

# THE DIRECT BROADCAST SATELLITE: THE NEED FOR EFFECTIVE INTERNATIONAL REGULATION

## I. INTRODUCTION

The direct broadcast satellite,<sup>1</sup> like most valuable resources, is both economically scarce and vitally needed by all countries.<sup>2</sup> There is a need for such satellites in the fully developed countries in order to facilitate the efficient exchange of an entire spectrum of information: from politics to cultural advancement. At the same time there is a pressing need for such satellites in the developing countries, such as India,<sup>3</sup> if the stated social and political goals of their governments are to be achieved. Concomitant with the potential benefits to be derived from such satellites, however, there arise serious possibilities for abuse. The areas in which there is great potential for abuse include broadcast intervention,<sup>4</sup> cultural imperialism, propaganda, spill-over,<sup>5</sup> frequency allocation, and

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1. There are three types of communication satellites: passive, active, and direct broadcast.

Passive satellites reflect a signal transmitted from one earth station to another earth station. This type of satellite requires the use of extremely powerful transmitters and complex, sensitive receivers, both of which are exceedingly expensive.

Active satellites amplify the signals received before transmitting them to a ground station. The higher cost of the satellite is balanced by the relatively low cost for the transmitting and receiving apparatus.

Direct broadcast satellites are hybrid active satellites which have a synchronous orbit. The direct broadcast satellite not only has the ability to amplify signals it receives from an earth station, but also possesses the capacity to transmit audio and visual signals directly into an individual's television set. A synchronous orbit is a circular orbit around the earth in the plane of the equator. The satellite's period of revolution is the same as the earth's. This means that it will remain in a fixed position with respect to a point on the earth and can, therefore, provide uninterrupted services from a particular ground station to a large area of the earth. See Smith, *The Legal Ordering of Satellite Telecommunications: Problems and Alternatives*, 44 INDIANA L.J. 338 (1968-69) [hereinafter cited as Smith].

2. Gold, *Direct Broadcast Satellites: Implications for Less Developed Countries and for World Order*, 12 VA. J. INT'L L. 66 (1971) [hereinafter cited as Gold].

3. Conditions in India and other similar developing countries would seem to demand such services as would be provided by direct broadcast satellites. India has large inaccessible areas, a high illiteracy rate and minimum communications facilities. The benefits to be derived would primarily be educational and industrial. *Id.* at 67. Also note that the United States will launch and position a direct broadcast satellite over India sometime in 1974. The Department of Atomic Energy of India will operate the satellite. See *Memoandum of Understanding Between the Department of Atomic Energy of the Government of India and the United States National Aeronautics and Space Administration*, U.N. Doc. A/AC. 105/72 (1969), 8 INT'L LEG. MAT. 1281 (1969).

4. See notes 46 & 48 *infra* and accompanying text.

5. See note 87 *infra*.

orbital slot allocation.<sup>6</sup> The abuse potential in these areas is of such a magnitude that, if left unabated, they would prove to be insurmountable barriers to the full development of an international direct broadcast satellite system.

Through the simultaneous creation of both benefit and abuse potential, the direct broadcast satellite has necessitated some form of international regulation of its use. There are three major proposals which have been suggested to achieve this end. These proposals are: (1) Intelsat, the United States sponsored solution,<sup>7</sup> (2) the UNESCO Draft Declaration on the use of satellite broadcasting,<sup>8</sup> and (3) the U.S.S.R. Draft Convention on direct television broadcasting.<sup>9</sup> This article discusses the responsiveness of these proposals to the issues raised by direct broadcast satellites.

However, it is essential that, from the outset, the reader appreciate the nature of the problem with which the international lawyer and the diplomat are faced as they attempt to regulate the use of direct broadcast satellites. Accordingly, it is appropriate, if not crucial, to begin the study of what *ought* to be done to regulate direct broadcast satellites with a brief sketch of what *has been* done and what currently comprises the status quo regarding such regulatory attempts.

## II. THE PROGRESS MADE BY THE INTERNATIONAL COMMUNITY TOWARDS EFFECTIVE REGULATION OF THE DIRECT BROADCAST SATELLITE

Currently, there is no unity of thought in the world as to either an international set of guiding principles for the use of direct broadcast satellites or the formation of a single global system of telecommunications. This observation is evidenced by the activities of numerous agencies and countries in the field of satellite communications.

One such agency is the International Telecommunications Union,<sup>10</sup>

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6. See note 77 *infra* and accompanying text.

7. Agreement relating to the International Telecommunications Satellite Organization (INTELSAT), Aug. 20, 1971, [1972] 23 U.S.T. 3813, T.I.A.S. No. 7532 (effective Feb. 12, 1973) [hereinafter cited as Intelsat], Operating Agreement relating to the International Telecommunications Satellite Organization (Intelsat), Aug. 20, 1971, [1972] 23 U.S.T. 4091, T.I.A.S. No. 7532 (effective Feb. 12, 1973).

8. *The UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, The Spread of Education and Greater Cultural Exchange*, U.N. Doc. A/AC. 105/104 (1972), 11 INT'L LEG. MAT. 1476 (1972) [hereinafter cited as UNESCO].

9. *The U.S.S.R. Draft Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting*, U.N. Doc. A/8771 (1972), 11 INT'L LEG. MAT. 1375 (1972) [hereinafter cited as U.S.S.R.].

10. Since 1947, the I.T.U. has been a specialized agency of the United Nations. The basic instrument of the I.T.U. is the International Telecommunications Convention, the

whose main function is the allocation of electromagnetic frequencies<sup>11</sup> for specific types of use.<sup>12</sup> In 1959 the I.T.U. first revised its regulations in order to allocate frequencies to radio communication services for space research purposes.<sup>13</sup> Later, in 1963, I.T.U. once again revised its regulations and for the first time allocated frequency bands specifically to communication satellites.<sup>14</sup> Finally, in 1971, at the World Administrative Conference for Space Telecommunications,<sup>15</sup> specific problems arising from the use of direct broadcast satellites were discussed. The results of those discussions were refinements of I.T.U.'s specialized operations in the areas of radio frequency spectrum utilization and allocation.<sup>16</sup>

Another international agency that has been active in the area of direct broadcast satellites is the United Nations Committee on the Peaceful Uses of Outer Space.<sup>17</sup> One of the Committee's three working groups is the Working Group on Direct Broadcast Satellites, which, to date, has submitted four reports concerning direct broadcast satellites. In the first of these reports it was noted that the use of direct broadcast satellites on an operational basis was not likely until after 1985.<sup>18</sup> However, in its second report in 1969,<sup>19</sup> the Working Group concluded that

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current version of which entered into force Jan. 1, 1967. See International Telecommunications Convention, May 29, 1967 [1967] 18 U.S.T. 575, T.I.A.S. No. 6267. According to some authors, the I.T.U. has, and may continue to play the leading role in the allocation of electromagnetic frequencies.

