

THE NEED FOR AN INTERNATIONAL AGREEMENT ON
DIRECT BROADCASTING BY SATELLITES

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The development of human society and of international collaboration is connected, *inter alia*, with the rapid growth in literacy and education and with the remarkable development of various techniques of mass communication. Of great importance was the invention of radio, by which nearly everyone could be reached and which made possible to the general public reception of the human voice from abroad. To this have been added the techniques of television. This combination of visual and audio perception increases not only the effectiveness of mass communication, but also the possibility of great influence on the minds of men in comparison to other means of mass communications. Artificial earth satellites have removed obstacles arising from the nature of radio wave propagation. Through space and telecommunication techniques, everyone, wherever he may be, can receive directly broadcast radio and television programs coming from any other country. While the effect of other mass communications media, the press for example, can be stopped on the frontiers, radio waves break through; radio and television services can speak, almost without restriction, to listeners in all countries of the world.

In the interest of human society and of all nations, and in accordance with international law, these new space and telecommunications techniques should serve the purpose of improving international understanding and cooperation. They should encourage the peaceful coexistence of all nations. When broadcasting fulfills this mission, the frontiers of all countries will remain open to radio and television broadcasts.

Unfortunately, since the beginning of broadcasting, experience has shown that sometimes it is or could be misused to contrary purposes, to incite the population of other countries to acts incompatible with internal order, to incite them to war or to acts likely to lead to war, and to the general detriment of harmonious international relations. Such activity violates the sovereignty of nations and is totally incompatible with peaceful co-existence and the principles of international law.

For these reasons attention was and is given to the international aspects of the broadcast service, namely to propaganda and the protection of the sovereign rights of states. International agreements concerning this matter were concluded some decades ago, and the bibliography dedicated to these problems and to broadcast transmissions and propaganda made by these means of mass communication is extensive.

There are two principal aspects of broadcasting (radio and television), namely:

Technical questions which are, in general, common to all radio communications and which fall, in the field of international regulation, within the competence of the International Telecommunications Union; questions concerning programs (both desirable and eventually undesirable), as political and legal problems to be treated in the sphere of the United Nations.

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This paper, dedicated to direct broadcasting¹ by satellite, deals, in the first place, with agreements and decisions adopted in the sphere of the International Telecommunications Union. The principles underlying these agreements, representing the collective opinions of the member-countries of the Union, could help reach an understanding about a series of other important problems concerning direct-broadcast services by satellite which have been for several years among the items on the agenda of the United Nations Committee on the Peaceful Uses of Outer Space and of UNESCO. A draft convention on guiding principles for direct television service by satellite was submitted by the Soviet Union to the Twenty-seventh United Nations General Assembly and discussed there.² Thus this article deals, for the most part, with questions to be settled in the near future at the United Nations level.

I.

Technical Questions Regarding Satellite Broadcasting Service

The technical questions of space telecommunications have been treated by the International Telecommunications Union and by its different organs since 1959,³ but the wide problems of the broadcasting service only were on the agenda of the World Administrative Radio Conference for Space Telecommunications held in Geneva in 1971. The majority of decisions adopted by that Conference are included in the 1971 partial revision of the 1959 Radio Regulations;⁴ others appear in eight resolutions and fifteen Recommendations.⁵ The most important decisions concerning broadcasting satellite service can be summed up as follows:

a) "Broadcasting satellite service" is defined as "a radiocommunication service in which signals transmitted or retransmitted through space are intended for direct reception by the general public."⁶ The term "direct reception" encompasses both individual reception (reception by simple domestic installations) and community reception (recep-

¹The term "broadcasting," as used in this article, refers to both radio and television broadcasts. Cf. Radio Regulations, done at Geneva December 21, 1959, entered into force Oct. 23, 1961, 12 U.S.T. 2377, T.I.A.S. No. 4893.

²See the proposed Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting, U. N. Doc. A/AC.105/C.2/L.88 (1973).

³See, for instance, the Ninth, Tenth and Eleventh Reports by the International Telecommunications Union on Telecommunications and the Peaceful Uses of Outer Space (1970, 1971, 1972).

⁴Partial Revision of Radio Regulations and Final Protocol: Space Telecommunications, signed at Geneva July 17, 1971, entered into force Jan. 1, 1973, T.I.A.S. No. 7435 at 8-293.

