canadian-Swedish Working Paper to the second session, UN. Doc. A/AC.105/59; and the Working Paper to the third session, UN. Doc. A/AC.105/WG.3/L1, of April 7, 1970.

20. See on these problems Queeney, op. cit. (Fn. 17), p. 48 ff; see also the Canadian-Swedish Paper to the third session, op. cit. (Fn. 19).

21. EBU = European Broadcasting Union. EBU is an association of broadcasting entities of European States.

22. See Queeney, op. cit. (Fn. 17), p. 77, 77.

23. See UN. General Assembly Resolution 2916 (XXVII) of Nov. 9, 1972, in: UN. Gen. Ass. Resolutions, 27th Session (ed. by U.N.).

24. See the Canadian-Swedish Proposal entitled "Draft Principles Governing Direct Television Broadcasting by Satellite", A/AC. 105/WG.3/1.4, of May 2, 1973.

25. See op. cit. (Fn. 24), and supra, 3A.

26. Radio Regulation 428A reads: "In devising the characteristics of a space station in the broadcasting-satellite service, all technical means available shall be used to reduce to the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries". See: The Final Acts of 1979 WARC, ITU 1979, Vol. I, p. RRN28-2.

27. See for further details, infra, VI.5.

28. See, for the text of the Recommended Principles of the Working Group, UN. Doc. A/AC.105/C.2 (XIII/ WG.III/1/Rev. 1; on the discussion of the Working Group, see UN. Dob. A/AC.105/127 (2 April 1974).

29. See UN. Docs. A/AC.105/WG.3/L.8 (13 Feb. 1974); A/AC.105/WG.3 (V)/CRP.6; and in particular A/AC.105/C.2/L.102 (Canadian-Swedish Working Papers).

30. See UN. Docs. A/AC.105/L.99 (June 28, 1977) and A/AC.105/196 (April 11, 1977); see also A/AC.105/XX/WPDBS/1 (Text agreed by the Working Party of the Committee).

31. See UN. Docs. A/AC.105/C.2/SR.266-270; 275, 283 (Summary Records of the sixteenth session of the Legal Subcommittee); see also the report, UN. Doc. A/AC.105/196.

32. See the Summary Records of the Legal Subcommittee at its sixteenth session, op. cit. (Fn. 31), and the REport of the Legal Subcommittee, UN. Doc. A/AC.105/196 (April 11, 1977).

33. See UN. Doc. A/AC.105/C.2/L. 117 (Feb. 15, 1979); also reproduced in UN. Doc. A/AC.105/240, Annex IV, p. 2 (Report of the Legal Subcommittee).

34. See the text of the clause infra in the Annex XIII for a discussion of the clause, see infra, 3.D.IV.

35. See the Report of the Legal Subcommittee on the work of its eighteenth session (12 March - 6 April 1979), UN. Doc. A/AC.105/240, p. 6-7 ; Annex II, para. 18.

36. See also the survey infra in the Annex I.

37. For details, see the Report of the Legal Subcommittee, op. cit. (Fn. 35).

38. See the remarkable turn of the discussion during the 1979 session of the Legal Subcommittee, UN. Doc. A/AC.105/C.2/Sr.310, p. 3-8, with particular regard to the U.S.S.R. delegation. See also the observations of G. Warren, "Direct Broadcast Satellites: The ITU, UN and the Real World", Annals of Air and Space Law/ Annales de droit aérien et spatial, Vol. IV (1979), p. 413-432, at 427 ff.

39. See the survey infra in the Annex I.

40. See the Working Paper of the U.S., UN. Doc. A/AC.105/C.2/L.118, of March 22, 1979; and the Working Paper of Belgium, UN. Docs. A/AC.105/C.2/L. 120, of March 22, 1979.

41. See the statements of Japan, Indonesia, West-Germany, Italy, Belgium and the U.S., UN. Docs. A/AC.105/C.2/SR.311, 312, 310 respectively. Japan, Indonesia and Italy expressed also support for the unamended version.

42. See the statements of Ecuador, Argentina, Mexico, Chile and Venezuela, UN. Docs. A/AC.105/C.2/SR.306, 307; see also SR. 311 (Chile and Argentina).

43. See the stat ement of Iraq, UN. Doc. A/AC.105/C.2/SR. 307; 311 .

44. See the statements of Romania, Egypt and Brazil, UN. Docs. A/AC.105/C.2/SR.306, 308.

45. See the statements of the Netherlands, UN. Doc. A/AC.105/C.2/SR.311, p. 9. See also, on the subject of State responsibility, the Report of the Legal Subcommittee on its eighteenth session, UN. Doc. A/AC.105/240, Annex II, p. 3, para. 13. The outcome of discussions was that the respective draft clause which had previously appeared without brackets (signifying consensus), was partly (the first paragraph) placed within brackets again.

46. See the statements of Japan, UN. Doc. A/AC.105/C.2/SR.305; 311.

47. See the survey infra in the Annex I.

48. Namely, Romania, Egypt and Brazil; see their statements, UN. Doc. A/AC.105/C.2/SR.306,308, in particular that of Romania: "The draft principles should also include provisions to ensure that (D.B.S.) would take place only after the receiving State had given its approval and had had a chance to influence programme content."

49. See also Warren, op. cit. (Fn. 38), p. 428, who also counts the Netherlands and Italy among the "hard core" of opponents. It may be pointed out that Italy has specifically mentioned the Canadian-Swedish "clean text" as a possible compromise solution; the Netherlands has kept general "doors open" by merely emphasizing State

responsibility but not committing itself to any particular position on the prior agreement question. The Netherlands has, in particular, refrained from calling the "clean text" unacceptable as such.

50. See their respective statements, UN. Doc. A/AC.105/C.2/SR.310, and during the general debate, A/AC.105/C.2/SR.303, 304, and 306.

51. See also Warren, op. cit. (Fn. 38), p. 428 with respect to the discussions during the eighteenth session of the Legal Subcommittee: "The 'clean text' at times seemed like a delicate 'house of cards' with different sides trying to shift key cards."

52. See the Report of the Legal Subcommittee on the work on its seventeenth session, UN. Doc. A/AC.105/218 (April 13, 1978), Annex II.

53. See the statements of Ecuador, Argentina, Mexico, Chile and Venezuela, UN. Docs. A/AC.105/C.2/SR. 306, 307.

54. See UN. Doc. A/AC.105/C.2/L.120.

55. See their respective statements, UN. Docs. A/AC.105/C.2/SR.310, 311.

56. See also Warren, op. cit. (Fn. 38), p. 415: "If it were possible to reach consensus on the key issue of the right of the receiving States to "agree", other important, but secondary, outstanding points would fall quickly into place."

57. See doc. cit. (Fn. 52), p. 2: "Purposes and Objectives. States declare* that activities in the field of international direct broadcasting by means of artificial earth satellites should be carried out in a manner compatible with the development and mutual understanding and the strengthening of friendly relations and co-operation among all States and peoples in the interest of maintaining international peace and security. ..."
(*Note: "Subject to review in the context of the final form of this document").
(emphasis added).

58. See the Legal Subcommittee Report, doc. cit. (Fn. 35), Annex II, p. 2, para. 9.

59. See the Legal Subcommittee Report, doc. cit.

(Fn. 52), Annex II.

60. See the Legal Subcommittee Report, doc. cit. (Fn. 35), Annex II, p. 2-3, para. 12.

61. See also Warren, op. cit. (Fn. 38), p. 415 - 427 ff; C.M. Dalfen, "Principles Governing Direct Satellite Broadcasting", in "Manual on Space Law, ed. by N. Jasentuliyana and R.S.K. Lee, (Dobbs Ferry, N.Y./Alphen, Netherlands, 1979), Vol. I, p. 283 ff.

62. See the Legal Subcommittee Report 1978, doc. cit. (Fn. 52), Annex II.

63. See the Legal Subcommittee Report 1979, doc. cit. (Fn. 35), Annex II, p. 6: "There was no disagreement on the substance of this paragraph as the need for consultations was generally recognized".

64. See UN. Doc. A/AC.105/C.2/L.118 (March 22, 1979).

65. See the statement of the U.S. delegation, UN. Doc. A/AC.105/C.2/SR.304, p. 8 ff.

66. See, in particular, the statement of the U.S.S.R. during the Legal Subcommittee session, UN. Doc. A/AC.105/C.2/SR.310, p. 4-5: "However, consultations between States could never replace international agreements, since consultations in and of themselves could never give rise to mutual rights and obligations between States. Direct broadcasting by means of satellites must be carried out within a framework of mutual rights and obligations and States should not have a free hand to use that technology with no constraint except the requirement of consultations."

67. It should be remembered that the U.S. have opposed any prior consent and "prior agreement" concept for more than 10 years in the framework of COPUOS. It seems difficult now for the U.S., in view of the geo-political context and of their "human rights campaign" in particular, to bend over to accept any draft clause which states the "prior agreement" principle in a "blunt" manner; instead, it would seem advisable to offer "golden-bridge"-type solutions, thus politically facilitating a shift in position.

68. See supra, Chapter 2.B.

69. See the preamble to the UN. Charter, Arts. 1, 13 (1.b), 55, 62, 68, 73, 76. See for further details, supra, Chapter 2.C.

70. Such a "tacit" agreement with the results mentioned would be perfectly in conformity with international law; however, the relevant point is that it would constitute an exception to the rule.

71. The "prior agreement" thus implies the "prior consent" concept advocated by the Eastern European States and a number of developing States during the late sixties and early seventies. See on this subject in particular Dalfen, op. cit. (Fn. 61), p. 291 ff; Queeney, op. cit. (Fn. 17), p. 150 ff.

72. See supra, part C.I (development of the Canadian-Swedish position).

73. See Queeney, op. cit. (Fn. 17), p. 61 ff.

74. This position is obviously defended by the U.S.S.R.; see the statement of the U.S.S.R. UN. Doc. A/AC.105/C.2/SR.303, p. 4 and SR.310, p. 4 ff. See also Queeney, op. cit. (Fn. 17), p. 66 ff.

75. See in this respect the interesting remarks of the delegation of Belgium, UN. Doc. A/AC.105/C.2/SR.310, p. 2: "Such an agreement (on shared 'international beams' within ITU) was exclusively the affair of the nine countries concerned, and the international community could impose no conditions on them other than the technical restrictions arising from the plan elaborated by ITU. It was up to those countries alone to decide how they would apply international law among themselves, and they would bear the responsibility for any of their actions affecting a third State."

76. See Dalfen, op. cit. (Fn. 61), p. 289 ff; see also the above "non-governmental" approach of Canada and Sweden, supra, part C.I.

77. See supra Chapter 2-E. (discussion of the Final Acts of the 1977 and 1979 WARC's).

78. For details of the plan, see supra Chapter 2.E.

79. See also Warren, op. cit. (Fn. 38), p. 422 and N. Jasentuliyana, "Regulations Governing Space Telecommunication", in: Manual on Space Law, ed. by N. Jasentuliyana and R.S. Lee, (Dobbs Ferry, N.Y./Alphen, Netherlands, 1979), Vol. I, p. 195 ff. at 207 f, 219 ff.

80. See Jasentuliyana, op. cit. (Fn. 79), p. 207 ff; Warren, op. cit. (Fn. 38), p. 422 f. With respect to frequency coordination, the ITU has elaborated a sophisticated coordination procedure : see Jasentuliyana, op. cit. (Fn. 79), p. 209 ff.

81. See the statement of the U.S. delegation, UN. Doc. A/AC.105/C.2/SR.304, p. 7 ff.

82. See the statement of the U.S.S.R. delegation, UN. Doc. A/AC.105/C.2/SR.310, p. 4.

83. See insofar the statement of the U.K. delegation, UN. Doc. A/AC.105/196, Annex IV, paras. 9 and 10.

84. See the statement of the delegation of Belgium, UN. Doc. A/AC.105/C.2/SR.310, p. 3.

85. See also Warren, op. cit. (Fn. 38), p. 425, 426.

86. This seems to be the underlying concept for the "clean text" as well as for the position of all those States (the overwhelming majority) which support the "prior agreement" principle.

87. See supra, chapter 2. J.III. (The Broadcasting Act). Note the difference in the legal situation where two States have not agreed to share an "international beam", but have two "national beams" on the same orbital position under ITU plans. In this case, the use of the other State's "national beam" without that State's prior agreement would, even without a generally recognized "prior agreement" principle, constitute an illegal act under ITU provisions.

88. This news was advanced by Canada and Sweden during the fourth and fifth session of the Working Group on D.B.S. (1973 and 1974); See Queeney, op. cit. (Fn. 17), p. 170.

89. See A. Chayes, P. Laskin, Direct Broadcasting Satellites: Policies and Problems, ASIL, Studies in Transnational Legal Policy No. 7 (1975), p. 20, 21.

90. See UN. Doc. A/AC.105/C.2/SR.304, p. 8.

91. See supra, in particular at Fn. 81.

92. See doc. cit., (Fn. 81).

93. See also Jasentuliyana, op. cit. (Fn. 79), p. 196 ff.

94. See supra, chapter 2.B. (Discussion on general international law as applicable to telecommunications).

95. See in this respect the remarks of Jasentuliyana of the ITU coordination procedure, op. cit., (Fn. 79), p. 208 ff.

96. See supra, chapter 2.B (Discussion on general international law).

97. As State practice shows, States have not acquiesced to foreign radio and TV interference where this interference occurred under "exceptional circumstances", namely in cases of political propaganda, war propaganda, ideological propaganda and the like, and in cases of pirate stations interference. See also supra, chapter 2.B (General international law).

98. See, for an account of States interventions in this respect since 1969, Queeney, op. cit. (Fn. 17), p. 34 ff.

99. See UN. Doc. A/AC105/240, p. 6 and Annex II.

100. Comp. Warren, op. cit. (Fn. 38), p. 428 ff.

101. Compare UN. Docs. A/AC.105/C.2/L.117 and A/AC.105/C.2/L.118.

102. See the remarks supra, chapter 3.D.V.

103. In principle, all kinds of peaceful settlement procedures would offer themselves for this purpose. However, it should be kept in mind that the U.S.S.R. and other Eastern bloc-countries have never accepted jurisdiction of any international court, so that adjudication in the strict sense would not be a suitable means of settlement in

this respect. Arbitration, either by a tribunal or a commission, in the first place, but also the tool of conciliation would seem suitable settlement procedures. On arbitration, see Simpson and Fox, International Arbitration (1959); on conciliation, see Hackworth, Digest of International Law, Vol. VI, p. 1-57.

104. For the text of the draft, see UN. Doc. A/AC.105/240, Annex III, Appendix A.

105. The inclusion of a review clause, aiming at the need to modify certain provisions or wordings, in the light of experience, has become more and more frequent in drafting international texts and instruments, as it has proved to be a practical means of following up important developments. See, e.g. Art. 26 of the Space Liability Convention of 1972, UST 24: 2391(TIAS 7762); Article X of the Spacecraft Registration Convention of 1974, Cmnd. 6256. Although the D.B.S.-principle will not be legally binding in the strict sense, as these instruments, the inclusion of a review clause would nevertheless facilitate compromise and later adjustment.

106. See Radio Regulation 428A, doc. cit. (Fn. 26), (wording).

107. See Jasentuliyana, op. cit. (Fn. 79), p. 219; Warren op. cit. (Fn. 38), p. 423.

108. In this sense also Warren, op. cit. (Fn. 38), p. 428: "(T) The reasonable interpretation (of the relevant provisions of the "clean text") would be that there is no duty to "consult" on "technically-unavoidable spill-over". See also the U.K. position, UN. Doc. A/AC.105/240, Annex II, para. 18 (a).

109. See subsection 3. of the "consultation and agreements between States", clause of the "clean text", UN. Doc. A/AC.105/C.2/L.117.

110. See, e.g. the statement of Japan during the eighteenth session of the Legal Subcommittee, UN. Doc. A/AC.105/240, Annex II, p. 6, para. 18 (d).

111. Their agreement to Radio Regulation 428A in connection with the 1977 WARC specifications for unavoidable spill-over means, in essence, that they will tolerate the specified interference, i.e. acquiesce to such specified interference.

112. See also with regard to this special problem, A. Gotlieb, C. Dalfen and K. Katz, "The Transborder Transfer of Information by Communications and Computer Systems: Issues and Approaches to Guiding Principles", AJIL, Vol. 68 (1974), p. 227 ff, 238, 239.

113. It can already be foreseen, that this question may be an area of potential future friction among neighbouring States. See, e.g. "Luxembourg Accuses Germany of Being Bully over TV Dispute", The New York Times, Tuesday, October 23, 1979.

114. See supra, chapter 3.D.VI.4.

115. See the text in UN. Doc. A/AC.105/218 (April 13, 1978), Annex II.

116. See in this respect Queeney, op. cit. (Fn. 17), p. 168, 169; UN. Doc. A/AC.105/240 Annex II, para. 19.

117. See the statement of the U.S.S.R., UN. Doc. A/AC.105/c.2/Sr. 310, p. 8.

118. For the text, see LNTS Vol. 186/187, (1938), p. 301 ff.

119. See World Treaty Index, Vol.1 (1974), p. 295.

120. See Articles 1 - 4 of the Broadcasting Convention, doc. cit. (Fn. 118).

121. See the discussion, supra, Chapter 2.C (Discussion of the UN Charter).

CONCLUSIONS AND RESULTS

The main results of the analysis relating to the applicable rules and norms of international law and domestic Canadian Law can be summarized as follows:

1. Under the fundamental principle of territorial jurisdiction, every State has the right to control and regulate its telecommunications, in particular its broadcasting system. This relates to all relevant aspects, including the technical elements as well as programme contents. Thus, in principle, every State has the right to remain free from outside interference by foreign broadcasts into its territory, to object to such interference and, in principle, and as far as necessary, to take counteraction against such interference.

2. General State practice with respect to radio and 'traditional' TV broadcasts into foreign countries shows that States have, as a rule, acquiesced to such foreign broadcasts. However, they have exercised their right to object and to take countermeasures, in particular to "jam" foreign broadcasts, under exceptional circumstances, namely when they considered these broadcasts to be harmful to their vital interests, mainly in cases of political and

ideological propaganda. With respect to radio and 'traditional' TV broadcasts, international law, therefore, seems to recognize the right of States to object to and to "jam" such foreign broadcasts, only under such exceptional circumstances.

3. With respect to D.B.S., the overwhelming majority of States within COPUOS have clearly and repeatedly asserted that they will not acquiesce to foreign D.B.S.-broadcasts into their countries in the same manner as with regard to radio and 'traditional' TV. Since D.B.S. is different in effects from these traditional forms of broadcasting, general international law recognizes the right of States to object to, and where necessary to "jam", foreign D.B.S. interference to the full extent.