11. S. LAY & H. TAUBENFELD, *THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE* 114 (1970) [hereinafter cited as S. LAY & H. TAUBENFELD].

12. *Id.* Basically, the I.T.U. allocates bands of frequencies for types of use rather than to specific users. Once a frequency band has been assigned for a use such as satellite communications, the various nations then assign specific frequencies to their own stations. These assigned frequencies are then registered with the International Frequency Registration Board of I.T.U. on a first come first serve basis.

13. The revisions were accomplished at the 1959 Administrative Radio Conference, held in Geneva. See U.N. Doc. A/AC. 105/100 48, para. 186(i) (1959).

14. The specific revisions concerning communication satellites were enacted at the Extra Ordinary Administrative Radio Conference to Allocate Frequency Bands for Space Radio Purposes, held at Geneva in 1963. See Final Acts of the Extra Ordinary Administrative Radio Conference to Allocate Frequency Bands for Space Radio Communication Purposes, Nov. 1963, [1964] 15 U.S.T. 887, T.I.A.S. No. 5603. A major accomplishment of the 1963 Conference was the increasing of the percentage of the radio frequency spectrum allocated to outer space activities. At the 1959 Conference (*supra* note 13) only 1% had been allocated, but at the 1963 Conference that was increased to 15%. See Smith, *supra* note 1, at 356.

15. See note 13 *supra*, at 50, para. 199.

16. A rather detailed overview of the results, which deals basically with the problems of technical allocation of frequencies to broadcast satellites and earth exploration satellites, is available in *id.* at 51-60.

17. The Committee's twenty-eight member countries include the United States and the U.S.S.R. *Id.* at 3.

18. For a summary of the Working Group's report see *id.* at 10.

19. For summary of the Working Group's second report see *id.* at 10, para. 36. Also

there was then a present need to consider the social, cultural and legal implications of such a satellite system. Of particular importance was the Working Group's conclusion that there was no international institution which had the competence to take action in all the fields of direct broadcasting. Therefore, the Working Group recommended that the United Nations Committee on the Peaceful Uses of Outer Space should sustain the interest that it had shown in coordinating activity in the field of direct broadcasting.<sup>20</sup> In a subsequent report, issued in 1970, the Working Group noted that there were several legal questions raised by the use of direct broadcast satellites and that they were considering the possibility of establishing a set of guiding principles on the subject.<sup>21</sup> There were no indications in that report, however, that such a set of general principles had been established.<sup>22</sup>

It was not until November 1972 that the Working Group was reconvened under the authority of a United Nations General Assembly resolution<sup>23</sup> with instructions that it study new material that had become available since its last meeting. Among this new material was the UNESCO Draft Declaration,<sup>24</sup> which was one of the few attempts made to establish an international set of guiding principles for the use of direct broadcast satellites.

The result of this resolution was still another General Assembly resolution, entitled Preparation of an International Convention on Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting.<sup>25</sup> The importance of this resolution was three-fold: (1) the United Nations officially recognized the pressing need to prevent the conversion of direct television broadcasting into a source of international conflict and the need to protect the sovereignty of states from external interference; (2) the Committee on the Peaceful Uses of

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note that this report came out only a few months prior to the India-United States agreement. See note 3 *supra*.

20. It is interesting to note that at the time of the Working Group's second report Intelsat was in existence. So, in effect, the report was a pronouncement by the Working Group that Intelsat itself was not competent to regulate the use of direct broadcast satellites under its structure at that time. It will be shown later in this article that at present, Intelsat is still not completely competent to handle the issues raised by direct broadcast satellites.

21. See note 13 *supra* at 10, paras. 37 & 38.

22. This conclusion is arrived at when one notes that the Working Group, after issuing their third report in 1970, was not reconvened until November 1972. The reason for the Working Group not being reconvened earlier, in order to work on the establishment of a set of guiding principles, is that the Working Group itself felt that there were not enough materials available for it to act upon.

23. See G.A. Res. 2915, 27 U.N. GAOR Supp. 30, at paras. 18, 19 & 23, U.N. Doc. A/8730 (1972).

24. See UNESCO, *supra* note 8.

25. See G.A. Res. 2916, 27 U.N. GAOR Supp. 30, U.N. Doc. A/8730 (1972).

Outer Space was requested to undertake the elaboration of such principles and to consider the U.S.S.R. Draft Convention<sup>26</sup> on direct television broadcasting as a possible model; and (3) the General Assembly resolution was voted against by only one country, the United States.<sup>27</sup>

Analysis of the factors involved in the U.S. decision suggest that the rationale was twofold, but that both aspects of the controlling policy stemmed from the same key consideration, Intelsat. The first of these aspects is that the United States was heavily committed financially to the Intelsat consortium,<sup>28</sup> which operates independently of the United Nations. The second reason was possibly a fear that whatever principles were established would conflict with the operating policies of Intelsat.

At present the establishment of an international convention is still under active consideration. Despite the United Nations recognition of the need for one, however, there are no indications of any rapid developments that would lead to the establishment of such an international convention.<sup>29</sup>

A third international agency involved in the area of regulating direct broadcast satellites in addition to standard communication satellites, is the International Telecommunications Satellite Consortium (Intelsat). Intelsat is an organization whose member countries together own and operate the global commercial communications satellite system.<sup>30</sup> The member nations of Intelsat are responsible for a very high percentage, perhaps in excess of ninety percent, of all the telecommunication traffic in the world.<sup>31</sup> Intelsat was originally established in 1964 under two international interim agreements.<sup>32</sup> Two years later a third

26. See U.S.S.R., *supra* note 9.

27. The resolution was approved by a vote of 102 in favor to 1 against (United States), with 7 abstentions. 11 INT'L LEG. MAT. 1470 (1972).

28. See note 38 *infra* and accompanying text.

29. The present state of affairs is demonstrated by the Working Group on Direct Broadcast Satellites' 1973 Report. In its report, the Working Group stated that it was aware of the need for a set of guiding principles on the use of direct broadcast satellites and would continue to give the matter its full attention. See U.N. Doc. A/AC. 105/117 (1973).