⁵*Id.* at 294-339.

⁶*Id.* at Annex 1 (Art. I) § §84AP.1, 84APA, 84APB.

tion by receiving equipment intended for use by members of the general public in one location, or through a distribution system covering a limited area).⁷

b) For the broadcasting satellite service the following frequency bands shall be used:

620-790 MHz, on condition that frequency assignments may be made to television stations only and subject to agreement between the administrations concerned and those which may be affected by the transmissions;

2500-2690 MHz, on condition that the broadcasting satellite service is limited to domestic and regional systems for community reception and that such use is subject to agreement between the administrations concerned;

11.7-12.75 GHz, on condition that fixed and mobile broadcasting services on the earth shall not cause harmful interference to broadcasting satellite services operating in accordance with the decisions of the appropriate broadcasting planning conference;

41-43 GHz and 84-86 GHz (exclusive broadcasting satellite service bands).⁸

c) All technical means available shall be used to reduce, to the maximum extent practicable, the radiation of space stations in the broadcasting satellite service over the territory of other countries unless an agreement has been previously reached with such countries.⁹ This rule is intended to protect the sovereign rights of countries which would not be disposed to agree to the direct reception of broadcasts by satellite. This rule can be considered as analogous with rules concerning the terrestrial broadcasting service on medium waves, long waves, and very short waves; the power of these stations must not be superior to the signal strength necessary to ensure a national service of good quality within the territory of the country.¹⁰

d) The Conference recognized the importance of making the best possible use of geostationary satellite orbits and the frequency bands allocated to the broadcasting satellite service.¹¹ For this reason, stations operating in this service must be set up and operated in accordance with multilateral agreements and associated plans adopted by special conferences in which all administrations concerned and administrations whose services are likely to be affected may participate. The Administrative Council of the International Telecommunications Union has been assigned the task of convening world conferences or regional conferences, as required, for the purpose of establishing the plans.

⁷*Id.*

⁸*Id.* at Annex 3 (Art. 5).

⁹*Id.* at Annex 5 (Art. 7), §428A.

¹⁰Radio Regulations, *supra* note 1, Art. 7, §428.

¹¹Partial Revision of Radio Regulations, *supra* note 4, Res. Spa 2-2.

e) The preparation, elaboration, and approval of broadcasting satellite plans is a long-term project.¹² Therefore, the Conference of 1971 decided that a special coordination procedure shall be applied to all stations in broadcasting satellite service set up prior to the entry into force of plans regulating this service.¹³ The purpose of this procedure is to coordinate the frequency needs of all interested countries before the notification and entry of frequency assignments in the Master International Frequency Register.¹⁴

The Resolution stresses that only the date of receipt of the notification by the International Frequency Registration Board (I.F.R.B.) shall be entered in the Master International Frequency Register and that such recording does not prejudice in any way, the decisions to be included in the agreements and plans elaborated and approved by the future planning conferences.¹⁵

f) Very important is Resolution Spa 2-1 relating to the use by all countries, with equal rights, of the frequency bands allocated to space radiocommunication service. The registration and use of frequency assignments should not provide any permanent priority for any country and should not create any obstacle to the establishment of space systems by other countries.¹⁶

As mentioned above, the majority of the decisions of the World Administrative Radio Conference for Space Telecommunications are included in the Radio Regulations; they are or will be ratified in the near future.¹⁷ The new rules included in the Radio Regulations entered into effect on January 1, 1973. The obligatory nature of these rules, which have the character of an international agreement, for all members of the International Telecommunications Union, is, especially with regard to Article 15, paragraphs 1 and 2 of the International Telecommunications Convention, quite evident and indisputable.¹⁸

The international legal character of the resolutions adopted by the Conference that are not included in the Radio Regulations could be considered quite differently. The resolutions have, from the legal point of view, the character of recommendations addressed to the member countries; nevertheless, it seems necessary to take into account the fact that these resolutions were adopted unanimously (including the two space powers) and that their purpose is to protect the interests of all members of the

¹²7 Telecommunications J. 476 (1972).

¹³Partial Revision of Radio Regulations, *supra* note 4, Res. Spa 2-3.

¹⁴*Id.* Res. Spa 2-3, §4.1 et seq.

¹⁵*Id.* Res. Spa 2-3, §6-4.