4. It follows that under general international law, sending States need the prior agreement of receiving States, before they can start D.B.S. services. However, this legal situation under general international law would not necessarily prevent States to agree, within COPUOS, on a set of principles to govern D.B.S.-activities which would not require prior agreement. In case States do so agree within COPUOS, this rule of conventional

international law would take precedence over general inter national law. Problems may arise, however, with respect to States which do not consider themselves legally bound to such D.B.S. principles, especially since these principles are not drafted as a formal agreement D.B.S. principles which follow the "free flow of information" concept, might therefore run the risk of "legal erosion" if States subsequently invoke its non-binding character, on one hand, and the basic "prior agreement" rule under general international law, on the other hand.

5. Under the UN. Charter, the "obligations" of States relating to the promotion of respect for human rights are more of a programmatic character rather than established principles of international law. In contrast, the principles of "territorial jurisdiction" and "non-interference", including the right of States to regulate their own telecommunications, are recognized and binding norms of international law. Although the promotion of respect for human rights is an objective and as such to be observed when exercizing other rights and duties under the Charter and other norms of international law, the fundamental character of the principle of territorial jurisdiction, including the

right to regulate its own telecommunications, would seem lead to the result, that in case of conflict, the principle of territorial jurisdiction is prevalent over the human rights aspect.

6. The finding that under the UN. Charter, the promotion of human rights is of merely programmatic character, is corroborated by the finding that, as the Law stands, the "Universal Declaration of Human Rights" of 1948 is a non-binding instrument, that the various binding Human Rights Treaties are more regional in scope and significance, that their contents are not coherent, that ratifications by States of these binding instruments has not been numerous, and that, at present, it would be difficult to say if and which human rights are really generally accepted.

7. As a result, the principle of "territorial jurisdiction", including the right of States to regulate their own broadcasting system, prevails as the basic rule for international D.B.S. services under general international law. However, in applying this rule, States should take into account the objective of promoting the respect for human rights as far as possible. Therefore, in applying the "prior approval" concept (under general international law or under

D.B.S. principles), States should promote "freedom of information" as far as possible by cooperation and agreements.

The main results of the analysis relating to the Canadian-Swedish "clean text" can be summarized as follows:

8. Canadian domestic law, in particular the Broadcasting Act, the TV-Broadcasting Regulations, and other laws limiting the freedom of speech and of the press, would seem to require the Canadian government to ensure a legal basis upon which preventive governmental regulatory control over the D.B.S. information influx from foreign States can effectively be exercised. Thus, for domestic law reasons, a "free flow of information" solution, as advocated by the U.S., would seem to be precluded, unless domestic law is specifically changed.

9. Only the U.S., West-Germany and Belgium remain as the "hard core" of the opponents to the "clean text". It cannot reasonably be expected that they will declare their acceptance unless the key clause(s) of the text is (are) somewhat amended, modified or merely rephrased. In order not to loose the general support of the majority, it would seem necessary that the key clauses be

rephrased to a more flexible version without altering the requirement of "prior agreement" in substance.

Gabay's Heads + our solution

10. The controversies on the preambular clauses, the "purposes and objectives" clause, the "international cooperation" clause, and the clauses on "programme content" and "unlawful/inadmissible broadcasts" can be regarded as settled. As far as divergencies of opinion on some of these issues remain at present, they are a direct consequence and entirely dependent upon the main controversy on the "prior agreement" issue. Once a consensus is found with respect to the key issue, it will also cover the remaining divergencies.

11. The "notification and consultation" subsection of the key clause on "consultation and agreement among States" would seem to make any compromise easier if it was repositioned as the opening subsection of the clause, given the importance which the position and context of legal provisions usually have if they are the fruit of extensive negotiations.

12. The agreements among States reached under the ITU provisions merely signify agreement on the technical basis on which international D.B.S.-activities may eventually later be

carried out. Prior agreement relating to the conduct of the D.B.S.-activity itself has not become unnecessary because of the ITU provisions; in fact, both types of agreements complement each other.

13. Any rephrasing of the key clause on "agreements among States" should take the following into account:

a) Elements in the "clean text" fully compatible with the respective elements in the U.S. Amendment proposal should be retained and precede the wording of the other elements.

b) Elements which are only partly compatible should in principle be retained but possibly further developed by flexible wording.

c) Elements which are incompatible with the respective elements of the amendment should be brought together as far as possible by flexible wording. The remaining gap should be left open, but provision should be made for a pragmatic solution by means of a compulsory dispute settlement procedure.

d) In order to facilitate a compromise between the opposing positions, it would

appear advisable to provide for a review clause, thus facilitating later modifications to the principles at regular review intervals, should such modifications become necessary in the light of experience gained.

14. It seems necessary to keep "spill-over" within the scope of the draft principles, and not to exempt it entirely, given the narrow borderline between true unintentional and unavoidable spill-over on one hand and "intentional spill-over" on the other hand. Thus, the exemption should only concern the "consultations and agreements" clause.

15. For purposes of convenience, and as a possible practical application of the aforementioned findings, the wording of a modified draft clause which may facilitate compromise, is set out in the next paragraph as an appendix. However, it must be pointed out that this wording shall merely serve as an illustration of a possible approach, and is not meant as a guidance but merely as an example.

For Convenience:

Illustration of a "Flexible Approach" with a Compulsory Dispute Settlement Clause:

Consultation and Agreements between States

1. A State which proposes to establish or authorize the establishment of an international direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign State shall without delay notify that State of such intention and shall promptly enter into consultations with that State if the latter so requests.

2. Such consultations should take into account and give due regard to the interests and concerns of all participating States, with a view to reach agreement on the establishment of the proposed service. Such a service shall be established only when it is not inconsistent with the provisions of the relevant instruments of the International Telecommunication Union and in conformity with the terms and provisions of appropriate agreements and/or arrangements between the broadcasting and receiving States or the broadcasting entities duly authorized by the respective states, on which the establishment of such service shall be based, in order to facilitate the freer and wider dissemination of information of all kinds and to encourage cooperation in the field of information and the exchange of information with other countries.

3. Wherever a mutually acceptable agreement cannot be achieved by such consultations, the proposed service shall not be established unless a mutually acceptable solution has been reached through arbitration or other established procedures for the peaceful settlement of disputes.

4. ("clean text" clause 3. unchanged).

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Government of Canada
Department of Communications

Gouvernement du Canada
Ministère des Communications

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Your file Votre référence

Our file Notre référence

le 12 mars 1979

Professeur N. M. Matte
Directeur
Institut de droit aérien et spatial
Université McGill
3696, rue Peel
Montreal, (Québec)
H3A 1W9

Cher professeur Matte,

Faisant suite à votre visite dans nos bureaux vendredi le 2 février ainsi qu'à l'entretien que vous m'avez accordé lundi le 5 février dernier à votre Institut, en présence de Dr. Magdélénat, nous sommes heureux de vous transmettre les éléments de base qui devraient vous permettre de soumettre un programme d'étude à notre ministère.

Je me permets de vous rappeler les procédures que nous devons suivre afin de pouvoir vous octroyer un contrat pour une durée d'un an. Une extension pour trois années pourrait être envisagée en fonction des résultats obtenus à la fin de la première année. Comme nous vous l'avons expliqué, notre ministère n'a aucune autorité pour accorder des subventions à des universités, mais peut passer des contrats spécifiques. Les montants de ces contrats ne sont évidemment pas comparables à ceux qui sont accordés par le Conseil de recherches en sciences humaines du Canada. Ils sont généralement de l'ordre de $10,000 à $25,000. Nous pensons qu'un montant de $25,000 devrait défrayer les coûts et les émoluements que vous devrez encourir afin de mener à bien votre recherche pour notre ministère.

... 2

Pour la première année, c'est-à-dire pour l'année fiscale 79-80, nous suggérons que vous entrepreniez une analyse du régime juridique permettant d'établir les principes directeurs pour gouverner l'utilisation de la télédiffusion directe par satellite mettant une emphase particulière sur l'initiative Canada-Suède au sein du sous-comité juridique du Comité des Nations Unies sur l'utilisation pacifique de l'espace extra-atmosphérique.

Quant au programme des années suivantes, nous pensons que vous pourriez préparer un plan détaillé sur les deux sujets suivants, qui sont particulièrement importants pour notre Ministère:

- les aspects juridiques relatifs à l'utilisation de l'orbite géostationnaire incluant les questions de la définition de l'espace extra-atmosphérique, et de la délimitation de la souveraineté nationale des états sur l'espace extra-atmosphérique au-dessus de leur territoire national.

- l'examen des principes juridiques sur lesquels sont fondés la séparation des fonctions des entrepreneurs de télécommunications et des diffuseurs ainsi que l'examen des principes de propriété des satellites et des stations terriennes transmettant des signaux aux satellites.

Nous vous rappelons le document que nous vous avons transmis le 9 mars 1979 pour vous permettre de faire une démarche officielle. Il s'agit du document intitulé "Renseignements à fournir pour une proposition de contrat de recherche" comportant entre autres des clauses ayant trait à la propriété des études financées par le gouvernement et dont il serait utile que vous preniez connaissance.

Nous espérons que ces quelques suggestions vous seront utiles et que nous pourrons conclure un contrat à votre satisfaction ainsi qu'à la nôtre très prochainement.

Veuillez agréer, cher professeur, mes salutations cordiales.

Brigitte Léger

Brigitte Léger
Division des Arrangements
internationaux

ANNEX I

UN-COPUOS, Legal Subcommittee, Session 1979:
Summary of States' Positions

	Position	Reference
1) Soviet Union	"beaming" only on basis of agreement; sovereignty; non-interference in domestic affairs; equality; cooperation plus mutual benefit;	A/AC.105/C.2/SR.303, p. 4
2) FRG	freedom and the free flow of information, in active and passive aspects; key to progress: "consultations and agreements between States"; willingness to reach consensus;	" p. 4 ff. " p. 5
3) GDR	prior consultation and bilateral plus multilateral agreements; rights of receiving State to participate; sovereignty and principle of non-interference;	"/SR. 304, p. 2 " p. 3
thus:	prior notification prior agreement on the basis of ITU Rules	
4) Austria	support for the Canadian/Swedish proposal, in A/AC. 105/C.2/L.117	" p. 4
5) Italy	principles of openness and equal access to benefits, i.e. -equal access to the use and resulting benefits of satellite communications -favours "code of conduct"	" p. 5
6) Poland	support for the Canadian/Swedish proposal (s.o.)	" p. 6
7) USA	"need for a new world information order"; free circulation and wider and better balanced dissemination of information	" p. 7
	US: "no plans to engage in international broadcasting by satellite".	" p. 8
	broadcasts: in accordance with ITU-Convention and with customary international law. Considerations of int'l comity would bear upon State's right to engage in DBS, "such considerations	

	would argue strongly against intentionally directing a service to a State which did not wish to receive it. "Full consultations" on any proposed service were thus an highly important means of resolving any potential problems".	" p. 8
8) UK	support for Canadian/Swedish proposal	"/SR. 305, p. 2
9) Hungary	support for Canadian/Swedish proposal	" " p. 3 and Sr. 311, p. 2
10) Japan	concerns of receiving State deserve due consideration "Full consultation" should be held, in accordance with principle relating to "purposes and objectives" already agreed upon "Spill-over" - not to be included in scope of consultations under "duty and right to consult" - not to be regarded as int'l broadcasting Canadian/Swedish proposal as a basis for solution Regard to UNESCO Declaration on Mass Media	" p. 3 p. 4
11) Columbia	no position stated on DBS	
12) Australia	support for the Canadian/Swedish proposal	/SR. 306, p. 3
13) Ecuador	Canadian/Swedish proposal as a basis support for principle of freedom of information, for principle of consultation, for participation of recipient States Paper of Working Group II (A/AC.105/218, Annex II, Append.), para. 1(a) and (b) should be included (referring to sovereignty, non-interference, peace plus friendship)	p. 4
14) France	support for principle of "consultation and agreements" between States (Canadian/Swedish proposal)	p. 5

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15)	Argentina	reasonable controls aimed at safeguarding cultural identity and protecting security. Right to request consultation, corresponding requirement. Support for "right and duty to consult"	p. 6
16)	Turkey	support for Canadian/Swedish proposal agreement of recipient State required; Importance of cooperation in the field of programme content and production	"/SR. 306, p. 7
17)	Roumania	Sovereignty; non-interference; agreement ("approval"), right to participate ("programme content") UNESCO and UNGA: new int'l information order	p. 11
18)	Egypt	Sovereignty of recipient State; agreement necessary; draft principles of subcommittee	p. 12
19)	Belgium	freedom of information, to be exercized responsibly; UNESCO Declaration on Mass Media; ITU: technical and conventional limits established	p. 14
20)	Mexico	support for Canadian/Swedish proposal; but support for para. 1 (a) and (b) in subcommittee's report (see Eduador)	/SR. 307, p. 2
21)	Bulgaria	support for Canadian/Swedish proposal; acceptable with minor changes; sovereignty; non-interference; reference to Art. VI Space Treaty (responsibility)	p. 3
22)	Mongolia	Agreement; sovereignty; non-interference; equality; mutual benefit;	p. 4
23)	Chile	sovereignty; legitimate interests of States; transfer of technology; support for Canadian /Swedish proposal, but unlawful and inadmissible broadcasts to be regulated	p. 5
24)	Venezuela	agreements necessary; freedom of information, but duty and right to preserve national identity	p. 6

25) Kenya	consent; support for "consultation and agreements between States" (Canadian /Swedish proposal)	p. 7
26) Iraq	no statement on DBS; general: equality; sovereignty, national independance, non-interference support for subcommittee report (programme content)	p. 8 SR. 311, p. 2, 3
27) Netherlands	concept of State responsibility applicable; responsibility clause for earth segment desirable	p. 9
28) Sweden	Canadian/Swedish proposal	p. 10
29) Indonesia	full consultation; agreement; balanced solution; support for Canadian/Swedish proposal	/SR. 308, p. 2, p. 3
30) Brazil	sovereignty; specific agreement, covering all matters	p. 4
31) India	prior consultation and agreement, incl. content; no "unavoidable" spill-over in a period of technological advance; extent of spill-over to be reduced to minimum.	/SR. 308, p. 5

Special Debate on DBS:

1) Belgium	unavoidable spill-over not to be covered, as well as national services in general: ITU regulations are enough; submission of amendment proposals (A/AC. 105/C.2/119 n. 120	SR. 310, p. 2
2) US	submission of amendment to "consultation clause", (A/AC. 105/C.2/L. 118)	p. 3 ff.
3) USSR	further work: on basis of Subcommittee Report and Canadian/Swedish proposal "consultations could never replace international agreements"	p. 5

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4) FRG	preference for Belgium/US amendments	p. 6
5) Italy	support for Canadian/Swedish Text plus US/Belgium proposal	p. 6
6) GDR	Canadian/Swedish proposal as a compromise formula; no support for Belgium/US amendments	p. 6
7) USSR	wants to sponsor Canadian/Swedish proposal	p. 8
8) Hungary	(see 9)	
9) Iraq	(see 26)	
10) Poland (see 6)	US-Belgium proposals unacceptable	SR.311, p. 3
11) Japan (see 10)	support for US.-Belgium proposal	p.3
12) India (see 31)	support for Canadian/Swedish proposal; US.-Belgium proposal unacceptable	p. 3
13) Chile (see 23)	US-Belgium paper unacceptable support for subcommittee proposal	
14) Argentina (see 15)	like India and Chile	
15) France (see 14)	support for Canadian/Swedish proposal	SR. 312, p. 2
16) Indonesia (see 29)	support for Canada/Sweden; support for rephrased US proposal no support for Belgium proposal	p. 3
17) Venezuela (see 24)	Can./Swed. proposal acceptable; also in favour of Iraqui proposal	
18) Mongolia (see 22)	support for Canadian/Swedish proposal	

Cross-section survey

In Favour of Canadian-Swedish "Clean Text"	with modifications: US-Belgium amendments	with modifications: Subcommittee report	other	other positions
Sweden, Canada, Austria, Poland				Columbia: no position state
U.K., Hungary, Japan, Australia, Ecuador France, Argentina Turkey	(Japan)	(Ecuador) (Argentina)		(Japan): special regulatic on "spill-over"
				Romania: agreement necessa right to participate; new international information order
				Egypt: agreement necessa
	Belgium US			
Mexico Bulgaria Mongolia		(Mexico)		
Chile Venezuela Kenyia		(Chile) (Venezuela)		
		Iraq		Netherlands: concept of State responsibility applicable
Indonesia	(Indonesia) rephrased US amendment			Brazil: specific agree-ments necessary
India USSR				
Italy GDR	FRG (Italy)			
23	3 (6)	1 (6)		5 (6)

ANNEX II

On the Relation of Science, Engineering and Technology to Law in Space

(With Comments on Canadian Policy on DBS)*

1. Purpose:

The objective of this study is to examine the interrelationships which may exist between scientific principles along with their engineering applications, and the formation of laws, the evaluation of policy and the definition of regulations, as they apply to activities in Space.

This statement is the result of only the first stage of the study and lays no claim to completeness or definitiveness. At best, it may identify some major questions worthy of further detailed inquiry and possibly may indicate some options leading to answers. It is not attempted to catalogue or describe the state of current scientific knowledge, engineering achievement or of future development but rather, to outline some systematic relationships between these and considerations of laws and policy.

This statement, in consequence of the above broad considerations also addresses itself briefly to certain aspects of Direct Broadcast Satellites, as a case in point.

2. General

The customs, laws and jurisprudence governing individual, national and societal relationships evolved historically in an earthbound physical environment which, no matter how difficult, is nevertheless benign, forgiving and indeed supportive of life. Man-made laws which evolved under these circumstances could afford the luxury of varying doctrinal philosophies without inviting fatal, disastrous or even serious effects from the physical world. This environment can be characterized as two-dimensional and is permissive of self-contained, bounded, territorial and independent legal systems.

As science and technology evolved, human activities began to extend on to the less secure environment of the high seas, giving rise to maritime law and thus promoting at least rudimentary international regulatory regimes. Nevertheless, the environment involved, continued to be 'two-dimensional' since continuous motion at all times is still not absolutely essential to survival.

However, mankind's more recent venturing into the air and, subsequently, beyond even the relatively kindly environment of the atmosphere, has brought human activities into a deadly environment which is hostile and utterly unforgiving. This environment can be characterized as four dimensional since space and time

are irrevocably inseparable. Under these circumstances, movement as well as position are essential and the physical laws governing these may not be ignored. In particular, the physical laws of thermodynamics, orbital mechanics and electromagnetic fields play a prime role.