For further reports dealing with the United Nation's discussions on international principles governing the use of direct broadcast satellites see G.A. Res. 2917, 27 U.N. GAOR Supp. 30, U.N. Doc. A/8730 (1972) on the preparation of arrangements on principles governing the use of artificial earth satellites. See also *The Report of the Committee on the Peaceful Uses of Outer Space*, U.N. Doc. A/8720 (1972), which has scheduled another meeting of the Working Group on Direct Broadcast Satellites for March, 1974.

30. See note 13 *supra*, at 131, para. 555.

31. See S. LAY & H. TAUBENFELD, *supra* note 11, at 124. Also note that the U.S.S.R. is not a member of Intelsat, although the Republic of China is. 10 INT'L LEG. MAT. 909 (1971).

32. The Agreement Establishing Interim Arrangements for a Global Commercial Communication Satellite System, August 20, 1964, [1964] 15 U.S.T. 1705, T.I.A.S. No.

international agreement was incorporated which provided for the settlement of disputes among Members through a process of arbitration.<sup>33</sup> At present Intelsat is governed by the new Definitive Agreements, which entered into force January 1, 1973.<sup>34</sup> The Definitive Agreements entirely replace the 1964 interim agreements.

Under the present Intelsat documents, the purpose of Intelsat is to achieve a single global commercial telecommunication satellite system as part of an improved global telecommunications network which will provide expanded telecommunications services to all areas of the world and which will contribute to world peace and understanding.<sup>35</sup>

The operating structures used in attempting to achieve this goal are: An Assembly of Parties,<sup>36</sup> Meeting of Signatories,<sup>37</sup> Board of Governors,<sup>38</sup> and a Director-General.<sup>39</sup> Voting participation at the Board of Governors level, is based upon a percentage investment system.<sup>40</sup> The United

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5646. Special Agreement, August 20, 1964, [1964] 15 U.S.T. 1745, T.I.A.S. No. 5646.

33. Supplementary Agreement on Arbitration, 4 INT'L LEG. MAT. 735 (1965).

34. See Intelsat, *supra* note 7.

35. *Id.* art. III for the scope of Intelsat activities.

36. *Id.* art. VII (Assembly of Parties).

a) The Assembly of Parties shall be composed of all the Parties and shall be the principal organ of Intelsat.

. . . .

c) The Assembly of Parties shall have the following functions and powers:

(iv) to authorize through general rules or by specific determinations, the utilization of the Intelsat space segment . . . .

(v) to review, in order to ensure the application of the principle of non-discrimination, the general rules established pursuant to subparagraph b(v) of Article VIII . . . .

37. *Id.* art. VIII (Meeting of Signatories).

a) Shall be composed of all the Signatories.

b) The Meeting of Signatories shall have the following functions and powers:

(v) . . . to establish general rules upon the recommendation of the Board of Governors.

38. *Id.* art. IX (Board of Governors).

a) The Board of Governors shall be composed of:

1) one Governor representing each Signatory whose investment share is not less than the minimum investment share as determined in accordance with paragraph (b) . . . .

b) (i) . . . the minimum investment share that will entitle a Signatory or group of Signatories to be represented on the Board of Governors shall be equal to the investment share of the Signatory holding position thirteen . . . .

See also, *id.* art. X.

a) [The Board of Governors] shall have the responsibility for the design development, construction, establishment, operation and maintenance of the Intelsat Space segment . . . .

39. *Id.* art. XI.

40. *Id.* art. V.

b) Each signatory shall have an investment share corresponding to its percen-

States participates as a Governor through its designated representative COMSAT.<sup>41</sup> Under the 1964 Interim Agreements COMSAT had a voting percentage of sixty percent as compared to 30.5 percent for European Signatories, and 8.5 percent divided among Australia, Canada and Japan.<sup>42</sup> However, under the new Definitive Agreements COMSAT's voting percentage has been arbitrarily limited to forty percent.<sup>43</sup> Even with the decrease in the United States control, the U.S.S.R. has opted not to join Intelsat. Instead, it has established its own telecommunications satellite system.<sup>44</sup> At the present time, it is only being used for domestic purposes but it has obvious international potential which will probably bring it into conflict with Intelsat.

The Soviet Union is not the only other country trying to develop international telecommunications capabilities. France, England, Germany, Japan and other nations have the ability individually or collectively to develop regional or global communication satellite systems.<sup>45</sup>

It is against this diverse background that the Intelsat, UNESCO, and U.S.S.R. solutions will be analyzed in terms of their responsiveness to the various issues raised by the injection of the direct broadcast satellite into any telecommunications system.

tage of all utilization of the Intelsat space segment by all Signatories . . . .

*Id.* art. IX.

f) . . . each Governor shall have a voting participation equal to that part of the investment share of the Signatory, or group of Signatories, he represents . . . .

41. COMSAT is a privately owned Communication Satellite Corporation that represents the U.S. in Intelsat. It was created under the Communication Satellite Act, P.L. 87-624, 47 U.S.C. §§ 701-44 (1962).

42. Smith *supra* note 1, at 347.

43. See Intelsat, *supra* note 7, art. IX para. g(iv):

No Governor may cast more than forty percent of the total voting participation of all Signatories and groups of Signatories represented on the Board of Governors.

This provision was an attempt to calm the protests of many of the poorer nations who feared a monopoly by the United States, and to compromise the U.S.S.R.'s criticism that such a weighted voting procedure was incompatible with the principle of sovereign equality. See Smith, *supra* note 1, at 349.

44. Intersputnik is an agreement on the establishment of Intersputnik, an international system of space communication via satellite; it was signed in Moscow on November 15, 1971 by: Bulgaria, Hungary, the German Democratic Republic, Cuba, Mongolia, Poland, Romania, U.S.S.R., and Czechoslovakia. The Agreement is open for accession by all States of the world. U.N. Doc. A/AC. 105/100 137 (1959).

45. Among other countries or groups of countries which have considered the possibilities of national or regional communications satellites are Canada and a few Latin American countries. Some of the organizations involved are the European Conference of Postal and Telecommunications Administration representing 23 European countries; Eurospace, a private association of industrial firms and professional bodies from 12 European countries; the European Space Research Organization and many other organizations with membership encompassing private and public sectors on both sides of the Atlantic and Iron Curtain. See S. LAY & H. TAUBENFELD, *supra* note 11, at 104 n.6.