¹⁶*Id.* Res. Spa 2-1.

¹⁷The Partial Revision of Radio Regulations, *supra* note 4, was ratified by the United States on July 14, 1972, T.I.A.S. No. 7435.

¹⁸International Telecommunications Convention, done at Montreaux Nov. 12, 1965, entered into force May 29, 1967, [1967] 18 U.S.T. 575, T.I.A.S. No. 6267.

International Telecommunications Union. It is implied that the measures provided by the resolutions will be put into effect and that the planning conferences will include the principles concerning the broadcasting satellite service in agreements concluded by them. In this way the decisions of the planning conferences will have an obligatory character for all signatories. As an example, the Resolution of the U. N. General Assembly No. 1962/XVIII (1973) and its associated declaration should be mentioned, and contents of which appear now in the Treaty on Principles Governing the Activities of States in Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.¹⁹

From the point of view of international law, especially of space law, and with regard to the future development of the broadcasting satellite service, it is important that the collectivity of the 143 member countries of the International Telecommunications Union come to an agreement with regard to the following principles:

a) All members have equal rights in the sphere of the broadcasting satellite service irrespective of the level of their space and telecommunications techniques and economic possibilities;

b) No country must have any priority or preferential rights to the use of the geostationary orbit and the frequency bands allocated to the broadcasting-satellite service;

c) The sovereignty of each country must be protected and, therefore, radiation of broadcasting satellite signals over its territory is not allowed unless an agreement has been previously reached with such country.

Finally, an important rule included in the Radio Regulations since 1959 should be mentioned according to which the establishment and operation of broadcasting stations (including television transmitters) on board ships and aircraft outside the national territory of any country is prohibited.²⁰ This rule is intended to respect the sovereignty of coastal countries.²¹

II.

International Propaganda by Broadcasting

The transmission of broadcast programs, especially television programs, directly to

¹⁹Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies [hereinafter cited as Space Treaty], done at Washington, London and Moscow Jan. 27, 1967, entered into force Oct. 10, 1967, [1967] 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205.

²⁰Radio Regulations, *supra* note 1, Art. 7, §422.

²¹For a text of the European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories (Jan. 29, 1965), see 14 Int'l. & Comp. L. Q. 434 (1965).

home receivers is a very promising use of outer space for the benefit of mankind. This would promote better relations among peoples, encourage the exchange of cultural values, and raise the educational level of the population of different countries. However, this new technology could also raise serious legal problems relating to the need to ensure that the new space techniques serve only the maintenance of peace and friendship among peoples. Simultaneously it is necessary to protect state sovereignty from any external intervention and to prevent the conversion of the broadcasting satellite service into a source of conflicts and of aggravation of international relations. Broadcasting service by satellites must not become an instrument of propaganda inconsistent with the aims of the Charter of the United Nations.

International propaganda is addressed to peoples at large, or to regional, national, racial, religious, or professional groups. There is no objection to propaganda when its aims are the mutual understanding and peaceful co-existence of all peoples and countries, but propaganda is sometimes considered an instrument of policy—together with diplomacy, economics, and armed forces—against the interest of other states and their sovereignty. In this case, national sovereignty and the idea of the community of sovereign states, is inconsistent with international propaganda.²²

Analyzing international propaganda, J. B. Whitton considers war-mongering propaganda, subversive propaganda, and defamatory propaganda to be dangerous. He states that "... we should now hold for an urgent need the disarmament of propaganda".²³

With radio waves penetrating without any obstacle the frontiers of states, broadcasting has become one of the most important tools of international propaganda.

Conscious of the significance of this fact, the resolutions of the International Broadcasting Union of March 25 and July 6, 1926, claimed "... to eliminate broadcasting prejudicial to good international relations..." and requested that "... national transmissions should not contain, in the political, religious, economic, intellectual, and artistic field, any attack on the spirit of co-operation and international good will ...".²⁴

The first step in international regulation of broadcasting transmissions on a multi-lateral basis was the Convention Concerning the Use of Broadcasting in the Cause of Peace, signed on September 23, 1936, under the League of Nations' auspices.²⁵ In articles 1-3 there are defined broadcasting transmissions which are dangerous to peaceful international co-existence and are, for this reason, forbidden; Articles 4 and 5 deal with recommended transmission, intended to promote international understanding and good

²²L. Martin, *International Propaganda* 16-17 (1958).