The basic question arises therefore regarding the meaningfulness of man-made 'Laws' which might be defined in an arbitrary manner without regard for or in ignorance of the physical laws. How can the making of 'Laws' be kept in harmony with physical Laws?

A corollary question relates to the process under which man made 'Law' evolves along with the development of scientific knowledge and engineering achievement. Which precedes and which follows? Can 'Laws' be planned in the light of scientific knowledge or are they of necessity merely ad hoc solutions of human problems as they arise as a consequence of technological activity? On the other hand, is it desirable for 'Law' to attempt a leadership role without possibly stifling or even arresting the discovery of knowledge and its applications?

3. The Fundamental Physical Problems of Useful Spacecraft

Orbiting satellites and other forms of spacecraft are subject to unalterable physical laws of the universe and must be engineered to carry out their desired function within the framework of such laws. In addition to the obvious constraints of thermodynamics,

orbital mechanics and electromagnetic fields, the design and operation of spacecraft depends intensively on the sciences of materials, on what is popularly known as 'electronics' and on what may be described as the 'organizational sciences'. Under the last heading are included the recently evolved and still developing disciplines of Control and Systems Theory, Information Theory and Computer Science. The crucial observation to make is that both the better established and the more recent disciplines continue to be in a state of further development and that this development and is greatly aided by and promoted by man's venture into space activity. It is for this reason that activities in man made 'Law' and regulatory measures must be carried on with due caution if it is desired to promote and aid in further discovery of knowledge. This, of course, is an issue in itself since philosophies oriented towards obscurantism and suppression of knowledge are not unknown and in fact appear to be operative in increasing measure in many parts of the world. Are 'Law' and 'Regulations' of human activities - including those in space, capable of arresting or even reversing the achievements of science and technology?

In the considerations of the scientific bases of space activities enunciated above, a separate, special and key role must be reserved for that of the

discipline of electromagnetic fields. Regardless of its function, mode of operation, form and organization, a spacecraft is absolutely and entirely dependent on electromagnetic waves in their many forms. Spacecraft control, operation, guidance, communications and much of their primary function are carried out entirely through the intermediary of electromagnetic waves and there exists no alternative. It is therefore essential that the properties and limitations of e.m. waves be appreciated and that legal and regulatory measures be formulated with due regard to them or, at least not in contravention of them. Since the laws of physics as in the case of e.m. waves are 'universal', is it possible to support the notion of different legal doctrines with respect to them? If yes, then in what respects can they differ? As an example, can the speed of e.m. waves be arbitrarily 'regulated' to have different values or are 'Laws' restricted only to the determination of usage of e.m. waves?

4. Practical Applications of Useful Spacecraft

Spacecraft can be broadly classified as those concerned with information transmission through electromagnetic waves and these may be termed as 'SIGNALS' spacecraft. This type of spacecraft heavily predominates, although other basic missions also exist or are evolving. The second category includes

craft involved in transportation of goods (lunar rocks), people and physical activities in space as in Skylab and in the forthcoming Shuttle. Energy capturing, converting and retransmitting, spacacraft also belong to this second or 'GOODS' category. It must be re-emphasized that both the SIGNALS and the GOODS categories depend absolutely and essentially on the intermediary of e.m. waves as indicated earlier.

In the case of SIGNALS spacecraft further grouping is useful in order to emphasize the point that in a broad sense all spacecraft are to some degree or other 'Communications' or 'SIGNALS' spacecraft. The groupings are:

i. Communications or 'fixed service' satellites
ii. Remote sensing satellites
iii. Meteorological satellites
iv. Navigational satellites
v. Special purpose research satellites
vi. Direct broadcast satellites

In all of these, messages, signals, data, information etc. are acquired and transmitted. The manner in which they differ is in the manner in which the content of the information is acquired, in the nature of the content and in the systematic use to which the content is put after it is transmitted by the satellite.

It is at this point, the point of application, that there exists a broadening element of choice, the

possibility of different decisions based on differing objectives, ambitions and considerations of advantage. Different users will place the above listed groupings in different orders of priority and may even wish to suppress some, not on the basis of physical realizability but on the basis of arbitrary policy or differing life philosophy. This is the girst for the mill of 'Law' and 'Regulation' making. However, even here there are physical constraints. There are two and these are related to the essential limits of usable e.m. waves. The first and best known (and historically one of the best examples of effective international regulatory procedures) is the management of the electromagnetic spectrum. (e.g. WARC 1979). The fundamental problem is the fact that the e.m. spectrum is a limited resource. The second, and seldom noticed limitation, is one which is only now emerging into prominence. It is the limitation of the 'amount' of electromagnetic energy which can be tolerably sustained in the environment. This problem, not new, but not well noticed by lawmakers and regulatory planners is usually designated by the acronums e.m.c., e.m.i., e.m.s. (electromagnetic - compatibility/ interference / susceptibility).

While considerable public discussion is evolving regarding possible biological hazards, it is not this area which represents the most immediate

problems. The most immediate problem is that, as the utilization of the authorized electromagnetic spectrum intensifies, the electronic devices and systems which are part and parcel of the modern technological environment, are themselves prone to malfunction or even damage in the growing levels of e.m. fields (which they themselves produce). The onset of the saturation of the e.m. environment is thus a major limiting factor especially in the use of the sensitive satellite communications systems.

5. Communications in General and Direct Broadcast Satellites in Particular

In reviewing the SIGNALS spacecraft groupings in 4. above, it is obvious that those dealing with remote sensing, meteorology, navigation etc. constitute elaborate measurement and instrumentation systems in which a measurement is made (e.g. the weather) and this data is transmitted or communicated to the receptor for use.

The communications systems, both fixed service and DBS however, merit more elaborate detailed description from the point of view of their structure. Unfortunately, the structural differences of communications systems are not always clearly defined. There are two fundamentally different modes of communications and, regrettably, these are frequently mixed together when 'Communications' systems are discussed. In this

context the term 'Communications' need not be restricted to ' electronic' systems only.

The two modes are:

A. Mode A or the 'Entertainment/ Information/Propaganda' mode

B. Mode B or the Interpersonal or Telecommunications mode.

Mode A is basically characterized by an essentially centralized 'program source' and many 'receptors' to which the content is transmitted unilaterally. There is, of course, the possibility of several central sources which a receptor may choose from (or shut off entirely). However, the receptor has a limited range of choice (even in 'data bank access systems') and virtually no ability to respond or react directly.

Mode B is a system in which there is a large number of 'members' who can, at their choice, become linked with any one (or even several) of other members and engage in information interchange of their own choice in both directions or multilaterally.

A careful examination of the prevalence of Mode A and Mode B systems throughout the world can be most illuminating and can lead to a variety of (possibly misleading) value judgments. Suffice it to say that such an examination demonstrates statistically that while Mode A systems appear well developed throughout most of the world, Mode B systems appear to be largely concentrated in what is usually

termed the 'Free World'. An examination of the reason for this merits a separate investigation.

It is useful, in terms of the above comments to consider DBS. Obviously, DBS belongs to the Mode A type of system. The reasons for advancing DBS are usually based on the inability of remote locations to have access to Entertainment, Information, etc. Clearly the use of transmission via satellite would help to provide such service, provided technical and economic problems can be solved. Until recently, existing frequency spectrum allocations did not permit this but the opening of the 12 GHz range provides an opportunity to provide such service. The higher frequency range also helps overcome some of the technical and economic problems because of concommitant size considerations for the receptors. Although, if a communications transmission system works properly, it should be 'tranparent' so that the user is not aware of the mode of transmission, the use of satellites for remote region entertainment distribution has high public visibility and thus achieves good promotional and publicity value. However, in the light of comments in Section 4 regarding the assignment of priorities to different services, and in the light of comments above regarding the relation of Mode B systems to Canadian society the question must be raised whether DBS is the most urgent need

in remote areas. If Mode B systems are already fully accessible to the vast majority of remote area dwellers then the addition of a Mode A system is evidently laudable. However, if a choice is to be made between the two then it might appear useful to make the choice with the participation of the remote area dwellers as well as through public policy agencies.

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ANNEX III

POLITICAL IMPLICATIONS OF D.B.S.*

I. INTRODUCTION

Direct Boradcasting Satellites became an international political issue in the late sixties when the United Nations established a Working Group to consider the implications.[1] By that time, the extensive development of telecommunications satellite technology raised fears of encroaching upon the sovereignty of nation-states. The fear was that geo-stationary satellites could transmit the television broadcasts of one state to another without the content of the latter. This situation would mean the loss of control which governments have over the form and content of the electronic mass media and indirectly over the minds of their own people.

Political problems, such as this, clearly arise when governments perceive an unacceptable situation which may lead to a loss in their decision-making capacity.[2] Such loss diminishes their power to govern inside their territory and hence lessens their influence in the international system. Unfortunately for them, satellites in general and DBS in particular do not respect national boundaries. When space telecommunications reach a certain stage, mass audiences anywhere may pick up programs originating in far away foreign countries and thus be adversely affected by them. This possibility is the crux of the problem facing us.

So far this remains only a potential problem which is expected to become real within this decade. The United Nations' COPUOS, however, has been grappling with it for over ten years already. State representatives in its Working Group on DBS have been trying to reach some consensus on its operative principles since 1970. A Specialized Agency, UNESCO, has succeeded in passing a declaration relating to DBS in 1972,[3] but many countries feel that only a formal treaty binding its signatories will resolve the problem. Is such treaty possible or even desirable at this time? What exactly is at issue here and how are states reacting to it? How are the fears expressed likely to materialize and what options are open to governments to do anything about it? These are the questions that we shall try to answer in the following four chapters of this paper.

II. ISSUES

In order to clarify what is involved in the DBS controversy, we must break down the problem in its component parts. To begin with, the issue at hand may be considered of a dual nature: substantive and procedural. The substantive issue, itself, may also be dichotomized into form and content. As to form, states are trying to agree on the management of the broadcasting frequency spectrum and the orbital planes

to be allocated to their satellites. Although this seems to be a technical problem, it has political implications because both spectra and orbits are scarce resources and hence their distribution becomes contentious. The principle of "first-come first-served" in allocating these natural resources has been opposed by many states who prefer the principle of "equal access" to all.

As to content, once the above infrastructural problems have been resolved, the issue is who decides on the programming to be received by a certain audience: the people themselves, their government or whoever can get to them. This problem, which arises also in the domestic setting, becomes more acute in international politics because there are foreign broadcasts involved. These raise the spectre of "cultural imperialism" and "foreign propaganda" which no government can ignore. The question is whether it rests on the transmitting state to decide the program content or rather on the receiving state. If the former, the so-called principle of "freedom of information" applies; if the latter it is that of "prior consent".

This brings us to the procedural issue behind the substantive one: i.e. how far does state sovereignty reach. Does "sovereignty" mean complete control over all information entering or leaving a country? The

international community has not yet reached an unequivocal answer on this question. Various UN resolutions and the UNESCO Declaration affirm "freedom of information" at the same time as they emphasize "state prerogative" to regulate all communications within its territory.[4] How does one reconcile such apparent contradiction? COPUOS, the central international forum where this issue is being debated, has not yet found a consensus to settle the point. The negotiations there have bogged down on serious differences as to the interpretation and priority of these conflicting principles.

At the centre of the controversy is the key principle of international "consultation and agreement" between concerned states as to the program content of DBS. The duty to consult has by now been accepted as a basic premise of international cooperation.[5] Before they take any action, states must take into account the views of others who may be affected by such actions. But whether they have to secure their agreement is still a moot point. If a state objects to the kind of foreign programs its people can pick up, what recourse does it have? Does it have the right to demand of the state where these programs originate not to transmit them; or is the onus on itself to see that its people cannot receive the proscribed communications. At this

point international law is not clear, so the exigencies of international politics predominate.

III. POLITICS

Since the rules of DBS have not been settled yet, various states are trying to make their views prevail during this stage of international legislation. Among the differing positions on this matter, we can distinguish two diametrically opposed ones: laissez-faire liberal versus strict regulation. The first is based on the "freedom of information" principle, whereas the second gives priority to "state sovereignty". The United States may be said to lead the school of the liberals, while the Soviet Union champions the cause of the etatists. These two extremes are rather oversimplifications, since the issue is much more complex and the nuances are many; but it helps situate the range of overlapping policies.

The American position, supported by West Germany, Japan and other high technology free-market economy states, is consistent with commercial interests which stand to gain from the so-called "free flow of information". These countries, who have the capacity to launch and operate DBS do not want to see their freedom of action impared by ineffective principles or unnecessary regulation.[6] On the other hand, highly controlled closed systems, such as the Soviet Union and its allies, cannot allow

their citizens this wide freedom of choice that an unregulated DBS will produce.[7] This US-SU confrontation is in the best tradition of the East-West ideological conflict, where political propaganda and psychological warfare are still alive.

There is however another confrontation which cross-cuts ideological lines. In that one, the division is between the space satellite powers on the one side and those who are not on the other. This means again the United States and other technologically developed countries who share common interests because of their space capabilities versus the so-called "underdeveloped" countries which are excluded from space activities because they cannot afford it. This confrontation coincides with the North-South gap in many areas and reflects the mutual fears between the "haves" and the "have-nots". In this case, the smaller, newer, weaker and poorer states are naturally afraid of the possible domination of their cultures and economies by the bigger, older, stronger and wealthier states. Most Afro-Asian and Latin American governments are either too insecure or too conscientious to accept with equanimity an avalanche of western commercials and other cultural images spread over their unsuspecting societies.[8]

Such foreign influx would raise the expectations of the masses, disturb and disorient people, put their cultural traditions in disrespect and question the authority of their governments. Thus, DBS may become the oligopoly of certain northern states who will then misuse it to exploit the third world.

Some of these fears may be well justified, even if the DBS states have no intention of using their power in such way. For that reason the principle of "state responsibility" to some extent has been accepted by most countries, both in the North and South, East and West. What remains to be done is find a compromise between various extremes and so build a consensus somewhere in the middle. This is precisely what some moderates are trying to do, lead by Canada and Sweden. These attempts aim to strike a balance between nationalism and internationalism, laissez-faire and strict control, by some regional systems approach. The trick here is to find an acceptable common ground where conflicting national interests will coincide with the necessary international coordination. The Swedish-Canadian proposals have not yet found the appropriate consensus, so the matter stands deadlocked for the time being. As DBS becomes a reality, the present deadlock will be broken one way or another. If an international policy cannot proceed technology, the

inexorable "progress" of technology, will force some policy reaction.

IV. TRENDS

Since the dawn of the space age, DBS have been hailed as a boon to mankind. Riding on the enormous potential of technology, many people saw in DBS a way to unify the world. The disregard of national boundaries by DBS meant the rise of a universal culture and the destruction of petty nationalism. The instant communication and exchange of information which DBS can make so easy would create a global village in which all humanity could participate. DBS could reach every individual and community in the world, thus providing general education and specialized training, art and recreation; thus combatting ignorance, parochialism and fear.

Yet, for precisely the same reasons, many people were afraid that DBS could become the bane of society. In apposition to the above scenario, these people posited another one highlighting the dangers of DBS. These dangers, like the promises, are also well-known: the possibility of the strong cultures destroying the weak, commercialism spreading throughout the world, racist or war-mongering propaganda fanning the fires of hatred, subversive doctrines fomenting revolution and even brain washing by subliminal control. This more sobre view emphasizes the

negative aspects of DBS, as much as the first opinion outlined only the positive. Up to a point, both of them are plausible and either one could come about within this century.

Nevertheless, these two scenaria are caricatures of reality. Although possible, they are not very probable in the foreseeable future. What will most likely happen is neither of the two; though some elements of both will evolve in parallel. As is usually the case, neither the highest hopes nor the worst fears of men are realized; even if it is quite natural to point them out and worry about them constantly. The potential of DBS, for good or evil, has been rather exaggerated, so it is desirable to balance the picture with a more realistic account.

We can accept without question the reality of DBS presently. The parameters of this reality, however, do not add up to either an overly optimistic or pessimistic forecast. As to the technical aspects, the costs of launching and technological sophistication will limit the possession and operation of DBS to only the few advanced or wealthy states and trans-national corporations.[9] As such the fears of oligopoly are not excessive. The socio-political repercussions of this development , however, are not as great as they are made out to be.

Even in the event of complete absence of any international regulation of program content of DBS,

it would not be very difficult for those states who do not want such programs to control their reception themselves. By all accounts it is far easier and less costly to regulate the reception of DBS than its transmission. There is no question that a state can have effective control of its community receivers, so that it can filter out any unwanted programs. But even for individual receivers, it is possible to build them so that they can only receive government approved channels. Apart from the isolated contraband, DBS cannot reach anyone whose government takes the necessary precautions to that effect. If we add to that, the barriers of language, customs and time-zones, the possibility of DBS spreading their culture or propaganda throughout the world becomes minimal.[10]

The most that will happen is that DBS will bring closer together regions of the same culture, such as Western Europe and North America, as long as their governments remain open and liberal. Even there, some mutual restraint and unilateral rejections will take place. Beyond that, however, the probability of transmitting American commercialism or Russian communism by DBS is rather remote. What, then, is the problem and why all the fuss about DBS? The problem is the variable ability and willingness of different governments to act alone or with others to apply their policies upon their societies. As we

shall see in the next section, this situation leaves them with few alternatives.

V. OPTIONS

The broad alternative in policy-making, whether domestic or foreign, concerning DBS or other issues, is between the piece-meal gradualist approach and the system planning one. The former is the traditional pragmatic way in which most governments operate, whereas the latter is a new scientific method of preparing for action. Translated into our case, this alternative becomes whether governments should get together and decide upon a common policy for the world, or wait and tackle the problems as they arise separately.

On a different level, another stark alternative is whether to allow individual choice in the matter of program content or not. As we have mentioned, most governments have opted for the not; and the question is how far they should take this policy or how vigorously they should apply it. It is here where the problem of volition and capacity came in, since many governments are unable or unwilling to implement draconian policies, so would rather have somebody else do it for them. That is why they press for collective action through international organizations.

Once the necessity or desirability of international cooperation has been accepted, the options reduce to the kind and degree of the required action. In the case of DBS, there are three options: a General Assembly Resolution; a United Nations Declaration; a multilateral treaty; depending on the degree of committment and kind of inclusion the participants will agree upon.[11] One alternative here is regional or global agreement. In general, the strength and depth of the agreement is inversely proportional to its extent and scope. Thus it is much easier to get specific regional agreements than broad global ones. Those who demand strong international responsibility, as the USSR and France do, will have to accept much less if they want universal agreement. On the contrary, the United States only has to sit and wait.

