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RECENT DEVELOPMENTS IN THE LAW OF DIRECT BROADCAST SATELLITES

I. INTRODUCTION

Recent developments in communications technology have made possible transmission of television signals to the viewing public by direct broadcast satellites. Reception can now be made by community receivers and individual television sets in the homes of viewers. This method is an improvement over the conventional "point-to-point" system of transmission which relays a signal from a broadcasting ground station, via satellite, to an elaborate receiving station;¹ programming is only aired to the public in the immediate vicinity. Direct broadcast satellites require simpler and less expensive ground stations, rendering transmissions to vast audiences possible.

The technological feasibility of direct satellite broadcasts has engendered considerable debate as to what legal standards, if any, should govern their transmissions. In response, the United Nations General Assembly authorized creation of the Working Group on Direct Broadcast Satellites [hereinafter referred to as the Working Group]. The Working Group functioned under the auspices of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, holding five sessions from 1969 to 1974. The Fifth Session of the Working Group, which convened in Geneva in March of 1974, provided the substantive proposals to be discussed in this note. The report of the Fifth Session of the Working Group [hereinafter referred to as Fifth Session Report] and the review of that report by the Legal Sub-Committee, Thirteenth Session, will be considered, as well as the results of the

1. See Note, *Direct Satellite Broadcasting*, 14 HARV. INT'L L.J. 601 (1973). Direct satellite broadcasting is subdivided into two categories, individual and community reception. The former is "the reception of emissions from a space station in the broadcasting-satellite service by simple domestic installations, and in particular those possessing small antennae," and the latter is "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." Report of the Working Group on Direct Broadcast Satellites on the work of its Fifth Session, U.N. Doc. A/AC.105/127, Annex VI, at 1 (1974). Community reception can be further divided into distribution systems intended for the general public at either one location or a large area. *Id.* While the Indian experiment, see text accompanying notes 3-5 *infra*, indicates the present practicality of community reception, the use of individual reception through augmented or unaugmented receivers is not foreseen until at least 1980. Report of the Working Group on Direct Broadcast Satellites [First Session], U.N. Doc. A/AC.105/51, at para.9 (1969).

recent Fourteenth Session of the Legal Sub-Committee which reestablished its Working Group [hereinafter referred to as Working Group II] in order to pursue the endeavors of the Fifth Session of the prior Working Group.² The efforts of other international organizations will be commented upon in order to provide a coherent overview of the legal status of direct broadcast satellites and of the proposals now before the international legal community.

The potential application of direct broadcast satellites is great. It is hoped that such satellites will improve the flow of news and information around the world, as well as foster exchange of cultural programs which will promote closer ties between nations.³

An example of the benefits of the direct broadcast satellite was an experimental series of daily programs begun in India in August. The broadcasts were designed to teach hygiene, agriculture, birth control and nutrition.⁴ The signals were beamed from a direct broadcast satellite 22,300 miles above the equator⁵ to community receivers in 2,400 remote and isolated towns. Indian

2. See app. A *infra*.

3. Report of the Working Group on Direct Broadcast Satellites of the Work of its Fourth Session, U.N. Doc. A/AC.105/117, Annex I, at 2 (1973).

4. Representatives from developing countries have particularly high expectations of direct broadcast satellites

The potential benefits of direct satellite broadcasting are more important to the Third World than to developed industrial nations. As a group, the Third World countries are characterized by high rates of illiteracy and widely dispersed, heterogeneous populations. These characteristics retard or impede national integration where communication facilities are inadequate or non-existent. Governments are unable to communicate national programs on public health, family planning, or productivity problems. In fact, farmers (who form the core of the population) are unable to receive such essential and basic information as weather conditions, market prices, and improved agricultural methods. It is appropriate that the Third World be the major target for the use of direct satellite broadcasting of a primarily instructional or educational nature and actively assist in building the infrastructure necessary for development.

Jasentuliyana, *Direct Satellite Broadcasting and the Third World*, 13 COLUM. J. TRANSNAT'L L. 68 (1974). See generally Gold, *Direct Broadcast Satellites: Implications for Less Developed Countries and for World Order*, 12 VA. J. INT'L L. 66 (1971).

5. By placing it in this orbit, the satellite is able to maintain a fixed position relative to the surface of the earth. Such a "geostationary" orbit has been consistently used for its technical advantages. The efficiency of the broadcast is increased because once the transmitting and receiving antennae on earth are properly aimed, broadcasting may commence without locating a particular satellite. Comment, *Utilization of the Geostationary Orbit-A Need for Orbital Allocation?*, 13 COLUM. J. TRANSNAT'L L. 98 (1974). However, it should be noted that this orbit can only accommodate a limited number of satellites and thus it will be necessary to regulate access and use of the geostationary orbit. *Id.*

television had previously been available in only four cities which all used the traditional point-to-point system of transmission. This more conventional method, requiring complex ground-based facilities, limited reception to the four cities and their immediate environs.⁶ Through direct broadcast satellites, these villages were given the opportunity to watch four hours of television per day on a variety of subjects aimed at improving their way of life. The same satellite employed in India, the Applications Technology Satellite F (ATS-F), had earlier been used for a year in the United States. There, it provided schools in remote areas of the Rocky Mountains and Appalachia with special courses, and it enabled two-way communication of medical diagnoses to Alaska. It was also used in the Apollo-Soyuz mission for a fifty-minute period of each orbit.⁷ The United States has tentatively offered to make the ATS-F satellite available to other countries on a contingent basis upon completion of the Indian project. Other direct broadcast satellites are currently in use, or are planned for use, in South America, Japan, and Canada.⁸

II. BACKGROUND OF DIRECT BROADCAST SATELLITES

When the United Nations General Assembly authorized the creation of the initial Working Group,⁹ the General Assembly, as well as other international organizations, was already directly involved in the formulation of standards to govern direct broadcast satellites. In 1961, the General Assembly "commended" to its members 1) that international law, including the United Nations Charter, apply in outer space, and 2) that outer space be free for exploration and use by all states and not subject to national expropriation.¹⁰ These objectives were furthered by the passage 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 Outer Space Treaty].¹¹ This treaty provided that international law and the United Nations Charter govern activities conducted in outer

6. N.Y. Times, Aug. 3, 1975, at 10, col. 1.

7. *Id.*

8. For discussion of the current and projected use of broadcast satellites for educational purposes, see Report of the U.N. Panel Meeting on Satellite Broadcasting Systems for Education, U.N. Doc. A/AC.105/128 (1974).

9. G.A. Res. 2453(B), 23 U.N. GAOR Supp. 17, at 10, U.N. Doc. A/7217 (1968).

10. G.A. Res. 1721, 16 U.N. GAOR Supp. 17, at 6, U.N. Doc. A/5100 (1961).

11. [1967] 3 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205 (1967).

space.¹² The Treaty advocated the view that the benefits of outer space be shared equally by all nations in order to promote international peace, security, understanding, and cooperation.¹³ Although its applicability to space communications has been questioned,¹⁴ the Working Group concluded that the Outer Space Treaty "form[ed] the bases for the conduct of States in carrying out direct television broadcasting by satellite."¹⁵

The International Telecommunications Union

The International Telecommunications Union [hereinafter referred to as ITU] has played an important part in the development of standards governing the use of direct broadcast satellites. Founded in 1865 to regulate telegraphic communications in Europe, it has expanded its role to include the regulation of telephones, cables, radio, and television.¹⁶ Its primary function with respect to broadcast satellites is to conduct technical studies and to allocate, regulate, coordinate, and utilize the frequency spectrum.¹⁷

In 1971, the ITU convened the World Administrative Radio Conference for Space Telecommunications [hereinafter referred to as WARC-ST] in Geneva, at which frequencies for broadcast satellites were allocated. WARC-ST adopted resolutions calling for equal rights to the use of the geostationary orbit¹⁸ and frequency bands assigned to the various space-radio communications services. The equal rights provision was designed to prevent "permanent priority for these services that might create an obstacle to the establishment by other countries of their own space

12. *Id.*

13. *Id.*

14. Note, *Direct Broadcast Satellites and Freedom of Speech*, 4 CALIF. W. INT'L L.J. 374,377 (1974).

15. Report of the Working Group on Direct Broadcast Satellites on the Work of its Fifth Session, U.N. Doc. A/AC.105/127 (1974) [hereinafter cited as Fifth Session Report].