²³J. Whitton and A. Larson, *Propaganda Towards Disarmament in the War of Words* 1, 2, 10, 11, chs. III, IV, V and VI (1964).

²⁴See L. Martin, *International Propaganda* 16-17 (1958).

²⁵Convention Concerning the Use of Broadcasting in the Cause of Peace, signed at Geneva Sept. 23, 1936, entered into force April 2, 1938, 185 L.N.T.S. 301 (1938).

will. The Convention still binds thirty contracting parties (five of them by accession or succession during 1966-1969) and, therefore, it can be listed above under the heading of treaties as a source of law on this topic.²⁶

In the Western Hemisphere, analogous ideas have been expressed, especially in Article 7 of the South American Regional Agreement on Radiocommunications concluded at Buenos Aires, on April 10, 1935, and later in Article 2 of the new South American Regional Agreement on Radiocommunications signed on June 6, 1937, revised at Santiago on January 17, 1940.²⁷

After World War II the United Nations Charter became the principal basis for regulating relations between the states and protecting their equal rights and sovereignty. Under the Preamble to the United Nations Charter, the member states are pledged to practice tolerance and live together in peace with one another as good neighbors. The purpose of the United Nations is to maintain international peace and to develop friendly relations among nations, based on respect for the principles of equal rights and self-determination of peoples. According to Article 2 of the Charter "members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State." The Charter itself contains no rule concerning international propaganda, but considering the possibility of disruption of peaceful relations by illegal propaganda, it may be concluded that membership in the United Nations and the obligation to live together in peace as good neighbors would be violated by efforts, through propaganda, to harm the peaceful co-existence of states. This principle was confirmed by decisions of the competent organs of the United Nations.

Some of these decisions concern the need for peaceful and friendly international co-operation and good understanding in the field of economics, culture, science, technology and communications according to the letter and the spirit of the United Nations Charter.²⁸ There are also other resolutions dealing with the inadmissibility of intervention, direct or indirect, in the domestic affairs of states and with the protection of their independence and sovereignty.²⁹ There is no doubt that broadcasting transmissions interfering with the internal affairs of other states should be considered as a form of indirect intervention.

²⁶See 9 U. N. GAOR 841 (1971); Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions. List of Signatures, Ratifications and Accessions as of Dec. 31, 1971, 22-23 (1971).

²⁷Inter-American Radio Agreement, signed at Santiago Jan. 26, 1940, entered into force Feb. 25, 1942, 55 Stat. 1482, E.A.S. 231. The Santiago Agreement was replaced by the Inter-American Radio Agreement, done at Washington July 9, 1949, entered into force April 13, 1952, 3 U.S.T. 3064, T.I.A.S. No. 2489, 168 U.N.T.S. 143. See also VII M. Hudson, *International Legislation* 47-56, 767-99 (1960); S. Krylov, *Mezhdunaradno-pravovoe Reglurovanie Radiosvsjazi i Radiovescania* 318-21 (1950); L. Martin, *supra* note 22 at 82.

²⁸See, e.g., G. A. Res. 123/XII (1957) and G. A. Res. 1301/XIII (1958).

²⁹See, e.g., G. A. Res. 2131/XX (1965) and G. A. Res. 2160/XXI (1966).

Also important is the declaration of principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations adopted by the General Assembly on October 24, 1970.³⁰

These resolutions do not expressly mention propaganda; nonetheless broadcast transmissions which do not follow the recommendations of the United Nations General Assembly in the form of resolutions or declarations should be considered contrary to the aims and goals of the United Nations Charter.

Besides the above-mentioned resolutions, from which the prohibition of illegal propaganda could be reduced indirectly, there are other resolutions directly concerning the inadmissibility of propaganda contradictory to the principles of international law. The most important is Resolution 110/II (1947) of the United Nations General Assembly on the measures to be taken against propaganda and the inciters of a new war.³¹ Its paragraph 1 concerning the prohibition of war-mongering propaganda is mentioned in the Preamble to the Treaty of Principles Governing the Activities of States in Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.³²