When all these options are considered together they present us with a dual policy: a UN Resolution of broad principles and regional treaties of specific applications. The first would incorporate the rule of consultation and cooperation among all states; the second would go into various arrangements for their implementation. These two policies, of course, are not mutually exclusive; both could and should be pursued in parallel. The point is, however, that alghough it is necessary and desirable to establish

some common principles for mankind at this time, it is neither necessary nor desirable to try for specific uniform regulations regarding DBS everywhere in the world. In any case, these two together or separately, are the only broad possibilities we can envisage for the near future. Any other combination would be a partial one, either in space or in content.

VI. CONCLUSION

The possibility and effectiveness of any international agreement depends on the willingness of states to transcend narrow national interests and move towards a common goal. For such movement to take place there must be perceived some overriding necessity; since no state will give up any of its prerogatives without some compensation. In the case of DBS, such overriding necessity has not manifested itself yet, so states would rather live with the status quo than change it. As we have seen, the status quo is not an entirely laissez-faire one, but neither it is as regulated as many states would have it. The international legislative process will take its course, as it has done in the past, as the need arises rather than as methodical planning would require.

Under the circumstances, the most realistic course of action for a government, such as the Canadian, to take would be based on the following principles regarding DBS:

-prior consultation of the state which one's actions are likely to affect: Such consultation would not necessarily require consent;

-prior consent would only be necessary of those states to whom a DBS is expressely and specifically beamed;

-Unintentional and unavoidable spill-over of minimal interference cannot hold the sender liable, it is up to the receiver to deal with;

-Technical aspects of DBS to be administered and implemented by the ITU on the basis of international agreements;

-Program content to be negotiated locally as the need and desire calls for it among like-minded states.

These points should provide the necessary and sufficient conditions for international regulation of DBS as far as we can see. For an adequate application of this policy, we have to assume a modicum of goodwill among states. Without it, even an agreement in principle will remain a dead letter. Apart from deliberate hostile propaganda beamed directly to a region, most problems of DBS arise from honest

differences of opinion as to what constitutes cultural interference, freedom of information, state responsibility and national interest. Accordingly, international relations need not be zero-sum games and political conflicts could be settled to the net gain of everyone.

* By P.J. Arnopoulos. The author wishes to thank Mr. Riccardo Trecroce for his assistance in research.

1. See Kathryn M. Queeney, Direct Broadcast Satellites and the United Nations (Leyden: Sijtoff & Noordhoff (1978), pp. 33-34.

2. This thesis is developed in a lucid fashion with respect to DBS as well as with respect to Remote Sensing and the problem of transborder computer storage of personalized data in an article by Allan Gotlieb; Charles Dalfen and Kenneth Katz entitled "The Transborder Transfer of Information by Communications and Computer Systems", in The American Journal of International Law, 68 (1974), pp. 227-257.

3. Res. 4. 11, 1 Records of the General Conference, UNESCO, 17th Session, Oct. 17 - Nov. 21, 1972 at 67.

4. UNGA Resolution 2468, Freedom of Information, Dec. 19, 1968; ECOSOC Draft Declaration on Freedom of Information 756 (XXIX), April 21, 1960; "Freedom of Information", Note by the Secretary-General, UN A/34/195. September 7, 1979; UNGA 2625 (XXV) "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the CHARTER of the United Nations".

5. Paris J. Arnopoulos, "Consultation and Conciliation", International Journal XXX (1974-75), p. 102.

6. Queeney, op. cit., pp. 124-130.

7. Jan Busak, "The Need for an International Agreement on Direct Broadcasting by Satellites", Journal of Space Law 1 (1973), p. 151.

8. Queeney, op. cit., pp. 48-50.

9. Commission on the Peaceful Uses of Outer Space, Report of the Working Group on Direct Broadcast Satellites, UN. Doc. A/AC. 105/51, at 5 (1969) as cited in Abram Chayes and Leonard Chazen, "Policy Problems in Direct Broadcasting from Satellites", Stanford Journal of International Studies, 5 (1970), p. 5.

10. Queeney, op. cit., p. 55; Chayes and Chazen, op. cit., p. 9.

11. Queency, op. cit., p. 3.

ANNEX IV

THE ECONOMICS OF DBS*

Direct broadcasting satellites raise two distinct types of economic issues. DBS shares with other space activities the use of certain space resources, and these resources must be allocated in some way to different uses. A satellite, for example, occupies a location in outer space, and makes use of the electromagnetic spectrum. The allocation of these space resources depends on the general institutional framework -- the interaction of legal, political, economic and technical factors -- that govern all space activities.[1] The implementation of DBS may require specific enabling actions by some of the institutions concerned with space activities, for example, radio frequencies may have to be allocated to this service.

This economic study deals only with a second set of economic issues, that is, questions which are specific to the broadcasting nature of DBS. Most of the international issues are concerned with xeno-signals -- a term coined to describe television signals transmitted by one country but received in another country. Xeno-signals already exist from transmitters on the ground, for example, where stations are located along national borders. Satellites are already widely used to transmit television signals from point-to-point, providing feeds of broadcast material for local stations or cable or

community antenna systems. DBS would provide broadcasts via satellite directly to home receivers where the increase in transmitter power would drastically reduce the cost of ground receiving equipment. DBS can be used to provide international service where the target audience is in another country. The xeno-signals are in this case intentional. If a specific country is targeted, there may be unintended spill-overs of xeno-signals to other countries. DBS can also be used to provide domestic service. In this case, unintended xeno-signals are the principal international issue raised.

In any country with television broadcasting, there is an identifiable broadcasting industry consisting of privately-owned commercial enterprises or quasi-public organizations or both. In addition, there are a number of support industries, including local performing arts, that depend on domestic broadcasters. Xeno-signals pose a competitive threat for local broadcasters and their supporting industries. The magnitude of this threat will be discussed in the next section by examining experience along the Canada-U.S. border.

While broadcasting is an industry providing services, it is usually subject to a number of regulations imposed by a local public body. Some of these regulations aim at protecting the public against misinformation or inducements to buy products that are considered

harmful, they may also try to modify the content of broadcast material in order to foster national, cultural and moral objectives. For the purposes of this study, it does not matter what objectives are pursued by the regulatory body.[2] The presence of xeno-signals -- signals not controlled by the regulatory body -- may reduce the regulatory body's ability to achieve its objectives. The number of viewers who are likely to substitute xeno-signals for domestic signals is a rough measure of the likely impact of xeno-signals on the effectives of policy tools available to the regulatory body. For certain objectives, a more sophisticated measure may be desirable, such as, for example, the percentage of people who can be designated as "opinion makers" or the percentage viewers in a certain age group who are likely to choose xeno-signals over domestic signals.

Impact of Xeno-Signals on Domestic Viewing Patterns

Canadian viewing patterns are examined in this section with the aim of extrapolating some conclusions on the likely effects of Xeno-signals from DBS on the audiences for Canadian broadcasters. The addition of new signals that become available to a region may increase the total hours of viewing as well as divert viewers from existing stations. The analysis of viewer data provided by BPM surveys of selected Canadian markets is carried out on the assumption that

all viewing of xeno-signals is a diversion from domestic broadcasters. The impact of xeno-signals is thus over-stated.

There is good reason to believe that total viewing habits are fairly stable over time. One study done in the U.S. found that the prime-time audience had stayed very close to 60 per cent of television households over two decades in spite of major changes in programming, the advent of color, and an increase in the number of stations.[3] An unpublished study by the Rand Corporation working with county-by-county audience data found that prime-time audiences averaged about 54 percent with one network station available, 56 percent with two network stations available, 58 percent with three network stations available, and increased modestly with the availability of independent stations.[4]

Canadian evidence suggests that the availability of U.S. network signals to Canadian viewers either off-the-air or via cable have increased total hours of viewing by slightly more than the U.S. figures in the Rand study. James Linton and Hugh Edwards estimate that average weekly hours of viewing by a Canadian household increased from 22 hours 12 minutes in November 1971 to 23 hours 52 minutes in March, 1974, an increase of 7.5%.[5] The period coincided to a rapid expansion in market penetration by cable companies in Canada and increased availability of U.S. stations. They

attribute a large measure of the increased viewing to the availability of U.S. stations. The two sets of figures come from different sources, and a word of caution is in order for the difference may be due in part to differences in methods of estimation. The general conclusion that availability of U.S. network stations in Canada has a slightly greater effect on total Canadian viewing than that reported for U.S. viewers by Rand is supported by detailed studies of the markets in Edmonton and Calgary.[6]

Table 1 presents audience shares held by U.S. stations in a number of selected markets. Defining prime-time as the period from 7:30 P.M. to 10:30 P.M., U.S. stations held 26 per cent of the total audience in Edmonton, Kitchener and Toronto, and 36 per cent in Vancouver. The share of the audience held by U.S. stations declines significantly with the proportion of the population that is francophone -- 17 per cent in Ottawa-Hull, 15 per cent in Montreal, and 6 per cent in Sherbrooke. It is clear that the attractiveness of the xeno-signals to the local audience must be considered.

There is no obvious way of measuring the attractiveness of programming. Rolla Park in his study suggests a "Beta-parameter" which depends in large part on the expenditure on programming.[7] This factor may explain in some measure the preferences of Canadian viewers for U.S. network shows carried on Canadian stations

and the decline in "off-the-air" viewing of Canadian produced programs,[8] as well as the attractiveness of U.S. network stations in Canada.

Park's "Beta-parameter* would have to be expanded to make it applicable to Direct Broadcasting. The lower penetration of U.S. stations in francophone areas indicates that language is a significant factor in determining the attractiveness of programming offered. The point is supported by audience data on francophone stations operating in anglophone markets. The BBM surveys used to produce table 1 reported on three CBC stations: CBVFT in Vancouver; CBXFT in Edmonton and CBLFT in Toronto, all of which broadcast in French. Audiences for every time slot were consistently below 1 per cent, except for CBLFT Toronto which reached the 1 per cent level in the 10AM to 12NOON slot, Mondays to Fridays. Foreign language broadcasts are unlikely to attract a significant part of the audience with any consistency.

The time-zone factor would also affect the value of the "Beta-parameter". Table 1 shows xeno-signals that flow in a South-North direction where time zones are not a factor. The attractiveness of global television broadcasting would be affected by time-zone differences.

The impact of DBS on the local broadcasting industry and on the local government's ability to regulate broadcasting depends on the attractiveness of the programs offered by DBS. This attractiveness

which can be summarized in a "Beta-parameter", depends on the level of expenditure on programming, accessibility to the language of the broadcast, and the effects of time-zone differences. U.S. networks are likely to enjoy an advantage in the immediate future because of their levels of expenditures on programs. The other two factors are likely to impose constraints on the potential for DBS as a commercial venture or DBS as a significant threat to domestic broadcasting.

In the Canadian context, where U.S. signals are already available to a substantial portion of the population either "off-the-air" or through cable systems, DBS is likely to have a marginal impact. Other countries where English is spoken substantially, the availability of U.S. network programming via DBS is likely to pose a similar threat to that which already exists in Canada.

TABLE 1

PERCENTAGE OF TOTAL AUDIENCE SHARES HELD BY U.S. STATIONS IN SELECTED CANADIAN CITIES AND SELECTED TIME SLOTS

Time Slots Mon-Fri	Vancouver	Edmonton	Kitchener	Toronto	Ottawa-Hull	Montreal	Sherbrooke
AM 6-8	53	65	30	73	7	4	6
8-10	49	43	40	68	13	17	4
10-12	45	49	52	48	33	19	11
PM 12-4:30	49	23	20	26	19	10	9
4:30 - 6	41	36	24	40	10	-	5
6 - 7	24	10	9	11	2	1	1
6:30 - 7:30	25	5	15	18	8	6	4
7 - 11	34	25	24	26	16	15	6
7:20 - 10:30	36	26	26	26	17	15	6
10:30- 11	37	29	22	26	18	19	7

Source: BBM Audience Surveys for these markets. Periods covered and U.S. stations reported are: Vancouver: Jan. 31, 1980 to Feb. 3, 1980, BVOS, Bellingham, Wash, and KING, KIRD and KOMO in Seattle, Wash; Edmonton, Jan. 15 to Jan. 28, 1980, KHQ, KRBM and KXLY in Spokane, Wash; Kitchener: Jan. 21 to Feb. 3, 1980, WIGB, WGR and WKBW in Buffalo, N.Y.; Toronto: Jan. 21 to Feb. 3, 1980, WIVB, WGR, WKBW and WUTV in Buffalo, N.Y.; Ottawa-Hull: Jan. 21 to Feb. 3, 1980, WHEC and WROC, Rochester, N.Y.; Montreal: Feb. 4 to Feb. 17, 1980, WCAX, Burlington, Vt., and WPTZ, Plattsburg, N.Y.; Sherbrooke, Spring 1979, WCAX, Burlington, Vt.

Figures are market shares of total audience in central regions for these markets.

Economic Significance of Audience Diversions

The revenues of a commercial broadcaster are likely to vary in a rough way with the size of his audience. Total audience is too simple a measure to establish a firm relationship with revenues, for the composition of the audience in terms of age distribution, income distribution, and other characteristics, would also have to be taken into account. The audiences lost to xeno-signals described above, however, do provide a rough indication of lost revenues.

The broadcaster who relies on public funding for part or all of his budget may similarly find a relationship between audience size and revenues. The relationship here is more tenuous, for there are no market forces at work determining earnings, and at the same time governments have a scope for behaving with a certain budgetary discretion. In periods of budgetary retrenchment, however, a broadcasting service with a larger audience is likely to wield more political power in defending its budgets than a broadcasting service with a small audience.

Whether the broadcasting industry is privately owned, publicly owned, or mixed, there is likely to be a relationship between audience size and funds available to the broadcasters.

Broadcasting involves a variety of components which must be put together -- programs have to be

produced or acquired from somewhere, technical operations have to be performed in a studio, a transmitter and antenna is needed with technicians to operate , and there are a variety of administrative functions that must be performed. The costs of some of these components are relatively fixed. Thus one operates the transmitter or one goes off the air. If all fixed costs are deducted, then we are left with an amount which is available for producing programs plus providing net earnings on the operations. The result of substracting costs from the total funds available to the broadcaster is that the amount available for program production is likely to be much more variable in percentage terms than the variation in the size of the audience. This point is readily recognized in economic theory as a simple application of the concept of effective protection.[9]

The point can be illustrated with a simple example. A television station has revenues of $1 million per year, and fixed costs of $200,000, which include normal profits and earnings on the investment. $800,000 is available for programming, of which, let us say, $300,000 is spent on programs acquired from other sources, and $500,000 is spent on local productions. If the television stations loses 25% of his audience, with a proportionate drop in revenues to $750,000 per year,

his fixed costs remain at $200,000. The amount available for programming drops to $550,000. This certainly does not allow him to increase local programming. After he has paid $300,000 for programs produced by other sources, only $250,000 is left for local programming. A 25 per cent drop in funds available thus leads to a 50 per cent cut in funds spent on local programming.

In many countries, one of the objectives of regulation is to promote national content or local culture. The interaction between broadcasting and the performing arts seems to be at best a two-edged sword. Broadcasts are a substitute for live performances, and hence diminish the earnings of local artists. DBS, under the conditions postulated above, is not likely to increase television viewing significantly, and so is not likely to add to this kind of effect. Broadcasting also employs artists in performances, and so provides a demand for the services of those in the performing arts. Evidence suggests that only a small portion of those in the performing arts find regular employment in television, although some of them are able to make substantial incomes in television. Baumol concluded that on the whole, broadcasting injures those in the performing arts.[10] DBS, as we have seen, is likely to diminish significantly the demand for artists in

televised productions if there is a sizeable diversion of audience to xeno-signals.

In almost all countries, the development of culture industries, including broadcasting and the performing arts, is a matter of national policy. The effects of xeno-signals on local viewing habits are therefore of concern.

* By Alex G. Vicas, assisted by Yolande L. Bertrand

1. A useful economic analysis of issues raised in the allocation of space resources can be found in Clas G. Wihlborg and er M. Wijkman, "Outer Space in Efficient and Equitable Use -- New Frontiers for Old Principles", mimeo, 1979.

2. Many different objectives may be floowed by regulatory bodies, and these may vary considerably from country to country. Without attempting a full bibliography, a classic study has been provided by R.G. Noll, M.J. Peck, and J.J. McGowan, Economic Aspects of Television Regulation, Washington, D.C., The Brookings Institute, 1973. See also, S.M. Besen and B.M. Mitchell, Economic Analysis and Television Regulation, The Rand Corporation, R-1398-MF, December 1973, and B.M. Owen, J.H. Beebee, and W.G. Manning, Jr., Television Economics, Lexington, Mass., 1974.

3. Owen, Beebee and Manning, op. cit., pp. 95-96.

4. Reported by R.E. Park of the Rand Corporation in "New Television Networks", Bell Journal of Economics, Autumn, 1975, p. 610.

5. James Linton and Hugh Edwards, Canadian Television Viewing Habits, Center for Communications Studies, University of Windsor, Oct. 1976, p. 1.

6. Ibid., pp. 27ff.

7. R.E. Park, op. cit., 611-612.

8. Linton and Edwards, op. cit., p. 34.

9. W.M. Corden, The Theory of Protection (Oxford University Press, 1971).

10. W.J. Baumol and W.G. Bowen, Performing Arts -- The Economic Dilemna, Twentieth Century Fund, 1966.

ANNEX V

Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange(1972, UNESCO).

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris at its seventeenth session in 1972.