16. The International Telecommunications Union [hereinafter cited as ITU] was made a specialized agency of the United Nations in 1974. See Comment, *The Role of the International Telecommunications Union in the Settlement of Harmful Interference Disputes*, 13 COLUM. J. TRANSNAT'L L. 82, 83 (1974). For a more detailed discussion of the ITU, see G. CODDING, *THE INTERNATIONAL TELECOMMUNICATIONS UNION: AN EXPERIMENT IN INTERNATIONAL COOPERATION* (1952); D. LEIVE, *FUTURE OF THE INTERNATIONAL TELECOMMUNICATIONS UNION* (1972); D. LEIVE, *INTERNATIONAL TELECOMMUNICATIONS AND INTERNATIONAL LAW: THE REGULATION OF THE RADIO SPECTRUM* (1970).

17. See generally Leive, *Regulating the Use of the Radio Spectrum*, 5 STAN. J. INT'L STUDIES 21 (1970).

18. See note 4 *supra*.

stations.”¹⁹ WARC-ST also adopted a regulation obligating member states to reduce radiation²⁰ of direct broadcast transmissions over foreign territory unless prior agreement had been reached between the two countries.²¹ Another ITU conference is scheduled to be held before April of 1977 to further assign available broadcasting frequencies.²² Although the ITU has contributed a great deal toward the development of broadcast satellites, it should be noted that its function is primarily limited to the technical and operative aspects of communications rather than the formulation of legal principles.²³

United Nations Educational, Scientific, and Cultural Organization

The United Nations Educational, Scientific, and Cultural Organization [hereinafter referred to as UNESCO] has been active in the realm of broadcast satellites. At its seventeenth General Conference in 1972, UNESCO adopted the Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange²⁴ [hereinafter referred to as the UNESCO Declaration]. Although the UNESCO Declaration was not legally binding on states, it reflected growing international concern that a laissez-faire attitude towards broadcast satellites was no longer desirable and a more regulatory approach should be taken.

19. Report of the Working Group on Direct Broadcast Satellites of the Work of its Fourth Session, U.N. Doc. A/AC.105/117, at para. 25 (1973) [hereinafter cited as Fourth Session Report].

20. The term radiation or “spill-over” refers to “the straying of signals from one country’s satellite beyond their designated geographical target or intended frequency to permit reception by the citizens of another nation.” Note, *Approaches to Controlling Propaganda and Spillover from Direct Broadcast Satellites*, 5 STAN. J. INT’L STUDIES 167, 169 (1970).

21. It should be noted that the regulations adopted in Geneva are presently the only rules legally binding on states in connection with broadcast satellites. Fourth Session Report, Annex I, at 3.

22. Report of the U.N. Panel Meeting on Satellite Broadcast Systems for Education, U.N. Doc. A/AC.105/128, at para. 55 (1974).

23. The narrow mandate of the ITU is but one reason for its inability to function as the primary coordinating body for broadcast satellites. It has been noted that the internal organization of the ITU is not adapted to space age problems, and that the ITU has only minimal enforcement powers over delinquent states. Note, *The Role of the International Telecommunications Union for the Promotion of Peace Through Communications Satellites*, 4 CASE W. RES. J. INT’L L. 61 (1971).

24. U.N. Doc. A/AC.105/109 (1973).

The UNESCO Declaration dealt generally with the issues of sovereignty, international cooperation, the free flow of information, the rights of audiences, contact between peoples, and the preservation of cultures. It dealt more specifically with the rights of a state to decide upon the content of educational programs broadcast by satellite to its people, and the need for both prior agreements between countries where one state broadcasts to the population of another, and bilateral agreements regulating commercial advertising.²⁵ UNESCO has been subject to criticism for enacting the Declaration without sufficient consultation with other appropriate specialized agencies.²⁶

UNESCO has also been involved with the development of broadcast satellites in a number of other ways. For example, it has conducted studies on regional satellite broadcasting systems in many parts of the world. One such project, which was carried out by UNESCO in cooperation with the ITU and the United Nations Development Programme [hereinafter referred to as UNDP], was a feasibility study of a regional tele-educational system for the Spanish-speaking countries of South America. The proposed communication system would broadcast educational and cultural programs to approximately twenty million students.²⁷ UNESCO also participated in preliminary studies of broadcast satellite systems in Africa and Asia.

In conjunction with the World Intellectual Property Organization [hereinafter referred to as WIPO], UNESCO has examined copyright and neighboring right problems arising from the use of direct broadcast satellites. A recent UNESCO-WIPO convention resulted in an agreement to protect program-carrying sig-

25. *Id.* See also Gotlieb, Dalfen & Katz, *Transborder Transfer of Information by Communications and Computer Systems*, 68 AM. J. INT'L L. 1 227 (1974) [hereinafter cited as GOTLIEB].

26. "[Some] delegations [at the Committee on the Peaceful Uses of Outer Space, the parent Committee of the Working Group] regretted . . . [that] the UNESCO General Conference had adopted the Declaration before the Committee [on Peaceful Uses of Outer Space] had had a further opportunity to express its views on it." Fourth Session Report, at para. 34.

The drafters of the Declaration have also been criticized for "either assuming blithely that the whole subject was tabula rasa or else displaying a rather cavalier lack of concern for the vast amount of work already being done in the general area by other U.N. specialized agencies and for the need in consequence, of some sort of prior consultation and effective continuing liaison with them." McWHINNEY, *The Antimony of Policy and Function in the Institutionalization of International Telecommunication Broadcasting*, 13 COLUM. J. TRANSNAT'L L. 3, 22 (1974).

27. Fourth Session Report, at para. 29.

nals transmitted by satellite from piracy.²⁸ However, its provisions specifically exclude from coverage signals of direct broadcast satellites.²⁹

Working Group, Sessions I-IV

As these other organizations have continued their work the United Nations, through its Committee on the Peaceful Uses of Outer Space, has performed a coordinating function, and has become the focal point for consideration of the overall implications of satellite broadcasting. To further these purposes, the Working Group, a subdivision of the Committee on the Peaceful Uses of Outer Space, was established pursuant to General Assembly Resolution 2453 B (XXIII) "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 implications of such developments in the social, cultural, legal, and other areas."³⁰ The Working Group held its First Session in February of 1969.³¹ This session was mainly devoted to technical and economic considerations of direct broadcast satellites. The First Session concluded that contemporary satellite technology has made it possible to contemplate future development of direct broadcasting to the public at large but that direct broadcast of television signals into existing unaugmented home receivers on an operational basis could not be foreseen before 1985. This finding was based on the lack of technological means to transmit signals of sufficient strength from satellites. Direct broadcasts into augmented home receivers were viewed as technologically feasible by 1975. However, the cost of both the ground and space segments of an augmented system have become inhibiting factors.³² Alternatively, direct broadcasts to community receivers could be imminent because technology under development may allow for this in the mid-1970's. A community receiver system is considered to be less expensive to launch than

28. UNESCO/WIPO/CONFISAT/42 (prov.) (May 21, 1974). See Note, *The Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite: A Potshot at Poaching*, 7 N.Y.U.J. INT'L L. 575 (1974).