The second very important resolution is Resolution 1904/XVIII (1973) proclaiming the declaration of the elimination of all forms of racial discrimination. Its Article 9 condemns "all propaganda . . . based on ideas . . . of the superiority of one race or group of persons of one color or ethnic origin with a view to justifying or promoting racial discrimination. . .". This principle has been included in Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature on March 7, 1966.³³

Even the Resolution of the General Assembly of the United Nations on freedom of information and interference with radio signals inviting the member states to refrain from jamming the broadcasting transmissions from foreign countries as contrary to the principles of freedom of information, invites in paragraph 4 all governments "to refrain from radio broadcasting that would mean unfair attacks or slanders against peoples anywhere and in so doing to conform to ethical conduct in the interest of world peace by reporting facts truly and objectively."³⁴ Simply stated, this resolution condemns both jamming and subversive or defamatory propaganda.

Resolutions of international organizations including the United Nations have no

³⁰G. A. Res. 2625/XXV (1970); 25 U. N. GAOR Supp. 20, U. N. Doc. A/8028 (1970).

³¹This Resolution was reaffirmed by G. A. Res. 381/V (1950).

³²Space Treaty, *supra* note 19.

³³International Convention on the Elimination of all Forms of Racial Discrimination, done at New York December 21, 1965, entered into force Jan. 4, 1969, 25 U. N. GAOR Supp. 20, U. N. Doc. A/8028 (1970); cf. G. A. Res. 2106/XX (1965).

³⁴G. A. Res. 424/V (1950).

binding force on states as do treaties. Rather, they are recommendations addressed to member states. However, they show a pattern of desire and will on the part of member states to lay down general principles in order to make subsequent work easier, especially codification that aims at the obligatory character of those principles in the form of treaties, conventions, etc. In this way the prohibition of propaganda regarding racial discrimination³⁵ has become, two years later, obligatory with the conclusion of the International Convention on the Elimination of All Forms of Racial Discrimination.³⁶ In the same way, having been introduced in the Preamble to the Space Treaty of 1967, paragraph 1 of Resolution 110/II (1947) condemning war-mongering propaganda now has binding force.

Analyzing the existing policy of the United Nations we can see that only some activities in the field of propaganda including propaganda by broadcasting were declared *verbis expressis* as prohibited and that for just this reason there is no doubt about the inconsistency of such propaganda with international law and about its illegality. However, this does not mean that other transmissions, whose contents—even though not expressly declared to be illegal propaganda—do not correspond to the letter and the spirit of the United Nations Charter and the principles of international law, should be considered permissible. Moreover, the illegality of propaganda by broadcast transmission—just as by other means of mass communications—must be judged not only with regard to the content and wording, but also with regard to the purpose, apparent or hidden, of transmissions, especially if such transmissions could produce breaches in international friendship and peaceful co-existence.

III.

Some Reasons for Concluding a Special Convention on Broadcasting-Satellite Transmissions

As mentioned above, there are some international documents intended to limit international propaganda, including propaganda by broadcasting, that is not in line with international law, namely with principles of peaceful co-existence of states and friendly relations among them. However, this international legal regulation cannot be considered as uniform and complete. Only the strict prohibition of war-mongering propaganda and of racial propaganda has taken the form of an international treaty with binding force; the prohibition of other kinds of propaganda is found directly, or rather indirectly, in other documents of the United Nations without obligatory character. In each case, propaganda violating the fundamental principles of the Charter should be considered, from the point of view of international law, as illegal and therefore prohibited. The Geneva International Convention Concerning the Use of Broadcasting in the Casue of Peace³⁷ deals generally

³⁵G. A. Res. 1904/XVII (1972).

³⁶International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 33.

with broadcasting transmissions, prohibited and recommended, and does not concern television directly; the number of contracting parties does not exceed one-fifth of the nations in the world.

Moreover, after World War II in some countries, special broadcast agencies were established in order to achieve better conditions for launching propaganda transmissions in third countries.³⁸

International propaganda using broadcasting and television transmitters is very effective, and it is feared that space and telecommunications technology could extend propaganda into outer space. In this way broadcasting services by satellites, including television, could become sources for aggravation of international relations and conflicts.