Recognizing

that the development of communication satellites capable of braodcasting programmes for community or individual reception establishes a new dimension in international communication,

Recalling

that under its Constitution the purpose of Unesco is to contribute to peace and security by promoting collaboration among the nations through education, science and culture, and that, to realize this purpose, the Organization will collaborate in the work of advancing the mutual knowledge and understanding of peoples through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,

Recalling

that the Charter of the United Nations specifies, among the purposes and principles of the United Nations, the development of friendly relations among nations based on respect for the principle of equal rights, the

non-interference in matters within the domestic jurisdiction of any State, the achievement of international cooperation and the respect for human rights and fundamental freedoms,

Bearing in mind

that the Universal Declaration of Human Rights proclaims that everyone has the right to seek, receive and impart information and ideas through any media and regardless of frontiers, that everyone has the right to education and that everyone has the right freely to participate in the cultural life of the community, as well as the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author,

Recalling

the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (resolution 1962 (XVIII) of 13 December 1963), and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, of 1967 (hereinafter referred to as the Outer Space Treaty),

Taking account

of United Nations General Assembly resolution 110 (II) of 3 November 1947, condemning propaganda designed or likely to provoke or encourage any threat

to the peace, breach of the peace or act of aggression, which resolution as stated in the preamble to the Outer Space Treaty is applicable to outer space; and the United Nations General Assembly resolution 1721 D (XVI) of 20 December 1961 declaring that communication by means of satellites should be available as soon as practicable on a global and non-discriminatory basis,

Bearing in mind

the Declaration of the Principles of International Cultural Co-operation adopted by the General Conference of Unesco, at its fourteenth session,

Considering

that radio frequencies are a limited natural resource belonging to all nations, that their use is regulated by the International Telecommunications Convention and its Radio Regulations and that the assignment of adequate frequencies is essential to the use of satellite broadcasting for education, science, culture and information,

Noting

the United Nations General Assembly resolution 2733 (XXV) of 16 December 1970 recommending that Member States, regional and international organizations, including broadcasting associations, should promote and encourage international cooperation at regional and other levels in order to allow all participating parties to share in the establishment and operation of regional satellite broadcasting services,

Noting

further that the same resolution invites Unesco to continue to promote the use of satellite broadcasting for advancement of education and training, science and culture, and in consultation with appropriate inter-governmental and non-governmental organizations and broadcasting associations, to direct its efforts towards the solution of problems falling within its mandate,

Proclaims

on the 15th day of November 1972, this Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange:

Article I

The use of Outer Space being governed by international law, the development of satellite broadcasting shall be guided by the principles and rules of international law, in particular the Charter of the United Nations and the Outer Space Treaty.

Article II

1. Satellite broadcasting shall respect the sovereignty and equality of all States.

2. Satellite broadcasting shall be apolitical and conducted with due regard for the rights of individual persons and non-governmental entities, as recognized by States and international law.

Article III

1. The benefits of satellite broadcasting should be available to all countries without discrimination and regardless of their degree of development.

2. The use of satellites for broadcasting should be based on international cooperation, world-wide and regional, intergovernmental and professional.

Article IV

1. Satellite broadcasting provides a new means of disseminating knowledge and promoting better understanding among peoples.

2. The fulfilment of these potentialities requires that account be taken of the needs and rights of audiences, as well as the objectives of peace, friendship and co-operation between peoples, and of economic, social and cultural progress.

Article V

1. The objective of satellite broadcasting for the free flow of information is to ensure the widest possible dissemination, among the peoples of the world, of news of all countries, developed and developing alike.

2. Satellite broadcasting, making possible instantaneous world-wide dissemination of news, requires that every effort be made to ensure the factual accuracy of the information reaching the public. News broadcasts shall identify the body which assumes responsibility for the news programme as a whole, attributing where appropriate particular news items to their source.

Article VI

1. The objectives of satellite broadcasting for the spread of education are to accelerate the expansion of education, extend educational opportunities, improve the content of school curricula, further the training of educators, assist in the struggle against illiteracy, and help ensure life-long education.

2. Each country has the right to decide on the content of the educational programmes broadcast by satellite to its people and, in cases where such programmes are produced in co-operation with other countries, to take part in their planning and production, on a free and equal footing.

Article VII

1. The objective of satellite broadcasting for the promotion of cultural exchange is to foster greater contact and mutual understanding between peoples by 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.

Article VIII

Broadcasters and their national, regional and international associations should be encouraged to co-operate in the production and exchange of programmes and in all other aspects of satellite broadcasting including the training of technical and programme personnel.

Article IX

1.In order to further the objectives set out in the preceding articles, it is necessary that States, taking into account the principle of freedom of information, reach or promote prior agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission.

2. With respect to commercial advertising, its transmission shall be subject to specific agreement between the originating and receiving countries.

Article X

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.

Article XI

The principles of this Declaration shall be applied with due regard for human rights and fundamental freedoms.

ANNEX VI

DRAFT DECLARATION ON FUNDAMENTAL PRINCIPLES CONCERNING THE CONTRIBUTION OF THE MASS MEDIA TO STRENGTHENING PEACE AND INTERNATIONAL UNDERSTANDING, THE PROMOTION OF HUMAN RIGHTS AND TO COUNTERING RACIALISM, APARTHEID, AND INCITEMENT TO WAR, UNESCO GENERAL CONFERENCE, TWENTIETH SESSION, PARIS, 1978.

PREAMBLE

The General Conference

1. Recalling that by its Constitution the purpose of UNESCO is to "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms" (Art. I, 1), and that to realize this purpose the Organization will strive "to promote the free flow of ideas by word and image" (Art. I, 2).
2. Further recalling that under the Constitution the Member States of UNESCO, "believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives" (sixth preambular paragraph).

3. Recalling the purposes and principles of the United Nations, as specified in the Charter.

4. Recalling the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and particularly Article 19 which provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"; and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966, Article 19 of which proclaims the same principles and Article 20 of which condemns incitement to war, the advocacy of national, racial or religious hatred and any form of discrimination, hostility or violence.

5. Recalling Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination adopted by the General Assembly of the United Nations in 1965, and the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted by the General Assembly of the United Nations in 1973, whereby the States acceding to these Conventions undertook to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination, and agreed to prevent any encouragement of the crime of apartheid and similar, segregationist policies or their manifestations.

6. Recalling the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, adopted by the General Assembly of the United Nations in 1965.
7. Recalling the declarations and resolutions adopted by the various organs of the United Nations concerning the establishment of a New International Economic Order and the role UNESCO is called upon to play in this respect.
8. Recalling the Declaration of the Principles of International Cultural Cooperation, adopted by the General Conference of UNESCO in 1966.
9. Recalling Resolution 59 (I) of the General Assembly of the United Nations, adopted in 1946 and declaring:

   > Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated;
   >
   > Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent.

10. Recalling Resolution 110 (II) of the General Assembly of the United Nations adopted in 1947 condemning all forms of propaganda which are designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.

11. Recalling Resolution 127 (II), also adopted by the General Assembly in 1947, which invites Member States to take measures, within the limits of constitutional procedures, to combat the diffusion of false or distorted reports likely to injure friendly relations between States, as well as the other resolutions of the General Assembly concerning the mass media and their contribution to strengthening peace, thus contributing to the growth of trust and friendly relations among States.
12. Recalling Resolution 9.12 adopted by the General Conference of UNESCO in 1968 reiterating UNESCO's objective to help to eradicate colonialism and racialism, and resolution 12.1 adopted by the General Conference of UNESCO in 1976 which proclaims that colonialism, neo-colonialism and racialism in all its forms and manifestations are incompatible with the fundamental aims of UNESCO.
13. Recalling resolution 4.301 adopted in 1970 by the General Conference of UNESCO on the contribution of the information media to furthering international understanding and cooperation in the interests of peace and human welfare, and to countering propaganda on behalf of war, racialism, apartheid and hatred among nations, and aware of the fundamental contribution that mass media can make to the realization of these objectives.
14. Recalling the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO at its twentieth session.

15. Conscious of the complexity of the problems of information in modern society, of the diversity of solutions which have been offered to them, as evidenced in particular by consideration given to them within UNESCO as well as of the legitimate desire of all parties concerned that their aspirations, points of view and cultural identity be taken into due consideration.
16. Conscious of the aspirations of the developing coutries for the establishment of a new, more just and more effective world information and communication order.
17. Proclaims on this_____day of_____1978 this Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War.

Article I

The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading contribution to make. This contribution will be the more effective to the extent that the information reflects the different aspects of the subject dealt with.

Article II

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.
2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.
3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute effectively to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.
4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media,

in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

Article III

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war.
2. In countering aggressive war, racialism, apartheid and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by disseminating information on the aims, aspirations, cultures and needs of all people, contribute to eliminate ignorance and misunderstandin between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of policies best able to promote the reduction of international tension and the peaceful and the equitable settlement of international disputes.

Article IV

The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings and all nations, and economic and social progress. Equally they have an important role to play in making known the views and aspirations of the younger generation.

Article V

In order to respect freedom of opinion, expression and information and in order that information may reflect all points of view, it is important that the points of view presented by those who consider that the information published or dissemniated about them has seriously prejudiced their effort to strengthen peace and international understanding, to promote human rights or to counter racialism, apartheid and incitement to war be disseminated.

Article VI

For the establishment of a new equilibrium and greater reciprocity in the flow of information, which will be conducive to the institution of a just and lasting peace and to the economic

and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries, and between those countries. To this end, it is essential that their mass media should have conditions and resources enabling them to gain strength and expand, and to cooperate both among themselves and with the mass media in developed countries.

Article VII

By disseminating more widely all of the information concerning the objectives and principles universally accepted which are the bases of the resolutions adopted by the different organs of the United Nations, the mass media contribute effectively to the strengthening of peace and international understanding of a more just and equitable international economic order.

Article VIII

Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their functions in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.

Article IX

In the spirit of this Declaration, it is for the international community to contribute to the creation of the conditions for a free flow and wider and more balanced dissemination of information, and the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media. UNESCO is well placed to make a valuable contribution in this respect.

Article X

1. With due respect for constitutional provisions designed to guarantee freedom of information and the the applicable international instruments and agreements, it is indispensable to create and maintain throughout the world the conditions which make it possible for the organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration.
2. It is important that a free flow and wider and better balanced dissemination of information be encouraged.
3. To this end, it is necessary that States should facilitate the procurement, by the mass media in the developing countries, of adequate conditions and resources enabling them to gain strength and expand, and that they should support cooperation by the latter both among themselves and with the mass media in developed countries.

4. Similarly, on a basis of equality of rights, mutual advantage, and respect for the diversity of cultures which go to make up the common heritage of mankind, it is essential that bilateral and multilateral exchanges of information among all States, and in particular between those which have different economic and social systems be encouraged and developed.

Article XI

For this Declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existance of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

No. 4319. — INTERNATIONAL CONVENTION [1] CONCERNING THE USE OF BROADCASTING IN THE CAUSE OF PEACE. SIGNED AT GENEVA, SEPTEMBER 23RD, 1936.

Official texts in French and in English. This Convention was registered with the Secretariat, in accordance with its Article 11, *on April 2nd*, 1938, *the date of its entry into force.*

ALBANIA, THE ARGENTINE REPUBLIC, AUSTRIA, BELGIUM, THE UNITED STATES OF BRAZIL, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, CHILE, COLOMBIA, DENMARK, THE DOMINICAN REPUBLIC, EGYPT, SPAIN, ESTONIA, FRANCE, GREECE, INDIA, LITHUANIA, LUXEMBURG, THE UNITED STATES OF MEXICO, NORWAY, NEW ZEALAND, THE NETHERLANDS, ROUMANIA, SWITZERLAND, CZECHOSLOVAKIA, TURKEY, THE UNION OF SOVIET SOCIALIST REPUBLICS and URUGUAY,

Having recognised the need for preventing, by means of rules established by common agreement, broadcasting from being used in a manner prejudicial to good international understanding ;

Prompted, moreover, by the desire to utilise, by the application of these rules, the possibilities offered by this medium of intercommunication for promoting better mutual understanding between peoples :

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[1] *Ratifications :*

INDIA	August 11th, 1937.
GREAT BRITAIN AND NORTHERN IRELAND	August 18th, 1937.
DENMARK	October 11th, 1937.
NEW ZEALAND	January 27th, 1938.
LUXEMBURG	February 8th, 1938.
BRAZIL	February 11th, 1938.
FRANCE	March 8th, 1938.
NORWAY	May 5th, 1938.
EGYPT	July 29th, 1938.
ESTONIA	August 18th, 1938.

Accessions :

AUSTRALIA (including the Territories of Papua and Norfolk Island and the Mandated Territories of New Guinea and Nauru)	June 25th, 1937.
BURMA	October 13th, 1937.
SOUTHERN RHODESIA	November 1st, 1937.
UNION OF SOUTH AFRICA (including the Mandated Territory of South West Africa)	February 1st, 1938.
IRELAND	May 25th, 1938.
SWEDEN	June 22nd, 1938.
SALVADOR	August 18th, 1938.
GUATEMALA	November 18th, 1938.
FINLAND	November 29th, 1938.

Ont décidé de conclure, à cette fin, une convention et ont nommé pour leurs plénipotentiaires

ALBANIE :

M. Thomas LUARASSI, secrétaire de la délégation permanente près la Société des Nations.

RÉPUBLIQUE ARGENTINE :

M. Carlo A. PARDO, conseiller commercial de la Légation, à Berne.

AUTRICHE :

Son Excellence le Dr Marcus LEITMAIER, envoyé extraordinaire et ministre plénipotentiaire.

BELGIQUE :

M. Maurice BOURQUIN, professeur à l'Université de Genève.

ETATS-UNIS DU BRÉSIL :

M. Elyseu MONTARROYOS, délégué près l'Institut international de Coopération intellectuelle.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD :

Le vicomte CRANBORNE, M.P., sous-secrétaire d'Etat aux Affaires étrangères ;
M. Frederick William PHILLIPS, directeur des télécommunications au Département des Postes ;
M. Henry George Gordon WELCH, chef au Département des Postes.

CHILI :

M. Enrique J. GAJARDO V., chef du Bureau permanent près la Société des Nations.

COLOMBIE :

Son Excellence le Dr Gabriel TURBAY, délégué permanent près la Société des Nations, envoyé extraordinaire et ministre plénipotentiaire ;
Son Excellence le Dr Carlos LOZANO Y LOZANO, envoyé extraordinaire et ministre plénipotentiaire près le président de la République espagnole.

DANEMARK :

M. Holger Oluf Quistgaard BECH, premier secrétaire à la délégation permanente près la Société des Nations.

RÉPUBLIQUE DOMINICAINE :

M. Charles ACKERMANN, consul général à Genève.

EGYPTE :

M. Abd-el-Fattah ASSAL, chargé d'Affaires par intérim à Berne.

ESPAGNE :

M. José RIVAS Y GONZALEZ, chef de la Section des Radiocommunications du Ministère des Communications ;
M. Manuel MARQUEZ MIRA, professeur à l'Ecole officielle de Télécommunication.

ESTONIE :

M. Johannes KÕDAR, délégué permanent *a. i.* près la Société des Nations.

Have decided to conclude a Convention for this purpose, and have appointed as their Plenipotentiaries :

ALBANIA :

M. Thomas LUARASSI, Secretary of the Permanent Delegation to the League of Nations.

ARGENTINE REPUBLIC :

M. Carlos A. PARDO, Commercial Adviser to the Legation at Berne.

AUSTRIA :

His Excellency Dr. Marcus LEITMAIER, Envoy Extraordinary and Minister Plenipotentiary.

BELGIUM :

M. Maurice BOURQUIN, Professor at the University of Geneva.

THE UNITED STATES OF BRAZIL :

M. Elyseu MONTARROYOS, Delegate to the International Institute of Intellectual Co-operation.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND :

Viscount CRANBORNE, M. P., Under-Secretary of State for Foreign Affairs ;
Mr. Frederick William PHILLIPS, Director of Telecommunications, General Post Office ;

Mr. Henry George Gordon WELCH, Principal, General Post Office.

CHILE :

M. Enrique GAJARDO V., Head of the Permanent Office to the League of Nations.

COLOMBIA :

His Excellency Dr. Gabriel TURBAY, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary ;
His Excellency Dr. Carlos LOZANO Y LOZANO, Envoy Extraordinary and Minister Plenipotentiary to the President of the Spanish Republic.

DENMARK :

M. Holger Oluf Quistgaard BECH, First Secretary of the Permanent Delegation to the League of Nations.

THE DOMINICAN REPUBLIC :

M. Charles ACKERMANN, Consul-General at Geneva.

EGYPT :

M. Abd-el-Fattah ASSAL, Acting Chargé d'Affaires at Berne.

SPAIN :

M. José RIVAS Y GONZALEZ, Head of the Radio-Communications Section of the Ministry of Communications ;
M. Manuel MARQUEZ MIRA, Professor at the Official School of Telecommunication.

ESTONIA :

M. Johannes KÕDAR, Permanent Delegate *a.i.* to the League of Nations.

FRANCE :

M. Marcel PELLENC, directeur général de la Radiodiffusion au Ministère des Postes Télégraphes et Téléphones ;
M. Yves CHATAIGNEAU, chef de section au Ministère des Affaires étrangères.

GRÈCE :

Son Excellence M. Raoul BIBICA-ROSETTI, délégué permanent près la Société des Nations, ministre plénipotentiaire.

INDE :

Sir Denys DE SAUMAREZ BRAY, K.C.S.I., K.C.I.E., C.B.E.

LITHUANIE :

M. Juozas URBŠYS, ministre plénipotentiaire, directeur politique aux Affaires étrangères

LUXEMBOURG :

Son Excellence M. Emile REUTER, ministre d'Etat honoraire, président de la Chambre des députés.

ETATS-UNIS DU MEXIQUE :

Son Excellence M. Narciso BASSOLS, ambassadeur, envoyé extraordinaire et ministre plénipotentiaire près la Cour de Saint-James ;
Son Excellence M. Primo VILLA MICHEL, délégué permanent près la Société des Nations envoyé extraordinaire et ministre plénipotentiaire.

NORVÈGE :

M. Einar MASENG, délégué permanent près la Société des Nations.

NOUVELLE-ZÉLANDE :

M. William Joseph JORDAN, haut commissaire à Londres ;
Sir Christopher James PARR, G.C.M.G.

PAYS-BAS :

Son Excellence le chevalier C. VAN RAPPARD, représentant permanent près la Société des Nations, envoyé extraordinaire et ministre plénipotentiaire près le Conseil fédéral suisse.

ROUMANIE :

M. Tudor A. TĂNĂSESCO, ingénieur au Ministère des Communications, maître de conférence à l'Ecole polytechnique de Bucarest.

SUISSE :

M. Camille GORGÉ, conseiller de légation, chef de la Section de la Société des Nations au Département politique fédéral ;
M. Jakob BUSER, chef de division à la Direction générale des Postes et des Télégraphes

TCHÉCOSLOVAQUIE :

Son Excellence M. Rudolf KÜNZL-JIZERSKÝ, délégué permanent près la Société des Nations, envoyé extraordinaire et ministre plénipotentiaire près le Conseil fédéral suisse.

TURQUIE :

Son Excellence M. Necmeldin SADAK, délégué permanent près la Société des Nations, ministre plénipotentiaire.

FRANCE :

M. Marcel PELLENC, Director-General of Broadcasting of the Ministry of Posts, Telegraphs and Telephones ;
M. Yves CHATAIGNEAU, Chief of Section at the Ministry of Foreign Affairs.

GREECE :

His Excellency M. Raoul BIBICA-ROSETTI, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

INDIA :

Sir Denys DE SAUMAREZ BRAY, K.C.S.I., K.C.I.E., C.B.E.