29. *Id.* at 584-85.

30. G.A. Res. 2453(B), note 9 *supra*.

31. Report of the Working Group on Direct Broadcast Satellites [First Session], U.N. Doc. A/AC.105/51 (1961).

32. *Id.* at para. 9.

one intended for reception directly into individual homes. It would also be easier to establish in locations where radio interference is low. It has been noted, to the credit of the First Session of the Working Group, that its conclusions on the technical aspects of broadcast satellites are, to a large extent, still valid.³³

The Second Session of the Working Group was held in August of 1969,³⁴ and the Third Session in May of 1970.³⁵ Both sessions stressed the need for a general spirit of cooperation between nations, rather than the need for agreement on regulations to govern direct broadcast satellites.³⁶ The Working Group's attitude led one writer to note that such cooperation

[c]ould establish practical and useful patterns of operation in regard to the activity and could provide an indication of the legal norms that were and were not necessary. It was considered that cooperation and participation in establishing and operating direct broadcasting satellite systems would tend to diminish fears on the part of those countries receiving broadcasts from such systems.³⁷

Other matters were discussed at these sessions, but there was no agreement as to the necessity of drafting specific principles to govern the use of direct broadcast satellites.

After the close of the Third Session, a growing number of nations believed that a specific regulatory system should be developed. This was manifested in the UNESCO Declaration.³⁸ At the United Nations, the Union of Soviet Socialist Republics took the initiative and proposed that the General Assembly establish specific governing principles for broadcast satellites. At the same time, the USSR submitted its own proposal as to the form such principles should take.³⁹ The resulting discussion led the General

33. *Id.* Annex I, at 1.

34. Report of the Second Session of the Working Group on Direct Broadcast Satellites, U.N. Doc. A/AC.105/66 (1969).

35. Report of the Working Group on Direct Broadcast Satellites on its Third Session, U.N. Doc. A/AC.105/83 (1970).

36. "The Working Group cannot over-emphasize the importance of international and regional cooperation if the full potential of direct broadcasts from satellites is to be realized." Report of the Second Session of the Working Group on Direct Broadcast Satellites, *supra* note 34, at para. 39. "International cooperation will be essential if States are to be encouraged to exercise restraint in various aspects of direct broadcasting from satellites in the interests of the international community as a whole." *Id.* at 40.

37. Gotlieb at 237.

38. See text accompanying note 24 *supra*.

39. Soviet Draft Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting, U.N. Doc. A/8771 (1972). The Soviet

Assembly to adopt Resolution 2916 (XXVII)⁴⁰ declaring the necessity "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."⁴¹ As a result, the Working Group held its Fourth Session in June of 1973.⁴² Addressing the delegates at the beginning of the Fourth Session, the Chairman, Olof Rydbeck, emphasized that

the elaboration and formalizing of principles for direct television broadcasting from satellites has not been explicitly entrusted to this Working Group. The General Assembly has requested the main Committee [on Outer Space] to deal with this question and it is up to that body to decide how and where it will be dealt with. However, considering the broad mandate of this Working Group and its interdisciplinary character I think we would fail to carry out the specific mandate we have been given were we not to provide the Outer Space Committee with advice on this matter.⁴³

How specific the "advice" was to be is unclear.

The members of the Working Group were unable to agree on whether they were to adopt general principles which would be supplemented later by detailed agreements or to immediately adopt specific principles of a binding character. Although political and legal considerations were discussed at length, the Fourth Session made no specific recommendations with respect to these issues. The Working Group did advise that, prior to the convening

position aroused considerable controversy. In addition to requiring express consent of a receiving country before a broadcasting nation could beam its signal there, it provided that certain broadcasts were to be considered illegal, *i.e.*, broadcasts interfering with the receiving nation's domestic affairs, propagandizing violence and horrors, or undermining the foundations of the local civilization and culture. Perhaps the most controversial section of the proposal would allow states to "utilize the means at their disposal to counteract illegal direct television broadcasting of which they are the object, not only in their own territory but also in outer space and other areas beyond the limits of the national jurisdiction of any State." *Id.* It was feared this would sanction the use of physical force in retaliation for unwanted broadcasts.

40. G.A. Res. 2916, 27 U.N. GAOR Supp. 30, at 14, U.N. Doc. A/8730 (1972).

41. *Id.* The United States was alone in its negative vote to this proposal. The official United States position has long been that "there should be an uninhibited free flow of broadcasting as an international expression of freedom of speech." Gotlieb at 238-39. *See also* 67 DEPT STATE BULL. 686-87 (1972) (for official U.S. position on the matter); Comment, *Direct Broadcast Satellites and Freedom of Speech*, 4 CALIF. W. INT'L L.J. 374 (1974) (constitutional analysis of the U.S. position); Note, *Direct Satellite Broadcasting*, 14 HARV. INT'L L.J. 601 (1973) (analysis of U.S. opposition to G.A. Res. 2916).

42. *See* note 19 *supra*.

43. Fourth Session Report, Annex I, at 4.

of the Thirteenth Session of the Legal Sub-Committee on the Peaceful Uses of Outer Space, the Working Group be requested to reconvene to consider and discuss "principles on the use by States of artificial earth satellites for direct television broadcasting, in accordance with General Assembly Resolution 2916 (XXVII), with a view to making specific recommendations for the work of the Legal Sub-Committee in this field."⁴⁴ This would permit the Legal Sub-Committee to more effectively discharge the duties conferred upon it.⁴⁵ The Committee on Peaceful Uses of Outer Space endorsed the above recommendations⁴⁶ and sent the proposal to the General Assembly, which approved it and endorsed the Outer Space Committee's decision to reconvene the Working Group for a fifth session in 1974.⁴⁷

III. THE REPORT OF THE FIFTH SESSION OF THE WORKING GROUP AND THE LEGAL SUB-COMMITTEE (WORKING GROUP II)

The Working Group on Direct Broadcast Satellites, Fifth Session, served as a sounding board for the positions of member delegations on issues related to the use of direct broadcast satellites. Subsequent to the Fifth Session, meetings were held by the Legal Sub-Committee, 14th Session, of the Outer Space Committee. A number of the divergent views were resolved by its sub-committee, Working Group II.⁴⁸ This note will consider the various opinions voiced at the Fifth Session of the Working Group, and the subsequent resolution of some of those issues by Working Group II.

The report of the Fifth Session was divided into four topical sections: introductory considerations, the role of international organizations, technical and economic aspects, and political and legal conclusions. Although this survey will concentrate on the last section, the others deserve brief mention.

The introductory section sets out the mandate of the Work-

44. Fourth Session Report, at para. 78.

45. *Id.*

46. 28 U.N. GAOR Supp. 20, U.N. Doc. A/9020, at para. 66 (1973).