### III. ISSUES AND PRESENTLY PROPOSED SOLUTIONS

#### A. Broadcast Intervention

Direct broadcast satellites open up the possibility of broadcast intervention by television similar to that presently achieved by radio.<sup>46</sup> As a result, the leaders of many countries have expressed concern over the fact that the United States or Russia, with as few as three direct broadcast satellites, could reach every television screen in the world.<sup>47</sup>

Broadcast intervention can be divided into two closely related problems. The first of these is known as cultural imperialism, and is raised by many countries which fear that certain types of programs from the broadcasting country would tend to promote unwarranted and unneeded changes. There is also the fear that the programs could generate strong desires for a different standard of living thereby creating tensions within the receiving country that its government would rather do without.<sup>48</sup> The second problem in the area of broadcast intervention, is that the direct broadcast satellite could all too easily be used by the broadcasting country for propaganda purposes.<sup>49</sup>

#### 1. INTELSAT

The issues presented above offer tremendous avenues of abuse and therefore barriers to the full development of the benefits to be derived from the use of direct broadcast satellites. However, nowhere in the present Intelsat agreements does there appear to be a provision that deals specifically with these issues. One can infer a sanction against broadcast interventions for the purposes of cultural imperialism and propaganda from Article III of the Definitive Agreement. There mention is made of providing "telecommunication services of high quality . . . ."<sup>50</sup> Other provisions that offer the potential for development of a set of rules governing the use of direct broadcast satellites are

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46. See Gold, *supra* note 2, at 78. An example of radio broadcast intervention are the many radio wars between the Soviet Union and China, the United States and the Soviet Union, and Europe and the Soviet Union.

47. See *Hearings Before the House Sub-Comm. on National Security Policy and Scientific Development*, 91st Cong., 1st Sess. 56 (1969).

48. Such countries as Canada have viewed with concern the great impact that United States television has had or would have on Canadian culture, and as a result have restricted use of American programs in Canada. N.Y. Times, Feb. 15, 1970, at 8, col. 1. Iceland has also decided that its television audiences, despite their desires, should not receive American programs at all. See Gold, *supra* note 2, at 76.

49. Due to its capability of transmitting directly into an individual's television set, the potential for creating internal unrest, hatred, violence and general dissension is greatly amplified.

50. See Intelstat, *supra* note 7, Article III, para. (a) seems to speak more to the quality of the goods provided rather than the use that they are put to.



those that (1) authorize the Assembly of Parties through general rules to determine the utilization of the Intelsat space segment,<sup>51</sup> (2) authorize the Meeting of Signatories to establish general rules concerning the utilization of the Intelsat space segment,<sup>52</sup> and (3) authorize the Board of Governors to adopt terms and conditions regarding the use of the space segment owned and operated by Intelsat.<sup>53</sup>

Despite these possibilities there has been no indication of the development of a set of guiding principles by which to govern the use of direct broadcast satellites. Instead the provisions of the Intelsat agreements remain directed to the administrative processes of organizing access to the system and not to the uses to which the particular State would put the communication satellite. The potential for abuse of the direct broadcast satellite, therefore, remains unabated.

Even though there are no provisions that specifically deal with the issue of abuse of direct broadcast satellites, there are provisions that refer to the settlement of disputes.<sup>54</sup> Despite the effectiveness of the arbitration process in disputes between Parties or Signatories involving communication satellites, it is inadequate to the task of regulating disputes arising from the abuse of a direct broadcast satellite and a non-Member country. This conclusion is based upon a reading of Article XVIII of the Operating Agreement,<sup>55</sup> in light of the following situations: A Party nation of Intelsat, possessing an earth station, broadcasts programs containing propaganda into a non-Member nation via direct broadcast satellites and that nation strongly resents the content of those

51. See Intelsat, *supra* note 7.

52. *Id.*

53. *Id.* art. X, para. a(vii).

[The Board of Governors shall have the power to adopt] terms and conditions governing the allotment of Intelsat space segment.

"Space segment" means the telecommunication satellites and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of these satellites. *Id.* at 910, art. I, para. (h).

54. *Id.* art. XVIII.

a) All legal disputes arising in connection with the rights and obligations under this Agreement or in connection with obligations undertaken by Parties, between Parties with respect to each other or between INTELSAT and one or more Parties, if not otherwise settled in a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex C . . . . Any legal dispute arising in connection with the rights and obligations under this Agreement or the Operating Agreement between one or more Parties and one or more Signatories may be submitted to arbitration . . . , provided the Party or Parties and Signatory or Signatories involved agree to such arbitration.

b) All legal disputes . . . between a Party and a State which has ceased to be a Party . . . shall be submitted to arbitration . . . provided the State which has ceased to be a Party so agrees.

55. *Id.*

programs. The result, under Article XVIII, is that the non-Member is barred from submitting the dispute to Intelsat for arbitration. The reasons for that result are: (1) even though the broadcasting country is a Party, the dispute does not derive from any contractual obligations between the Party and the non-Member, (2) the dispute is not between Parties because the non-Member is not one,<sup>56</sup> (3) it is not between a Party and a Signatory,<sup>57</sup> or between Signatories, and (4) it is not between a Party and a State that has ceased to be a Party. Therefore, there is no relief to the non-Member receiving nation under Article XVIII. Meanwhile, the broadcasting Party nation has been allowed to abuse the direct broadcast satellite and to inflict serious damage on the receiving country.

The need for a non-Member receiving country to have access to Intelsat's arbitration process is further magnified by the very nature of the direct broadcast satellite. By employing such a satellite one avoids the need to route television broadcasts through a ground receiving station in the country for which the programs are intended. Therefore any control over program content that the receiving country would exercise through its control of its earth station, would be dissipated by another country's use of a direct broadcast satellite.

The foregoing illustrates the need on the part of non-Member receiving countries for access to the Intelsat arbitration system as well as the unresponsiveness of Intelsat to that need.

## 2. THE U.S.S.R. DRAFT CONVENTION<sup>58</sup>

In contrast to the inadequacy of the Intelsat agreements in dealing with the issues raised by the abuse of direct broadcast satellites,<sup>59</sup> the U.S.S.R. Draft Convention speaks directly to those issues. The U.S.S.R. Draft Convention specifically prohibits the broadcasting of materials which are "immoral or instigating in nature or otherwise aimed at interfering in the domestic affairs or foreign policy of other States."<sup>60</sup> It also provides that "States Party to [the] Convention may carry out direct television broadcasting by means of artificial earth satellites to foreign States only with the express consent of the latter."<sup>61</sup> Any transmission

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56. *Id.* art. I, para. (f).

f) "Party" means a State for which the Agreement has entered into force or been provisionally applied.

57. *Id.* para. (g).

g) "Signatory" means a Party, or the telecommunication entity designated by a Party, which has signed the Operating Agreement . . . .

58. *See U.S.S.R.*, *supra* note 9.