LITHUANIA :

M. Juozas URBŠYS, Minister Plenipotentiary, Political Director in the Ministry of Foreign Affairs.

LUXEMBURG :

His Excellency M. Emile REUTER, Honorary Minister of State, President of the Chamber of Deputies.

UNITED STATES OF MEXICO :

His Excellency M. Narciso BASSOLS, Ambassador, Envoy Extraordinary and Minister Plenipotentiary accredited to the Court of St. James ;
His Excellency M. Primo VILLA MICHEL, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

NORWAY :

M. Einar MASENG, Permanent Delegate to the League of Nations.

NEW ZEALAND :

Mr. William Joseph JORDAN, High Commissioner in London ;
Sir Christopher James PARR, G.C.M.G.

THE NETHERLANDS :

His Excellency Ridder C. VAN RAPPARD, Permanent Representative to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

ROUMANIA :

M. Tudor A. TĂNĂSESCO, Engineer, attached to the Ministry of Communications, Lecturer at the Bucharest Polytechnic School.

SWITZERLAND :

M. Camille GORGÉ, Counsellor of Legation, Chief of the League of Nations Section at the Federal Political Department ;
M. Jakob BUSER, Chief of Division at the General Directorate of Posts and Telegraphs.

CZECHOSLOVAKIA :

His Excellency M. Rudolf KÜNZL-JIZERSKÝ, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

TURKEY :

His Excellency M. Necmeddin SADAK, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES :

M. Edouard HOERSCHELMANN, secrétaire général du Commissariat du Peuple pour les Affaires étrangères.

URUGUAY :

Son Excellence M. Victor BENAVIDES, ingénieur, envoyé extraordinaire et ministre plénipotentiaire près le Conseil fédéral suisse.

Lesquels, après avoir communiqué leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes :

Article premier.

Les Hautes Parties contractantes s'engagent mutuellement à interdire et, le cas échéant, à faire cesser sans délai sur leurs territoires respectifs toute émission qui, au détriment de la bonne entente internationale, serait de nature à inciter les habitants d'un territoire quelconque à des actes contraires à l'ordre intérieur ou à la sécurité d'un territoire d'une Haute Partie contractante.

Article 2.

Les Hautes Parties contractantes s'engagent mutuellement à veiller à ce que les émissions diffusées par les postes de leurs territoires respectifs ne constituent ni incitation à la guerre contre une autre Haute Partie contractante ni incitation à des actes susceptibles d'y conduire.

Article 3.

Les Hautes Parties contractantes s'engagent mutuellement à interdire et, le cas échéant, à faire cesser sans délai sur leurs territoires respectifs toute émission susceptible de nuire à la bonne entente internationale par des allégations dont l'inexactitude serait ou devrait être connue des personnes responsables de la diffusion.

Elles s'engagent mutuellement en outre à veiller à ce que toute émission susceptible de nuire à la bonne entente internationale par des allégations inexactes soit corrigée le plus tôt possible par les moyens les plus efficaces, même si l'inexactitude n'est apparue que postérieurement à la diffusion.

Article 4.

Les Hautes Parties contractantes s'engagent mutuellement à veiller, notamment en temps de crise, à ce que les postes de leurs territoires respectifs diffusent sur les relations internationales des informations dont l'exactitude aura été vérifiée par les personnes responsables de la diffusion de ces informations et cela par tous les moyens en leur pouvoir.

Article 5.

Chacune des Hautes Parties contractantes s'engage à mettre à la disposition des autres Hautes Parties contractantes qui le demanderaient les renseignements qui, à son avis, seraient de nature à faciliter la diffusion, par les différents services de radiodiffusion, d'émissions tendant à faire mieux connaître sa propre civilisation et ses conditions particulières d'existence, ainsi que les traits essentiels du développement de ses rapports avec les autres peuples et sa contribution à l'œuvre d'organisation de la paix.

UNION OF SOVIET SOCIALIST REPUBLICS :

M. Edouard HOERSCHELMANN, Secretary-General of the People's Commissariat for Foreign Affairs.

URUGUAY :

His Excellency M. Victor BENAVIDES, Engineer, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

The High Contracting Parties mutually undertake to prohibit and, if occasion arises, to stop without delay the broadcasting within their respective territories of any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party.

Article 2.

The High Contracting Parties mutually undertake to ensure that transmissions from stations within their respective territories shall not constitute an incitement either to war against another High Contracting Party or to acts likely to lead thereto.

Article 3.

The High Contracting Parties mutually undertake to prohibit and, if occasion arises, to stop without delay within their respective territories any transmission likely to harm good international understanding by statements the incorrectness of which is or ought to be known to the persons responsible for the broadcast.

They further mutually undertake to ensure that any transmission likely to harm good international understanding by incorrect statements shall be rectified at the earliest possible moment by the most effective means, even if the incorrectness has become apparent only after the broadcast has taken place.

Article 4.

The High Contracting Parties mutually undertake to ensure, especially in time of crisis, that stations within their respective territories shall broadcast information concerning international relations the accuracy of which shall have been verified — and that by all means within their power — by the persons responsible for broadcasting the information.

Article 5.

Each of the High Contracting Parties undertakes to place at the disposal of the other High Contracting Parties, should they so request, any information that, in his opinion, is of such a character as to facilitate the broadcasting, by the various broadcasting services, of items calculated to promote a better knowledge of the civilisation and the conditions of life of his own country as well as of the essential features of the development of his relations with other peoples and of his contribution to the organisation of peace.

Article 6.

En vue d'assurer un plein effet aux obligations résultant des articles précédents, les Hautes Parties contractantes s'engagent mutuellement à édicter, à l'usage des services de radiodiffusion placés sous la dépendance directe du gouvernement, et à faire appliquer par ces services, des instructions et règlements appropriés.

Dans le même but, les Hautes Parties contractantes s'engagent mutuellement à faire figurer, à l'usage des entreprises de radiodiffusion à gestion autonome, soit dans la charte constitutive d'un institut national, soit dans les conditions imposées à une société concessionnaire, soit dans les règlements applicables aux autres exploitations privées, des clauses appropriées, et à prendre les mesures nécessaires pour en assurer l'application.

Article 7.

S'il s'élève entre les Hautes Parties contractantes un différend quelconque relatif à l'interprétation ou à l'application de la présente convention, et si ce différend n'a pu être résolu de façon satisfaisante par voie diplomatique, il sera réglé conformément aux dispositions en vigueur entre les parties concernant le règlement des différends internationaux.

Au cas où de telles dispositions n'existeraient pas entre les parties au différend, elles le soumettront à une procédure arbitrale ou judiciaire. A défaut d'un accord sur le choix d'un autre tribunal, elles soumettront le différend, à la requête de l'une d'elles, à la Cour permanente de Justice internationale si elles sont toutes parties au Protocole[1] du 16 décembre 1920, relatif au Statut de ladite Cour, et, si elles n'y sont pas toutes parties, à un tribunal d'arbitrage, constitué conformément à la Convention[2] de La Haye du 18 octobre 1907, pour le règlement pacifique des conflits internationaux.

Avant de recourir aux procédures visées aux alinéas 1 et 2 ci-dessus, les Hautes Parties contractantes pourront, d'un commun accord, faire appel aux bons offices de la Commission internationale de coopération intellectuelle, à qui il appartiendrait de constituer à cet effet un comité spécial.

Article 8.

La présente convention, dont les textes français et anglais feront également foi, portera la date de ce jour et sera, jusqu'au 1er mai 1937, ouverte à la signature au nom de tout Membre de la Société des Nations, ou de tout Etat non membre représenté à la Conférence qui a élaboré la présente convention, ou de tout Etat non membre auquel le Conseil de la Société des Nations aura communiqué copie de la présente convention à cet effet.

Article 9.

La présente convention sera ratifiée. Les notifications de ratification seront transmises au Secrétaire général de la Société des Nations. Celui-ci en notifiera le dépôt à tous les Membres de la Société, ainsi qu'aux Etats non membres visés à l'article précédent.

Article 10.

A partir du 1er mai 1937, tout Membre de la Société des Nations et tout Etat non membre visé à l'article 8 pourra adhérer à la présente convention.

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[1] Vol. VI, page 379 ; vol. XI, page 404 ; vol. XV, page 304 ; vol. XXIV, page 152 ; vol. XXVII, page 416 ; vol. XXXIX, page 165 ; vol. XLV, page 96 ; vol. L, page 159 ; vol. LIV, page 387 ; vol. LXIX, page 70 ; vol. LXXII, page 452 ; vol. LXXVIII, page 435 ; vol. LXXXVIII, page 272 ; vol. XCII, page 362 ; vol. XCVI, page 180 ; vol. C, page 153 ; vol. CIV, page 492 ; vol. CVII, page 461 ; vol. CXI, page 402 ; vol. CXVII, page 46 ; vol. CXXVI, page 430 ; vol. CXXX, page 440 ; vol. CXXXIV, page 392 ; vol. CXLVII, page 318 ; vol. CLII, page 282 ; vol. CLVI, page 176 ; vol. CLX, page 325 ; vol. CLXIV, page 352 ; vol. CLXVIII, page 228 ; vol. CLXXII, page 388 ; vol. CLXXVII, page 382 ; vol. CLXXXI, page 346 ; et vol. CLXXXV, page 370, de ce recueil.

[2] DE MARTENS, *Nouveau Recueil général de Traités*, troisième série, tome III, page 360.

Article 6.

In order to give full effect to the obligations assumed under the preceding Articles, the High Contracting Parties mutually undertake to issue, for the guidance of governmental broadcasting services, appropriate instructions and regulations, and to secure their application by these services.

With the same end in view, the High Contracting Parties mutually undertake to include appropriate clauses for the guidance of any autonomous broadcasting organisations, either in the constitutive charter of a national institution, or in the conditions imposed upon a concessionary company, or in the rules applicable to other private concerns, and to take the necessary measures to ensure the application of these clauses.

Article 7.

Should a dispute arise between the High Contracting Parties regarding the interpretation or application of the present Convention for which it has been found impossible to arrive at a satisfactory settlement through the diplomatic channel, it shall be settled in conformity with the provisions in force between the Parties concerning the settlement of international disputes.

In the absence of any such provisions between the Parties to the dispute, the said Parties shall submit it to arbitration or to judicial settlement. Failing agreement concerning the choice of another tribunal, they shall submit the dispute, at the request of one of them, to the Permanent Court of International Justice, provided they are all Parties to the Protocol[1] of December 16th, 1920, regarding the Statute of the Court ; or, if they are not all Parties to the above Protocol, they shall submit the dispute to an arbitral tribunal, constituted in conformity with the Hague Convention[2] of October 18th, 1907, for the Pacific Settlement of International Disputes.

Before having recourse to the procedures specified in paragraphs 1 and 2 above, the High Contracting Parties may, by common consent, appeal to the good offices of the International Committee on Intellectual Co-operation, which would be in a position to constitute a special committee for this purpose.

Article 8.

The present Convention, of which the French and English texts are both authentic, shall bear this day's date, and shall be open for signature until May 1st, 1937, on behalf of any Member of the League of Nations, or any non-member State represented at the Conference which drew up the present Convention, or any non-member State to which the Council of the League of Nations shall have communicated a copy of the said Convention for that purpose.

Article 9.

The present Convention shall be ratified. The instruments of ratification shall be sent to the Secretary-General of the League of Nations, who shall notify the deposit thereof to all the Members of the League and to the non-member States referred to in the preceding Article.

Article 10.

After May 1st, 1937, any Member of the League of Nations and any non-member State referred to in Article 8 may accede to the present Convention.

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[1] Vol. VI, page 379 ; Vol. XI, page 405 ; Vol. XV, page 305 ; Vol. XXIV, page 153 ; Vol. XXVII, page 417 ; Vol. XXXIX, page 165 ; Vol. XLV, page 96 ; Vol. L, page 159 ; Vol. LIV, page 387 ; Vol. LXIX, page 70 ; Vol. LXXII, page 452 ; Vol. LXXVIII, page 435 ; Vol. LXXXVIII, page 272 ; Vol. XCII, page 362 ; Vol. XCVI, page 180 ; Vol. C, page 153 ; Vol. CIV, page 492 ; Vol. CVII, page 461 ; Vol. CXI, page 402 ; Vol. CXVII, page 46 ; Vol. CXXVI, page 430 ; Vol. CXXX, page 440 ; Vol. CXXXIV, page 392 ; Vol. CXLVII, page 318 ; Vol. CLII, page 282 ; Vol. CLVI, page 176 ; Vol. CLX, page 325 ; Vol. CLXIV, page 352 ; Vol. CLXVIII, page 228 ; Vol. CLXXII, page 388 ; Vol. CLXXVII, page 382 ; Vol. CLXXXI, page 346 ; and Vol. CLXXXV, page 370, of this Series.

[2] *British and Foreign State Papers*, Vol. 100, page 298.

Les notifications d'adhésion seront transmises au Secrétaire général de la Société des Nations. Celui-ci en notifiera le dépôt à tous les Membres de la Société, ainsi qu'à tous les Etats non membres visés audit article.

Article 11.

La présente convention sera enregistrée par le Secrétaire général de la Société des Nations, conformément aux dispositions de l'article 18 du Pacte, soixante jours après la réception par lui de la sixième ratification ou adhésion.

La convention entrera en vigueur le jour de cet enregistrement.

Article 12.

Chaque ratification ou adhésion qui interviendra après l'entrée en vigueur de la convention produira ses effets soixante jours après sa réception par le Secrétaire général de la Société des Nations.

Article 13.

La présente convention pourra être dénoncée par une notification adressée au Secrétaire général de la Société des Nations. Cette notification prendra effet un an après sa réception.

Le Secrétaire général notifiera à tous les Membres de la Société et aux Etats non membres visés à l'article 8 les dénonciations ainsi reçues.

La présente convention cessera de produire ses effets si, à la suite de dénonciations, le nombre des Hautes Parties contractantes devient inférieur à six.

Article 14.

Toute Haute Partie contractante peut, au moment de la signature, ratification, adhésion, ou par la suite, dans un acte écrit adressé au Secrétaire général de la Société des Nations, déclarer que la présente convention s'appliquera à l'ensemble ou à une partie de ses colonies, protectorats, territoires d'outre-mer ou territoires placés sous sa suzeraineté ou son mandat. La présente convention s'appliquera au territoire ou aux territoires énumérés dans la déclaration soixante jours après sa réception. A défaut d'une telle déclaration, la convention ne s'appliquera à aucun de ces territoires.

Toute Haute Partie contractante pourra postérieurement, à n'importe quelle époque, par une notification au Secrétaire général de la Société des Nations, déclarer que la présente convention cessera de s'appliquer à l'ensemble ou à une partie de ses colonies, protectorats, territoires d'outre-mer ou territoires placés sous sa suzeraineté ou son mandat. La convention cessera de s'appliquer au territoire ou aux territoires désignés dans la notification un an après sa réception.

Le Secrétaire général communiquera à tous les Membres de la Société, ainsi qu'aux Etats non membres mentionnés à l'article 8, toutes les déclarations reçues aux termes du présent article.

Article 15.

La demande de revision de la présente convention peut être introduite à n'importe quelle époque par une Haute Partie contractante, sous la forme d'une notification au Secrétaire général de la Société des Nations. Cette notification sera communiquée par le Secrétaire général de la Société des Nations aux autres Hautes Parties contractantes. Si un tiers au moins d'entre elles s'associent à cette demande, les Hautes Parties contractantes conviennent de se réunir à l'effet de reviser la convention.

Dans ce cas, il appartiendra au Secrétaire général de proposer au Conseil ou à l'Assemblée de la Société des Nations la convocation d'une conférence de revision.

The notifications of accession shall be sent to the Secretary-General of the League of Nations, who shall notify the deposit thereof to all the Members of the League and to all the non-member States referred to in the aforesaid Article.

Article 11.

The present Convention shall be registered by the Secretary-General of the League of Nations, in conformity with the provisions of Article 18 of the Covenant, sixty days after the receipt by him of the sixth ratification or accession.

The Convention shall enter into force on the day of such registration.

Article 12.

Every ratification or accession effected after the entry into force of the Convention shall take effect sixty days after the receipt thereof by the Secretary-General of the League of Nations.

Article 13.

The present Convention may be denounced by a notification addressed to the Secretary-General of the League of Nations. Such notification shall take effect one year after its receipt.

The Secretary-General shall notify the receipt of any such denunciation to all Members of the League and to the non-member States referred to in Article 8.

If, as the result of denunciations, the number of High Contracting Parties should fall below six, the present Convention shall cease to apply.

Article 14.

Any High Contracting Party may, on signing, ratifying or acceding to the present Convention, or at any subsequent date, by a written document addressed to the Secretary-General of the League of Nations, declare that the present Convention shall apply to all or any of his colonies, protectorates, overseas territories, or territories placed under his suzerainty or mandate. The present Convention shall apply to the territory or territories specified in the declaration sixty days after its receipt. Failing such a declaration, the Convention shall not apply to any such territory.

Any High Contracting Party may at any subsequent date, by a notification to the Secretary-General of the League of Nations, declare that the present Convention shall cease to apply to any or all of his colonies, protectorates, overseas territories, or territories placed under his suzerainty or mandate. The Convention shall cease to apply to the territory or territories specified in the notification one year after its receipt.

The Secretary-General shall communicate to all Members of the League and to the non-member States referred to in Article 8 all declarations received under the present Article.

Article 15.

A request for the revision of the present Convention may be made at any time by any High Contracting Party in the form of a notification addressed to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to the other High Contracting Parties. Should not less than one-third of them associate themselves with such request, the High Contracting Parties agree to meet with a view to the revision of the Convention.

In that event, it shall be for the Secretary-General of the League of Nations to propose to the Council or Assembly of the League of Nations the convening of a revision conference.

Fait à Genève, le vingt-trois septembre mil neuf cent trente-six, en un seul exemplaire, qui sera déposé dans les archives du Secrétariat de la Société des Nations. Copie certifiée conforme en sera remise à tous les Membres de la Société des Nations et aux Etats non membres mentionnés à l'article 8.

Done at Geneva, the twenty-third day of September, one thousand nine hundred and thirty-six, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations and of which a certified true copy shall be delivered to all the Members of the League and to the non-member States referred to in Article 8.

Albanie : — *Albania :*

Ad referendum
Th. LUARASSI

République Argentine : — *Argentine Republic :*

C. A. PARDO

Autriche : — *Austria :*

M. LEITMAIER

Belgique : — *Belgium :*

Sous réserve des déclarations insérées dans le procès-verbal de la séance de clôture [1].