47. G.A. Res. 3182, 28 U.N. GAOR Supp. 30, vol. 1, at 19, U.N. Doc. A/9030 (1973).

48. Report of the Legal Sub-Committee on the Work of its Fourteenth Session, U.N. Doc. A/AC.105/147 (1975) [hereinafter cited as Legal Sub-Committee, 14th Session Report]. The Sub-Committee delegated the task of drafting governing principles on the use of broadcasting satellites to Working Group II. The Report of the Chairman of Working Group II became Annex II of the Legal Sub-Committee, 14th Session Report. The Report of the Chairman is reproduced, by permission of the United Nations, as Appendix B of this note.

ing Group⁴⁹ and lists the documents which were considered by the Fifth Session in formulating its report.⁵⁰ The section on the role of international organizations briefly notes the recent work of UNESCO, the ITU, and activities of other organizations.⁵¹ Because the Fifth Session did not give detailed consideration to the technical and economic considerations of broadcast satellites, the report treats these matters summarily.⁵²

Political and Legal Considerations

The Fifth Session and Working Group II were the first significant attempts toward articulating legal principles for direct broadcast satellites. The numerous viewpoints and recommendations debated at these sessions will be discussed by detailing first the deliberations of the Fifth Session and then those of Working Group II.

A. PURPOSES AND OBJECTIVES

The Fifth Session recommended that broadcast satellites should be used in

maintaining international peace and security through developing mutual understanding and strengthening friendly relations and cooperation among all States and peoples, assisting in the 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 people of various countries.⁵³

The debate over the purposes and objectives of direct broadcast satellites centered on whether or not they were to promote the "free flow of information." No decision was reached. The United States was of the opinion that broadcast satellites were to "be conducted in a manner which will encourage and expand the free and open exchange of information and ideas while taking into account differences among cultures"⁵⁴ To support its position, the United States relied upon international precedents guaranteeing the "free flow of information." It pointed to the Univer-

49. See text accompanying note 30 *supra*.

50. Fifth Session Report, at para. 8.

51. *Id.* at paras. 12-19.

52. *Id.* at paras. 20-27.

53. *Id.* at para. 31.

54. Fifth Session Report, Annex IV, at 1.

sal Declaration of Human Rights which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."⁵⁵

Other states, particularly the USSR, were of the opinion that the "free flow of information" was neither a purpose nor an objective of direct broadcast transmissions. The Soviet proposal for principles governing satellites conspicuously avoids mentioning the "free flow of information" as one of its purposes. The Canadian-Swedish proposal submitted to the Fifth Session sought a compromise between the Russian and American positions. By providing that broadcasting was to be "conducted on the basis of respect for the principles of the sovereignty of States, non-intervention and equality and in the interest of promoting the free flow of communications,"⁵⁶ it indicated that there was no inherent conflict of objectives between the promotion of the free flow of communications and the recognition of state sovereignty.

When Working Group II met in 1975, it was unable to reach agreement on the purposes and objectives of direct broadcast satellites. Instead, it proposed two alternatives⁵⁷ which were similar to the Fifth Session recommendations. Neither could it reach agreement with regard to the "free flow of information." The discussions prompted by the Legal Sub-Committee's review of the report of Working Group II indicate that there was still no consensus on this issue.⁵⁸

The delegations at the Working Group conferences generally supported a limited concept of "free flow of information," balanced by "respect for the sovereign rights of States and for the right of all countries and peoples to preserve their culture."⁵⁹ The nations represented at the Working Groups feared that their populations would be bombarded by unwanted programming. Most participating states opposed the unrestricted "free flow of information" and they are likely to maintain this stance so long as direct broadcast satellite capability is controlled by only a few developed states.

55. G.A. Res. 217, U.N. Doc. A/811, at 4 (1948).

56. Fifth Session Report, Annex III, at 2.

57. Legal Sub-Committee, 14th Session Report, Annex II, at 1-2; *see app. B infra*.

58. Summary Records of the Committee on the Peaceful Uses of Outer Space Legal Sub-Committee, Fourteenth Session, U.N. A/AC.105/C.2/SR.226-245, at 115 (1975).

59. Fifth Session Report, at para. 32.

B. APPLICABLE INTERNATIONAL PRINCIPLES

Another subject broached at the meetings involved the international principles relevant to the control and use of broadcast satellites. The Fifth Session was able to reach agreement on some matters.⁶⁰ The U.N. Charter and the Outer Space Treaty were recognized as controlling, as were particular provisions of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States⁶¹ and the Universal Declaration of Human Rights.⁶² With reference to the ITU, it was agreed that its Radio Regulations contain a number of binding provisions applicable to direct broadcast satellites, but the comprehensiveness of these regulations was questioned.⁶³ Some states believed that the ITU provided a complete regulatory framework for satellite operation, while others, such as the United States, held the view that it merely provided the technical framework for conducting direct broadcast satellites.⁶⁴

The Working Group II proposal was less extensive. It agreed upon the applicability of the U.N. Charter, the ITU Radio Regulations, and the Outer Space Treaty, as well as "relevant" provisions of the International Telecommunications Convention.⁶⁵ However, there was no consensus with respect to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, the Universal Declaration of Human Rights, or the International Covenant on Civil and Political Rights.⁶⁶

C. BENEFITS

The Fifth Session delegations were in complete harmony regarding the rights and benefits accruing to states as a result of broadcast satellites. All states were considered to have equal rights to conduct broadcasting and to share in the benefits of broadcast satellites. It was recognized that each state also has the right to send and receive broadcasts, "irrespective of their degree of economic or scientific development and without discrimination

60. See generally Valters, *Perspectives in the Emerging Law of Satellite Communication*, 5 STAN. J. INT'L STUDIES 53 (1970).

61. G.A. Res. 2625, 25 U.N. GAOR Supp. 28, at 121, U.N. Doc. A/8028 (1972).

62. See note 55 *supra*.

63. Fifth Session Report, at para. 34.

64. *Id.*, Annex IV, at 1.

65. 63 Stat. 1399, T.I.A.S. No. 1901 (1947).

66. Legal Sub-Committee, 14th Session Report, Annex II, at 2; see app. B *infra*.

of any kind.”⁶⁷ This sharing of benefits should permit access to broadcast satellites on the basis of bilateral agreements.⁶⁸ Although Working Group II could not agree on the precise language to govern rights and benefits of states, its provision⁶⁹ is practically identical to that of the Fifth Session.

D. COOPERATION

As it had done in the past, the Fifth Session espoused the need for international cooperation.⁷⁰ Such cooperation was to form the “touchstone for the development and use of direct television broadcasting by satellite.”⁷¹ Working Group II substantially concurred with the Fifth Session.⁷²

E. NON-GOVERNMENTAL BROADCASTING

The issue of state responsibility for the broadcast activities of non-governmental bodies within a state's jurisdiction was unresolved at the Fifth Session. At a minimum, the Outer Space Treaty should govern the responsibility of states for their own activities with regard to broadcast satellites.⁷³ As to the activities of non-governmental organizations within a state, however, there was dispute over liability. The USSR argued that a state bears international responsibility for all national broadcast satellite activities “irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons and of whether it is carried out by States acting independently or through international organizations.”⁷⁴ Other delegations found this unacceptable, particularly in light of the fact that such a principle would make a state liable for the content of broadcasts over which it had no control, *i.e.*, where broadcasters were not subject to state control. The Fifth Session did agree that when broadcasting is conducted by inter-

67. Fifth Session Report, at para. 37.

68. Legal Sub-Committee, 14th Session Report, Annex II, at 2-4; *see app. B infra*.

69. *Id.*

70. It has been suggested that a lack of cooperation in the use of direct broadcast satellites “would create absolute chaos in the use of the [frequency] spectrum.” Welsker, *The Control of Program Content in International Telecommunications: A Discussion of General Principles*, 13 COLUM. J. TRANSNAT'L L. 40, 50 (1974).

