Direct Broadcasting from Satellites:

Policies and Problems

A Report of the Panel on International Telecommunications Policy

by

Abram Chayes and Paul Laskin

Amendment Constraints and the Direct Satellite Controversy

by

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Summary of Discussions of the ASIL/IBI Group of Experts on Direct Broadcasting from Satellites

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INTRODUCTION

This paper is the second in the *Studies in Transnational Legal Policy* series to deal with questions of international telecommunications policy. It covers a selected number of issues raised by the development of the technology of direct broadcasting from satellites. The paper is the product of a Working Group of the American Society of International Law on Broadcast Satellites formed from the Society's Panel on International Telecommunications Policy. An earlier report emanating from that Panel, entitled "The Future of the International Telecommunications Union", was published in 1972 as No. 3 in the series.

This paper is in three parts. Part I is a Report of the Society's Panel, and has been primarily authored by Paul Laskin, Chairman of the Working Group, and Professor Abram Chayes, Chairman of the Panel. It was considered in draft form at a number of meetings of the Working Group in late 1973, and by the Panel in the spring and summer of 1974. Additionally, it was presented at an international meeting on direct broadcast from satellites co-sponsored by the American Society of International Law and the International Broadcast Institute, which was held in Bellagio, Italy, in February of 1974.

As a report of the Panel, Part I of the paper is intended to express a consensus with which Panel members in general can agree. It does not purport necessarily to represent the views of any particular Panel member, nor of any institution with which he is affiliated. Nor does the Report purport to reflect the views of the American Society of International Law, which as an organization does not take positions on such matters, or of the International Broadcast Institute or either of the supporting foundations.

Part II is a study entitled "First Amendment Constraints and the Direct Broadcast Satellite Controversy", by Professor Monroe Price. Prepared for the Society's Panel, it addresses some of the questions of United States domestic

law which have an important impact on the foreign relations law of this subject.

Part III of the paper is a "Summary of Discussions" formulated by the group of experts on direct broadcasting from satellites convened by the Society and the International Broadcast Institute at Bellagio, Italy in February of 1974. This international gathering, representing widely diverse points of view, was chaired by Ambassador Olof Rydbeck of Sweden, who is also Chairman of the United Nations Working Group on Direct Broadcast Satellites, and included participants from Argentina, Canada, Egypt, France, India, Japan, Morocco, Nigeria, Poland, U.S.S.R., the United States and West Germany, as well as the United Nations. The final section of this Summary sets out possible approaches to international arrangements on direct broadcasting from satellites.

We hope this paper will be of use to those concerned with the wide range of legal and policy questions raised by the emergence of direct broadcast technology. The United Nations Working Group on Direct Broadcasting from Satellites has been in continuing discussion on the subject, and will meet again in March, 1975. It is our hope that the paper will be of particular use to participants in that United Nations body.

The work of the American Society of International Law in this field has been supported by a portion of a grant to the Society from the Research Applied to National Needs Directorate of the National Science Foundation, for the purpose of research in the area of Science, Technology and International Law. The Society is very grateful for this support. Additionally, the Society was fortunate to receive a grant from the Rockefeller Foundation for the use of the Villa Serbelloni in Bellagio, Italy, for the conference which was co-sponsored by the International Broadcast Institute, and wishes to express its thanks to the Rockefeller Foundation and to the highly competent Director and Staff of the Villa.

Miss Elizabeth Scheetz, a Research Assistant at the Society, gave valuable assistance in the preparation of the manuscript for publication.

One of the active members of the Working Group and Panel, Dr. John Hanessian, Jr., the Program Officer of the National Science Foundation responsible for the Society's grant, was killed in an airline crash shortly after participating in the Bellagio meeting. Upon the occasion of the publication of this paper, we wish to express our gratitude for his participation in our activities and for his valuable contribution to them.