The efforts of the United Nations aim to avoid the rise of dangerous situations in the new domains of human activity, e.g. in the exploration of Antarctica,³⁹ and in the exploration and use of the deep sea bottom.⁴⁰ The legal regime applied in these domains is based on the recognition that, in the interest of mankind, these domains should be used exclusively for peaceful purposes and should not become the scene or object of international discord. The principle of disarmament is applied to these domains. In conformity with the Treaty on Principles Governing the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, the same regime entered into force for outer space. For these reasons, it is necessary to follow this policy to ensure that the broadcasting satellite service will fulfill its peaceful and cultural mission without violating the sovereignty of any state or other principles of international law.

The principle of freedom of information is often mentioned as a principle that ought to govern broadcasting transmissions; therefore, any limitation concerning the contents of transmissions should be considered as a grave violation. However, it must be taken into account that the restriction on broadcast propaganda has a legal basis introduced in conventions or, at least, in other documents of international character which are generally recognized. On the other hand, freedom of information has already been for two decades on the agenda of the United Nations and, up to the present time, no general convention on this matter has been elaborated. Moreover, the course of discussion

³⁷International Convention Concerning the Use of Broadcasting in the Cause of Peace, *supra* note 25.

³⁸L. Martin, *International Propaganda* 21 et seq. (1958); J. Whitton and A. Larson, *Propaganda Towards Disarmament in the War of Words* 47-52 (1964); *Internationals Handbuch für Rundfunk und Fernsehen* C-146-142 (1972); G. Krause-Ablass, *Zur Rechtslage von Radio Free Europe, Rundfunk und Fernsehen* 20-27 (1971).

³⁹The Antarctic Treaty, signed at Washington Dec. 1, 1959, entered into force June 23, 1961, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71.

⁴⁰Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, done at Washington, London and Moscow Feb. 11, 1971, entered into force May 18, 1972, T.I.A.S. No. 7337.

in the United Nations organs does not show that freedom of information should be absolute or predominant over the state sovereignty.

There are also practical examples just chosen from international agreements relating, *inter alia*, to the flow of information. In conformity with articles 3 and 29 of the Tokyo postal convention of 1969,⁴¹ the member states of the Universal Postal Union are authorized to suspend international postal service and to prohibit carriage into and from their territory of matter defined by their internal law. Similarly, articles 32 and 33 of the Montreaux International Telecommunications Convention of 1965⁴² permit suspension of international telecommunications services, which include, of course, radiocommunications, and permit stopping information via telecommunications that is dangerous to the security of a member state or contrary to their laws, public order or decency. Both conventions fully respect the sovereign rights of the contracting states in the sphere of information. We should also mention article 35(a) of the Chicago Convention on International Civil Aviation of 1944,⁴³ recognizing the right of contracting parties to regulate or to prohibit, for reasons of public order and safety, the carriage into or above their territory of certain articles.

All of the above-mentioned demonstrates that the principle of sovereignty of states is the predominant rule in the sphere of information and that solutions adopted for the broadcasting-satellite service in order for it to become the most effective mass communication should be based, first of all, on the principle of mutual respect of sovereignty. On this principle is based the Draft Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting, submitted to the XXVIIth General Assembly of the United Nations by the Soviet Union in 1972.⁴⁴ After discussion in the First Committee and in the plenary meeting, the General Assembly adopted—by a vote of 102 for, 1 against (USA), and 7 abstentions—Resolution 2915/XXVII (1973) for the preparation of an international convention on principles governing the use by states of artificial earth satellites for direct television broadcasting. Resolution 2917/XXVII (1973), on the same matter, was adopted by a vote of 65 for, 9 against (including USSR and Czechoslovakia), and 12 abstentions.⁴⁵

Paragraph 1 of another resolution, namely, Resolution 2916/XXVII (1973), states that it is necessary to elaborate the principles governing the broadcasting-service by satellites in regard to the conclusion of an international convention on this matter as the

⁴¹See Additional Protocol to the Constitution of the Universal Postal Union of July 10, 1964, done at Tokyo Nov. 14, 1969, entered into force July 1, 1971, 22 U.S.T. 1056, T.I.A.S. No. 7150.

⁴²International Telecommunications Convention, *supra* note 18.

⁴³Convention on International Civil Aviation, done at Chicago Dec. 7, 1944, entered into force April 4, 1947, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.

⁴⁴Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Broadcasting, *supra* note 2.

⁴⁵See 12 U. N. Monthly Chron. 37-41 (1972).

final aim. In this way, the resolution gives a clear answer to the question of whether or not there is a need for a special international agreement. In paragraph 2 of the same resolution, the Committee on the Peaceful Uses of Outer Space has been requested to elaborate the fundamental rules.

