

**DIRECT TELEVISION BROADCASTING BY SATELLITES:
SOME ALTERNATIVES IN CASE OF AN IMPASSE**

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The United Nations Working Group on Direct Broadcast Satellites, which was established under a General Assembly resolution,¹ has been studying and reviewing *inter alia* the legal and political problems related to direct satellite broadcasting. The purpose of this presentation is to review briefly some of the issues of law and policy on which the Working Group has found a general measure of agreement and those on which it has reached no such consensus.² With respect to the latter, some alternatives will be suggested.

Looking at the deliberations of the Working Group we find that it developed a number of principles which, in its view, should govern direct broadcasting by satellites. Among these were the principle that direct television broadcasting by satellites should serve the purposes of maintaining international peace and security through developing mutual understanding and strengthening friendly relations and cooperation among all states and peoples, assisting in social and economic development, particularly in the developing countries, facilitating and expanding the international exchange of information, promoting cultural exchanges and enhancing the educational level of peoples of various countries.³

More specifically, the Working Group was in agreement that all states should have an equal right to carry out direct television broadcasting by satellite and that they should be entitled to enjoy and share in the benefits of activities in the field of direct television broadcasting by satellite, irrespective of their degree of economic or scientific development and without discrimination of any kind.⁴

Furthermore, the Working Group shared the view that international cooperation is a touchstone for the development and use of direct television broadcast by satellite and

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¹S. A. Res. 2453 B/XXIII (1968).

²For a recent, detailed account, see Report of the Working Group on Direct Broadcast Satellites on the Work of its Fifth Session, doc. A/AC. 105/127 (1974). See also Report of the Legal Sub-Committee on the Work of its Fourteenth Session, doc. A/AC. 105/147, Annex II (1975).

³*Id.* at 10.

⁴*Id.* at 11.

that States and regional international organizations, both governmental and non-governmental, particularly the United Nations, should encourage and cooperate in efforts to strengthen the capability of interested states, including in particular the developing countries, to make use of direct television broadcasting by satellite.

Also, the Working Group had little difficulty in agreeing that States should recognize the desirability of creating conditions favorable to the promotion of international cooperation among broadcasters and regional broadcasting associations as a means of advancing the foregoing objectives. In addition, it was felt that direct television broadcasting by satellite should be conducted within the technical parameters and procedures established by the International Telecommunications Convention and its Radio Regulations and that practical approaches to the use of the technology of direct television broadcasting by satellite on a regional or international cooperative basis should be given particular consideration by states having shared needs and mutual interests.⁵

The Working Group was also of the general view that states should bear international responsibility for activities in the field of direct broadcast by satellite in accordance with Article VI of the Outer Space Treaty. Similarly, the Working Group was in agreement that when direct television broadcasting by satellite is conducted by an international intergovernmental organization, responsibility for compliance with principles in this field of activity, as appropriate, should be borne both by the international organization and by the states participating in such organization.⁶

Unfortunately, beyond the above enumerated general principles governing direct television broadcasting by satellites, there has been little consensus with respect to more specific provisions, including such basic questions as those relating to prior consent, spill-over, program content, illegality of broadcasts, right and duty to consult and other lesser matters.

Among the areas of disagreement the most crucial one related to the question of prior consent. While many delegations insisted that no country should undertake direct satellite broadcasting to another country without prior consent of the latter, some delegations asserted that the principle of prior consent was unacceptable.

The states advocating prior consent base their arguments on the principles of sovereignty and on the Revised Radio Regulations adopted by the World Administrative Conference for Space Telecommunication in 1971. States opposed to the principle of prior consent base their arguments *inter alia* on the principles of free flow of information and freedom of exchange of ideas and point out that any power of veto which a receiving state may have would be inconsistent with the Universal Declaration of Human Rights. They also point out that acceptance of the principle of prior consent would infringe upon the sovereign rights of states to maintain their domestic public media systems free from

⁵*Id.* at 11 and 12.

⁶*Id.*, at 13.

control or restriction imposed by other states and would cause serious difficulties to a country's domestic broadcasting system if it were to apply to broadcast spill-over.⁷

Even a brief glance at the diametrically opposed views which have been touched upon in the foregoing discussion seems to indicate that a long and hard road is likely to lie ahead of the future deliberations of the Working Group if some measure of *rapprochement* is to be achieved.

The most fundamental disagreement relates to the question of whether or not prior consent by the receiving state is essential before direct television broadcasting can be sent to a particular country. Since many states are unlikely to change their position with respect to the question of prior consent, it would appear that the best procedure for the Working Group would be at this stage of our development to deal with problems which are expected to arise in the immediate future. This, according to all indications, would not include the problem of direct television broadcasting to home receivers inasmuch as according to our current expectations there will be no such broadcast prior to 1985.⁸ Therefore, it would seem better to concentrate on the problems which would arise in connection with community instead of individual home receivers. Community receivers would normally be under some governmental supervision or control in most, if not all, states which insist on prior consent. Hence, such states could internally regulate the operation and use of their community receivers without interference by other states and, if they felt it necessary, they could exclude reception of unwanted telecasts. In the same manner such states could probably also control the distribution of augmented, or if the technology should develop, unaugmented (but still specially designed) home receivers for the same purpose.

To be sure, the above described system of unilateral exclusion is not preferable to an international bilateral or multilateral agreement on direct television broadcasting by satellites but it could conceivably satisfy both the advocates and opponents of prior consent in a situation where the differences are irreconcilable. Obviously such a system runs counter to the idea of the free flow and exchange of information and the right to receive and impart such information which is a fundamental human right. However, it is hoped that such exclusion of direct foreign television broadcast by satellites would be used only very sparingly and with great reluctance by states only in cases where most substantial national security interests are affected or threatened.

After a decade or so when sufficient experience has been obtained through the use of direct television broadcasts by satellites to community receivers and various forms of bilateral and multilateral agreements have been concluded, the Working Group would be hopefully in a better position to look at the problems associated with individual home reception.

⁷*Id.* at 13-15.

⁸See remarks made by U. S. representative Lee T. Stull before the U. N. Working Group on Direct Broadcast Satellites on March 13, 1974, 70 Dept. St. Bull. 445 at 447 (1974).