Robert E. Stein
Senior Research Manager

The American Society of
International Law

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PART I

A REPORT OF THE PANEL ON INTERNATIONAL TELECOMMUNICATIONS POLICY

Principally Authored by Paul Laskin and Abram Chayes***

A. Introduction

From the beginning of satellite communications, almost a decade ago, there was universal recognition that with further development the new technology might one day be used to broadcast television programs directly to consumers via satellite. This exciting prospect has not yet been realized. But technical progress has been rapid, and experiments with some forms of direct satellite broadcasting are now being mounted. None involves direct broadcasting from satellite to home receivers, but this form, though economically problematical, is just over the technological horizon.

For several years, the international community has been grappling in several different forums with the technical and political problems of direct broadcasting. The current focus of this work is in the United Nations Committee on the Peaceful Uses of Outer Space, which is particularly concerned at the present time with the issues involving the content of television programs that might be broadcast directly via satellite.

For a number of years, many countries have voiced the fear that the new satellite technology will bring them programs they do not want—because they contain propaganda,

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or material that is culturally offensive, or trivia. And some of these countries have advanced proposals for regulating direct broadcast programs. These proposals have been opposed on the ground that regulation will be inimical to the free flow of information.

The issue came to a head in August, 1972, when the Soviet Union submitted to the UN General Assembly a draft international convention calling for a regime of strict control over satellite broadcasting. In the following months, this proposal was debated heatedly; and in November, 1972, the General Assembly voted to refer the matter to its Outer Space Committee. The resolution recited both the potential benefits of satellite broadcasting and the need to respect the sovereignty of States in its use, and it requested the Outer Space Committee "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." The United States cast the only vote against this resolution.

Concurrently, the United Nations Educational, Scientific and Cultural Organization issued a "Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange." Article IX stated that "it is necessary that States, taking into account the principle of freedom of information, reach or promote agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission."

Since the enactment of the resolution of the UN General Assembly, there has been considerable discussion of direct television broadcasting by satellite in the Working Group on Direct Broadcast Satellites of the Outer Space Committee. In June, 1973, and in March, 1974, the Working Group met, each time for approximately two weeks, to explore in depth the various national positions on the principles that should govern direct satellite broadcasting. The report of the most recent meeting of the Working Group, issued on

April 2, 1974, indicates that some progress has been made in reconciling different views. But profound differences of outlook remain, and one should not minimize the difficulty of reaching international agreement on the use of direct broadcast satellites. The contrary views expressed by the nations of the world—the Soviet Union, the United States, the developing countries, and others—have deep roots in their political, cultural and social, and legal traditions.

This report seeks to identify the issues at stake and to analyze the main approaches put forward in the hope of making some contribution to an accommodation among competing views. The report begins with a brief review of the background of the problem (including the technical setting), the chief concerns that have been expressed, and the principal proposals before the Outer Space Committee. It then examines the existing framework of communications satellite regulation by the International Telecommunication Union (ITU) for its bearing on the issues and the proposals. The report concludes with a critical analysis of the major national positions.

B. The Technology Involved

Existing communications satellites are relatively low in power and require an elaborate earth receiving station costing several million dollars. Television programs can be transmitted today via these satellites. They travel from one large central earth station in the originating country to similar earth stations in the receiving countries, and are then retransmitted in the receiving countries by conventional terrestrial and broadcast facilities. Here the satellite performs not a broadcast but a *distribution* function, not unlike coaxial cable or microwave relay in terrestrial systems.

The technology of satellite communications is such that the more powerful the transmission from a satellite, the less sophisticated, and hence less costly, the ground receiving antennas need be. The effective transmitting power of

a satellite can be increased in several ways. The satellite can be made larger so that it may carry a larger transmitter. A heavier satellite is more expensive to launch, but there may ultimately be savings in system costs because the more powerful satellite permits the use of smaller and cheaper earth stations. Another way of increasing the effective transmitting power of a satellite is to increase the bandwidth, although this would reduce the satellite's total channel capacity. Still another is to focus the energy transmitted by the satellite into a narrow beam centered on the area of the earth's surface where transmission from the satellite is to be received.