Also, the preamble to the same Resolution, states some principles that should be taken into consideration:

a) Direct broadcasting service by satellite shall serve the purpose of development of friendly relations and mutual understanding among all states, and of the increase in exchange of information and cultural values;

b) The new space technology must not become a source of international conflicts and aggravation of international relations;

c) The activities of states in the sphere of broadcasting-service by satellite shall be based on the principles of mutual respect of state sovereignty, of non-interference with the internal affairs of other states, of equal rights, and of cooperation and mutual benefit.

The last paragraph of the preamble refers to serious problems connected with the necessary balance between strict respect for state sovereignty and freedom of information. This matter is treated also in Resolution 2917/XXVII (1972), referring to the work done on the Draft Convention on Freedom of Information and to the deliberations in the different bodies of the United Nations.

Also the Declaration on Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, which was adopted by the General Conference of UNESCO at its XVIIth session held at Paris in 1972,⁴⁶ proclaims *inter alia* the same fundamental principles as the United Nations General Assembly's Resolution 2916/XVII (1972). It, however, is not a binding legal instrument.

During the discussions in the General Assembly and the General Conference of UNESCO two different opinions were stated. In both organizations, the majority of member states seemed to be in favor of strict protection of state sovereignty, including the consent of the state for whose territory the broadcasting-satellite service is intended, without denying the principle of freedom of information. Other states preferred the principle of freedom of information as the fundamental one. The position of many states may be influenced by the fact that they have no capability to launch their own broadcasting satellites and that they will be obliged to use broadcasting-satellite services operated by a small number of other countries owning communications satellites. Let us hope that, in the interest of all peoples, this difference of opinion can be resolved in the near future when all states have the good will to do so.

⁴⁶U. N. Doc. A/AC.105/104 (1972); *Courrier de l'UNESCO* (French ed.) 21-23 (Feb. 1973). The Declaration was adopted by a vote of 55 to 7, including the U.S.A., and 22 abstentions.

IV.

Remarks on the Fundamental Principles Governing
the Broadcasting Service by Satellites

At the present time only two space powers and a few other states (or groups of them) have or will have the technical and economic means for launching and operating broadcasting satellites. Other states, if they want to participate in the broadcasting-satellite service, will be obligated to use satellites of other countries. It is possible that some of them could later require their own. For these reasons, all countries desire a guarantee of equal rights in the sphere of broadcasting-satellite services; this equality has two aspects:

1) No monopoly by any state should exist in the sphere of launching and operating communications satellites.⁴⁷

2) The right to and possibility of reception by direct transmission coming from satellites of any other states should exist without any discrimination. (No state may refuse to help another country by direct transmission, if requested.)

As mentioned above, sovereignty of all states should be fully respected as the fundamental principle. This principle should manifest itself mainly along the following lines:

a) Direct broadcasting by satellites to foreign countries should be subject to the express consent of the latter. It is noteworthy that technical measures are provided in Article 7 of the Radio Regulations, revised in 1971,⁴⁸ in order to reduce to the maximum extent practicable the radiation over the territory of other states, unless a previous agreement has been reached;

b) States to which direct broadcasting transmissions are addressed, with their consent, should have influence upon the contents of these transmissions;

c) Transmissions of a commercial and public nature for direct reception in earth are not allowed when the receiving state does not agree to it;

d) Broadcasting transmissions must not interfere in the internal or other affairs of the receiving state;

e) The receiving state should be entitled to withdraw its consent at any time;

⁴⁷See also Partial Revision of Radio Regulations, *supra* note 4.

⁴⁸Partial Revision of Radio Regulations, *supra* note 4, Annex 5 (Art. 7).

f) Conflicts between the principle of freedom of information and the principle of state sovereignty should be resolved in favor of the latter.

The purpose of direct broadcasting services seems to be clear. Broadcast transmissions should be conducive to the promotion of friendly international relations and peaceful co-existence of all states to the increase of mutual understanding and better knowledge of peoples, to the advancement of the educational level of populations and to the development of culture and the increase of exchanges of cultural values. In other words, the new space technology should serve exclusively the interest and welfare of mankind.