59. *Supra* page 106.

60. *See U.S.S.R.*, *supra* note 9, at 1378, art. IV.

61. *Id.*, art. V.

of television programs without the express consent of the receiving state would be regarded as illegal. The Draft Convention itself contains a list of types of programs that would be treated as illegal.<sup>62</sup>

As to any provisions regarding the settlement of potential disputes, the Draft Convention offers a rather simple but startling solution.

Any State Party to [the] Convention may employ the means at its disposal to counteract illegal television broadcasting of which it is the object not only in its own territory but also in outer space and other areas beyond the limits of the national jurisdiction of any State.<sup>63</sup>

What Article IX amounts to is a blank check approval of the use of any means available from mere jamming of signals to actual destruction of the satellite. Combined with the Draft Convention's list of illegal broadcasts, the potential for international conflict over the use of direct broadcast satellites becomes very pronounced.<sup>64</sup> This result is precisely what is sought to be avoided by the development of an international set of principles to govern direct broadcast satellites.

### 3. THE UNESCO DECLARATION<sup>65</sup>

The UNESCO Draft Declaration, like the U.S.S.R. Draft Convention, also addresses the issues raised by abuse of direct broadcast satellites. The Declaration specifically provides that satellite broadcasting shall "respect the sovereignty of and the equality of all States, and shall be conducted with due regard for the rights of individual persons . . . ."<sup>66</sup> It also requires that account be taken of the needs and rights of audiences,<sup>67</sup> that each country have the right to decide on the content of the programs broadcast by satellite to its people,<sup>68</sup> and that any

62. *Id.* at 1379, art. VI, para. (2)a-f.

a) Broadcasts detrimental to the maintenance of international peace and security.

b) Broadcasts representing interference in intra State conflicts of any kind.

c) Broadcasts involving an encroachment on fundamental human rights, on the dignity and worth of the human person and on fundamental freedom for all without distinctions as to race, sex, language or religion.

d) Broadcasts propagandizing violence, horrors, pornography and the use of narcotics.

e) Broadcasts undermining the foundations of the local civilization, culture, way of life, tradition or language.

f) Broadcasts which mis-inform the public on these or other matters.

63. *Id.* at 1379, art. IX, para. (1).

64. The net effect of the U.S.S.R. proposal would appear to be not a lessening of conflicts resulting from abuse of the direct broadcasting satellite, but rather a lessening of operational telecommunication satellites.

65. See UNESCO, *supra* note 8.

66. *Id.* at 1477, art. II, paras. (1), (2).

67. *Id.* at 1478, art. IV, para. (2).

68. *Id.*, art. VI, para. (2).

cultural programs should respect the distinctive character, value and dignity of each country.<sup>69</sup> However, unlike the U.S.S.R. Draft Convention, the UNESCO Declaration does not provide for the use of jamming or satellite destruction as a means of ending transmissions which violate the principles set forth in the Declaration. As a matter of fact, the UNESCO Declaration does not contain any provisions regarding the settlement of disputes.<sup>70</sup>

Reviewing the responsiveness of the proposals to the issues presented, there are (1) the Intelsat agreements, which contain no provisions speaking directly to the abuse of direct broadcast satellites and which contain a dispute settlement provision that is inadequate to deal with direct broadcast satellites; (2) the U.S.S.R. Draft Convention, which specifically lists programs considered to be illegal when broadcast over a direct broadcast satellite, and which also provides for destruction of the offensive satellite by the receiving country at its own discretion; and (3) the UNESCO proposal, which speaks peripherally to the issues raised by abuse of the direct broadcast satellite but contains no specific provisions relating to the settlement of disputes.

The end result is that the highly volatile issues of broadcast intervention, cultural imperialism, and propaganda still remain unresolved at a point where the use of the direct broadcast satellite is imminent.

### B. Access to the Telecommunication Satellite System

The issue of access is composed of two sub-issues: frequency allocation and orbital slot allocation.

#### 1. FREQUENCY ALLOCATION

Neither the Intelsat agreements, the UNESCO proposal, nor the U.S.S.R. Draft Convention attempt to obtain authority for determining what bands of the radio frequency spectrum will be used for direct broadcast satellites. This lack of concern with such an important and essential area indicates that there is agreement that the I.T.U.<sup>71</sup> should continue to exercise authority over the allocation of radio frequencies for particular uses.

Even though most nations of the world are members of the I.T.U.,

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69. *Id.*, art. VII, para. (2).

70. One could infer from the lack of any dispute settlement provision, that the various States would have to work out their own solution. This result could lead to the adoption of methods ranging from jamming to satellite destruction: precisely the methods encompassed in the U.S.S.R. Draft Convention.

71. See International Telecommunications Convention, May 29, 1967, [1967] 18 U.S.T. 575, T.I.A.S. No. 6267.

violations of frequency assignments are numerous.<sup>72</sup> An attempt was made, at the 1965 Montreux Convention, to strengthen the authoritative and legislative powers of the I.T.U. by providing for an Optional Protocol on Compulsory Settlement of Disputes.<sup>73</sup> However, both the United States and Russia withheld approval and as a result are governed by the rather permissive dispute settlement provisions of Article 28 of the I.T.U. Convention.<sup>74</sup> This refusal to submit to compulsory arbitration poses an unneeded additional barrier to the furtherance of international cooperation in the field of direct broadcast satellites.

Another problem in the field of frequency allocation is the actual allocation procedures used by the I.T.U.<sup>75</sup> Those procedures generate the potential for a monopoly of telecommunication frequencies by a few countries. The countries referred to are the technically advanced countries that will soon preempt all of the frequencies that have been allocated to space telecommunications purposes.<sup>76</sup> Therefore, unless a set of international principles as to the use of these frequencies by direct broadcast satellites is developed, the few countries possessing such satellites shall have an unrestrained monopoly over telecommunications.

## 2. ORBITAL SLOT ALLOCATION

The issue of orbital slot allocation raises a problem because there is a practical limit to the number of direct broadcast satellites that can be placed in orbit without interfering with one another. This could enable one nation to deprive another of an entire area of broadcast coverage by merely placing three direct broadcast satellites in a preferred position over the equator.<sup>77</sup> The results of such action would be a monopoly over

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72. See S. LAY & H. TAUBENFELD, *supra* note 11, at 114. Also note that among the Member nations are the United States and the U.S.S.R.

73. *Id.* at 115 n.5.

74. Article 28 of the I.T.U. Convention provides for diplomatic negotiations or, in the case of any existing agreements between disputants or failure to resolve the question, for arbitration under Annex C. The provisions of Annex C are couched in very permissive terms. See S. LAY & H. TAUBENFELD, *supra* note 11.