This last development is particularly important. It not only enhances the effective power of the transmission, but also makes it increasingly possible to confine the transmission to the particular area of the earth that is to be served. It is predicted that in the not too distant future, it may be possible to focus the beam on an area as small as 100 miles in diameter. The present state of the art, however, does not yet make it possible to confine a transmission within the borders of smaller countries. And given the irregularity of national boundaries, it may never be possible to shape a beam to fit them exactly. Thus, there is, and there will probably continue to be, a problem of "spillover"—that is, of transmissions that fall outside of their intended reception area.

The work of research and development is continuing—not only in satellite technology, but also in the technology of ground receiving equipment. New developments in receiver technology are already drastically reducing the cost of producing receivers. With more powerful satellites and cheaper receivers, it is already economically feasible to construct a *community satellite broadcasting* system. This mode involves transmission from a satellite to a large number of relatively inexpensive earth stations, each costing in the range of thousands of dollars (or perhaps even less). Each station would serve a city or town, or perhaps only a community or neighborhood. The programs might be dis-

played on a central screen in a school, a market, or a meeting hall; or they might be distributed to home sets by conventional broadcast stations, or via limited access distribution means such as cable or multi-point distribution systems.

Earlier this year, the United States began to experiment with community satellite broadcasting over Alaska and over the Rocky and Appalachian Mountain regions. This same satellite or one of a similar type will be used later for a satellite broadcasting experiment in India involving approximately 5,000 villages. The village earth stations will be very simple receivers and will be manufactured in India, at a projected cost of less than $1000 each.

As the term implies, *direct satellite broadcasting,* (the third mode of TV transmission via satellite), involves transmission from a satellite directly to a home receiving set. The set might require augmentation by a special antenna, or it might not. At the moment, there is no direct satellite broadcasting system in place, under construction, or even under active contemplation. In its early reports, the UN Working Group on Direct Broadcast Satellites was of the view that direct satellite broadcasting would not be feasible until 1985. With the quickening pace of technological progress, however, the prevailing view is that it will become feasible much sooner. But no direct broadcast system can become operational until the package of necessary receiving equipment is physically and economically available to ordinary listeners in the area to be served.

Although there are sharp differences among the nations of the world on the international ground rules that should govern direct satellite broadcasting, there is wide agreement that the direct broadcast satellite promises very great benefits to mankind. This is particularly true for the developing countries. In general, these countries today have limited facilities for television broadcasting—facilities that are confined primarily to their largest cities. For them, the construction of a truly national television system is of-

ten not economically feasible with conventional terrestrial facilities. The satellite, however, may reduce substantially the overall cost of constructing a national television system —by spanning large geographical distances, or by serving where terrain makes the construction of conventional facilities difficult or where the population is widely dispersed. Such a system will not be cheap, but the satellite may at least bring it within the realm of economic practicability— particularly if financial and technical assistance is available.

As experience has taught, a national television system can be misused in many ways, but the potential benefits include many of the priority goals of the developing countries. With a national system in place, there would be a new opportunity to combat illiteracy in a comprehensive way, to raise the educational level, to disseminate essential information for the improvement of health and economic well-being, and to provide a large stream of cultural programs. These, indeed, are the objectives of the Indian program already mentioned.

For the developed countries, the case for the direct broadcast satellite has never seemed particularly strong. The developed nations already have extensive terrestrial facilities for television broadcasting; and for them, a system that uses a satellite to broadcast directly to home receiving sets may not make economic sense. A role may be envisioned, however, for a community broadcast satellite linking cable television systems (with 20 or more television channels) that would serve as the capillaries of local distribution for urban centers. Admittedly, the development of cable has begun to falter in the United States over the past year or two, particularly in the larger cities. And in Europe, there are only the rudimentary beginnings of cable. But if the future of cable television now seems somewhat murky, the economic feasibility of the direct broadcast satellite for domestic broadcasting is even more uncertain for a country as developed as the United States.