BOURQUIN

Etats-Unis du Brésil : — *United States of Brazil :*

E. MONTARROYOS

Royaume-Uni de Grande-Bretagne et d'Irlande du Nord : — *United Kingdom of Great Britain and Northern Ireland :*

CRANBORNE
F. W. PHILLIPS
H. G. G. WELCH

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[1] *Translation by the Secretariat of the League of Nations :*

Under reservation of the declarations mentioned in the *procès-verbal* of the final meeting.

Ces déclarations sont conçues comme suit :

« La délégation de la Belgique déclare considérer que le droit de brouiller par ses propres moyens les émissions abusives émanant d'un autre pays, dans la mesure où un tel droit existe conformément aux règles générales du droit international et aux conventions en vigueur, n'est en rien affecté par la convention. »

These declarations are worded as follows :

" The Delegation of Belgium declares its opinion that the right of a country to jam by its own means improper transmissions emanating from another country, in so far as such a right exists in conformity with the general provisions of international law and with the Conventions in force, is in no way affected by the Convention. "

Chili : / *Chile :*

Enrique J. GAJARDO V.

Colombie : / *Colombia :*

Ad referendum
Gabriel TURBAY.
Carlos LOZANO Y LOZANO

Danemark : / *Denmark :*

Holger BECH

République Dominicaine : / *Dominican Republic :*

Ch. ACKERMANN

Egypte : / *Egypt :*

F. ASSAL

Espagne : / *Spain :*

Sous réserve de la déclaration insérée dans le procès-verbal de la séance de clôture de la Conférence [1].

José RIVAS Y GONZALEZ
Manuel MARQUEZ

Estonie : / *Estonia :*

J. KÕDAR

France : / *France :*

M. PELLENC
Yves CHATAIGNEAU

Grèce : / *Greece :*

Ad referendum
Raoul BIBICA-ROSETTI

[1] *Translation by the Secretariat of the League of Nations :*

Under reservation of the declaration mentioned in the *procès-verbal* of the final meeting of the Conference.

Cette déclaration est conçue comme suit :

« La délégation espagnole déclare que son gouvernement se réserve le droit de faire cesser par tous les moyens possibles la propagande qui peut nuire à son ordre intérieur et qui constitue une infraction à la convention, dans le cas où la procédure envisagée par la convention ne permettrait pas de faire cesser immédiatement l'infraction. »

This declaration is worded as follows :

" The Spanish Delegation declares that its Government reserves the right to put a stop by all possible means to propaganda liable adversely to affect internal order in Spain and involving a breach of the Convention, in the event of the procedure proposed by the Convention not permitting of immediate steps to put a stop to such breach. "

Inde :	*India :*
Denys BRAY	
Lithuanie :	*Lithuania :*
J. URBŠYS	
Luxembourg :	*Luxemburg :*
REUTER	
Etats-Unis du Mexique :	*United States of Mexico :*
N. BASSOLS P. V. MICHEL	
Norvège :	*Norway :*
Einar MASENG	
Nouvelle-Zélande :	*New Zealand :*
W. J. JORDAN C. J. PARR	
Pays-Bas :	*The Netherlands :*
C. VAN RAPPARD.	
Roumanie :	*Roumania :*
T. TANASESCO	
Suisse :	*Switzerland :*
C. GORGÉ Dr J. BUSER	
Tchécoslovaquie :	*Czechoslovakia :*
Rod. KÜNZL-JIZERSKÝ.	
Turquie :	*Turkey :*
Ad referendum N. SADAK	

Union des Républiques soviétiques socialistes :

Union of Soviet Socialist Republics :

Sous réserve des déclarations insérées dans le procès-verbal de la séance de clôture de la Conférence [1].

Ed. HOERSCHELMANN

Uruguay :

Uruguay :

V. BENAVIDES

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[1] *Translation by the Secretariat of the League of Nations :*

Under reservation of the declarations mentioned in the *procès-verbal* of the final meeting of the Conference.

Ces déclarations sont conçues comme suit :

« La délégation de l'Union des Républiques soviétiques socialistes déclare que, selon l'avis du Gouvernement de l'Union des Républiques soviétiques socialistes, le droit d'appliquer, en attendant la conclusion de la procédure envisagée à l'article 7 de la convention, un régime de réciprocité au pays qui effectuerait à son encontre des émissions abusives, dans la mesure où un tel droit existe conformément aux règles générales du droit international et aux conventions en vigueur, n'est en rien affecté par la convention.

» La délégation de l'Union des Républiques soviétiques socialistes déclare que son gouvernement, tout en étant prêt à appliquer, sur la base de réciprocité, les principes de la convention à l'égard de tous les Etats contractants, estime cependant que certaines des dispositions de la convention supposent, notamment en ce qui concerne la vérification des informations et les procédures prévues pour le règlement des litiges, l'existence de relations diplomatiques entre les Parties contractantes. Par conséquent, le Gouvernement de l'Union des Républiques soviétiques socialistes est d'avis que, pour éviter les contestations et malentendus possibles entre les Etats parties à la convention qui n'ont pas entre eux de relations diplomatiques, il y a lieu de considérer la convention comme ne créant pas d'obligations formelles entre ces Etats. »

These declarations are worded as follows :

" The Delegation of the Union of Soviet Socialist Republics declares that, pending the conclusion of the procedure contemplated in Article 7 of the Convention, it considers that the right to apply reciprocal measures to a country carrying out improper transmissions against it, in so far as such a right exists under the general rules of international law and with the Conventions in force, is in no way affected by the Convention.

" The Delegation of the Union of Soviet Socialist Republics declares that its Government, while prepared to apply the principles of the Convention on a basis of reciprocity to all the Contracting States, is nevertheless of opinion that certain of the provisions of the Convention presuppose the existence of diplomatic relations between the Contracting Parties, particularly in connection with the verification of information and the forms of procedure proposed for the settlement of disputes. Accordingly, the Government of the Union of Soviet Socialist Republics is of opinion that, in order to avoid the occurrence of differences or misunderstandings between the States Parties to the Convention which do not maintain diplomatic relations with one another, the Convention should be regarded as not creating formal obligations between such States. "

2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,[1] which met in Geneva from 31 March to 1 May 1970,

Emphasizing the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States,

Deeply convinced that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter,

Considering the desirability of the wide dissemination of the text of the Declaration,

1. *Approves* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;

2. *Expresses its appreciation* to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration;

3. *Recommends* that all efforts be made so that the Declaration becomes generally known.

1883rd plenary meeting,
24 October 1970.

[1] *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 18* (A/8018).

ANNEX

DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

PREAMBLE

The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle 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, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(*d*) The duty of States to co-operate with one another in accordance with the Charter,

(*e*) The principle of equal rights and self-determination of peoples,

(*f*) The principle of sovereign equality of States,

(*g*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(*a*) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(*b*) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

(*a*) States shall co-operate with other States in the maintenance of international peace and security;

(*b*) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(*c*) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(*d*) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights

and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(*a*) To promote friendly relations and co-operation among States; and

(*b*) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

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.

In particular, sovereign equality includes the following elements:

(*a*) States are juridically equal;

(*b*) Each State enjoys the rights inherent in full sovereignty;

(*c*) Each State has the duty to respect the personality of other States;

(*d*) The territorial integrity and political independence of the State are inviolable;

(*e*) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(*f*) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

GENERAL PART

2. *Declares* that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. *Declares further* that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

2634 (XXV). Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-second session,[2]

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Noting with satisfaction that at its twenty-second session the International Law Commission completed its provisional draft articles on relations between States and international organizations, continued the consideration of matters concerning the codification and progressive development of the international law relating to succession of States in respect of treaties and State responsibility and included in its programme of work the question of treaties concluded between States and international organizations or between two or more international organizations, as recommended by the General Assembly in resolution 2501 (XXIV) of 12 November 1969,

Noting further that the International Law Commission has proposed to hold a fourteen-week session in 1971 in order to enable it to complete the second reading of the draft articles on relations between States

[2] *Ibid., Supplement No. 10* (A/8010/Rev.1).

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Approved by the General Assembly at its Plenary Meeting on December 10, 1948

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social

progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now therefore

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ or society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any descrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Artile 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged witha penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limination due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social

and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limination of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right toengage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

ANNEX X

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (EXTRACTS)

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore by subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

a) For respect of the rights or reputations of others;

b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their

group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

AMERICAN CONVENTION ON HUMAN RIGHTS (1969) (EXTRACTS)

Article 13
Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputation of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection

of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 26
Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 27
Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention

to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Human Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 30
Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms

recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Artile 31
Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

Article 32
Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.

2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

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ANNEX XII

TEXTS OF DRAFT PRINCIPLES AS CONTAINED IN THE REPORT OF THE LEGAL SUB-COMMITTEE ON THE WORK OF ITS SEVENTEENTH SESSION (A/AC.105/218, annex II, appendix), WITH CHANGES MADE AT THE PRESENT SESSION

PRINCIPLES GOVERNING THE USE BY STATES OF ARTIFICIAL EARTH SATELLITES FOR [INTERNATIONAL]* DIRECT TELEVISION BROADCASTING

The General Assembly,

(1) In view of the benefits of international direct television broadcasting by means of artificial earth satellites for individuals, peoples, countries and all mankind,

(2) Desiring to safeguard the legitimate rights and interests of all States and to encourage orderly development on an equitable basis of this new and promising means of television broadcasting,

(3) Recognizing the unique characteristics of such satellite broadcasting not encountered in other forms of broadcasting which necessitate besides relevant technical regulations also legal principles solely applicable in this field,

(4) Considering that States, as well as international governmental and non-governmental organizations, including broadcasting associations, should base their activities in this field upon and encourage international co-operation,

(5) Solemnly declares that in international direct television broadcasting by means of artificial earth satellites, States should be guided by the following principles:

[1a. Recognizing that international direct broadcasting by means of artificial earth satellites should be based on strict respect for the sovereign rights of States and non-interference in their internal affairs;]

.....

[1b. Considering that direct television broadcasting by means of satellites should take place under conditions in which this new form of space technology will serve the lofty goals of peace and friendship among peoples;]

.....

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* The term "international direct television broadcasting" is to be defined.

[1c. Recognizing the importance for free dissemination of information and ideas and a broader exchange of views between all countries of the world;]

.....

[1d. Recognizing the importance of the right of everyone to freedom of expression, including the right to seek, receive and impart information and ideas regardless of frontiers, as enshrined in instruments of the United Nations relating to universal human rights.]

Purposes and objectives

Activities in the field of international direct television broadcasting by means of artificial earth satellites should* be carried out in a manner compatible with the development of mutual understanding and the strengthening of friendly relations and co-operation among all States and peoples in the interest of maintaining international peace and security. Such activities should, inter alia, promote the dissemination and mutual exchange of information and knowledge in cultural and scientific fields, assist in educational, social and economic development, particularly in the developing countries and enhance the quality of life of all peoples.

Applicability of international law

Activities in the field of direct television broadcasting by means of artificial earth satellites should be conducted in accordance with international law, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies of 27 January 1967, the relevant provisions of the International Telecommunication Convention and its Radio Regulations and of international instruments relating to friendly relations and co-operation among States and to human rights.

Rights and benefits

Every State has an equal right to conduct activities in the field of direct television broadcasting by means of artificial earth satellites and to authorize such activities by persons and entities under its jurisdiction. All States and

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* Use of the terms "should" and "shall" will be reviewed later when formulation of the principles is complete and it is clear what status the principles are to have and uniformity of terminology is considered.

peoples are entitled to and should enjoy the benefits from such activities. Access to the technology in this field should be available to all States without discrimination on terms mutually agreed by all concerned.

International co-operation

Activities in the field of direct television broadcasting by means of artificial earth satellites should be based upon and encourage international co-operation. Such co-operation should be the subject of appropriate arrangements.*

State responsibility

[States should bear international responsibility for activities in the field of direct television broadcasting by means of artificial earth satellites carried out by them or under their jurisdiction and for the conformity of any such activities with the principles set forth in this document.]

When direct television broadcasting by means of artificial earth satellites is carried out by an international intergovernmental organization, responsibility for compliance with these principles should be borne both by such organization and by States participating in it.

Duty and right to consult

[Any State requested to do so by another State should promptly enter into consultations with the requesting State concerning any matter arising from those activities in the field of international direct television broadcasting by satellites that are likely to affect the requesting State, and such consultations should be conducted with due regard to the other principles of this document.]

Peaceful settlement of disputes**

Any dispute that may arise from activities in the field of direct television broadcasting by means of artificial earth satellites should be resolved by prompt consultations among the parties to the dispute. Where a mutually acceptable

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* Subject to review of the second sentence in the light of the discussion on consent and participation.

** Some delegations indicated that they had a preference for the text in paragraph 15 of the report of the Chairman of the Working Group.

resolution cannot be achieved by such consultations, it should be sought through other established procedures for the peaceful settlement of disputes.

Copyright and neighbouring rights

Without prejudice to the relevant provisions of international law States should co-operate on a bilateral and multilateral basis for protection of copyright and neighbouring rights by means of appropriate agreements between the interested States or the competent legal entities acting under their jurisdiction. In such co-operation they should give special consideration to the interests of developing countries in the use of direct television broadcasting for the purpose of accelerating their national development.

Notification to the United Nations

In order to promote international co-operation in the peaceful exploration and use of outer space, States conducting or authorizing activities in the field of direct television broadcasting by satellites should inform the Secretary-General of the United Nations to the greatest extent possible of the nature of such activities. On receiving this information, the Secretary-General of the United Nations should disseminate it immediately and effectively to the relevant United Nations specialized agencies, as well as to the public and the international scientific community.

Consultation and agreements between States

1. [A direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign State, which shall be established only when it is not inconsistent with the provisions of the relevant instruments of the International Telecommunication Union, shall be based on appropriate agreements and/or arrangements between the broadcasting and receiving States or the broadcasting entities duly authorized by the respective States, in order to facilitate the freer and wider dissemination of information of all kinds and to encourage co-operation in the field of information and the exchange of information with other countries.]

2. [For that purpose a State which proposes to establish or authorize the establishment of a direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign State shall without delay

notify that State of such intention and shall promptly enter into consultations with that State if the latter so requests.]*

3. [(a) No such agreements and/or arrangements shall be required with respect to the overspill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.]

[(b) No such agreements and/or arrangements or consultations shall be required with respect to the overspill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.]

[(c) Delete paragraph 3.]

[(d) This principle shall not apply with respect to the overspill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.]

Programme content

[States or their broadcasting entities which participate in direct television broadcasting by satellite with other States should co-operate with one another in respect of programming, programme content, production and interchange of programmes.]

[The broadcasting of advertising, direct or indirect to countries other than the country of origin should be on the basis of appropriate agreements between the countries concerned.]

[Notwithstanding the foregoing, States undertaking activities in direct television broadcasting by satellites should in all cases exclude from the television programmes any material which is detrimental to the maintenance of international peace and security, which publicizes ideas of war, militarism, national and racial hatred and enmity between peoples, which is aimed at interfering in the domestic affairs of other States or which undermines the foundations of the local civilization, culture, way of life, traditions or language.]

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* Some delegations considered that, owing to the wording of the principle on "consultation and agreements between States", the principle on "duty and right to consult" should be reconsidered in order to avoid inconsistencies and redundancies.

Unlawful/inadmissible broadcasts

[States shall regard as unlawful and as giving rise to the international liability of States direct television broadcasts specifically aimed at a foreign State but carried out without the express consent of the latter, containing material which according to these principles should be excluded from programmes, or received as a result of unintentional radiation if the broadcasting State has refused to hold appropriate consultations with the State in which the broadcasts are received.]

[In case of the transmission to any State of television broadcasts which are unlawful, that State may take in respect of such broadcasts measures which are recognized as legal under international law.]

[States agree to give every assistance in stopping unlawful direct television broadcasting by satellite.]

[Any broadcasts that a State does not wish to be made in its territory or among its population and in respect of which it has made known such decision to the broadcasting State are inadmissible.]

[Every transmitter, State, international organization or authorized agency shall refrain from making such broadcasts or shall immediately discontinue such broadcasts if it has begun to transmit them.]

B. ELABORATION OF DRAFT PRINCIPLES GOVERNING THE USE BY STATES OF ARTIFICIAL EARTH SATELLITES FOR DIRECT TELEVISION BROADCASTING

Canada and Sweden: working paper
(A/AC.105/C.2/L.117 of 15 February 1979)
[Clean text]

Principles governing the use by States of artificial earth satellites for direct television broadcasting

The General Assembly,

(1) In view of the benefits of international direct television broadcasting by means of artificial earth satellites for individuals, peoples, countries, and all mankind,

(2) Desiring to safeguard the legitimate rights and interests of all States and to encourage orderly development on an equitable basis of this new and promising means of television broadcasting,

(3) Recognizing the unique characteristics of such satellite broadcasting not encountered in other forms of broadcasting which necessitate besides relevant technical regulations also legal principles solely applicable in this field,

(4) Considering that States, as well as international governmental and non-governmental organizations, including broadcasting associations, should base their activities in this field upon and encourage international co-operation,

(5) Solemnly declares that in international direct television broadcasting by means of artificial earth satellites, States should be guided by the following principles:

Purposes and objectives

Activities in the field of international direct television broadcasting by means of artificial earth satellites should be carried out in a manner compatible with the development of mutual understanding and the strengthening of friendly relations and co-operation among all States and peoples in the interest of maintaining international peace and security. Such activities should, inter alia, promote the dissemination and mutual exchange of information and knowledge in cultural and scientific fields, assist in educational, social and economic development, particularly in the developing countries, enhance the quality of life of all peoples and provide recreation.

Applicability of international law

Activities in the field of international direct television broadcasting by means of artificial earth satellites should be conducted in accordance with international law, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies of 27 January 1967, the relevant provisions of the International Telecommunication Convention and its Radio Regulations and of international instruments relating to friendly relations and co-operation among States and to human rights.

Rights and benefits

Every State has an equal right to conduct activities in the field of international direct television broadcasting by means of artificial earth satellites and to authorize such activities by persons and entities under its jurisdiction. All States and peoples are entitled to and should enjoy the benefits from such activities. Access to the technology in this field should be available to all States without discrimination on terms mutually agreed by all concerned.

International co-operation

Activities in the field of international direct television broadcasting by means of artificial earth satellites should be based upon and encourage international co-operation. Such co-operation should be the subject of appropriate arrangements.

State responsibility

States should bear international responsibility for activities in the field of international direct television broadcasting by means of artificial earth satellites carried out by them or under their jurisdiction and for the conformity of any such activities with the principles set forth in this document.