71. Fifth Session Report, at para. 38.

72. Legal Sub-Committee, 14th Session Report, Annex II, at 3; *see app. B infra*.

73. Fifth Session Report, at para. 34.

74. *Id.*, Annex II, at 2.

national and intergovernmental organizations the responsibility for complying with the governing principles should be borne by both the international organization and the participating states.⁷⁵ The recommendation of Working Group II apparently took the Soviet position of the Fifth Session in providing that "[s]tates shall bear international responsibility . . . [for direct broadcast satellite activities] carried out by them or under their jurisdiction and for the conformity with these principles of any such activities."⁷⁶ Working Group II proposed a provision regarding the liability of international organizations which was almost identical to that of the Fifth Session.⁷⁷

F. PRIOR CONSENT

One of the most significant issues that confronted the Fifth Session and Working Group II was that of prior consent. The UNESCO Declaration stated that no country should undertake direct satellite broadcasting to the territory of another state without the latter's prior consent.⁷⁸ The rationale is that it would be improper to broadcast programs which might be offensive or injurious to the receiving nation, even if the broadcast was not intended for that nation.⁷⁹

Most of the participants at the Fifth Session were in accord with the UNESCO Declaration. They noted that Art. 7, §428A of the Revised Radio Regulations⁸⁰ adopted by WARC-ST in 1971 supported this view. The Radio Regulations provide that the consent of receiving states shall be obtained prior to the establishment of satellite broadcasting systems which are intended to reach beyond the national borders of the broadcasting state. The Fifth Session proposed that the United Nations adopt the same principle. Furthermore, it was the belief of the majority of the Fifth Session that prior consent would not violate national legislation. Receiving states would be free to give or withhold consent in any manner consistent with their own national laws and their interpretation of the "free flow of information." In addition, it was argued that the principle of prior consent should include the

75. Fifth Session Report, at para. 41.

76. Legal Sub-Committee, 14th Session Report, Annex II, at 3; *see app. B infra*.

77. *Id.*

78. *See note 24 supra*.

79. Fifth Session Report, at paras. 25-27. *See generally* Note, *Direct Satellite Broadcasting*, 14 HARV. INT'L L.J. 601, 607 (1973).

80. [1971] 23 U.S.T. 1527, 1648, T.I.A.S. No. 7435.

right of the receiving state to participate in broadcasts "which involve coverage of territory under its jurisdiction and control."⁸¹ This participation would be governed by special bilateral, regional, or international arrangements between cooperating states.⁸²

The United States opposed the Soviet and majority stance, reaffirming its belief in the "free and open exchange of information and ideas."⁸³ This position rejects the need for prior consent. The United States has consistently objected to the concept of prior consent, maintaining that it is a prior restraint violative of the first amendment of the United States Constitution,⁸⁴ as well as the Declaration of Human Rights.⁸⁵ The "free flow of information" and the free exchange of ideas guaranteed by these documents were considered essential to a better understanding among nations, as well as to international peace and security. Also, the United States maintained that the ITU Convention and its Radio Regulations requiring prior consent applied to technical aspects and coordination of future direct broadcast satellite systems but not to the substance of any broadcast which might be carried. The United States also expressed the opinion that prior consent would create serious difficulties for domestic broadcast systems which spillover across national boundaries.

As a substitute for prior consent, the United States advocated a general form of "consultation . . . through established procedures for the settlement of disputes."⁸⁶ As to a state's right to participate, the United States' position was vague.⁸⁷

A third position was expressed in the Canadian-Swedish proposal.⁸⁸ Their view was that the receiving state should have rights to prior consent and participation in activities which involve coverage of its territory. One exception was advanced in the case of transmissions to the receiving state which result from

81. Fifth Session Report, at para. 42.

82. The right to participate would include such matters as scheduling, content, production, and exchange of programs. *Id.*

83. Fifth Session Report, Annex IV, at 1.

84. U.S. CONST. amend. I.

85. See note 55 *supra*. The United States has taken a contradictory position in at least one instance. When Canadian broadcasts were found objectionable by residents of Buffalo, N.Y., prior consent by authorities was insisted upon by the United States. Gotlieb at 239.

86. Fifth Session Report, Annex IV, at 2.

87. *Id.* at 1.

88. Fifth Session Report, at para. 42.

technologically unavoidable spill-over as defined by the ITU, but not all unavoidable spill-over would be permitted without prior consent. Should the satellite broadcast which spills over be specifically aimed at the audience in the receiving state, there would be no exception and prior consent would be required.⁸⁹ Thus, the Canadian-Swedish proposal is aimed at preventing economic exploitation of markets through spill-over. Although it has been argued that it would be difficult to distinguish between intentional and unavoidable spill-over, fairly reliable indicators could be established.⁹⁰ In determining the intentions of the broadcaster, the language of the broadcast would be relevant, as would a determination of whether the names and addresses of advertisers on the broadcast were located in the broadcasting or receiving nation.⁹¹ The Swedish-Canadian proposal would also grant a state which has reason to believe that it was going to receive technologically unavoidable spill-over the right to consult with the broadcasting state in order to resolve the situation.⁹²

There were other variations of these three basic positions. Some delegations believed that, while the principle of prior consent was appropriate, the concept of freedom of information required that such consent be denied only for "legitimate" reasons. Subsequent consultations would be held to resolve the situation.⁹³ Another idea asserted was that the concept of "free flow of information" be reconciled with state sovereignty. This would involve procedures whereby receiving states would obtain effective control of all television broadcasts over their territories.⁹⁴ A final view maintained that the obligations of states under the ITU Radio Regulations, together with the universally agreed-upon principle of international cooperation, rendered the need for the concept of prior consent superfluous.⁹⁵

The Fifth Session expressed no recommendation as to the need for, or definition of, prior consent. It did express the thought that participation was important "in indicating a significant means for access to and sharing of the direct broadcast satellite technology," and that it could "assist in meeting some of the

89. Fifth Session Report, Annex III, at 3.

90. Gotlieb at 238.

91. *Id.*

92. Fifth Session Report, Annex III, at 4.

93. Fifth Session Report, at para. 42.

94. *Id.*

95. *Id.*

concerns expressed by various States in connexion with the use of this technology."⁹⁶ Working Group II was unable to establish a consensus on this matter. Instead, two alternatives were suggested which represented positions similar to those of the Canadian-Swedish and American proposals.⁹⁷

According to accepted principles of international law, it is improper for any state to infringe upon the territorial sovereignty of another state.⁹⁸ This should be made applicable to satellite transmissions by adoption of the principle of prior consent. The essential issue in this regard, for the international community, is the form such prior consent will take. It is submitted that bilateral and multilateral agreements should serve as the vehicle for adopting prior consent.

G. SPILL-OVER

The Fifth Session recognized the importance of spill-over as a legal and political aspect of direct broadcasting.⁹⁹ It noted that there were a number of potential technological solutions to the problem of spill-over which should be studied.¹⁰⁰ In light of technology which could substantially reduce the extent of spill-over, it was suggested at the Fifth Session that no specific legal framework was needed to govern potential conflicts. The fact that individual reception via direct broadcast satellites was not foreseeable in the near future and that spill-over problems with com-

96. *Id.* at para. 43.