But it is not the domestic applications that have been the source of international concern. Attention has focused on international direct broadcasting—on broadcasts originating in one country and beamed to others. At first, there were large visions of global broadcasting on a regular and continuous basis, with a single service available to all countries. But a moment's thought about the sharp differences among nations—of culture, interests, language, and time zones—suggests that global broadcasting is unlikely, except for the occasional great and universally appealing event. "Regional" [1] systems are another thing, however. Among contiguous countries too small to support national systems or among countries geographically separated, perhaps, but linked by culture, language, and history, regional systems are a distinct possibility. From these beginnings, it is hoped that international broadcasting will grow and become vigorous and will help to foster mutual understanding among the peoples of the world.

But the technology that will permit this level of international broadcasting gives rise to the concern that broadcasts originating outside a country and received within its territory pose a threat to national security, to the integrity of a nation's culture, or to the fulfillment of national goals.

C. The Concerns

Television has an immediacy and an impact—a capacity to engage men's minds and to move them for good or ill—that no other mass medium has. It is the perception of this power that is the primary source of the concerns over direct satellite broadcasting.

Some of the impetus behind the effort to regulate the content of direct broadcasting stems from the desire of some States to prevent the transmission of political propaganda to their citizens. Here the concern is with material that is polemical and argumentative and expressly designed

1. The term "regional" may imply geographical contiguity, but that is misleading, for the term is used as well to refer to groupings based on cultural, economic, linguistic or other linkages.

to change or influence people's views. Historically, most efforts at overt propaganda by radio have been futile except in time of war; and it is by no means clear that a citizenry will accept propaganda by television any more readily, or at least sufficiently so to justify the enormous cost of combatting it. Despite this consideration, the prevention of political propaganda by satellite remains for many governments an important objective of policy.

Though it is rarely admitted, for some governments the problem is not confined to overt propaganda in the traditional sense of the term. It may extend to ordinary news programs, and even to musical and other cultural programs, that originate outside their borders. For one reason or another, these programs may be thought to have hostile overtones, contain unwelcome information, invite invidious comparisons, or be distasteful. The fundamental issue here is one of control. Some governments do not wish their citizens to learn of international or domestic events from foreign sources or to receive foreign programs that are not officially approved.

But the regulation of direct satellite broadcasting is not exclusively, or even primarily, an issue between the societies that are closed and those that are open. One may say generally that the deepest concern is the possibility that a national culture will be submerged by the direct broadcast satellite. This view is often expressed by representatives of the developing countries, but it is by no means confined to them. The British Broadcasting Corporation, for example, refused to screen the highly praised American children's program "Sesame Street," and the program has been criticized in countries as different as Mexico and the Soviet Union. What they all object to is the "foreignness" of the program—that it reflects, as it naturally would, the values of American society, and tends, even if unintentionally, to inculcate these values in its viewers.

There is, moreover, a widespread (although not necessarily well grounded) anticipation that because of the ad-

vanced economic and technical position of the United States, unregulated direct broadcasting would be dominated by the American commercial networks. Even now, programs of the American networks provide the standard fare on television screens in countries that have inadequate programming facilities of their own (again primarily, but not exclusively, the developing countries). To some extent, the desire of some nations to have a degree of control over the content of direct satellite broadcasts reflects a judgment (shared by many Americans) that the output of the American networks, while visually attractive, is in large part trivial, banal, and violent. These nations fear a kind of Gresham's law in which bad American programs drive out or keep out the good.

A third point of contention is commercialism, which arises in several different forms. First, some countries, like England and France, ban or severely limit commercial messages over their domestic television. They have made the decision that the medium will not be used indiscriminately for advertising; and, understandably, they do not want that decision reversed by television commercials originating outside their borders. Second, there is the problem of economic competition: it is feared that commercials for foreign (again, presumably American) goods will lead to the displacement of local products and industries. And finally, a number of developing countries advance the view that even without overt commercialism, American and European programs, by displaying high-consumption societies in a favorable light, will generate a demand for consumer goods among their own citizens that will distort, and perhaps even frustrate, national plans for social and economic development.

Running through all these attitudes is a widespread sense that the form and content of the television system in a country is an aspect of national sovereignty. Sometimes, of course, "respect for national sovereignty" is a slogan that becomes a substitute for analytic thought. But essentially, the concept as used in this debate reflects a recogni-