When direct television broadcasting by means of artificial earth satellites is carried out by an international intergovernmental organization, responsibility for compliance with these principles should be borne both by such organizations and by States participating in it.

Duty and right to consult

Any State requested to do so by another State should promptly enter into consultations with the requesting State concerning matters covered by these principles that are likely to affect the requesting State.

Peaceful settlement of disputes

Any dispute that may arise from activities in the field of international direct television broadcasting by means of artificial earth satellites should be resolved by prompt consultations among the parties to the dispute. Where a mutually acceptable resolution cannot be achieved by such consultations, it should be sought through other established procedures for the peaceful settlement of disputes.

Copyright and neighbouring rights

Without prejudice to the relevant provisions of international law States should co-operate on a bilateral and multilateral basis for protection of copyright and neighbouring rights by means of appropriate agreements between the interested States. In such co-operation they should give special consideration to the interests of developing countries in the use of direct television broadcasting for the purpose of accelerating their national development.

Notification to the United Nations

In order to promote international co-operation in the peaceful exploration and use of outer space, States conducting or authorizing activities in the field of international direct television broadcasting by satellites should inform the Secretary-General of the United Nations to the greatest extent possible of the nature of such activities. On receiving this information, the Secretary-General of the United Nations should disseminate it immediately and effectively to the relevant United Nations specialized agencies, as well as to the public and the international scientific community.

Consultation and agreements between States

1. A direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign State, which shall be established only when it is not inconsistent with the provisions of the relevant instruments of the International Telecommunication Union, shall be based on appropriate agreements and/or arrangements between the broadcasting and receiving States or the broadcasting entities duly authorized by the respective States, in order to

facilitate the freer and wider dissemination of information of all kinds and to encourage co-operation in the field of information and the exchange of information with other countries.

2. For that purpose a State which proposes to establish or authorize the establishment of a direct television broadcasting service by means of artificial earth satellites specifically directed at a foreign State shall without delay notify that State of such intention and shall promptly enter into consultations with that State if the latter so requests.

3. No such agreements and/or arrangements shall be required with respect to the overspill of the radiation of the satellite signal within the limits established under the relevant instruments of the International Telecommunication Union.

United States of America: working paper
(A/AC.105/C.2/L.118 of 22 March 1979)

Replace the present paragraphs 1 and 2 of the principle now entitled "Consultation and agreements between States" with the following:

"A State which proposes to establish or authorize the establishment of an international direct television broadcasting service by means of artificial earth satellites specifically aimed at a foreign State should, without delay, notify that State of such intention and should promptly enter into consultations with that State if the latter so requests. The State which proposes to establish or authorize such a service should take into account and give due regard to the interests and concerns of the foreign State in regard to the proposed service, as set forth in such consultations. Any such consultations should also be premised upon facilitating a free flow and a wider dissemination of information of all kinds and encouraging co-operation in the field of information and the exchange of information with other countries."

Belgium: working paper
(A/AC.105/C.2/L.119 of 22 March 1979)

Amendment calling for the replacement of the draft principle entitled "Consultation and agreements between States" in document A/AC.105/218, appendix to annex II, and document A/AC.105/C.2/L.117 by the following text:

"Agreements between States on the exchange of programmes

"In order to facilitate the freer and wider dissemintion of information of all kinds and to encourage co-operation in the field of information and the exchange of information with other countries, (broadcasting and receiving) States may agree, bilaterally or multilaterally, directly or through their duly authorized broadcasting entities, to lend each other or pool the direct television broadcasting facilities available to them under the relevant instruments of the International Telecommunication Union, for the purpose of exchanging programmes for broadcasting to the public in their respective countries."

Belgium: working paper
(A/AC.105/C.2/L.120 of 22 March 1979)

Amendment to document A/AC.105/218, appendix to annex II, and to document A/AC.105/C.2/L.117.

Add the following wording at the end of the preambular part:

"Recognizing that in no instance does the scope of these principles cover national direct television broadcasting services or overspill within the limits established under the relevant instruments of the ITU."

C. MATTERS RELATING TO THE DEFINITION AND/OR DELIMITATION OF OUTER SPACE AND OUTER SPACE ACTIVITIES, BEARING IN MIND, INTER ALIA, QUESTIONS RELATING TO THE GEOSTATIONARY ORBIT

Union of Soviet Socialist Republics: working paper
(A/AC.105/C.2/L.121 of 28 March 1979)

Approach to the solution of the problems of the delimitation of air space and outer space

1. The region above 100 (110) km altitude from the sea level of the earth is outer space.

2. The boundary between air space and outer space shall be subject to agreement among States and shall subsequently be established by a treaty at an altitude not exceeding 100 (110) km above sea level.

3. Space objects of States shall retain the right to fly over the territory of other States at altitudes lower than 100 (110) km above sea level for the purpose of reaching orbit or returning to earth in the territory of the launching State.

ELABORATION OF PRINCIPLES RELATING TO DIRECT TELEVISION BROADCASTING BY SATELLITES

Working paper submitted by the United Kingdom

Technical and legal implications of the results of the World Administrative Radio Conference (1977) of the International Telecommunication Union (ITU)

1. In giving further consideration to part II of the report on the fifteenth session it might be helpful to delegates to state the position governing the establishment and use of broadcasting satellites in the light of the International Telecommunication Union Radio Regulations and the World Broadcasting Satellite Administrative Radio Conference (WARC) which took place in January and February. Recent developments have a direct relevance to the question whether or not there is a problem over direct television broadcasting by satellite (DBS) to receivers owned by individuals (as opposed to reception by community receivers).

Role of the ITU

2. Regulation of the use of the radio spectrum including emissions from satellites in the geostationary orbit is undertaken by the International Telecommunication Union. The facilities available for telecommunication are limited for inescapable technical reasons. The ITU has among its functions to secure conditions which will allow the greatest and most efficient use of the comparatively limited facilities available by establishing a technically viable system which ensures equitable sharing between countries taking into account stated needs and the necessity of avoiding mutual interference of signals.

The Radio Regulations

3. The Radio Regulations, which are part of the ITU Convention, provide for the use of broadcast satellites in six frequency bands:

(a) In the two lower frequency bands (about 700 MHz and 2600 MHz) individual reception is ruled out either by power limits or through the effect of other regulations. Furthermore, as these frequency bands are shared with other radio communications services any plan to use the frequencies for other purposes would under existing rules require the prior consent of the Administrations affected (Radio Regulations 332A and 361B). (In practice, there has been very little operational use in the lower band, none at all in the higher band.)

(b) The three highest frequency bands (23 GHz in Asia and Australasia only; and world-wide at 42 and 85 GHz) are not contemplated for use by broadcasting satellite services in the foreseeable future. At these very short wave lengths signals cannot penetrate rain. If, in the future, advancing technical knowledge

enables these frequencies to be used, a country contemplating DBS would have to observe the regulatory conditions laid down by the ITU. Well before operational services were introduced, the ITU would convene an appropriate conference to produce the agreement and plan under which these services would be established. No such conferences are envisaged.

4. The sixth band is the 12 GHz band. Use of this band is governed by the existing Radio Regulations and the Final Acts of the World Broadcasting Satellite Administrative Radio Conference (WARC) which was held in Geneva from 10 January to 13 February 1977.

The World Broadcasting Satellite Administrative Radio Conference (WARC)

5. The WARC concluded a World Agreement with an associated plan for regions 1 and 3 (i.e., the world except for the Americas). Following the normal process of approval of the Final Acts by Governments, the Agreement will come into force on 1 January 1979 at which time DBS to individual receivers will not yet be operative. The World Agreement is based on the fact that in region 1 the spectrum available (11.7-12.5 GHz, i.e. 800 MHz) will permit only 40 frequency channels of the necessary band width and 24 in region 3 (where the spectrum is 11.7-12.2 GHz, i.e. 500 MHz). In region 1 this allows roughly 5 frequency channels to be assigned to each country from its own orbital position. In region 3 the corresponding figure is 4 frequency channels. Apart from a few exceptions (see para. 9) these frequencies are for use for their national service only. For small or medium countries the channels available will cover the whole of their country with some overspill beyond their borders. In the case of a large country (e.g., the USSR, China and India) the channels cover only part of its territory and channels are therefore repeated at other orbital positions to cover the rest of the country. Large countries may therefore occupy many orbital positions and use very many channels in all.

6. In region 2 (the Americas) broadcasting satellite services are governed by Radio Regulation 405 BC which provides that they can be used only for domestic services. The Final Acts of the 1977 Conference require a Regional Conference to be held not later than 1982 to draw up a Frequency Assignment/Orbital Position Plan for region 2 for broadcasting satellites (and also fixed satellites which share the band in this region only). Guidelines have been laid for this conference; thus the plan for region 2 is expected to follow the lines of that agreed for regions 1 and 3. If no plan is agreed the present Regulations will continue to apply.

Reasons for the WARC plan for regions 1 and 3

7. The problems of mutual interference are very great in satellite broadcasting. Two satellites serving the same hemisphere, using the same frequencies and broadcasting to different countries, must be 6 degrees apart. Even so, the technical problems were such that at the WARC the frequency channels for each country had to be carefully selected by computer, taking into account the position on the orbit and the power and direction of the beam. The provisions of the Agreement also include conditions designed to avoid mutual interference between the broadcasting satellite services and other radio services using the same frequencies

(broadcasting, mobile and fixed (e.g., telephone systems) and fixed satellites in region 2). Accordingly, the 113 countries at the Conference recognized that these technical conditions had to be strictly complied with, and the Agreement was therefore drafted so as to be legally binding.

8. These tightly controlled technical conditions are supplemented by equally rigid consultation procedures. For instance, there is no insistence procedure, which means that no country can insist on a frequency assignment against the wishes of a country concerned and affected. No country or group of countries may try to alter the plan, even by mutual agreement, except for relatively minor agreed modifications capable of being accommodated within the co-ordination procedures in the plan. Thus the plan remains in force for 15 years and can be revised only by a competent conference.

International broadcasting

9. International broadcasting requires wider beams than national broadcasting. The Conference therefore did not permit more than a handful of countries to have this facility. Given the limited number of frequency channels available, to do otherwise would have reduced the channels available to other countries for their national programmes. The plan therefore permits international broadcasting by only nine ITU members (Denmark, Finland, Norway, Sweden, Vatican City, Tunisia, Saudi Arabia, Syria and Iceland). The beams in question cover at least one but in no case more than five adjacent countries. The adjacent countries affected all gave their agreement to this in accordance with Radio Regulation 428A. A list of the broadcasting and receiving countries is annexed (see appendix). There is no legal possibility, in the life of this plan, for additional interstate broadcasting by supranational beams. However, this would not prevent programmes being exchanged between countries by mutual consent using the satellite and frequency of the receiving country.

10. It would be in breach of the Agreement if a country were to appropriate an orbital position and frequency channel not assigned to it in order to broadcast to another country. Moreover, such an attempt could not succeed unless there was already a legitimate broadcasting satellite service to that country and equipment capable of receiving the unauthorized transmission (for example, the receiver must be able to tune to the frequency channel and the 90 cm dish-shaped aerial must be accurately aimed at the satellite). But in this case there would be interference with that unauthorized broadcast (and of course the authorized one as well). The ability of the receiving country to use the frequencies for its terrestrial radio services would give it in the last resort a means of preventing reception of a recognizable signal from an unauthorized satellite broadcast.

11. In the case of national services that for technical reasons radiate beyond national frontiers, it would be impossible for the general public in the overspill areas to receive the programmes unless these were on frequencies within tuneable range of their sets, were beamed from the same orbital position to which their

receiving aerials were positioned, and were not on frequencies being used by the country concerned for other radio services. But these represent formidable technical constraints.

12. In view of the considerations set out above, e.g. absence of insistence procedure and severe limitation of supranational beams, the United Kingdom concludes that the basic assumptions upon which the question whether prior consent to DBS is required from the receiving country have hitherto been considered in the Committee, have been completely changed. In the few cases mentioned in paragraph 9 and the annex, countries have voluntarily agreed to common beams. In all other cases deliberate State-to-State broadcasting by satellite without the agreement of the receiving country will be not only in breach of treaty obligations but in the opinion of the United Kingdom, for the reasons given in paragraph 10, not a practical possibility. Radical rethinking is now necessary on the question whether further discussion of prior consent is necessary in the Legal Sub-Committee.

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Appendix

STATE-TO-STATE BROADCASTING PERMITTED BY THE PLAN OF THE 1977 WARC

Broadcasting State	Beams	Receiving States
Denmark	2	Denmark, Finland, Norway, Sweden
Finland	2	Denmark, Finland, Norway, Sweden
Norway	2	Denmark, Finland, Norway, Sweden
Sweden	2	Denmark, Finland, Norway, Sweden
Iceland	3	Iceland, Faroes
Denmark	2	Iceland, Faroes
Vatican City	1	Vatican City, Italy
Tunisia	1	Tunisia, Morocco, Algeria, Libya
Syria	1	Syria, Lebanon, Jordan
Saudi Arabia	1	Bahrain, Kuwait, Qatar, United Arab Emirates, Oman

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TITLE OF THE PROJECT:

PART I: - Legal Aspects concerning the Use of the Geostationary Orbit, including Questions of the Definition of Outer Space, and Delimitation of State Sovereignty over the Airspace above a State's National Territory

DESCRIPTION:

The geostationary orbit approximately 36,000 km. above the Equator, is the orbit most suited for telecommunication satellites, since they appear to remain stationary in relation to given points on the surface of the earth. Telecommunications satellites are the first and the most beneficial application of outer space scientific developments. Their use is increasing at an unprecedented speed. The geostationary orbit is also considered useful for meteorological satellites; and future solar power satellites will, and earth resources satellites may make use of this orbit. A tremendous number of satellites are expected to be placed on the geostationary orbit in the future.

However, there are physical restraints on the number of satellites that can be placed on this orbit without the possibility of mutual harmful interference. Article 33 of the International Telecommunications Convention (1973) has declared it to be a limited international natural resource which must be used economically and efficiently and must be accessible to use by everybody.

Satellite and other related technologies are being developed to better use the orbit in order to accomodate more satellites; however, the fact remains that it is a limited international resource.

Countries not in a position to own and operate a satellite in the geostationary orbit at present, seem worried and concerned about their future when they will have the capability to own and operate such satellites. Their concerns have been recognized by related international instruments. Since the world is in the process of establishing "New Orders", these concerns form a part of the North-South controversy, in world politics.

The 1967 Outer Space Treaty does not define "outer space" though it does declare that outer space is not subject to national appropriation. The Treaty obliges the States parties to use outer space for the benefit of and in the interest of all mankind while at the same time it entitles every State to freedom of exploration and use of outer space. Since that time, some industrialized countries have almost monopolized the geostationary orbit, while the group of equatorial States have declared, in the form of the Bogota Declaration, their sovereignty over the geostationary orbit above their territories. The International Telecommunication Union, the

competent international intergovernmental body, has started regulating the use of the geostationary orbit and allocating the "orbital slots" along with radio frequencies for telecommunication services. There are unanswered and pressing questions: (i) whether the ITU will be in a position to solve the problems of the use of the geostationary orbit; (ii) whether it has the authority to do so; and (iii) whether the ITU should discontinue its policy of "first come, first served" in relation to the use of the geostationary orbit.

The item of the "definition of outer space" has been on the agenda of the UN COPUOS since its creation. However, recently it is being given more attention and includes the question of the geostationary orbit, mainly because of the concerns of the "have-not States" and the problems arising from the Bogota Declaration.

OBJECTIVES OF THE RESEARCH:

The objectives of the present research will be:

- to analyze the applicable existing international legal principles including the 1967 Outer Space Treaty, the International Telecommunication Convention and Radio Regulations, the U.N. Charter, the Bogota Declaration, customary law (if any), and other relevant and related rules, principles and the

recommendations, resolutions of and studies conducted by international bodies, with a view to producing a synopsis of the law applicable to this problem, and how it affects Canada;

- to attempt to answer, on the basis of the applicable international law, some of the key issues involved in the future decision which every State member of the UN COPUOS (including Canada) will have to make with respect to its position on this question: should there be a definition of outer space?

If yes, what will be the standards for such a definition of outer space? In what ways would the various standards legally restrict any present or future uses of outer space? In particular, in what ways could the delimitation affect spaceflight? How can the geostationary orbit be regulated most effectively to meet the rules of Article 33 of the International Telecommunication Convention?

The elaboration of the legal framework relevant for decision-making with respect to all of these questions would, on one hand, clarify the legal situation in itself; on the other hand, it could facilitate the task of the policy-making body with regard to these problems, since they possess the special characteristic of a multifold interrelationship of law and policy.

RESEARCH METHODS:

The research will be undertaken with the assistance of colleagues from the Departments of Engineering and Economics of McGill University, and the Department of Political Science of Concordia. This interdisciplinary approach will help the legal participants in achieving the desired objectives.

LENGTH OF THE CONTRACT:

This contract will be for a duration of one year, to terminate on March 31, 1981.

RESEARCH TEAM:

The research team will be composed of the following members:

Dr. Nicolas M. Matte OC QC.	Director-Chief Researcher
Dr. Jean-Louis Magdelénat	Assistant Director-Researcher
Professor Tomas Pavlasek (Department of Engineering)	
Professor Paris Arnopoulos (Department of Political Science, Concordia University)	
Professor Alek Vicas (Department of Economics)	
Professor Peter Haanappel (Faculty of Law)	Resource Person
Mr. Ludwig Weber	Senior Research Assistant
Mr. Ram S. Jakhu	Senior Research Assistant

BUDGET

Amount to be received 1980-81			$25,000
University Overhead @ 30%			7,500
			17,500
A. MATERIALS AND SUPPLIES			
Stationery	400		
Long-distance telephone calls	100		
Other: Photocopies etc.	600		
B. SALARIES AND HONORARIA			
Dr. N. Matte	2,400	(12 days x $200)	
Dr. J.-L. Magdelénat	2,000	(20 days x $100)	
Professor T. Pavlasek	1,000	(5 days x $200)	
Professor Alek Vicas	1,000	(5 days x $200)	
Professor P. Arnopoulos	1,000	(5 days x $200)	
Professor P. Haanappel	250		
Mr. Ludwig Weber	4,000	(40 days x $100)	
Mr. Ram Jakhu	2,000	(20 days x $100)	
Secretarial Assistance	1,000		
Fringe Benefits	1,758		
TOTAL	17,508		17,500

SUMMARY OF EXPENDITURES:	$
Materials and supplies	1,100
Salaries and honoraria	16,408
University Overhead	7,500
TOTAL	25,008

Date: March 28, 1980

Nicolas M. Matte
Signature

Director, Centre for Research of
Air & Space Law