97. Legal Sub-Committee, 14th Session Report, Annex II, at 3-4; see app. B *infra*.

98. See 1 M. Whitemen, *DIGEST OF INTERNATIONAL LAW* 241-58 (1965).

99. See generally Note, *Approaches to Controlling Propaganda and Spillover from Direct Broadcast Satellites*, 5 *STAN. J. INT'L STUDIES* 167 (1970). For a Soviet writer's views on the subject of spillover, see Kolossov, *Legal Consequences of "Spill-Over" Resulting from Satellite Direct Broadcasting, Proceedings of the Fifteenth Colloquium on the Law of Outer Space*, in *INTERNATIONAL INSTITUTE OF SPACE LAW OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION* (M. Schwartz ed. 1973).

100. The solutions included:

broadcast beam shaping and satellite stability; signal amplitude reduction in border areas coupled with more sensitive receivers and higher gain antennae in those areas; antenna directivity and shielding in the direction of unwanted transmissions; use of separate frequency assignments to adjacent countries; [and] transmissions requiring special decoding in receivers to avoid the reception of intelligible signals.

Fifth Session Report, at para. 25.

The Fifth Session also noted continued ITU interest in this area. ITU Regulation 428 A requires that all technical means available should be used to reduce the radiation over the territory of other countries to the maximum extent practicable unless an agreement has been previously reached with such countries. See note 80 *supra*.

munity reception were considered to be minimal further strengthened this opinion.¹⁰¹ Some states disagreed on the basis that some spill-over would be unavoidable even if it were appreciably reduced.¹⁰²

Specific principles governing the use of spill-over were contained in the Soviet and Canadian-Swedish proposals submitted to the Fifth Session. The USSR proposed that when a broadcasting country has reason to believe a transmission would cause potentially harmful interference or unintentional radiation over another country, "it shall hold appropriate consultations before undertaking such activities."¹⁰³ The receiving state, if it has reason to believe that unintentional radiation over its territory will occur,

may request that appropriate consultations be held. If as a result of such unintentional radiation, foreign programmes can be received in the territory of a State by ordinary receivers or by receivers fitted with simple additional devices, the broadcasting State shall immediately enter into consultations with the former State on its request regarding the content of the programmes received.¹⁰⁴

The Canadian-Swedish proposal was more moderate in approach. It provided that in the event a state has reason to believe that there will be radiation over its territory, *i.e.*, beyond the limits considered unavoidable by the ITU Radio Regulations, consultations must be held upon the request of the receiving state.¹⁰⁵ Under this theory, only avoidable or intentional radiation would be cause for consultation between states, as opposed to the Soviet proposal which includes all radiation.

The Fifth Session, aside from mentioning these conflicting views over the need for a legal framework governing spill-over, made no specific recommendations on this subject.¹⁰⁶ Working Group II was also unable to reach accord on the issue, but it did suggest two alternatives. Alternative A would require states to use "all technical means available" to reduce spill-over, and alternative B would require the use of "all reasonable means" to

101. Fifth Session Report, at para. 45.

102. *Id.* at para. 46.

103. Fifth Session Report, Annex II, at 2.

104. *Id.* at 3.

105. Fifth Session Report, Annex III, at 3.

106. Fifth Session Report, at paras. 44-48.

reduce unintended radiation.¹⁰⁷

The present state of broadcast satellite technology renders it impossible to eliminate all spill-over. The Canadian-Swedish proposal is the most reasonable since it attempts to accomodate unavoidable radiation while protecting receiving states from "economic exploitation."¹⁰⁸

H. PROGRAM CONTENT

As with many of the subjects examined, the Fifth Session's discussion of principles governing the issue of direct broadcast program content consisted of a plethora of differing views with no resultant recommendation by the Session itself. The Soviet Union repeated its belief that states should exclude material from broadcasts

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 internal domestic affairs of other States, or which undermines the foundations of the local civilization, culture, way of life, traditions or language.¹⁰⁹

The United States predictably found this proposal unacceptable. As previously mentioned, the United States has consistently maintained that such regulation of a broadcaster's program content would constitute a prior restraint violative of the first amendment and other legal principles.¹¹⁰

More moderate viewpoints were held by other delegations. For example, Argentina proposed that "[c]ontent should be described in very general, broad, non-specific and non-detailed terms. It does not appear feasible to regulate the content of direct broadcasts at the global level."¹¹¹ These delegations generally suggested that the receiving nation be allowed to participate in the preparation and content of programs where the broadcast from a foreign state was intended for the receiving state. An alternate view presented was that regulation of program content would be unnecessary if the principle of prior consent were adopted, particularly if it were complemented by a right of participation in the

107. Legal Sub-Committee, 14th Session Report, Annex II, at 46; *see app. B infra*.

108. Gotlieb at 255.

109. Fifth Session Report, Annex II, at 2.

110. *See* note 41 *supra*.

111. Fifth Session Report, Annex V, at 5.

receiving state.¹¹²

Working Group II was also unable to resolve this issue, although it did draft a proposal. This proposal, on which consensus was not reached, provided that broadcasting states and receiving states should cooperate with respect to programming, program content, and interchange of programs. It also substantially repeated the Soviet proposal of the Fifth Session concerning the exclusion of certain subjects from satellite broadcasts.

The differences in opinion concerning regulation of program content reflect apprehension that broadcast satellites will be used to transmit propaganda, inflammatory material, and "programs which offend national, social, cultural, or religious sensitivities."¹¹³ These fears are expressed by developing states which feel that they might become targets of foreign propaganda.¹¹⁴ The situation is exacerbated by the variety of views concerning freedom to broadcast without substantial regulation.¹¹⁵ With such problems and divergent political and societal outlooks extant, accords on material to be broadcast (or prohibited from broadcast) appear improbable. However, this issue could well be resolved within the context of prior consent. Bilateral and multilateral agreements on that point should encompass program content.

I. COMMERCIAL ADVERTISING

Attempts to control satellite broadcast of commercial advertising are closely related to regulations governing program content. It was stated at the Fifth Session that unregulated advertising would be undesirable inasmuch as it could produce a desire in the recipient state for a particular product or condition unfavorable to local advertising; this would be of particular concern to the developing countries.¹¹⁶ Thus, the Soviet Union was not alone when it proposed that "[t]he transmission of advertising and other commercial material may be carried out only on the basis of specific agreements specifically concluded between the States concerned."¹¹⁷ The Fifth Session itself expressed no spe-

112. Fifth Session Report, at para. 49.

113. Legal Sub-Committee, 14th Session Report, Annex II, at 4; see app. B *infra*.

114. Note, *supra* note 79, at 605.

115. See generally Welsker, *supra* note 72; Chayes & Chazen, *Policy Problems in Direct Broadcasting from Satellites*, 5 STAN. J. INT'L STUDIES 4, 12-16 (1970).

116. Fifth Session Report, at para. 50.

117. Fifth Session Report, Annex II, at 1.

cific recommendation or conclusion on this subject. Working Group II was also unable to reach a consensus on the matter, although a proposal similar to the one introduced by the Soviet Union at the Fifth Session was drafted.