Also note that the unwillingness of both the U.S. and U.S.S.R. to approve the compulsory arbitration agreement seems to indicate that both nations are afraid of losing in a dispute over a claim of right over a frequency.

75. See note 12 *supra* and accompanying text.

76. In the field of direct broadcast satellites there are very few countries with the financial and technical capacities to build and launch such satellites. Under the I.T.U. procedures a nation may not assign frequencies within an allocated band until it has the capacity to use that frequency. Therefore, the more advanced countries will soon be found to have assigned most of the allocated frequencies.

77. There are three orbital slots per frequency per synchronous orbit. Direct broadcast satellites operate on U.H.F. frequency in the range of 750-900 MH. With an average band width of 6 MH, per frequency there would be only 25 usable frequencies for a direct broadcast satellite. With a limit of three slots per frequency in order to avoid interference

coverage of a particular area by one nation. Once such a monopoly had been achieved, all other broadcasting countries would be forced to accept the monopolizing country's terms if they wanted access to its satellite system and its area of coverage. In addition, any of the receiving countries within the monopolizing country's area of coverage would have their program content determined solely by the monopolizing country.

Therefore, there is a genuine need for an international system or code under which all nations desiring access to a direct broadcast satellite system could attain such access once all the orbital slots had been filled.

### 3. INTELSAT

The problem of access to the direct broadcast satellite system has been dealt with in the new Intelsat agreements. An initial acknowledgment of the problem is contained in the preamble to the Definitive Agreement where it states "satellite communications should be organized in such a way as to permit all people to have access to the global satellite system . . . ."<sup>78</sup> In an effort to attain that goal, Intelsat has been organized into three main bodies that together control access to and utilization of the Intelsat satellite system.<sup>79</sup> The voting procedures used at all three levels are, a two-thirds majority of the present voting members<sup>80</sup> with voting participation at both the Signatory and Board of Governors levels determined by investment percentage.<sup>81</sup> The Board of Governors, however, restricts any one Governor from exercising more than forty percent of the Board's total voting power.<sup>82</sup>

The responsiveness of the Board of Governor's weighted voting procedures, to the goal of easy access to the direct broadcast satellite sys-

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there is a maximum of only 75 orbital slots available to direct broadcast satellites. See Gold, *supra* note 2, at 82.

78. See Intelsat, *supra* note 7.

79. The three groups are the Assembly of Parties, the Meeting of Signatories, and the Board of Governors. See notes 37 & 38 *supra*.

80. See Intelsat, *supra* note 7, art. VII, para. (f).

f) Decisions on matters of substance (in the Assembly of Parties) shall be taken by an affirmative vote cast by at least two-thirds of the Parties whose representatives are present and voting.

Article VIII, para. (b)(e) stated:

Each signatory shall have one vote. Decisions on matters of substance shall be taken by an affirmative vote cast by at least two-thirds of the Signatories . . . present and voting.

Article IX, para. (j)(i) states:

[The Board of Governors] on all substantive questions . . . at least two-thirds of the total voting participation of all Signatories represented on the Board of Governors. . . .

81. See note 40 *supra*.

82. See note 43 *supra*.

tem, has been criticized as being "incompatible with the principles of sovereign equality."<sup>83</sup> The most frequent proponents of this argument are the U.S.S.R. and the Latin American countries which are members of Intelsat.<sup>84</sup> Despite the validity of the principle behind the agreement, it would be rather unrealistic to suppose that governments would invest in such a system in varying proportions and then not expect to receive voting participation equivalent to their investment. It has been noted by other authors that the implementation of any plan which did not consider the financial investment of countries would result in the development of competing systems and thus run counter to the concept of a single international system.<sup>85</sup> The end result of abandoning a weighted voting procedure would be even more barriers to international cooperation than exist at the present. Therefore, the present weighted voting system would appear to be the most practical solution in light of the substantial funding needed to operate an international satellite system composed of direct broadcast satellites.

The second and more controversial area is that of the two-thirds requirement in the Assembly of Parties by which use of the Intelsat satellites is determined. Under the present system an applicant country would be denied the use of any of Intelsat's direct broadcast satellites unless a two-thirds majority of the present and voting Members favored such use. Most likely, the nations present and voting would be those in the particular region into which the applicant country wished to broadcast. Therefore, if more than one-third of the countries in that region objected to the applicant's use of the direct broadcast satellite, that minority block of countries would prevent the rest of the region from receiving a program it may desire. This result would seem to run counter to the 1948 U.N. Universal Declaration of Human Rights, which states:

Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive, and import information and ideas through any media regardless of frontiers.<sup>86</sup>

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83. See Smith, *supra* note 1.

84. Apart from the political factors which motivate Soviet criticism of the Western controlled Intelsat, it is unlikely that the Communist nations could gain control of the Board of Governors. This is because the Soviet usage of the Intelsat system would probably not be great enough to give it a voting percentage that would amount to veto power on the Board of Governors. It is highly unlikely that the U.S.S.R. would be content with only membership on the Board devoid of a veto. See Smith *supra* note 1, at 353. The arguments raised by the Latin American countries are also based primarily on a desire for greater control at the Signatory and Board levels.

85. *Id.* at 352.

86. G.A. Res. 217, art. 19, U.N. Doc. A/810 at 74-5 (1948).

Even so, the result is partially justified on the grounds that many countries in the region, which border on the country for whom the program was intended, would be subject to spill-over<sup>87</sup> from the direct broadcast satellite. Until the state of the art is further developed, direct broadcast satellites will not possess pin-point accuracy, and spill-over will be a problem that must be dealt with due to the high abuse potential of direct broadcast satellites.

The alternative solutions to the two-thirds majority requirement are either unanimous consent or one-vote veto power. Both of those solutions possess abuse and conflict potential much more serious than the present two-thirds vote requirement.

There will, however, remain the additional argument that the two-thirds requirement will foster charges of conspiracies among some countries of a region to prevent reception of programs by other countries within that region. Unfortunately, that problem will never be solved regardless of what voting system is adopted. Therefore, in light of the obvious abuses of a unanimity requirement or a one vote system, the present two-thirds requirement remains the lesser of the evils suggested.