The development of space technology, like many other developments in technology, is not free from negative side effects. To demonstrate this fact one need only mention propaganda disseminated by some broadcasting stations and notice the measures carried out by the General Assembly of the United Nations (*e.g.*, prohibition of war-mongering propaganda, racial propaganda, etc.). For this very reason it becomes necessary to define *verbis expressis* what kinds of broadcasting transmissions are not in accord with the principles of international law and with the peaceful uses of outer space. As contrary to international law and the interests of mankind, in the following cases satellite transmissions should be considered and disallowed when they are:

- 1) dangerous to the maintenance of international peace and security (*e.g.*, war-mongering), or
- 2) interfering in any way with the internal affairs of other states (*e.g.*, subversive propaganda), or
- 3) directed against fundamental human rights and freedoms (*e.g.*, propaganda based on distinctions as to race, sex, language, or religion), or
- 4) intended to disseminate information tending to intimidate peoples or to encourage immorality and use of narcotics, or
- 5) intended to disseminate deliberately defamatory and false news for peoples of foreign countries.

Satellite broadcast transmissions to foreign countries, when contrary to all of the afore-mentioned principles, just as transmissions radiated over the territory of foreign countries without the previous consent of the latter, should be prohibited and considered illegal.

It should also be noted that national penal systems consider the above activities to be punishable. It would be very strange not to prohibit transmissions to foreign countries,

the content of which forms the factual substance of criminal acts defined by the municipal laws of the latter.⁴⁹

Principles governing the responsibility for the activities of states in outer space were incorporated in Article 6 of the Space Treaty concluded in 1967,⁵⁰ according to which the contracting states are fully responsible for the space activities of both governmental and nongovernmental institutions. Article 22 of the International Telecommunications Convention⁵¹ defines the responsibility of states in the field of telecommunications in a similar way. Moreover, in conformity with Article 18 of the Radio Regulations,⁵² the control of nongovernmental bodies is strengthened by the fact that the establishment and operation of all transmitting stations require a special license delivered by the competent governmental authority.

Control and responsibility in the sphere of broadcasting services by satellite should be, in detail, organized as follows:

a) States owning and operating satellites for broadcasting to foreign countries should ensure that transmissions intended for the latter shall be strictly controlled by the state itself, and that the principles governing such transmissions shall be strictly observed; they should also be obliged to stop any transmissions contrary to these principles.

b) The receiving state should have the right to request that the principles set up by international agreements or other international documents be observed; it could also withdraw its consent when the transmitting state (the responsible state) does not ensure the strict observation of the agreed rules.

c) Controversies arising under the application of the agreement on principles governing the broadcasting satellite service should be settled by means of mutual consultations according to Article IX of the Space Treaty concluded in 1967, by diplomatic channels, or by any other means (e.g., by procedure of arbitration) which have been generally agreed upon between the states concerned. Controversies could also be submitted to the International Court of Justice if each party is a member and when no party is opposed to such procedure.

Finally, the technical and administrative regulations adopted by the International Telecommunications Union should not be affected by the elaboration of the declaration or international agreement on principles governing broadcasting-satellite transmissions.

⁴⁹L. Martin, *International Propaganda* 109-63 (1958).

⁵⁰Space Treaty, *supra* note 19.

⁵¹International Telecommunications Convention, *supra* note 18.

⁵²Radio Regulations, *supra* note 1.

Conclusions

The new space and telecommunications technology should be used, according to the principles governing the activities of states in exploration and use of outer space, only for peaceful purposes and in the interest of mankind. Therefore, it is necessary to suppress all that could interfere with the above principles. This rule should be applied also to broadcasting transmissions by satellites intended to be received directly by the general public on Earth. For this reason it is necessary to elaborate an international agreement intended to develop the fundamental principles of international law, including space law, in regard to the specific conditions of broadcasting-satellite services. In order to ensure the peaceful co-existence of all states and international co-operation in outer space with regard to direct broadcasting by satellites, such an agreement should confirm the equal rights and sovereignty of all states, define the purpose and aims of broadcasting transmissions by satellites and state what kinds of transmissions should not be allowed, and define the conditions of control, responsibility and settlement of controversies, etc. The elaboration of principles and of the convention itself is within the competence of the United Nations as expressed under Resolution 2916/XXVII (1972) and Resoluition 2917/XXVII (1972).