J. ILLEGALITY

Whether direct satellite broadcasts should be deemed illegal in the absence of prior consent has long been a source of controversy. Disputes first arose when the Soviet Union, in calling for the drafting of regulations on broadcast satellites, proposed that certain broadcasts be considered illegal. In instances of illegality, the receiving state could "employ the means at its disposal to counteract illegal television broadcasting of which it is the object, not only in its territory but also in outer space and other areas beyond the limits of the national jurisdiction of any state."¹¹⁸ The possibility that a state might find justification "to shoot [a satellite] out of the sky" due to illegal broadcasts disconcerted a number of commentators.¹¹⁹

It would appear that the Soviet stand on illegality has softened. In the Fifth Session, its proposal still called for a doctrine of illegality in the case of a broadcast which contained "excludable" materials¹²⁰ and which was specifically aimed at a foreign state without its consent. This doctrine would also apply when material is received as a result of unintentional radiation, if the broadcasting state has refused to hold appropriate prior consultations with the receiving state.¹²¹ The USSR seems to have retreated on the remedy for these illegal broadcasts. The latest Soviet view was that upon receiving an illegal broadcast a state "may take in respect of such broadcasts measures which are recognized as legal under international law."¹²²

A contrary view voiced by many states was that the concept of illegality should not enter into provisions governing direct broadcast satellites. This was based on the premise that the introduction of such a concept would require formulation of objective criteria for determining legality. It was thought that describing

118. USSR Draft Convention on Principles Governing the Use of Artificial Earth Satellites for Direct Television Broadcasts, U.N. Doc. A/8771 (1972).

119. Note, *supra* note 79, at 610.

120. See text accompanying note 109 *supra*.

121. Fifth Session Report, Annex II, at 2.

122. *Id.* at 3.

activities as illegal would increase, rather than diminish, international conflicts because of the small likelihood of agreement upon objective criteria.¹²³ Thus, it was suggested that “[a]ny broadcasts that a State does not wish to be made in its territories or to its population are inadmissible . . . [and] every State and every transmitter shall refrain from making such broadcasts.”¹²⁴ Unilateral measures by states to remedy these types of situations would not be permissible; disagreements would be settled through consultation and other established procedures for the peaceful settlement of disputes.¹²⁵ The Fifth Session Report does not contain any specific recommendations on this issue. Working Group II drafted a proposal similar to the USSR’s Fifth Session proposal, but no consensus could be reached.¹²⁶

The Fifth Session agreed that disputes between broadcasting and recipient states should be settled through consultation and, upon failure, through established procedures for settlements, *i.e.*, conciliation, mediation, or arbitration as provided in Chapter VI of the United Nations Charter.¹²⁷ Working Group II concurred with the Fifth Session on peaceful settlement of disputes.¹²⁸

K. COPYRIGHT AND NEIGHBORING RIGHTS

The Fifth Session agreed that any formulation of principles governing broadcast satellites should include a consideration of copyright and neighboring rights.¹²⁹ However, it was not able to agree on a specific method for dealing with these rights.¹³⁰ Some delegations believed that a general reference to protection of copyrights, without specific recommendations, would suffice.¹³¹ Others maintained that principles governing direct broadcast satellites must include cooperative efforts in the form of bilateral and multilateral agreements within the framework of the Universal Convention on Copyrights and the Berne Convention.¹³² Furthermore, it was felt that “special consideration” should be given

123. Fifth Session Report, at para. 51.

124. Fifth Session Report, Annex V, at 7.

125. Fifth Session Report, at para. 51.

126. Legal Sub-Committee, 14th Session Report, Annex II, at 4-5; *see app. B infra*.

127. Fifth Session Report, at para. 57.

128. Legal Sub-Committee, 14th Session Report, Annex II, at 5-6; *see app. B infra*.

129. Fifth Session Report, at para. 58.

130. *Id.* at para. 59.

131. *Id.*

132. *Id.*

to the interests of developing countries.¹³³ Working Group II was able to agree that copyrights and neighboring rights should be protected by means of bilateral and multilateral cooperation between states, and that special consideration should be given to the needs of developing countries. However, it could not agree on whether to include in this proposal a broader provision to the effect that "[c]opyright and neighboring rights shall not be affected by the use of direct broadcast television."¹³⁴

L. DISCLOSURE OF TECHNOLOGY

Another area considered by the Fifth Session and Working Group II was the need for a provision requiring states to notify the Secretary General of the United Nations of recent technological developments in direct broadcast satellites. Such information would immediately be disseminated to the relevant United Nations specialized agencies, as well as to the public and the international scientific community. There was disagreement in the Fifth Session on this point,¹³⁵ although Working Group II did include such a provision in its draft.

A final provision desired by many of the delegations of the Fifth Session, and included in the draft proposal of Working Group II, was one concerning disruption. Disruption refers to interference of ground communications by direct satellite broadcasts.¹³⁶ The proposal stated that in the use of direct broadcast satellites, "States shall take all necessary measures in order to prevent disruption between services with due regard to priority of communications relating to the safety of life."¹³⁷

IV. CONCLUSION

A review of the reports of the Fifth Session and Working Group II reveals that although "[t]he progress achieved was modest, . . . the results achieved were not entirely unsatisfactory"¹³⁸ and "facilitate the achievement of satisfactory results in the Sub-Committee's future work."¹³⁹ However, much work re-

133. *Id.*

134. Legal Sub-Committee, 14th Session Report, Annex II, at 6; *see app. B infra*.

135. Fifth Session Report, at paras. 60-62.

136. Legal Sub-Committee, 14th Session Report, Annex II, at 6; *see app. B infra*.

137. Fifth Session Report, at para. 63.

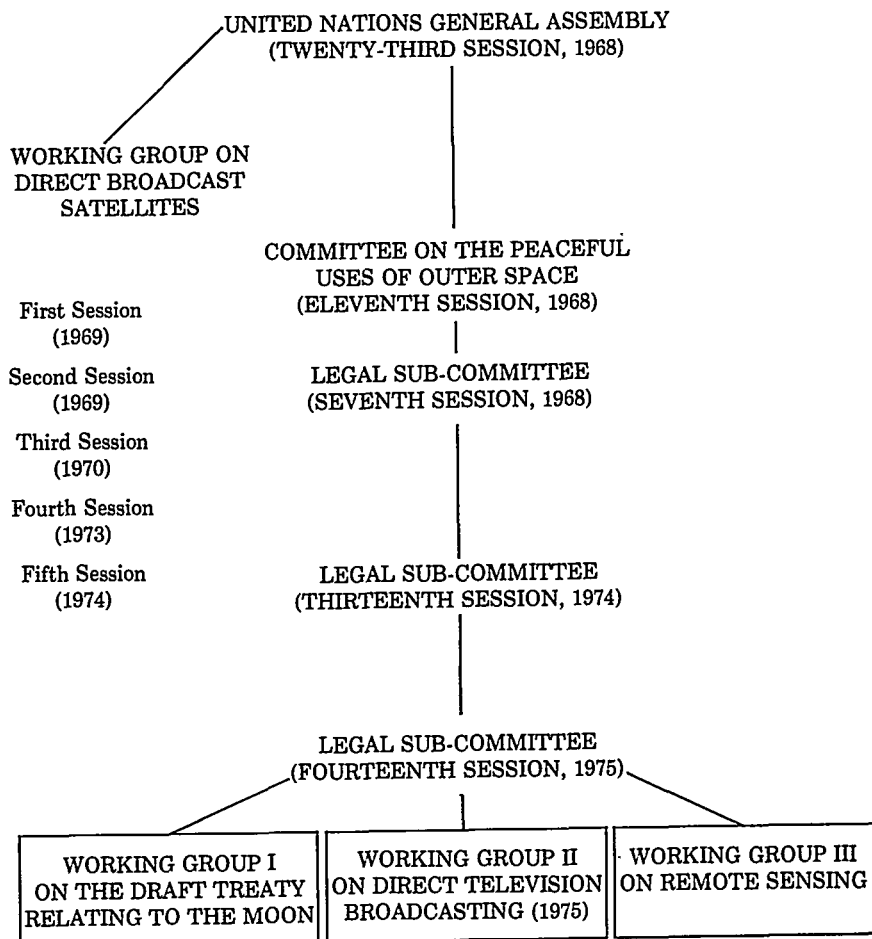
138. Summary Records of the Committee on the Peaceful Uses of Outer Space Legal Sub-Committee, Fourteenth Session, U.N. Doc. A/AC.105/C.2/SR.226-245, at 132 (1975).