#### 4. THE UNESCO DECLARATION AND THE U.S.S.R. DRAFT CONVENTION

Both the UNESCO Declaration and the U.S.S.R. Draft Convention contain provisions that are relevant to the determination of the issue of access to the direct broadcast satellite. The UNESCO Declaration states that the benefits of satellite broadcasting should be available to all countries without discrimination and should be based upon international cooperation, world-wide and regional.<sup>88</sup> Similarly, the U.S.S.R. Draft Convention calls for all States to have an equal right to carry out direct television broadcasting without discrimination of any kind.<sup>89</sup> However, unlike the Intelsat agreements, there are no further provisions regarding how such access is to be achieved. The results, therefore, are that the Intelsat agreements, the UNESCO Declaration, and the U.S.S.R. Draft Convention all recognize the need for world-wide access to a direct broadcast satellite system. But, only Intelsat has made provisions that at least respond to the problem of implementing world-wide access to the direct broadcast satellite.

### IV. CONCLUSIONS AND PROPOSED SOLUTIONS

Technically speaking, a single world-wide system would provide the

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87. The beam transmitted from a direct broadcast satellite has a basically cylindrical shape with a very gradual fall off from the central point of maximum strength. Thus in order to achieve truly national coverage the beam will of necessity spill into parts of neighboring countries that stand within the circular field. See Gold, *supra* note 2, at 80.

88. See UNESCO, *supra* note 8, at 1477, art. III, para. (1) & (2).

89. See U.S.S.R., *supra* note 9, at 1378, art. I, para. (1) & (2).



most effective use and management of the limited frequency spectrum. It would avoid duplication of and interference with competing systems, improve operating efficiency, and reduce the technical and operating problems of compatibility between different space systems and other services.<sup>90</sup> Economically speaking, there are strong inducements to the formation of a single telecommunications system. The most obvious of these is that the more nations that cooperate with one another, the less cost there will be per nation for the benefits of such a system. However, despite the technical and economic arguments, and despite the progress of the I.T.U.<sup>91</sup> and Intelsat<sup>92</sup> in the area of international cooperation, very little real progress has been made toward the goal of establishing an international code of conduct as to the use of direct broadcast satellites.

In addition to the difficulties of formulating a workable international code as to the use of and access to the direct broadcast satellite, there are also the added efforts of the U.S.S.R.,<sup>93</sup> Canada and Europe<sup>94</sup> to develop separate telecommunications systems. With the limited number of preferred orbital slots and allocated frequencies,<sup>95</sup> the potential for conflict among the competing systems is very high.

The suggested solution to this state of affairs is to convene an international conference for the purposes of: (a) discussing the feasibility of a single international telecommunication system, (b) developing an international code of conduct as to the use of direct broadcast satellites, and (c) developing a uniform system of access to such a satellite system in order to ensure world-wide access. Present at such a conference would be three main groups: the Intelsat countries,<sup>96</sup> Europe,<sup>97</sup> and the countries involved in the U.S.S.R. satellite system.<sup>98</sup> The Intelsat countries can be further divided into the lesser developed countries, such as Latin America and India, and the more developed countries, such as the United States, Canada, and France. Even though the United States has voted against the establishment of an international code of conduct in the past,<sup>99</sup> there is no reason to believe that it would not attend a confer-

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90. See Smith, *supra* note 1, at 350.

91. See notes 10-16, *supra* and accompanying text.

92. See notes 30-43 *supra* and accompanying text.

93. See note 44 *supra*.

94. See note 45 *supra*.

95. See note 79 *supra* and accompanying text.

96. See note 7 *supra*.

97. In reference to Europe, there are some countries such as France, Italy, Federal Republic of Germany, and Spain that are members of Intelsat and at the same time involved in European efforts to establish regional telecommunication systems. *Supra* note 42.

98. See note 44 *supra*.

99. See note 27 *supra* and accompanying text.

ence called for the purpose of discussing a single international telecommunication system.<sup>100</sup>

The concept of establishing a single international telecommunication system is an unrealistic one. Nations will, for reasons of security or national prestige or politics, be concerned about a single world-wide system over which they would have little control and which might be under the control of an unsympathetic country. Among such nations are France, Canada, the Soviet Union and oddly enough the United States.<sup>101</sup> The most persistent barrier to a single world-wide system is the refusal of the Soviet Union to cooperate with Intelsat. The political and propaganda factors involved are of such an intensity that Communist participation in any form of Western-dominated system is highly unlikely.<sup>102</sup>

Perhaps the concept of a single global system could be realized, however, if one interpreted single to mean a number of interconnected regional systems woven into a single global system.<sup>103</sup> This solution

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100. The United States has always favored a single system, and in fact the U.S. had suggested the addition of a paragraph to Article I of the Intelsat Agreement that would have explicitly bound the signatories to a single system and would have pledged them not to participate in any other program. This paragraph was not included though, and the efforts of the Canadians, Japanese, Germans and French to develop satellite capabilities indicate that the universal principle will be fragmented. See Smith, *supra* note 1, at 344.

101. Concern for security, absolute control, and possibly costs contributed strongly to the establishment of a U.S. Department of Defense Communication Satellite System. Political chauvinism plus distrust of the political potential of Intelsat doubtless were major factors in the decision of the Soviets not to join Intelsat. France has indicated its intent to establish its own system for primarily political and prestige reasons. Canada's discussion of a separate system for domestic purposes was openly motivated by political desires to avoid losing control of its domestic communication system to the United States or Intelsat. See S. LAY & H. TAUBENFELD, *supra* note 11, at 112 n.49.

102. It has been suggested though, that the Soviets may hope to bargain for a disproportionate voice on Intelsat by their development of a successfully competitive satellite system of their own. See S. LAY & H. TAUBENFELD, *supra* note 11, at 125.

In the related area of earth resource satellites, there has been a significant shift in the Soviet attitude toward international control of the collection and distribution of data from such satellites. Earth resource satellites are used for scanning the earth with highly sensitive cameras and sensors for location of valuable natural resources. The Soviet Union has proposed that the United Nations establish a center for the collection and distribution of data obtained from such satellites. Until now, the Soviets have been unwilling to have any international authority involved. N.Y. Times, Feb. 10, 1974, at 20, col. 3.

This recent shift in attitude could be an indicator of a possible willingness to allow a non-Western dominated international agency, under the auspices of the U.N., to have authority over an international telecommunication satellite system. It has already been noted that the U.S.S.R. supports an international convention on the use of direct broadcast satellites as evidenced by its proposed Draft Convention. See notes 62 & 63 *supra* and accompanying text.

103. This theory has been criticized as being naive in that it disregards the political realities of the situation. See Smith, *supra* note 14, at 351.

would seem to be the most practical in light of the present development of a number of telecommunications satellites. Through such a system each region would be able to retain some control over its own area, while at the same time benefiting from the use of other regional systems. Such a system would be ideal for direct broadcast satellites, which are limited as to the number which may be orbited.<sup>104</sup>

Provided such a "single international telecommunications system" could be achieved, there would still remain the problem of the lack of an internationally accepted code of conduct as to use of any direct broadcast satellites within the system. Without such a code, each regional system would be operating under its own standards. The results would be international conflict and abuse of the direct broadcast satellites under the control of a region.<sup>105</sup> Such a result would defeat the purpose of a regionally interconnected system.

The second issue to be dealt with at the Conference would be the development of an international code of conduct as to the use of direct broadcast satellites. Opposition to the development of such a code would be minimal. As previously noted, a U.N. General Assembly resolution calling for a convention to deal with this issue, was almost unanimously adopted.<sup>106</sup> As early as 1963, during the discussions of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, the Latin American countries expressed their view that there should be some reference to international scrutiny of a global satellite system.<sup>107</sup> With the rapid development and imminent use of the direct broadcast satellite, there are presently more reasons to support such international scrutiny than in 1963. (It has already been noted that the U.S.S.R. favors the formation of an international code of conduct.<sup>108</sup> The only possible opposition to the development of an international code of conduct would be that of the United States. As previously mentioned, the United States was the only country in the General Assembly that voted against the resolution call-

104. See note 71 *supra* and accompanying text.

105. A good example would be if the United States, through Intelsat, was using a direct broadcast satellite to beam propaganda into a Soviet country without its approval. The Soviet country would probably be operating under the U.S.S.R. Draft Convention principles. Instead of using diplomatic channels, the receiving country, under Article IX (*supra* note 63) would proceed to shoot the satellite out of the sky. This is precisely the sort of situation sought to be avoided through the use of inter-connected regional systems.

106. See note 27 *supra* and accompanying text.

107. Brazil, in particular, wanted a ban on the utilization of a communication system based on satellites for purposes of encouraging national racial or class rivalries. See W. JENKS, *SPACE LAW* 261 (1965) [hereinafter cited as W. JENKS].

108. See note 62 *supra* and accompanying text. Also note that as early as 1963, the U.S.S.R. was demanding a prohibition on the use of outer space for propagating war, national hatred or enmity between nations. See note 107 *supra*.

ing for the development of such a code.<sup>109</sup> The suggested reason for such opposition was the heavy United States financial commitment to Intelsat and the fear that such a code would conflict with the Intelsat agreements.<sup>110</sup> However, the Intelsat agreements contain ample references to the adoption of rules to regulate the use of the Intelsat satellite system.<sup>111</sup> Therefore, in light of the world-wide recognition of the need for regulation of satellite communications and the high abuse potential of the direct broadcast satellite, it may be posited that it would be in the best interests of the United States to support the development of an international code.

It is suggested that such an international code be modelled after the UNESCO and U.S.S.R. proposals,<sup>112</sup> except that Article IX of the Soviet Draft Convention be omitted.<sup>113</sup> In its place should be adopted an arbitration system similar to that of Intelsat's,<sup>114</sup> but with the addition of a provision that would permit a country that was a non-Member of any regional system access to the arbitration process of the offending region. As for inter-region arbitration, the only effective method would be to have an independent arbitration tribunal made up of representatives from each Member region in the telecommunication system. Only in that way would impartial settlements be achieved in an inter-region dispute. The main obstacle to be overcome in adopting such an arbitration system would be that of an unwillingness on the part of nations to vest an independent body with authority that would impinge on national sovereignty. If a truly workable global telecommunication system is to be achieved, such obstacles must be overcome.

The third issue to be dealt with at such a conference would be that of developing a uniform system of access to a direct broadcast satellite system. Without such access based upon nondiscriminatory methods, the technologically advanced and financially capable countries will obtain a monopoly over the use of direct broadcast satellites.<sup>115</sup> The result would be that the lesser developed countries would be denied a voice in determining the actual use of the direct broadcast satellite system. There is agreement among most nations of the world, as evidenced by the Intelsat agreements, UNESCO Draft Declaration, and the U.S.S.R.

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109. See note 27 *supra* and accompanying text. Also note that during the 1963 discussions on the Declaration of Legal Principles, the United States voted against the inclusion of any express declaration prohibiting the use of outer space for propaganda. See W. JENKS, *supra* note 107.

110. See note 7 *supra*.

111. See notes 36, 37, 50 & 53 *supra* and accompanying text.

112. See notes 8 & 9 *supra* respectively.

113. See note 63 *supra* and accompanying text.

114. See note 54 *supra* and accompanying text.

115. See note 76 *supra*.

Draft Convention that the benefits of direct broadcast satellites should be available to all countries.<sup>116</sup> The only source of disagreement is the manner in which such world-wide access is to be achieved.

Intelsat's weighted voting procedures at the Board of Governors level, minimum investment requirements for participation at the Signatory level, and two-thirds requirement for approval of access to its facilities<sup>117</sup> have been sharply criticized. However, most of this criticism has been centered in the countries without a large financial stake in Intelsat, and from the U.S.S.R.<sup>118</sup> The lesser developed nations with low investment in Intelsat will strive for a one-vote/one-nation procedure to be used in determining access to any telecommunication system. Such a system would be unrealistic in the light of the considerable funds needed to operate a telecommunication system.<sup>119</sup> It is suggested therefore that some form of weighted voting, according to investment, will be inevitable in any regional system that is developed.

As to the two-thirds requirement that Intelsat uses to determine access to and use of their satellite system, until direct broadcasting is capable of greater accuracy and the problems of spill-over have disappeared, some form of majority consent within a region will be needed. As noted earlier a two-thirds requirement carries less abuse potential than the alternatives of either unanimous consent or one vote veto power.<sup>120</sup> Therefore it is suggested that a two-thirds requirement similar to that of Intelsat's be adopted as an international standard. This will not be an easy task to accomplish because each nation will have its own idea as to what voting system will be the most equitable, and each nation will strive for whatever voting system will give it the most leverage.

There is, therefore, no assurance that the nations of the world will agree on every issue presented at the suggested conference. However, unless immediate steps are taken to achieve international agreement and cooperation, as to the use of and access to direct broadcast satellites, the world will run the risk of allowing the great benefits to be derived from such satellites to be lost in the flurry of conflicts that will be generated in the absence of effective international regulatory standards.

Gary C. Merckel

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116. See notes 7, 88 & 89 *supra* and accompanying text.

117. See note 80 *supra*.

118. See notes 83 & 84 *supra* and accompanying text.

119. See note 85 *supra* and accompanying text.

120. *Supra* page 113.