139. *Id.* at 135.

mains to be done. The draft proposal of Working Group II contains many bracketed phrases and alternative proposals, all indicating matters where consensus among its members could not be reached. The use of direct broadcast satellites is increasing. As time passes in the absence of agreements on governing principles, the implementation of such principles will become more difficult.

Jonathan M. Plasse

APPENDIX A



APPENDIX B

Report of the Chairman of Working Group II†

1. Following the procedure adopted at its thirteenth session, the Legal Sub-Committee, on 10 February 1975, established Working Group II for the item "Elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting."
2. At its first meeting held on 25 February, the Working Group decided that it would attempt to deal with all the principles reflected in the Report of the Working Group on Direct Broadcasting Satellites on the work of its fifth session (A/AC.105/127), including the five principles considered at the thirteenth session of the Legal Sub-Committee.
3. The Working Group also decided at its first meeting on 25 February to transform itself into a Drafting Group of the whole. The Drafting Group held 10 meetings. The first six meetings were devoted to the consideration of the principles not discussed at the thirteenth session of the Legal Sub-Committee and the next two meetings to the consideration of the five principles which had been discussed previously. The final two meetings were devoted to the finalization of the drafts to be included in the report of the Working Group.
4. At its meeting on 4 March, the Working Group endorsed the Work of the Drafting Group and decided to request the Sub-Committee to reproduce the present report, together with the texts of the principles given below (which include words or sentences in square brackets, or alternative formulations, on matters where consensus could not be reached) as an annex to the report of the Sub-Committee on the work of its fourteenth session.

*Purposes and Objectives**Alternative A*

Activities in the field of direct television broadcasting by satellite should serve the purpose of maintaining international peace and security, developing mutual understanding and strengthening friendly relations and co-operation among all

† Legal Sub-Committee, 14th Session Report, Annex II, U.N. Doc. A/AC.105/147. Reproduced by permission of the United Nations.

States and peoples, assisting in the social and economic development particularly in the developing countries, facilitating and expanding the international exchange of information, promoting exchanges in the field of culture, science and economy and enhancing the educational level of peoples of various countries. To this end activities in the field of direct television broadcasting by satellite shall be carried out by States exclusively in a manner compatible with the above-mentioned objectives and with due regard to the provision of the principle . . .*

Alternative B

Activities in the field of [international] direct television broadcasting by satellite should facilitate and expand the mutual international exchange of information and ideas, promote cultural and scientific exchanges, and enhance the educational level of all peoples. Such broadcasting should encourage the development of mutual understanding, friendly relations, and co-operation among all States and peoples, and should be conducted in a manner compatible with the maintenance of international peace and security. Efforts should be made where appropriate to encourage beneficial applications of direct television broadcasting by satellite which may assist in social and economic development particularly in the developing countries.

Applicability of international law

[States shall ensure that] Activities in the field of direct television broadcasting by means of artificial earth satellites [are] [should be] conducted in accordance with [generally recognized rules of] 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 in accordance with the principles of international law relating to friendly relations and co-operation among States and human rights [including those contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and the Universal Declaration of Human Rights] [and the International Covenant on Civil and Political Rights].

* Which relates to the applicability of international law.

Rights and benefits [of States]

Every State has an equal right to conduct and to authorize [under its supervision] activities in the field of direct television broadcasting by means of artificial earth satellites. All States and peoples [and individuals] [are entitled to] [should have an appropriate opportunity for] [should enjoy] equitable sharing without discrimination in the benefits derived from such activities on mutually agreed terms including, subject to national legislation, access to the use of this technology.

International co-operation

Activities in the field of direct television broadcasting by means of artificial earth satellites [shall be based on] [should encourage] international co-operation. Such co-operation shall be the subject of appropriate arrangements between the States concerned and/or entities authorized by them.

State responsibility

States shall 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 with these principles of any such activities.

When direct television broadcasting by means of artificial earth satellites is carried out by an international organization, responsibility for compliance with these principles shall be borne both by the international organization and by States participating in such organization.

*Consent and participation**Alternative A*

Direct television broadcasting by means of artificial earth satellites specifically aimed at a foreign State shall require the consent of that State. The consenting State shall have the right to participate in activities which involve coverage of territory under its jurisdiction. This participation shall be governed by appropriate arrangements between the States involved.

The consent and participation referred to in Principle . . .

shall not apply where coverage of the territory of a foreign State results from radiation of the satellite signal within the limits considered technically unavoidable under the Radio Regulations of the International Telecommunications Union.

Alternative B

Direct television broadcasting by satellite should be conducted in accordance with the principles set out herein, and in particular in accordance with principle. . . .** It may be subject to such restrictions imposed by the State carrying out or authorizing it as are compatible with the generally accepted rules of international law relating to the freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

The consent of any State in which such broadcasting is received is not required, but the State carrying it out or authorizing it should consult fully with any such receiving State which so requests concerning any restrictions to be imposed by the former State.

The foregoing is without prejudice to the restrictions which may be imposed in accordance with international law on technical grounds.

Spill-over

Alternative A

In carrying out activities in the field of direct television broadcasting by satellites, all technical means available shall be used to reduce, to the maximum extent practicable, the radiation over the territory of other countries [which enable the reception of television programmes with conventional or augmented television sets] unless an agreement has been previously reached with such countries.

Alternative B

Without prejudice to the ITU regulations concerning the avoidance of interference, all reasonable means should be used to reduce to the minimum any unintended radiation of the territory of other countries.]

Programme content

[States or their broadcasting entities which participate in

** Which relates to participation and co-operation.

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 commercial 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.]

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 of 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.]

*Duty and right to consult**Alternative A*

If a State, notwithstanding the provisions of principles . . . and . . .*** and the co-ordination procedures required under the provisions of the Radio Regulations of the International Telecommunication Union, has reason to believe that as a result of activities carried out or authorized by other States in the field of direct television broadcasting by means of satellites, it will be prejudicially affected by a radiation over its territory, it may request that consultations be held. A State receiving such a request shall enter into such consultations without delay.

Alternative B

Any State requested to do so by another State should without delay enter into consultations with the latter State concerning any matter arising from activities in the field of direct television broadcasting carried out or authorized by either of them which are likely to affect the other.

Peaceful settlement of disputes

Any disputes 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 such disputes. 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, neighbouring rights and protection of television signals

[Copyright and neighbouring rights shall not be affected by the use of direct broadcast television.] States shall 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 shall give special consideration to the interests of developing countries in the use of direct television broadcasting for the purpose of accelerating their national development.

[The provision of the Convention relating to the distribution of programmes carrying signals transmitted by satellite, Brussels, 1974, shall not be affected by this principle.]

*** Alternative A under "Consent and Participation."

Notification to the United Nations System

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 [including information on the contents of programmes]. On receiving the said 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.

Disruption

In using direct television broadcasting by means of satellites, States shall take all necessary measures in order to prevent disruption between services with due regard to priority of communications relating to the safety of life.